

CONSULTATION RESPONSE FORM

NHS Pension Scheme (Scotland): Retirement flexibilities and changes to pension rules regarding inflation

1. Name/Organisation

Organisation Name

British Medical Association (BMA)

Title

Miss

Surname

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3. Permissions - I am responding as... (please complete either sections (a), (b) and (d) or sections (c) and (d):

Individual or **Group/Organisation**

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please state yes or no:

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please state yes to one of the following:

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your *response* to be made available?

Please state yes or no: **Yes**

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please state yes or no: **Yes**

ABOUT YOU

I am responding ...

- as a scheme member
- on behalf of an Employer Organisation
- on behalf of a Trade Union/Staff Association
- other (please specify)

What is your gender?

- I am female
- I am male

I am employed as...

- an administrator
- a Dentist
- a Doctor
- a General Practitioner
- a junior Doctor
- a manager
- a nurse
- I'm retired
- other (please specify)
Senior Policy Advisor, BMA Pensions Committee.

What is your working pattern?

- I work part-time
- I work full- time
- Not applicable

CONSULTATION COMMENTS

Please use this space to provide any comments.

Question 1 - Do you agree or disagree that the new retirement flexibilities should be introduced as proposed in this consultation document?

If you disagree or don't know, please explain your answer.

Comments:

- The BMA has been calling for so called “partial retirement” for 1995 pension scheme members for some time and therefore we welcome its introduction. It will aid retention of senior consultants as currently there is significant variation between employers in terms of what retire and return arrangements are available.
- The option of pensionable re-employment for 1995 scheme members will bring this group in line with 2008 section members and would potentially encourage those who have previously retired to return to work.
- However, given the capacity issues in the NHS and record waiting lists, we do not believe that a 10% reduction in pensionable pay should be a requirement. As long as this requirement exists, we believe that in the majority of cases, this requirement will be met by reducing hours. For officer scheme members, including consultants and SAS doctors, this needs to be a reduction in basic pay (i.e. programmed activities of less than 10) and as such this may result in a significant loss of capacity than would be the case if the 10% reduction in pensionable pay requirement was scrapped. Furthermore, given that this will prompt a discussion about working patterns, in many cases officer members may choose to reduce hours by more than 10%. Although in England, some employers have suggested mitigating this by splitting contracts to allow variable pensionable and non-pensionable elements, to date as far as we are aware no NHS Scotland employer has offered this option. Furthermore, for practitioner members, this requirement can only be met by reducing hours. We strongly believe this requirement to reduce pensionable pay should be removed.
- We would underline the necessity for partial retirement to be announced as soon as possible, and certainly before Summer 2023 as suggested, with implementation by 1st April 2023 at the very latest. We know that April is a peak month for retirements, and we are concerned that if partial retirement is not available by April 2023, thousands of doctors will be lost from the NHS and may not be persuaded to return even if partial retirement is subsequently implemented.
- We welcome the proposal that members who partially retire would be able to claim, or ‘draw down,’ up to 100% of their 1995 Section benefits under partial retirement and this will also be increased from the current 80% to 100% for 2008 legacy scheme and 2015 reformed scheme members.
- However, in addition to the new retirement flexibilities, we believe that it is essential that late retirement factors are also introduced so that doctors can continue to work without their pension falling in value. This is already a feature of the 2008 legacy scheme and 2015 reformed scheme, and we believe it should be introduced in the 1995 scheme. This would

also encourage those approaching retirement age to simply continue working for longer.

- We support the permanent removal of the 16-hour rule and regulation R4 (6), and whilst we also support the extension of the suspension of abatement rules until April 2025, we have consistently argued that abatement should be scrapped entirely. The BMA has repeatedly stated that it is not only illogical but extremely unfair to reduce the pension of staff who have retired when they return to work for the NHS. This is especially counterproductive given that these rules do not apply if people go to work in the private sector. In reality, abatement only affects a small number of doctors seeking to return to work post-retirement, such as psychiatrists with 'mental health officer' status or those with ill health retirement. The overall costs of scrapping abatement entirely would be minimal, but doing this would have a significant positive impact in the Mental Health sector which is struggling at present. If due to concerns around red-circling (the practice of 'freezing' the pay of employees who are paid more than colleagues doing equivalent work until such time as their colleagues' pay reaches the same level) it is felt abatement cannot be scrapped, we suggest that the suspension of abatement rules are extended for a prolonged period (e.g. 15 years) by which point time it will no longer be relevant.
- Although these retirement flexibility proposals are helpful for small groups of doctors and other NHS staff (e.g. those in the peri retirement period and MHOs), they do nothing for the majority of the workforce that is impacted by pension taxation. These proposals do not directly address the issues caused by annual or lifetime allowance and do nothing for the tens of thousands of mid-career consultants and GPs, for whom partial retirement would not yet be an option. These doctors will still have to consider reducing the work they do to prevent incurring large punitive tax bills due to exceeding the annual allowance. It is disingenuous of the Government to suggest that these proposals will make any meaningful difference to the huge backlogs in care we are seeing. This proposal falls well short of the long-term solution that the NHS desperately needs to retain staff. The BMA have been clear to both UK and Scottish Government that we believe the long-term solution is the establishment of a tax unregistered scheme for senior NHS staff, similar to the one already implemented for judges, and that as a matter of urgency the Finance Act must be amended to address the serious issue of negative pension growth.
- There is potential interaction with partial retirement and the McCloud remedy that needs to be considered. If partial retirement is considered to be a benefit crystallisation event it may mean that members in scope for the McCloud remedy may be required to make the choice of whether they wish their remedy period membership to be in the legacy or the reformed scheme at the point of taking partial retirement. However, members will not know which option is better for them with certainty until they fully retire. We believe to mitigate this, affected members should be given the option to make their McCloud choice either at the point of partial retirement or when they fully retire from the pension scheme.

Question 2 - Do you agree or disagree that the changes to the pension rules regarding inflation should be implemented as proposed in this consultation document?

If you disagree or don't know, please explain your answer.

Comments:

- The BMA has been highlighting the grossly unfair situation related to the “CPI disconnect” for almost a year. We have been very clear that amending the Finance Act to ensure the same value of CPI was used for the “opening value” and the revaluation is the best way to fix this. This approach was supported by a large number of experts including the Association of Independent Specialist Medical Accountants, NHS Employers and Financial Specialists. We completely agree with Scottish Government’s position on this and we fully support the notion that “a fairer approach to delivering the intention would be to amend sections 234 and 235 of the Finance Act 2004, which would have the advantage of simplicity and could also resolve other issues in relation to annual allowance. The Scottish Government hopes that the UK Government gives full consideration to delivering the changes through primary legislation.”
- We believe that the proposals made by UK Government and discussed in this consultation are more complicated and less effective as a solution. The BMA understands that moving the effective date of the revaluation of CARE schemes from 1st April to the 6th April will “align” the CPI values being used from the 2023-24 tax year onwards. However, this creates a number of anomalies:
 - Firstly, for the 2022-23 tax year, there will be no revaluation applied to the CARE schemes (2015 scheme and both the legacy and reformed schemes for practitioners). The impacts of this need to be assessed for individuals, including any implications for annual allowance tax liabilities and carry forward calculations
 - Secondly, it is not entirely clear what the impact will be for members retiring this tax year and whether they will receive the appropriate proportion of the revaluation that they are entitled to under the existing arrangements. Indeed, we note the following in the consultation: *“Members who leave the 2015 Scheme but who have not yet retired receive a proportion of the in-service revaluation after 31 March and, following this, have their deferred 2015 Scheme pension increased yearly by pensions increase.”* Given that in the 2022-23 no revaluation will be applied, it is essential that members retiring in this financial year are retrospectively given the access to the relevant pro- rata revaluation and pro-rata pension increase that would have applied in the 2022-23 year if they receive their pension in 2022-23
 - Thirdly, as this is a scheme level solution, it requires not only all NHS schemes in the nations to replicate this change but potentially other public sector schemes such as the Armed Forces, Local Government or University schemes to ensure that doctors and other public sector staff who are equally impacted by this CPI disconnect are not disadvantaged. This is extremely labour intensive and complicated and a change to the Finance Act would have corrected the key

underlying anomaly and would fix this problem for all pension schemes.

- The BMA is extremely concerned that the proposals do nothing to address the issue of Negative Pension Growth. This is a particular issue in the NHS following the Public Sector pension reforms that resulted in NHS staff who are contributing to the pension after April 2022, being members of 2 separate but connected pension schemes. These reforms were imposed on the NHS by Government and were not accepted by the BMA. The issue arises due to the fact the new “reformed schemes” are considered separate for tax purposes. This coupled, with an anomaly in the S234 of the Finance Act, means that if you have negative growth in one scheme (e.g. the 1995 section of the legacy scheme), this negative growth is rounded up to zero and can neither be offset against positive growth in the 2015 scheme or carried forward or backwards within the same scheme. This is a very significant problem, especially in the context of sub-inflationary pay awards and unless this is rectified, it will result in many doctors looking to take full or partial retirement to protect the value of their pension. The UK Government must urgently correct this anomaly in the Finance Act so that “negative growth” in one scheme can either be offset against growth in another or carried forward or backwards into other tax years.
- We have conducted some modelling to see what impact the proposed solution to the CPI disconnect issue would have on an example mid-career consultant, as shown in the table in Annex A. There is in fact huge negative growth of - £71k in 2024 and - £61k in 2025 as highlighted by the yellow cells, which is keeping the member in the annual allowance tax charge brackets, despite their overall pension not keeping up with inflation. The modelling demonstrates that these proposals do nothing for those in their late 30s, 40s, and early 50s who are still subject to regular annual allowance tax charges. This will mean doctors will still be forced to reduce their hours or leave the NHS to avoid these tax charges, which will only worsen the NHS staff retention issues. If UK Government were to acknowledge this issue and address this negative pension growth, via carry forward the same member would not have annual allowance tax charges until 2032, meaning they can work as much as they wish for the foreseeable future and not have to reduce hours or leave the NHS to control pension tax, which would help solve the current NHS crisis.
- We believe the only viable solution is a substantive fix to S234 of the Finance Act recognising negative growth with carry forward / backwards to address this - we note similar recommendations made by AISMA (a professional body for medical accountants representing over 50% of medics) and Policy Exchange. It is crucially important that a robust fix is put in place via the Finance Act, properly recognising negative growth (i.e. below zero) rather than for example simply combining growth between two schemes that will not achieve this where the total is below zero. Furthermore, not only is fixing negative growth fundamentally fair (as it allows a true measure of growth above inflation - the stated policy aim of the consultation), it could also fix other anomalies, for example, relating to salary sacrifice or temporary promotion whereby mid-career staff are strongly disadvantaged from taking on more senior roles with higher responsibility. These could come with very large and punitive charges, but if the staff member does not retain that role until within 3 years of retirement, they may never see the benefit to their pension that they have paid tax on. Failing to address this would result in members seeking to retire or partially retire to prevent the negative growth in the legacy 1995 from materialising. This could result in thousands of doctors seeking to retire in 2023-2024.

Question 3 - Are there any further considerations and evidence that you think the Scottish Government should take into account when assessing any equality issues arising as a result of the proposed changes?

Comments:

- The consultation states that Scottish Government has considered the potential impact of the new retirement flexibilities on members in different age cohorts and acknowledges that if they are implemented it would be primarily older members who would benefit from them. We do not believe the proposals address the issue for mid-career consultants and GPs, for whom partial retirement would not be an option. The proposals do nothing for doctors below minimum pension age who will continue to regularly incur sky-high annual allowance tax bills, simply by continuing to provide care for patients.
- We believe there should be more flexibility as to when doctors are given the opportunity to make a scheme election and choose either to retain legacy benefits or elect to choose reformed benefits, so they have the chance to make the most informed decision for their pension benefit. This would have a significant impact on members below minimum pension age.
- It should be acknowledged that older members who are over 60 will have already lost some value in their pension, and so this is why late retirement factors are important and should be introduced in the 1995 scheme.

Please e-mail your response to SPPAPolicy@gov.scot or send via mail to:

NHSPS Consultation (2022 Amendments (No. 3))
SPPA Policy
7 Tweedside Park
Tweedbank
Galashiels
TD1 3TE

The closing date for receipt of comments is **Thursday 16 February 2023**

Annex A

1995 pension if retired at 60 in 2022 (to demonstrate fall in real terms)													
	£45,592	£50,196	£54,162	£55,245	£56,350	£57,477	£58,626	£59,799	£60,995	£62,215	£63,459	£64,728	
Tax Year Ending	2021/22	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034
CPI (actual or BOE forecast)	3.1%	10.1%	7.9%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%	2.0%
Pay Award (excludes old style CEA / national awards)		4.5%	2.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%
Increment year (add £6k pensionable income)					Yes						Yes		
Pensionable Income (mid career, CEA 4, plus on call)	£125,172	£130,261	£132,625	£133,831	£142,198	£143,500	£144,814	£146,141	£147,482	£148,836	£156,204	£157,645	£159,101
Pension contribution	£18,150	£17,585	£16,578	£16,729	£17,775	£17,937	£18,102	£18,268	£18,435	£18,605	£19,526	£19,706	£19,888
Real terms pay (incl. increments) and therefore 1995 pension (-ve = real terms PAY CUT vs CPI)		-5.48%	-5.64%	-1.07%	4.17%	-1.06%	-1.06%	-1.06%	-1.06%	-1.06%	2.89%	-1.06%	-1.06%
1995 Service (years)	£28	£28	£28	£28	£28	£28	£28	£28	£28	£28	£28	£28	£28
1995 pension	£43,810	£45,592	£46,419	£46,841	£49,769	£50,225	£50,685	£51,149	£51,619	£52,093	£54,671	£55,176	£55,685
1995 Pension Input Amount (ignoring -ve PIAs)		£8,040	£0	£0	£37,842	£0	£0	£0	£0	£0	£29,200	£0	£0
2015 Total Pension Accrued		£2,412	£5,148	£8,110	£11,028	£14,071	£17,245	£20,555	£24,006	£27,602	£31,461	£35,481	£39,669
2015 Pension Input Amount		£38,596	£39,875	£40,889	£44,079	£45,165	£46,285	£47,440	£48,632	£49,861	£52,907	£54,260	£55,657
Combined Pension Input Amount (ignoring -ve PIAs)		£46,636	£39,875	£40,889	£81,921	£45,165	£46,285	£47,440	£48,632	£49,861	£82,107	£54,260	£55,657
Available annual allowance including carry forward (post consultation)		£40,000	£40,000	£40,125	£40,000	£40,000	£40,000	£40,000	£40,000	£40,000	£40,000	£40,000	£40,000
AA Tax Charge (ignoring -ve PIAs - excluding LTA tax charge)		£2,654	£0	£306	£18,829	£2,324	£2,828	£3,348	£3,884	£4,437	£18,948	£6,417	£7,045
1995 Growth (including -ve PIAs if amended S234)	£0	£8,040	£-71,770	£-61,658	£37,842	£-10,258	£-10,345	£-10,432	£-10,521	£-10,610	£29,200	£-11,190	£-11,286
Combined Growth (counting -ve PIAs if amended S234)	£0	£46,636	£-31,894	£-20,768	£81,921	£34,907	£35,940	£37,007	£38,111	£39,251	£82,107	£43,071	£44,371
Available annual allowance including carry forward if amended S234 with carry forward		£40,000	£40,000	£111,894	£172,663	£130,741	£105,862	£49,153	£52,146	£48,942	£45,630	£40,000	£40,000
AA Tax Charge (counting -ve PIAs if amended S234 with carry forward) - i.e. only measuring "real growth" above inflation; excluding LTA charge		£2,654	£0	£0	£0	£0	£0	£0	£0	£0	£16,415	£1,382	£1,967
Difference in AA charge with -ve PIAs counted		£0	£0	£-400	£-18,865	£-2,324	£-2,828	£-3,348	£-3,884	£-4,437	£-2,534	£-5,035	£-5,079
													£48,735

AA Last 10 years

£68,498

£19,763