NHS Wales Employers
Cyflogwyr GIG Cymru

Pension tax guidance for employers

Local measures to support staff and service delivery

January 2022

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Introduction

This guidance originally developed in 2019 by NHS Employers has been adapted for application in NHS Wales so as to help you support staff who are likely to be affected by pension tax issues.

Whilst there were significant changes to the Annual Allowance arrangements announced in the March 2020 budget the current pensions taxation policies do continue to have an impact on workforce capacity in the NHS, therefore, Welsh Government (WG) have signalled that it is supportive of employers working with their employees and trade union representatives to implement local solutions. Employers are free to reach their own decisions and agreements with individuals locally, without challenge or scrutiny from WG, provided they take appropriate advice and have assurance that such agreements are lawful and based on strong justifications. Welsh Government also want to remind employers of the need to take appropriate advice and have assurance that any such agreements entered into are lawful and based on strong justifications, which may include consulting Wales Audit Office and would encourage Health Boards and Trusts to consistently apply this guidance.

The measures outlined in this guidance can be used to support staff and service delivery and will be reviewed in the light of any changes to the NHS Pension Scheme or wider tax system.

Under the current UK pension tax system, pension contributions and any growth in pension savings are normally exempt from tax up to certain limits set by HMRC with pension benefits being taxed when they are paid to the individual in retirement. For members of the NHS Pension Scheme, the annual allowance places a limit on the amount by which an individual's pension may increase during a tax year, without incurring a tax charge. The lifetime allowance is the amount of pension savings an individual can make over a working lifetime without paying tax. If an individual exceeds the annual or lifetime allowance, a tax charge may be due on the excess above these limits. Please see NHS Employers annual allowance resources and lifetime allowance briefing for further information.

Notwithstanding this guidance, being a member of the NHS Pension Scheme will be in the best financial interests of most NHS employees, therefore this guidance can be used to support staff, who are or maybe affected by pension taxation issues, with additional choices as to when tax is paid i.e. from their current earnings, when a tax charge arises or through scheme pays arrangements. In all scenarios tax is due but the flexibilities included in this document provide for a choice framework as to when and how tax is paid.

We would encourage employers to engage with staff and listen to their concerns and suggestions, in order to implement arrangements in partnership with trade union colleagues, to support staff and service delivery. Any local arrangements should be reviewed regularly, to ensure any solutions which may be developed and implemented at a national level at a later date or changes to the NHS Pension Scheme or tax regime are taken into consideration.

Section 1 – The importance of independent financial advice and guidance

NHS Employers research into the impact of pensions tax in the NHS shows there is a clear lack of knowledge and understanding about the NHS Pension Scheme and associated tax issues. Pension tax can be a complex area and we strongly encourage employees to take independent financial advice to ensure their decisions are well informed, based on reliable and accurate information and positioned in the context of their overall individual financial position and long-term plans.

An individual's pension tax position depends on their taxable income from all sources, including employment outside the NHS, investments and rental properties. Pension savings from all pension arrangements including personal pensions and other workplace schemes are counted towards the annual and lifetime allowances.

It is not appropriate for employers or NHS Pensions to give employees advice on their pension tax position, as they are not regulated to give advice and they do not have sufficient information about the employee's individual financial circumstances. Employers can, however, support staff by signposting to general information and resources to improve understanding and awareness of pension tax issues. In addition a number of NHS Wales organisations have also introduced "Pensions Advice - Salary Sacrifice Schemes" to make use of the tax exemption which allows employees to save tax and National Insurance on the first £500 worth of pensions-related Financial Advice, each tax year, when offered through a salary sacrifice scheme. Individuals considering seeking such advice may wish to explore whether such a scheme is available to them.

The impact of the tapered annual allowance in place prior to the 2020/21 financial year, particularly on doctors, has been well publicised. The annual allowance tax arrangements however changed from 6 April 2020. Individuals now have to have taxable income of over £240,000 for their annual allowance for that tax year to be restricted. The standard annual allowance limit is currently £40,000. **A reduction to an individual's annual allowance i.e. a taper, does not apply to individuals who have 'threshold income' of no more than £200,000.**

It is possible that due to a lack of understanding, individuals who are unlikely to be affected by the tapered annual allowance may turn down additional work unnecessarily. For many clinicians, there is scope to do additional pensionable and more specifically, non-pensionable work without incurring a pension tax liability.

The tapered annual allowance applies to individuals with 'threshold income' (i.e. broadly all taxable income) above £200,000 and 'adjusted income' (i.e. broadly all taxable income plus the value of pension growth) of £240,000.

The average total earnings for a consultant are around £115,000, meaning that for many doctors and consultants, there is scope to increase their **non-pensionable earnings** without being affected by the tapered annual allowance.

Signposting employees to available advice and guidance may help them to maximise their earnings and make informed decisions about their membership to the NHS Pension Scheme, whilst carrying out additional activity. NHS Employers has compiled a list of organisations that are able to give expert guidance and advice for members of the NHS Pension Scheme. This web page has been developed to support employers to provide access to education, guidance and advice. **NHS Employers are not promoting or recommending the use of any organisation and may amend or update this list at any time.**

Section 2 – Existing flexibilities for employees choosing to remain in the NHS Pension Scheme

a) Managing pensionable pay

Determining certain elements of pay as being non-pensionable may help staff to limit the value and rate of their pension growth. Individuals with lower pensionable pay will build up a lower pension and will be less likely to breach the annual and lifetime allowances.

Employers have some flexibility in determining what pay is pensionable, depending on the nature and duration of the payment.

Employees should be aware that non-pensionable payments may still have an impact on their pension tax position. Employees may have a lower, tapered annual allowance if their threshold income exceeds £200,000 and their adjusted income exceeds £240,000. As non-pensionable pay counts towards both threshold income and adjusted income, these payments may reduce the individual's annual allowance limit through the effect of annual allowance tapering. If an employee is subject to the tapered annual allowance, a smaller value of pension growth may cause the employee to breach the annual allowance. Please see NHS Employers annual allowance briefing for more information about the tapered annual allowance.

Which payments are pensionable?

All employers must comply with the NHS Pension Scheme Regulations that define pensionable earnings. For staff employed by NHS organisations, pensionable earnings are broadly all salary, wages, fees and other regular payments. Pensionable earnings are defined in regulation 27 of the 2015 Scheme Regulations.

Non-pensionable payments include bonuses, non regular payments, payments made to cover expenses or overtime and pay awards or increases which are expressed as non-consolidated.

Further information about which payments are pensionable and non-pensionable is available on the NHS Pensions website.

Pension tax matters are very specific to the varying circumstances of each individual and the nature of the payment. We would therefore encourage employers to discuss pensionable pay arrangements with staff individually to reach an appropriate agreement on the way forward.

Employers may wish to discuss the existing flexibilities around the following payments:

Temporary payments

Most temporary payments are non-pensionable. Exceptions include temporary pay increases and shift allowances.

Local payments

Most local payments can be determined as non-pensionable. Payments in national contracts such as RRPs are pensionable.

One-off payments

Employers may wish to explore options to establish one-off bonus payments in recognition of the completion of additional activity.

Overtime

All overtime payments are non-pensionable for full time staff. Overtime for part time staff is pensionable up to the whole-time standard week if paid at the basic hourly rate.

Additional Direct Clinical Care activity (DCCs)

Additional DCC sessions worked by doctors which exceed the standard contractual limit of 10 are non-pensionable. Employers should ensure job planning processes and any supporting documentation clearly sets out that additional DCCs are over and above the standard contract and are subject to regular review.

Allowances for undertaking management responsibilities

Payments will be pensionable if the management responsibility is linked to one of the 10 sessions in a consultant's job plan or if the responsibility is taken on in addition to the job plan but without any additional time being allocated to this work. Payments also need to be made on a regular and continuing basis to be pensionable. This applies to both part-time and whole-time employees.

Allowances will be non-pensionable if they are linked to a non-pensionable session that exceeds the standard contractual limit of 10 or if they are temporary and subject to review. Employers may wish to bear this in mind when working with individuals to agree their job plan.

If additional management responsibilities increase actual working time above 37.5 hours per week, this extra time worked will also be non-pensionable.

If part-time staff are required to work additional sessions due to the additional responsibility, these sessions will be pensionable up to whole-time, but anything above this will be non-pensionable.

Waiting list initiative (WLI) payments

Additional paid waiting list activity that is voluntary and in addition to contracted hours is a form of overtime and is pensionable up to whole-time. WLI payments should be non-pensionable if the activity exceeds whole-time or if the payment is made as a one off bonus.

Weekend and on-call payments

Availability allowance for on-call work is only pensionable if there is a specific rota commitment that an individual is paid on a regular basis. This applies to both part-time and whole-time employees. Payments for work completed above whole-time whilst on call are non-pensionable.

Key considerations for employers

Annual allowance taper

Non-pensionable payments count towards an individual's threshold income and adjusted income, which determine whether the employee will have a lower, tapered annual allowance. See the NHS Employers annual allowance briefing for more information about the annual allowance.

Impact on benefits in retirement

Limiting pension growth by reducing pensionable earnings will lead to lower pension benefits in retirement.

Income tax

Members should be aware that they will pay more income tax on their salary due to paying lower pension contributions. This may be offset by a reduction in an annual or lifetime allowance tax charge.

Managing pensionable pay – key considerations:

- **Impact on benefits in retirement**
  Limiting pension growth by reducing pensionable earnings will lead to lower pension benefits in retirement. The lower pension benefits received during retirement must be considered alongside any benefit gained from lower annual allowance and/or lifetime allowance charges.
- **The tapered annual allowance**
  Non-pensionable pay still counts towards threshold income and adjusted income, which determine if the employee will have a lower, tapered annual allowance. See the NHS Employers annual allowance briefing for more information about the annual allowance.
- **Setting a review date**
  Employers may wish to review pensionable pay arrangements regularly.
- **Income tax**
  Members should be aware that they will pay more income tax on their salary due to paying lower pension contributions. This may be offset by a reduction in an annual or lifetime allowance tax charge.

b) Designing TOIL arrangements

Employers may wish to offer staff time off in lieu (TOIL) instead of pay to reduce pensionable income and therefore pension growth. Reducing overall income could particularly help staff who are potentially affected by the annual allowance.

This is a useful measure to help employers redistribute capacity to ease pressures on service during exceptionally busy periods. This approach has limitations in that it does not directly increase the available capacity for service delivery. For example, a consultant may work additional activity to support the Health Board/Trust with additional service pressures over the winter period and take the time back during less critical periods within the same financial year. Additional time worked could be recorded and banked to allow staff to save up TOIL over a number of years. The time saved could be used to take longer periods of leave, such as a sabbatical or career break, at the end of the employee's career before retirement, or to support a period of part-time working. The impact on service delivery and future affordability will need to be considered. The precise details of the policy, including the amount of TOIL to be provided to staff instead of pay, should be discussed and agreed locally.

Designing TOIL arrangements – key considerations

- **Recording the additional time worked**
  Relevant systems should be put in place to record any additional time that is worked. Organisations may decide to set a limit on the amount of time that can be carried forward.
- **Taking time back**
  Employers should consider how they will enable time to be taken back. It may be beneficial to discuss and agree this with the individual before the additional time is worked.
- **Impact on service delivery**
  The impact on service delivery and future affordability will need to be considered, such as the preferred times during which staff could take back their time with minimal impact on service delivery. Additional considerations would need to be made about staff potentially taking TOIL during periods of urgent clinical need.
- **Accounting implications**
  Employers may need to ensure that any TOIL carried over into a new financial year is recognised in the organisation's financial accounts.

c) Use of multiple contracts

Employees with multiple contracts of employment can opt out of the NHS Pension Scheme for one or more of their employments to reduce the value of pension benefits built up over the year. For full-time employees, employers have the option to split the full-time contract into two part-time contracts. The distribution of pensionable and non-pensionable pay across both contracts can be varied to manage pension growth. Both the ESR payroll system and the scheme regulations are already set up to deal with employees with multiple part-time employments.

Unlike the approach of opting out of the scheme for part of the year, this option has the advantage of retaining the death in service and ill-health retirement cover provided by the NHS Pension Scheme for the whole scheme year, as the employee will still be a member of the scheme in at least one of their contracts. However, any benefits would be at a lower level, based on the part-time salary of the contract which is pensionable.

Use of multiple contracts - key considerations:

- **Contract management**
  Employers should be aware of the potential practical issues of having to manage different contracts. The employer may need to close the existing contract of employment and issue two or more new separate contracts of employment. The potential impact that termination of one contract (e.g. disciplinary purposes) may have on the other contract should also be considered.
- **Complexity**
  As a short-term measure e.g. for one year, making the significant change of amending contracts may be disproportionate.
- **Opting out**
  The process of opting out is still required under the regulations as contracts of employment are always pensionable and this will be the employee's decision. Employers will also need to follow ongoing automatic re-enrolment requirements.
- **Family protection benefits**
  This approach allows employees to remain covered for death in service and ill-health retirement benefits for the contract remaining in the scheme. However, the level of benefits payable on death in service or ill health will be lower, due to the lower value of pension benefits earned over the year.
- **Reduction in pension growth**
  For members of the 1995/2008 NHS Pension Scheme, benefits are calculated based on service and whole-time equivalent final pensionable pay. This approach would therefore reduce service, but not final pensionable pay, meaning pension growth will be restricted but perhaps not to the full extent the member may be expecting. For members of the 2015 Scheme benefits are calculated based on actual earnings, so the restriction in pension growth would be more pronounced.
- **Income tax**
  Members should be aware that they will pay more income tax on their salary due to paying lower pension contributions. This may be offset by a reduction in annual allowance tax charge.
- **Final pay controls**
  Employers may wish to seek guidance from NHS Pensions about whether a final pay control charge will be incurred if the employee reverts to their original contract before retirement.

Section 3 – Potential arrangements for employees who decide to opt out of the NHS Pension Scheme

a) Opting out of the scheme for part of the scheme year

Some employees are choosing to manage their pension growth by opting out of the NHS Pension Scheme for a period of time during the scheme year and then returning to the pension scheme. This approach allows individuals to build up a lower value of pension benefits over the scheme year to mitigate annual allowance and lifetime allowance issues.

Opting out of the scheme for part of the scheme year - Key considerations:

- **Independent Financial advice**
  We would strongly recommend that employees take independent financial advice before opting out of the NHS Pension Scheme. Employees will need advice to understand the optimum value of pension they should earn during the year and the precise point at which they should opt out and re-join the scheme. Members should also be aware that they will pay more income tax on their salary due to paying lower pension contributions. This should be considered in conjunction with the value of pension gained and any benefit from lower annual allowance tax charges.
- **Family protection benefits**
  Employers should ensure staff are aware that they will not be covered for death in service and ill-health benefits provided by the NHS Pension Scheme during the part of the year in which they are not an active member of the scheme. If an employee were to pass away or retire due to ill health during a period where the employee had opted out of the scheme a lower level of benefits would be payable. This is outlined in our briefing document and further information is available on the NHS Pensions website. Individuals may wish to consider setting up separate cover away from the NHS Pension Scheme.
- **Reduction in pension growth**
  For members of the 1995/2008 NHS Pension Scheme, benefits are calculated based on service and whole-time equivalent final pensionable pay. This approach would therefore reduce service, but not necessarily final pensionable pay, meaning pension growth will be restricted but perhaps not to the full extent the member may be expecting. For members of the 2015 Scheme benefits are calculated based on actual earnings, so the restriction in pension growth would be more pronounced.
- **Recycling employer contributions**
  Employers will need to consider if any unused employer contributions could be used to fund an increase in salary. This is covered in more detail below, in section b.

b) Paying the employer contributions as additional salary

Welsh Government continues to be concerned about the impact pension taxation has on the delivery of NHS services in Wales and are supportive of employers developing solutions to offer unused employer contributions as additional salary, providing that any such agreements are lawful and based on strong justifications. This section covers how employers may make an additional pay offer to individuals that opt out of the NHS Pension Scheme in order to reduce their pensionable pay due to pension tax concerns using the ***Employer Pension Contributions – Model Alternative Payment Policy*** (see Appendix 1). This is often referred to as recycling employer contributions.

The NHS Pension Scheme is a key part of the reward offer for employees in the NHS. Recycling unused employer contributions may be considered appropriate to recognise the fact that staff who have specifically opted out of the scheme due to a pension tax issue will not get the full value of benefits from their employer's pension contribution in comparison to other colleagues. These payments are one way to restructure the employee's total reward package in order to maintain its value.

However, employers also have an obligation to ensure that staff are not incentivised to leave the NHS Pension Scheme. Before offering these payments, employers should carefully consider the balance between enabling staff to save for their retirement and current recruitment and retention needs.

Eligibility and scope

Employers will need to decide locally which members of staff would have access to the additional salary payments. The payments may be considered in circumstances such as:

- Where an employee has opted out of the NHS Pension Scheme for the full scheme year for tax reasons.
- The period where an employee has opted out of the scheme for part of the scheme year for tax reasons.
- Where the employee has opted out of the scheme for one contract for tax reasons.

In all cases it will be important to take legal considerations into account and carry out an equality impact assessment so as to clearly set out the objective justification for the application of the respective model policy's provisions. For example, there may be an objective justification based on the risk to service delivery posed by an individual reducing hours or being reluctant to take on additional work but such a justification would need to be clearly evidenced.

This is particularly relevant around any limiting of eligibility of the arrangements to certain staff groups or if the policy disproportionately impacts on groups with protected characteristics.

Employer contribution rate

The employer contribution rate increased in April 2019 to 20.6 per cent of pensionable pay from 14.3 per cent, plus a 0.08 per cent scheme administration levy.

The government agreed to provide funding for employers to initially cover this increase in cost. A funding arrangement has been put in place where the additional 6.3 per cent being is paid directly by the UK Government to NHS Pension Scheme.

Neither Welsh Government or employers have access to this additional 6.3 per cent of contributions. Accordingly employers can only offer to pay employer contributions at the 14.38 per cent level to staff as salary.

Employers should review the level of payments provided to staff at least annually, to ensure they take into account any changes to the employer contribution rate and funding arrangements.

National insurance contributions

The payment of additional salary in lieu of scheme membership will lead to an increase in the cost of the employer National Insurance contributions (NICs) payable in respect of the individual. This increase is approximately equal to 13.8 per cent of the value of any additional salary payments and should be taken into consideration when calculating the amount paid to an employee in order to keep this cost-neutral.

The below table illustrates how employers can pay up to 14.38 per cent of an individual's pensionable pay to staff as additional salary on a roughly cost-neutral basis, taking into account the increase in employer NICs.

	Member of the NHS Pension Scheme	Employee who has opted out receiving 14.38% additional salary
Pensionable earnings	£100,000	£100,000
Amount paid to NHS Pensions from the employer (14.38%)	£14,380	£0
Additional Employer NICs*	£0	£1,744
Net amount paid to employee in lieu of pension	£0	£12,636
Total employer cost	**£114,380**	**£114,380**

**In this simplified example, we have calculated the NI based on the 2021/22 NI regime with an increase in employer NICs based on a flat rate of 13.8 per cent. In reality, employer NICs are only payable in respect of earnings above the secondary threshold and so the correct value of the employer NICs would be slightly lower than shown in the example. Please see the HMRC website for more information.*

The Employer Pension Contributions -Model Alternative Payment Policy

The model policy is attached to this guidance document at Appendix 1. Key considerations for implementing the policy are:

- **Governance**
  Any response to a request for additional salary should be considered as part of a formal process that has been approved in line with the provisions of the Employer Pension Contributions – Model Alternative Payment Policy before payments are made.
- **Eligibility**
  The arrangement does not form any contractual entitlement and in order to request payment of employer contributions in place of pension scheme membership, employees must provide evidence that they qualify under the scheme and are affected (or about to be affected) by the annual allowance or lifetime allowance.
- **Timing of the payment**
  The payment of employer contributions as additional salary may take place alongside an arrangement where employees opt out of the scheme for only part of the year. In this case, employers may agree to wait until the end of the scheme year to make the payment once the value of unused employer contributions over the year is known. This could be given to employees as a one-off, non-consolidated lump sum.
- **Legal justification**
  Health Boards and Trusts will need to ensure they that their rationale for implementing the applying each arrangements can be strongly justified which may include taking appropriate legal advice.
- **Independent financial advice**
  Employees are strongly encouraged to take independent financial advice to assess if ceasing contributions to the NHS Pension Scheme is appropriate. Employers are not able to give advice directly or recommend any particular independent financial adviser, however staff can be signposted to the NHS Employers list of independent financial advisors.
- **Family protection benefits**
  Employees should be aware of the impact on their death in service and ill-health retirement benefits if they are no longer making payments towards their pension. If an employee were to pass away or retire due to ill health whilst not in the scheme, a lower level of benefits would be payable. This is outlined in the briefing document and further information is available on the NHS Pensions website. Individuals may wish to consider setting up separate cover away from the NHS Pension Scheme.
- **Equality impact assessment**
  Local pay agreements should be supported by an equality impact assessment.

Further information and resources

NHS Employers has produced a range of resources to help you raise awareness and improve understanding of pension tax issues:

- Simple briefings on the annual allowance and lifetime allowance.
- A presentation pack to help you explain the value of the scheme and how pension tax allowances work.
- A list of organisations that can give expert guidance and advice on pension tax issues for members of the NHS Pension Scheme.
- An infographic that sets out the key dates and actions for staff and employers in relation to the annual allowance during each tax year.
- A handy quick guide to raise awareness of the options available to members of the NHS Pension Scheme affected by the annual allowance.

Appendix 1

Employer Pension Contributions - Model Alternative Payment Policy

Employer Pension Contributions – Model Alternative Payment Policy

1. Introduction

1.1. This policy outlines an option for employees who are current active members of the NHS Pension Scheme (the NHS Scheme) who can demonstrate that they will be affected by the lifetime allowance (LTA) or annual allowance (AA) in respect of their pension savings. For most employees, it will likely be in their best financial interests to remain in the NHS Pension Scheme. This policy is only intended for those employees affected by the LTA or AA tax issue and sets out one option for these individuals. This may not be the best financial option for affected employees and so individuals should consider this policy and any associated information carefully before making a decision. Employees are strongly encouraged to obtain their own financial advice before making any changes.

1.2. This policy has been introduced to address operational risks that have been identified as a result of the pension tax regime. In particular, Health Boards/Trusts/SHAs have experienced a number of requests for reduced contractual hours, a reluctance to take on additional work and a desire to focus on private work as a direct result of the pension tax regime. This policy is an attempt to address these operational issues by setting out an alternative option. Other options for addressing this issue are available and these are set out in the "Pension tax guidance for employers - Local measures to support staff and service delivery" document published by NHS Wales Employers.

1.3. This policy does not form part of any employee's contract of employment.

1.4. This policy will allow those staff who believe they may be impacted by the LTA or an in-year AA tax charge an alternative choice, allowing them to continue to work in their present role at their present level of service, and continue to develop in their career journey. Health Boards/Trusts/SHAs operating this policy will need to determine the effective date for any applications and consider whether any retrospective payments will be made for opt-outs already made within the current financial year.

1.5. Employers would like to see flexibilities introduced into the NHS Pension Scheme which support continued membership through providing flexibility on the level of an individual's pension accrual. Such flexibilities do not currently exist and the content of this model policy will kept under review and considered in the light of any progress on the introduction of pension flexibilities within the NHS Pension Scheme.

2. Purpose

2.1 To provide an optional alternative to pension contribution for those employees who can demonstrate that they are impacted by the LTA or AA pension tax thresholds and decide to opt out of the pension scheme thereby choosing to forego pension tax relief.

3. The options

3.1. Where employees are currently active members of the NHS Scheme, and consider that they will be affected by the lifetime allowance (LTA) or annual allowance (AA) they can:

a. Continue in the NHS Scheme and bear any additional tax charges that arise (in the tax year for an AA charge or at retirement under the LTA arrangements); or

b. Opt out of the NHS Scheme and apply to be paid an alternative payment as explained in 3.2 below (“alternative payment”).

Individuals who opt out of the NHS Scheme will become deferred members and will not be able to make any further money purchase, added years or additional voluntary contributions into the NHS Scheme.

3.2 The alternative payment that will be paid in the event of an opt out of the NHS Pension Scheme will be the sum equivalent to the Employer’s Contribution (amount that the employer ordinarily pays into the relevant NHS Pension Scheme if the employee were still a member of the NHS Pension Scheme) net of the employer’s National Insurance contributions, maintaining cost neutrality to the NHS. This will be paid as a supplement to salary and so will be subject to income tax.

This is circa 12.4% of pensionable pay (14.38% of pensionable pay net of employer’s national insurance contributions at a rate of 13.8%). Although the employer contribution increased by 6.3% from 1 April 2019, the funding for this increase is not available to Health Boards/Trusts.

Pensionable pay for the purpose of calculating the alternative payment will be determined by the Health Board/Trust/SHA but will be based on what the pensionable pay would have been for the purpose of calculating employer contributions paid by the Health Board/Trust/SHA to the NHS Scheme had the individual continued to participate in the NHS Scheme.

3.3. Where individuals opt out of the NHS Pension Scheme it is their responsibility to provide the pension scheme administrator with effective notice of the opt-out. Individuals must provide the Health Board/Trust/SHA with a copy of this notification and evidence that the opt-out is effective, before any alternative payment will be paid.

3.4. Where individuals opt out of the NHS Scheme there may be a significant impact on the level of benefits which may be received from the NHS Scheme. In particular, there is likely to be a notable reduction in ill-health benefits and death benefits from the NHS Scheme, and potentially redundancy benefits. Individuals considering the alternative payment should carefully review and consider the impact of opting out of the NHS Scheme on all of their benefits.

3.5. This is only one option that may be available. Other options may be available and the “Pension tax guidance for employers - Local measures to support staff and service delivery” document published by NHS Wales Employers outlines a range of other flexibilities. Where individuals are concerned about this issue, it is suggested that the matter is discussed with the Health Board/Trust/SHA to determine the potential options available.

4. Impact of the alternative payment

4.1. The alternative payment will not form part of base salary and would not be included in the calculation of any overtime, or other entitlements.

4.2. Although not forming part of base salary, the alternative payment will increase the amount paid each month. It will also impact on the following:

a. The amount of holiday and sick pay. Such calculations will include an element to reflect the alternative payment.

b. The amount of any redundancy pay calculation, but only in so far as any statutory cap. Where an individual's weekly pay is higher than any statutory cap applicable at the point of redundancy, then the alternative payment will not be included in the calculation.

c. Income for the purposes of the tapered annual allowance may be higher than before and so the annual allowance may reduce for any pension savings already built up in the tax year. This means individuals may be entitled to a lower amount of tax relief on their pension contributions.

4.3 The alternative payment will be paid in equal monthly instalments in arrears. Payments will be subject to deduction for income tax and national insurance contributions. In deciding on the alternative payment, individuals may wish to consider whether it would be financially beneficial to receive the alternative payment (subject to income tax and national insurance contributions) as compared with paying an additional pension tax charge by staying in the NHS Scheme and also consider the effect on pension benefits and growth by staying in the Scheme versus opting out. Employees who are considering opting out of the NHS Pension Scheme are therefore strongly encouraged to obtain their own independent financial advice.

4.4. The model policy will reviewed at the start of each financial year and will be considered in the light of any progress on the introduction of pension flexibilities within the NHS Pension Scheme.

5. Making a request for the alternative payment

5.1. In order to make a request under this policy employees must comply with all of the following:

- be in the employment of an NHS Wales Health Board, NHS Trust, or Special Health Authority.
- be an active member of an NHS Pension Scheme at the point of application*.
- be able to evidence that they have a reasonable expectation of an AA tax charge for the respective financial year or be able to evidence that they have reached the LTA limit.

* *As noted in 1.4, Health Boards/Trusts/SHAs operating this policy will need to determine whether to approve any retrospective payments for opt-outs already made within the current financial year based on the criteria within this policy.*

As indicated above individuals must be reasonably expecting a tax charge for the financial year for which they are making an application for the alternative payment. Given that any AA tax charge will not be confirmed until after the end of the tax year (saving statements are issued in the October following the end of the respective tax year) an assessment must be made to provide a best estimate to evidence the likelihood of an AA tax charge arising. The NHS Employers Annual Allowance Ready Reckoner may be used to provide an indication of the likelihood of an AA charge.

5.2. Individuals are responsible for obtaining whatever advice is necessary for them to make an informed decision, including where appropriate (though not limited to) professional advice from an accountant or independent financial advisor, guidance from the NHS pension scheme (Member hub | NHSBSA), information from reputable sources such as professional organisations and unions, HM Revenue & Customs.

5.3 As noted in paragraph 3.2 the alternative payment that will be paid will be the sum equivalent to the Employer's Contribution (amount that the Health Board/Trust would pay into the NHS Pension Scheme in the financial year if the applicant were still a member of that NHS Pension Scheme) net of the employer's National Insurance contributions, maintaining cost neutrality to the NHS. This will be paid as a supplement to salary and so will be subject to income tax.

5.4 Meeting the criteria as set out in paragraph 5.1, does not automatically mean that applications for the payment of employer contributions will be approved. The approval process as set out in section 8 will consider all applications as set against the individual submission and the need for each outcome to be clearly recorded as to the reason for its approval or rejection.

6. Application process and evidence requirements

6.1 The section below provides guidance for individuals on the information required to support an application:

a. Retrospective Evidence that you are or would be affected by the AA. This will usually be in the form of acceptable documentary evidence from NHS Business Services Authority confirming the annual increase in your NHS pension benefits and acceptable documentary evidence confirming that you may be subject to an annual allowance tax charge e.g from the NHS Employers Annual Allowance Ready Reckoner (note that where individuals are subject to the tapered annual allowance this may take the form of proof of earnings from all income sources);

b. Prospective Evidence that you will be affected will typically be in the form of pension/pay modelling data using evidence from sources contained within 5.1 & 5.2 taking into account, for example, incremental pay progression and changes in working patterns and/or proof of projected income from multiple sources in the relevant financial year or a Total Reward Statement reflecting a level of pension accrual which will exceed the LTA

7. Process for applications

7.1 Application for an alternative payment should be made on the application form attached to this policy. All applications should be accompanied by a completed opt out form.

7.2 The application will be verified by employing organisations to determine whether applicants meet the eligibility criteria.

7.3 If eligible, payroll will calculate the amount of the alternative payment and notify the applicant of this.

8. Approval

8.1 Each Health Board/Trust/SHA will be required to establish a decision making panel with clear accountability to the Chief Executive and Director of Workforce and OD. The Panel will be under a duty to take into account the eligibility criteria defined in this policy in approving or rejecting applications and must record the justification for each decision.

8.2 The panel will meet regularly so that all applications can be considered and a decision made within ten working days of receipt of completed application forms, appropriate supporting evidence and completed opt out forms. The Panel will report outcomes to the Chief Executive and Director of Workforce and OD on a regular basis.

8.3 If the application is accepted, the employee will be issued a letter confirming this payment (which will be temporary in the case of Annual Allowance approvals), within five working days of the panel’s decision.

Implementation

9.1 Where an application has been successful, the applicant’s opt out of the NHS Pension Scheme(s) will be activated by the employer. The alternative payment will be paid to the employee on a monthly basis.

9.2 Any changes to terms of employment will continue as agreed by the Health Board/Trust/SHA and the continuance of the alternative payment will be subject to the Health Board/Trust/SHA’s over-riding legal duties. The alternative payment will apply to an individual’s current role only. In the event that an individual in receipt of the allowance changes roles, then the continuation of the alternative payment will be at the absolute discretion of the Health Board/Trust/SHA, although not unreasonably withheld. If individuals subsequently choose to reduce sessions/working hours while in receipt of the alternative payment, this will automatically trigger a review to assess ongoing eligibility.

9.3 For individuals who determined that they would be affected by a AA charge are in receipt of an alternative payment, this will only be for the duration of the financial year within which the AA charge would have been incurred and will therefore cease at the end of the financial year i.e. 31st March. At this point, the alternative payment will cease and individuals should determine whether they wish to be re-enrolled into the NHS Pension Scheme and make the necessary arrangements. If they choose not to re-join at this point they will remain out with the NHS Pension Scheme until the next date within their organisation for auto enrolment when they will be automatically re-enrolled, providing they meet the necessary auto re-enrolment requirements. An opt out can then be submitted if desired.

9.4 Where the individual considers that they would be affected by an AA charge in the subsequent financial year a new alternative payment application can be made.

10. Appeals Process

Where a Panel decision is in dispute this will be referred to the Director of Workforce & OD for a final decision and there is no further right of appeal and no right to raise a grievance under the Respect & Resolution policy about the process or outcome.

APPLICATION FOR AN ALTERNATIVE PAYMENT

Please complete in full and forward to the Director of Workforce & OD

Name:	
Post:	
Payroll Number:	
National Insurance No:	
SB Number for Pension Scheme:	

The alternative payment will start from 1st of the month. Please specify which date (note: this should be the 1st of the month, and should be the same as the date given in the opt out form)

Declaration:

I confirm that I have taken the necessary steps to obtain appropriate advice in respect of my voluntary decision to opt out of the NHS Pension Scheme and understand the consequences of opting out of the NHS Pension Scheme on further and future pension savings and accrual.

I have attached evidence that I have either:

i. a reasonable expectation of exceeding the Annual Allowance for pension growth in the current financial year and that this breach is likely to generate a tax charge or;
ii. reached the level of pension savings which would generate a Lifetime Allowance Charge

I confirm that to the best of my knowledge the information I have provided on this form is correct, including information I have provided to HMRC and/or NHSBA

I confirm that I understand that opting out of the NHS Pension Scheme will mean I will not benefit from active members provisions including ill health retirement benefits and death in service benefits.

Name………………………………..……………………………………

Signature ....……………..Date ……………………

Authorised by ………………………………………Date…………………….

(Chair of Panel)

Authorised by ………………………………………Date…………………….

(Director of Workforce & OD)