The British Medical Association's response to the consultation on the proposed amendments to the NHS Pension Scheme regulations

January 2023

British Medical Association
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FOREWORD

The British Medical Association (BMA) is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives. The majority of BMA members are members of the NHS Pension Scheme. This is a response from the BMA to the consultation on the proposed amendments to the NHS Pension Scheme regulations.

RESPONSE TO THE CONSULTATION

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

    - The BMA has been calling for the introduction of 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 it 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.
    - We have seen that NHS BSA has said in a letter sent to members that partial retirement will come into effect from October 2023, this is too late and will result in many doctors taking retirement between now and then. A BMA survey indicated that 44% of consultants intend to leave the NHS in some capacity over the next 12 months. 9% of respondents indicated that they intend to retire at normal pension age in response to multi-year pay erosion or pension taxation arrangements. 16% indicated they intend to take voluntary early retirement for the same reason. It is therefore essential that partial retirement is implemented at the earliest opportunity. The BMA have been lobbying for this change for several years. We would underline the necessity for this to be announced and implemented by 1st April 2023 at the latest. Otherwise, thousands of doctors will be lost from the NHS and may not be persuaded to return even if partial retirement is subsequently implemented.
    - In addition to the new retirement flexibilities, we believe that late retirement factors should also be 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 whilst we 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 costs of scrapping this entirely would be minimal, but doing this would have a significant 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 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 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 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 they must amend the Finance Act to address the serious issue of negative pension growth.
- There is potential interaction with partial retirement and the McCloud remedy that also 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 the McCloud choice either at the point of partial retirement or when they fully retire from the pension scheme.

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

- The BMA has been highlighting the grossly unfair situation related to the "CPI disconnect" for almost a year. We were clear that the best way to fix this was to amend the Finance Act to ensure the same value of CPI was used for the "opening value" and the revaluation. This approach was supported by a large number of experts including the Association of Independent Specialist Medical Accountants, NHS Employers and Financial Specialists.
- The proposals outlined 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 the 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 only applies to England and Wales (although we understand that similar discussions are happening in Scotland and Northern Ireland). It must be acknowledged that doctors who are members of other schemes such as in the Armed Forces, Local Government or University schemes, are equally impacted by this CPI disconnect, and we are concerned that there will not be a solution offered to them. 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 S234 of the Finance Act, means that if you have negative growth in one scheme (e.g. the 1995/2008 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 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 Government's 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 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.

3. Do you agree or disagree that changes to scheme access should be introduced as proposed in this consultation document?

We support the proposal to amend NHS Pension Scheme regulations to ensure that staff who wouldn't otherwise be entitled to join the NHS pensions scheme should be able to

pension such work if it is undertaken as part of a Primary Care Network (PCN). We note that temporary access has been granted to PCNs where they met one of the 8 scenarios described in the Annex. We also note that except for Scenarios 3 and 6, staff working under the arrangements described would be given automatic access. We would seek reassurances that those working in Scenarios 3 and 6, or indeed any staff working under arrangements not captured by these scenarios, are not disadvantaged. In addition, it is important that no perverse financial incentives are created that would favour setting up PCNs that don't qualify for automatic access to the NHS pension scheme, as this would create inequity between staff groups. Whilst out of direct scope of the consultation, greater standardisation of the set-up of PCNs (e.g. such that all PCNS qualify for automatic access) would be welcome in order to clarify and simplify the arrangements.

4. Do you agree or disagree that the technical updates to member contributions provisions should be implemented as proposed in the consultation document?

We understand that the contribution rate changes delayed until October 2022 were unavoidable. However, the impact of this on practitioner members is significant and increases complexity in what is already a complex system. It is reasonable to split the year into two to ensure the correct contribution rate is paid for each 6-month period and this would broadly mirror the arrangements for those in the officer schemes. However, given the additional complexity this brings, every effort must be taken to ensure that the next phase of contribution changes is not delayed and comes into effect at the start of the 2023-24 pension year.

5. Are there any further considerations and evidence that you think DHSC should take into account when assessing any equality issues arising as a result of the proposed changes?

- The consultation states that DHSC 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.

BMA

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 Last 10 years**
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**	**£68,498**
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 foward) - 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**	**£19,763**
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**