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medical accountants

NHS pension scheme: proposed changes to scheme regulations 2019

Response by the Association of Independent Specialist Medical Accountants

January 2019

Introduction

The Association of Independent Specialist Medical Accountants (AISMA) is a network of 75 firms providing accountancy and taxation advice to NHS GPs, locums, specialists and consultants. The network acts for close to 50% of GP practices across the UK.

Members of AISMA have a deep knowledge of the NHS Pension scheme, specifically relating to the taxation of pension savings. AISMA's view is that the proposed changes to scheme regulations 2019 as outlined in the consultation document are likely to result in more members of the pension scheme ceasing contributions which could cause the scheme to have further funding issues and a knock-on effect to how the Government affords the obligations payable to existing members in retirement. The reasons for this are complex and highlighted in the Association's response below.

The proposals affect the NHS Pension Scheme Regulations 1995, 2008 and 2015; AVC 2000, Injury Benefits 1995 and Transitional and Consequential Provisions 2015.

The proposals are intended to come into force on 1 April 2019 and 6 April 2019 applicable in England and Wales.

Please note that all the comments made relate to information contained in the consultation document and explanatory notes only and not the draft statutory instrument or any supporting calculations.

Consultation questions

1 Do you agree the proposed amendments deliver the policy objectives as set out in the document?

2 If no, why?

3 Are there any changes needed to ensure the proposed amendments deliver the policy objectives?

4 Are there any additional comments you wish to provide regarding the proposed amendments?

Comments on specific aspects of the proposed amendment regulations

1 Member contribution rates

Policies to be reflected include protecting the lower paid, minimising the risk of opt-outs, sustainability of the scheme and valued staff reward.

The existing structure is proposed to be retained for two years to 31 March 2021.

However, because in the main NHS employees' pay is increasing in line with Agenda for Change (AfC) and the existing proposals do not apply AfC increases to the banding thresholds, this has the effect of increasing employee contributions when that was not intended. The impact of salary inflation and AfC uplifts has not been addressed since the thresholds were set from 1 April 2015. Only the tiered rate percentages remain unchanged.

2 Improved benefits for employees

Why even consider improving benefits if the scheme needs additional employer contributions; surely this means improved benefits cannot be afforded?

As the cost cap mechanism has been triggered (see paragraph 1.8 in the consultation document) the suggestion is to enhance 2015 scheme member benefits, but at the same time contributions payable by employers are set to increase (see point 3) and the cost to members is also increasing as set out in point 1.
Why not consider reducing member contributions by increasing the banding thresholds in line with AfC pay increases instead (as per point 1).

Point 3 covers the proposed employer increases, so, costs have fallen by one measure and risen by another and contradictory solutions have been proposed. Are the funding envelopes for employee and employer contributions kept separate? Is this what has led to the two different outcomes on cost assessment?

It would be helpful to see a mechanism in place that ensures that employee benefit improvement is only applied in cases where the cost to employers does not need to also increase.

Employee benefit improvements should only be funded by proportionate increases in both employee and employer contributions. The conflicting outcomes suggest that the funding proportions between employee and employer are not correctly balanced.

3 Funding for the additional employer contributions

The proposals result from calculations indicating increased benefit costs but the cost cap calculations indicate that costs have fallen as referenced in point 2. Which is the correct interpretation? The conflicting outcomes suggest that the funding proportions between employee and employer are not correctly balanced.

If the proposals go ahead, for GP practices the global sum/PMS and APMS baseline payments will need to be increased or a separate sum paid to cover the increased on-cost of the employer contributions applicable to employed staff, salaried GPs, locum GPs and GP partners.

How will this cost overall be determined and awarded to practices?

An uplift to global sum doesn't ensure the funding required goes to the practices with the increased costs in the right ratio. There will be winners and losers.

There will be great scepticism within the GP profession that the proposed 6.3% increase in employer contribution rate will be covered with additional funding as promised in paragraph 2.4.

There will need to be very clear communication from the Government about how this is to be achieved, and not somehow lost within the overall long-term funding settlement. Given this is less than three months away, time is of the essence.

For other NHS employers their NHS contracts and hospital budgets etc will have to be uplifted by the amount of the on-cost increase.

In effect the cost of the increased contributions will be therefore be funded from the Department of Health and Social Care (DHSC) budget.

Has this funding been considered in the publicised additional sums being made available through the NHS Long Term Plan, or will the Treasury have to allocate more? Is this just moving money around the Government systems/departments for something that the Treasury is funding anyway?

4 Survivor pension benefits

No comments regarding the implementation of same rights for civil partners and same sex spouses as for widows following the Supreme Court judgement.

5 Forfeiture rules

No comments regarding the extension of forfeiture rights.

6 Contracting out

No comments regarding the updating of contracting out provisions in line with HMRC and DWP regulations.

7 Final pay controls

Paragraph 6.7 states that:
"The purpose of the Final Pay Controls policy is to claim back extra pension monies from an employer where that employer has purposefully awarded a pay increase with a view to increasing their employee's pension entitlement. It is not intended to capture mandatory pay increases such as those in relation to the Agenda for Change pay deal."

Does this mean that when Final Pay Control charges arise in unforeseen circumstances they will not be imposed?

What about where the increase arises simply because of profit performance or changes in ownership ratios within partnerships for commercial business management reasons, where the pension member and the practice "employer" have not purposefully acted to increase the pension entitlements?

8 Removal of requirement to nominate

No comments regarding nomination requirements and operational matters.

9 Annualization

The clarification in paragraph 7.41 and 7.42 that the annualising rules were incorrect, and the correct interpretation can be backdated is helpful.

10 Estimate of pensionable income: GP practices

It is reasonable to accept that if the forms are not submitted by the due date that sanctions should be imposed; in this case collecting contributions at the top rate, but only if, when the forms are submitted, that they are correctly actioned by PCSE.

Additional comments on matters arising from the consultation documents

11 Members opting out

If the increase in employer contributions is fully funded, then that in isolation should not necessarily lead to more employed members opting out. However, for GPs, there is no direct link between what they must pay personally for their own employer contributions and the global funding mechanism that is paid into the practices.

It is therefore likely that GPs will see themselves having to pay a combined contribution in the order of 35% and with general uncertainty about the future and the tax impact this may accelerate their opt out behaviours

Unless the Annual Allowance (AA) and Lifetime Allowance (LTA) tax regulations are changed then we are likely to see more and more NHS pension scheme members choosing to opt out of the scheme and ceasing contributions, and possibly drawing their pensions, thus continually pushing the scheme back into a cash deficit.

Such an accelerating spiral of increasing contributions and deficits could cause the whole scheme to collapse and exacerbates the workforce crisis.

Any scheme changes should be accompanied by the introduction of scheme flexibilities to allow members to control the value of their pension growth. This could include giving members the ability to limit how much of their pay is pensionable.

12 Why is the additional funding needed?

If there is a current cash deficit in the system, then increasing the employer contributions assists in funding cash flow.

The theory of the scheme is that the contributions made by active members now should be funding their future pension benefits. However, as there is no "pension saving pot" holding the current contributions for future use, the contributions collected just end up paying out the current benefits to retired members.

If balance in the scheme is required via employer contributions, could the Treasury just top slice the DHSC allocated funding envelope to meet the needs of the NHS pensions in payment, rather than having to increase the funding envelope to the DHSC so they can meet the additional pension costs via the employer contribution collection systems.

The proposed approach of increasing employer contributions to bring the scheme back into balance cannot be sustainable.

The funding proportions between employee and employer are not correctly balanced relative to the benefits enjoyed by employees.

13 Pension growth and tax implications

The proposed change in the accrual rate for the 2015 scheme will accelerate pension growth.

Is it intended that the 2015 scheme will have an accrual rate of 1/54 to say, 5/4/19, then an accrual rate of 1/48.5 from that point forward?

Any backdating of the accrual rate to 1/4/15 would have major implications on pension growth and would require GPs and NHS employees affected to recalculate their AA tax charges and resubmit tax returns and pay additional tax. This could have interest and penalty implications.

Would the NHSBS Pensions agency accept scheme pays elections for any earlier periods if retrospective changes are made?

If the NHS pension scheme is self-funding via increases in contributions, then the Treasury is not having to input funds to the scheme and so does not need to generate additional tax revenue relating to pension growth, which is obtained through the AA tax charges. As tax relief is capped on overall pension benefits by the LTA then the AA charge is no longer needed.

If the Treasury can agree this point and withdraw their approach to AA tax charges this will give an immediate impact to GPs and other NHS employees who are considering retirement or opting out and will assist to resolve some of the workforce issues

The increased contributions are being applied to all schemes equally but as per point 2 the cost cap mechanism is triggered for the 2015 scheme, therefore is it correct that the additional employer contributions should be at the same level for all schemes?

14 Do the proposed numbers add up?

How will a 6.3% increase in pension contribution rate for employers across the NHS be funded without impacting on core patient services?

Submitted by:

Deborah Wood
Vice Chairman
On behalf of the Association of Independent Specialist Medical Accountants
deborah.wood@mooreandsmalley.co.uk

To be sent to: NHS Pensions Policy Team
Department of Health and Social Care
Room 2W54 Quarry House
Quarry Hill
Leeds
LS2 7UE

Online at www.gov.uk/dhsc under our consultations

Also, to be cc'd to Ross Mathieson