

Frequently asked questions for staff

Pensions tax is a complex subject and the information set out in this document is intended to provide a concise summary of the new NHS Annual Allowance Policy 2019/20. If you have any questions about the annual allowance or how this scheme might affect your personal financial position you should consider advice available on HMRC, BSA and NHS Employers websites, and take independent financial advice.

These questions will be updated based on feedback from both staff and employers.

Last updated: 19 December 2019

Who is eligible for the commitment?

The commitment will only apply to clinicians who:

- are employed or engaged in a role that requires registration with an appropriate healthcare regulatory body, see: [Professional Standards Authority – Which professions are regulated](#)
- have a valid registration for the period of the “Scheme Pays” election
- are members of the NHS pension scheme
- receive a tax charge associated with breaching the annual allowance in 2019/20 in respect of their NHS pension scheme membership.

We expect local employers to verify these requirements for individuals as part of a slightly revised 2019/20 Scheme Pays election process.

Will this commitment apply to non NHS organisations (such as social enterprises)?

Clinicians working for non-NHS organisations would also be eligible providing they are delivering NHS services and meet the overall eligibility criteria, including being employed or engaged in a role that requires registration with an appropriate healthcare regulatory body and are a member of the NHS pension scheme.

How will I be fully compensated? What does that mean in practice?

Qualifying clinicians who are members of the NHS Pension Scheme and face a tax charge in respect of work undertaken this year (2019/20) as a result of exceeding their pension annual allowance will be able to defer this charge (by completing and returning a ‘Scheme Pays’ election form before the 31 July 2021 deadline) meaning that they **don’t have to worry about paying the charge now** out of their own pocket.

and;

Your NHS employer backed by Welsh Ministers will make a contractually binding commitment to pay a corresponding amount on retirement, ensuring that you are **fully compensated in retirement** for the effect of the Scheme Pays deduction on your income in retirement.

HMRC have confirmed that under current tax law, if all tax and NICs is paid at the time it is due, it is perfectly legitimate for an NHS employer to make a payment equal to the amount of any reduction in NHS Pension Scheme benefits arising from any

2019/20 annual allowance tax charge where the Scheme Pays mechanism has been used.

Will the offer only cover my tax charge associated with any additional work undertaken or will it cover the full tax charge in respect of breaching my annual allowance in 2019/20?

The offer covers the **full** annual allowance tax charge for main NHS schemes pension accrual, not just that resulting from additional work undertaken. For clinicians who would ordinarily expect to receive a charge before any additional work is undertaken, you will be able to elect for the nationally backed Scheme Pays offer for the full NHS Pension Scheme membership tax charge. This includes where the annual allowance tax charge is higher as a result of added years purchased in the past and added pension purchased before 2019/20.

Any tax charge in relation to money purchase additional voluntary contributions (AVCs) and any Additional Pension purchased in 2019/20 including the growth in contracts taken out before 2019/20 will not be covered. Pension growth resulting from 'added years' purchases taken out prior to 2008 however will be covered under this policy.

What about interest applied under Scheme Pays?

Interest is applied each year from 1 January following receipt and acceptance of your Scheme Pays election. Interest is based on the previous September's Consumer Price Index (CPI) figure, plus the Superannuation Contributions Adjusted for Past Experience (SCAPE) rate. Payments under the new policy will take into account all interest that has been applied to your 2019/20 Scheme Pays deduction, so that the full value of the deduction is mitigated.

What about my non-NHS work or income?

The value of Scheme Pays is capped at the level of the tax charge levied on pension saving in the NHS Pension Scheme (and does not cover annual allowance charges on any non-NHS pension scheme). However, to the extent that the value of a 2019/20 annual allowance tax charge in respect of the NHS Pension Scheme is influenced by other sources of income, this will be covered. This policy will not cover tax charges arising from non-NHS pension arrangements.

Further information on the scheme pays cap is available here:

www.nhsbsa.nhs.uk/member-hub/annual-allowance

What happens if I am a member of both the 1995/2008 and the 2015 NHS Pension Schemes?

This policy will apply in respect of your total annual allowance charge which will be split across the benefits in each of our NHS pension schemes.

Can I opt for a lump sum or annual payment at retirement?

Additional payments under this scheme will typically be paid as on-going annual payments in retirement. This will ensure the impact on pension income from the Scheme Pays election is mitigated in full. However, an additional payment will be made at the time of the retirement to fully compensate for any reduction in the tax-free lump sum in the 1995 NHS pension scheme.

Will I receive a tax charge as a result of this commitment?

The payment to compensate an individual for their Scheme Pays abatement at the time they retire will be liable to income tax (as is the case for any regular pension

payments) at the prevailing marginal rate at the time the payment is received. There will be no taxable benefit arising until these payments are received. The principle is that an employee will be fully compensated for the impact of relevant taxes and contributions at the point of taking their NHS pension scheme benefits such that the net payment they receive will be equal to the amount that would have been received had the pension not been reduced.

HMRC have confirmed that under current tax law, if all tax and NICs is paid at the time it is due, it is perfectly legitimate for an NHS employer to make a payment equal to the amount of any reduction in NHS Pension Scheme benefits arising from any 2019/20 annual allowance tax charge where the Scheme Pays mechanism has been used.

Will this payment increase in line with my pension?

The principle is that an employee will be fully compensated such that in each year the net payment they receive will be equal to the amount that would have been received had the pension not been reduced as a result of the 2019/20 Scheme Pays election.

I am a GP/dentist, am I eligible?

General Practitioners (GPs) and Dental Practitioners (dentists) make a significant contribution to the resolution of the operational challenges facing the NHS during the winter period. The proposals apply to GPs and dentists, although where GPs and dentists are members of the NHS pension scheme not as NHS employees but by virtue of holding contracts for the supply of NHS primary care services, we will now work through the detailed implementation mechanism with them, and their representative bodies to achieve the intended benefits.

I am a GP and I will not know whether I have a tax bill prior to the deadline?

Scheme members are able to enter an estimated amount for their annual allowance tax charge when making a Scheme Pays election which can subsequently be amended. HMRC impose a deadline for changing an election. Any change must be received no later than the 31 July that follows the end of the period of four years from the end of the tax year to which your annual allowance tax charge relates. For the 2019/20 tax year, this deadline is 31 July 2024.

Would it not be easier just to pay my tax bill when I receive it?

No, annual allowance tax charges levied in respect of pension saving in 2019/20 will fall due by 31 January 2021. There are complex and potentially second-round effects if this approach is taken, e.g. additional taxable income paid as compensation for an annual allowance tax charge could trigger a higher annual allowance charge in respect of pension saving in 2020/21.

I am not classed as 'clinical' but will still face a tax charge, why aren't I covered?

These measures are just being introduced this year until the UK Government is able to decide the approach covering the whole NHS from April 2020 or thereafter. There is clear evidence that the interaction of pension tax with the NHS Pension Scheme is causing many clinicians to limit the number of hours they are prepared to work, or even to retire early.

There is a less clear case that annual allowance tax charges are creating similar retention and productivity issues in the non-clinical NHS workforce. Whilst non-

clinical staff may exceed their annual allowance, the nature of these roles provides less scope to vary or reduce their working commitments or substantially increase their income through additional tasks and responsibilities and therefore is unlikely to have the same impact on the capacity of NHS services and patient care.

What if I have already opted-out of the NHS pension scheme?

Members of the scheme who have previously opted out for some or all of the 2019/20 tax year are able to prospectively opt back into the scheme and are encouraged to do so.

For further information see the [NHS Business Authority website](#).

What if my current employer is taken over, merges or ceases trading before I retire?

Where a Health Board or an NHS trust ceases to exist, its assets and liabilities as well as the services they provide will be transferred to another trust or other NHS body, or to Welsh Ministers. This means that the financial commitments made by Health Boards or NHS trusts will be safeguarded.

What is the deadline for asking NHS Pensions for Scheme Pays in order to access the new Policy?

NHS Pensions must receive your scheme pays election before 31 July 2021. However, in certain circumstances, the deadline for NHS Pensions to receive your election may be earlier. For example, if one of the following events takes place before the deadline:

- you retire – NHS Pensions need to receive your completed election before your NHS benefits become payable; or
- you reach age 75 – NHS Pensions need to receive your completed election before your 75th birthday.

We will provide further guidance on the necessary steps well in advance of any deadline.

Where can I find out more about Scheme Pays?

The NHS Business Services Authority (BSA) have published [Scheme Pays Election Guide for 2019/20](#).

Does the tax charge need to be over £2,000 to be able to use Scheme Pays?

No. The Finance Act 2004 ('The Act') sets out the provisions to enable the BSA to administer Scheme Pays. The Act includes a condition that that annual allowance charge liability for the tax year must exceed £2,000. However, the Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 (SI 2011 No. 1791) enabled individual schemes to extend "Scheme Pays" to cover an individual member who did not satisfy the mandatory conditions. The NHS Pension scheme offers such a voluntary scheme, with no minimum amount.

Further information can be found from [HMRC](#) and the [BSA](#).

Can the Scheme Pays rules be changed?

The mandatory Scheme Pays regime is set out in the Finance Act 2004 and therefore cannot be amended without further legislation. The voluntary scheme pays

regime for 2019/20 is set out in the [BSA's Scheme Pays Election Guide for 2019/20](#). We do not anticipate any changes to be made to either the mandatory or voluntary schemes. In the highly unlikely event that any retrospective changes are made to the Scheme Pays regime that impact on the operation of this policy, we will take further action to ensure any adverse impacts are mitigated in full.

Is this a permanent scheme?

These proposals will only apply to pensions annual allowance tax charges arising with respect to 2019/20 tax year.

The UK Government through the Department of Health and Social Care has conducted a consultation on an England and Wales basis a package of new proposals such as the introduction of a flexible accrual rate. As the NHS Pension Scheme is a statutory scheme, adopting any of the flexibilities outlined in this consultation would require legislation and significant amendments to pension administration and payroll systems. As such, they are not currently planned for implementation before April 2020.

What does Welsh Ministers backing this scheme mean in practice? What guarantees do I have that this payment will be made when I retire?

Welsh Ministers ultimately takes responsibility for the liabilities of NHS organisations. The commitment to make this payment will be contractually binding, but if there is no NHS body responsible for meeting this liability at the time you retire, Welsh Ministers will undertake responsibility for securing that payments are made.

Will my dependents' benefits be affected?

If you unfortunately die before retirement, the scheme pays 'loan' is written off and hence does not reduce the pension payable to your spouse, dependant or nominated person. In such case, as there is no scheme pays reduction, these payments are no longer required as the value of the pension is unaffected by the annual allowance charge. However, if you die in retirement, your spouse, dependant or other nominated person may be eligible to receive pension payments. Should these pensions payments be reduced as a result of a 2019/20 "Scheme Pays" deduction, the additional employer payments will be made to your dependents. Any such pension scheme beneficiary will be entitled to use the Contracts (Rights of Third) Parties Act 1999 to enforce this promise. Even if your employer has contracted out of the provisions of that Act for the main part of your employment contract, that contracting out arrangement will not apply to this set of obligations.

Will this payment commitment be affected by a future dispute with my employer?

Although the legal obligation taken on by your employer to make these payments becomes part of your contract of employment, it will not be affected by any future contractual disagreement or dispute between you and your employer. The obligations to make these payments will be honoured by your employer whenever future pension sums become payable, even if there are other resolved or unresolved disputes arising out of your employment or the circumstances of any future termination, except if the Secretary of State directs that your NHS Pension Scheme benefits are reduced or withheld entirely in exercise of powers^[1] to forfeit such benefits upon conviction or in recovery of losses to public funds that resulted from

criminal, negligent or fraudulent actions. So you do not need to worry that a future employment dispute may lead to your employer refusing to make these payments.

[1] 1995 Section: regulations T5 and T6 of the National Health Service Pension Scheme Regulations 1995; 2008 Section: regulations 2.J.6, 2.J.7, 3.J.6 and 3.J.7 of the National Health Service Pension Scheme Regulations 2008; 2015 Scheme: paragraphs 11 and 12 of Schedule 3 to the National Health Service Pension Scheme Regulations 2015

