

Update on Annual Allowance taxation charges and NHS pension flexibilities – ENGLAND ONLY



This briefing gives an update on NHS England's offer to clinical staff affected by pension taxation charges in 2019/20.

Background

The Government gives tax relief on contributions to pension schemes and allows up to 25% of the benefits to be taken tax-free at retirement. Since 2006 there have been limits on the amount that can be contributed tax free each year and the total benefits an individual may build up over their career as a way of restricting this tax relief. Beyond these limits, which have reduced steadily since the Finance Act of 2011, tax charges apply.

What are the tax relief limits?

The limits are set by HMRC through the following allowances -

Annual allowance (AA) - This is the limit on the 'value' of pension benefit growth which can be earned tax free each year and currently stands at £40,000 (down from £255,000 in 2010/11). This typically affects people with an income of over £110k pa. However, "the tapered annual allowance" came into force as of 6 April 2016 for high earners. For every £2 of income above £150,000 pa, wherever it comes from, £1 of annual allowance is lost. The maximum reduction is £30,000 meaning that anyone earning over £210,000 will have their annual allowance capped at £10,000. It is often the tapering of the allowance that is causing scheme members to incur high taxation charges for additional work undertaken.

Where people do not use up all of their AA in a given year they can carry forward any unused allowance from the previous three years to allow a larger sum of contributions to receive tax relief.

Life Time Allowance (LTA) – This is the limit on the maximum amount of benefits anyone can build up before tax charges apply from all their registered pension schemes (except the state pension) over their career and currently stands at £1.055m (down from £1.8m in 2010/11)

If someone's pension growth in exceeds their allowance they have to tell HMRC. They can then pay the charge directly to HMRC. Alternatively, they can ask their pension provider to pay the charge on their behalf in exchange for a reduction in benefits, this is called "Scheme Pays".

These allowances have reduced considerably in recent years and as a consequence many higher earning public sector staff have found themselves facing large tax charges. The BMA and NHS employers have had lots of press coverage articulating the problems these charges have caused to workforce supply and in summer 2019 the Government launched a consultation (see <https://www.rcn.org.uk/news-and-events/news/uk-response-proposed-nhs-pension-tax-changes-senior-doctors-nurses>) on introducing flexibility within the NHS pension scheme to allow members to better manage their tax liabilities. However, due to the general election that consultation had to be put on hold.

What is NHS England now offering?

On 26th November 2019 Simon Stevens, Chief Executive Officer at NHS England, announced that all registered clinical staff in England who will be adversely affected by the pensions annual allowance

taxation charge in financial year 2019/20 will have their tax liability paid by the NHS/Government, using the “Scheme Pays” mechanism. (see <https://www.england.nhs.uk/pensions/> accessed 05/12/19)

This offer has clearly been made amid concerns around growing winter pressures as a result of reduced commitment by senior medical colleagues but is **not** the official outcome of the recent Government consultation. As stated above that consultation has been “paused” during the general election and consequently employers have welcomed this step as a way of rapidly addressing workforce issues locally, in particular amongst senior doctors.

We know that RCN members are affected by these charges too. It particularly impacts on senior, executive nurses but can also affect other members, for example those who benefit from “Mental Health Officer Status” that gives double pension value for years in the NHS Pension Scheme once someone has accrued 20 years pensionable service. So we welcome the inclusion of all clinical staff in this offer. This offer at present only extends to registered clinicians working in England, and as yet no discussions have been had to offer similar in the devolved countries.

This is a contractual matter and is not a change to the pension scheme or pension benefits.

NHS England have provided Trusts with a standard letter to issue to affected staff that sets out the terms of this contractual offer and seeks to give assurance on how the offer will work in practice (appendix 1).

Who is eligible?

The FAQs from NHSE/I state that this offer only applies to clinicians in England who:

- are employed or engaged in a role that requires registration with an appropriate healthcare regulatory body during this period (2019/20)
- 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 and elect to use Scheme Pays to pay the charge on retirement.

However, other statements that have been made and the letter provided to Trusts to give to eligible staff (appendix 1) talk about “active clinical roles”. We don’t as yet know how Trusts will go about identifying their eligible staff but being able to demonstrate clearly the active nursing elements of your role will not be unhelpful.

How will I know whether I have a tax charge?

NHS Pensions will send you a pension savings statement if:

- growth in your 1995/2008 Scheme or 2015 Scheme benefits is more than the standard annual allowance
- you are a transition member, with pension entitlement in both NHS Pension Schemes, and the total growth in your NHS benefits across both the 1995/2008 Pension Scheme and the 2015 NHS Pension Scheme exceeds the standard annual allowance. You'll receive a statement from each NHS Scheme

Provided they receive the necessary membership information from your NHS employer or a third party to calculate your NHS pension growth by 6 July, they will write to you by 6 October if you have exceeded the standard annual allowance. If they receive the membership information after 6 July, they have 3 months from receipt of this information to send you a statement.

You can request an on demand pension savings statement if you do not expect the growth of your NHS benefits to exceed the standard annual allowance, or you have pension savings with another registered pension scheme.

How do I take up this offer?

To take up this offer you must elect to pay any annual allowance tax charge for this financial year (2019/20) using "Scheme Pays". This would ordinarily deduct your tax liability from your annual pension once it became payable. However, under this offer the NHS is making a contractually binding commitment to pay a corresponding amount on retirement, ensuring that eligible staff are fully compensated for the effect of the Scheme Pays deduction. If you do take up this offer it is advisable to keep all communication and documentation so that you remember the arrangements at the time of your retirement.

NHS England have stated that "The NHS employer will make a contractually binding commitment to pay them a corresponding amount on retirement, ensuring that they are **fully** compensated in retirement for the effect of the 2019/20 Scheme Pays deduction on their income from the NHS Pension Scheme in retirement" but it is as yet unclear exactly how this will be administered and managed.

Do employers have to pay this charge?

No. Local employers will incur no net extra costs as a result of this provision, which NHS England have said will be funded nationally. This commitment is supported by the Department of Health and Social Care and HM Government.

What will happen to the Government Consultation on flexibilities in the NHS Pension?

In our response to the Government consultation on pension flexibilities, the RCN restated its position that pension regulations should not be changed solely to deal with a taxation anomaly that would be better managed through changes to financial regulations. It will be for the incoming Government to decide how they wish to proceed but we will continue to press for flexibility for all NHS pension members, not just higher earners, as a way of encouraging retirement saving across the workforce.

What are the other UK countries doing?

To date Scotland, Wales and Northern Ireland have not made any indication that they are contemplating making a similar offer. In these countries staff affected by the tax charges are advised to speak to their employer and pension provider about utilising existing flexibilities or opting out of the scheme temporarily in order to manage their tax liabilities.

Where can I find further information?

Further information on Annual Allowance can be found here ([HM Government](#)) and here ([NHS Pensions](#))

Further information on the NHS England offer can be found here - www.england.nhs.uk/pensions

Independent Financial Advice is available to RCN members thro RCN Xtra from [Lighthouse Financial Advice](#)

(NLL/ERD/DEC2019)

To: [All consultants and other clinical staff who have the potential to be impacted by annual allowance pensions tax during 2019/20 and meet the eligibility criteria set out in the NHS England FAQs]

Dear Colleague,

PENSIONS TAX IMPACTS ON THE NHS – A SOLUTION FOR 2019/20

Many of you have had first-hand experience of the effect on work patterns caused by the annual allowance pensions tax, and the annual allowance taper. Each have impacted on an increasing number of clinical staff in the NHS Pension Scheme.

NHS England and NHS Improvement (“NHSEI”) accept that a longer term solution is required urgently but are now taking action to address the issue in order to reduce the negative impact of the pensions tax on the delivery of NHS services during the tax year 2019/20.

The specific purpose of this letter and the accompanying FAQ document is to set out how this will work in practice, and also to re-assure you that as your employer, [*the Trust*], is completely committed to playing its part in ensuring that clinicians who exceed their annual allowance as a result of the growth in their NHS Pension Scheme benefits in this financial year can now use the NHSEI mechanism to ensure that you do not suffer any negative financial consequences as a result.

You are therefore now immediately able to take on additional shifts or sessions during the remainder of 2019/20 without worrying about paying an annual allowance charge with respect to your NHS pension benefits now, or the tax charge impacting on your income in future.

The legal status of this letter is that it will constitute a formal variation to your contractual terms of employment with [*the Trust*], to incorporate an offer of a contractual additional salary payment from the Trust in retirement. This means that if you use the NHS Pension Scheme ‘Scheme Pays’ mechanism to pay your pensions annual allowance tax charge with respect to 2019/20, you will receive additional payments from [*the Trust*] ensuring that you are fully compensated in retirement for the effect of the 2019/20 Scheme Pays deduction on their income from the NHS Pension Scheme in retirement. Further detail on scheme pays is included in the accompanying FAQs.

Subject to the eligibility criteria and other details set out in this letter and accompanying FAQs, this means that in the event that:

- a) You incur a pensions annual allowance tax charge with respect to the 2019/20

tax year as a result of your membership of the NHS Pensions Scheme (the 'Tax Charge'); and

- b) You elect to have the Tax Charge paid by the NHS Pension Scheme under the "Scheme Pays" facility; then
- c) where an amount becomes payable to you under the NHS Pension Scheme and the amount of such payment is reduced as a result of payment of the Tax Charge, your NHS employer (backed by NHS England and ultimately the Secretary of State for Health and Social Care) will make a contractually binding commitment to make additional payments to you of a sum equal to the amount of this reduction, including any reduction to a tax free lump sum, grossed up for applicable taxes at that point in time. These payments shall become due and owing on the same date as the date of any payment that becomes due as a result of your accrued NHS pension rights.

This arrangement will ensure that you are fully compensated in retirement for the effect of the Scheme Pays deduction on your income from the NHS Pension Scheme in retirement. You will need to pay tax on these additional salary payments at the prevailing marginal rate at the time these payments are made, as you would have done on your pension payments prior to a "Scheme Pays" deduction. Your entitlement to these additional payments will immediately cease and the right to receive future payments is extinguished if the Secretary of State directs that your NHS Pension Scheme benefits are reduced or withheld entirely in exercise of powers¹ to forfeit such benefits upon conviction for treason, serious offences in connection with employment to which the pension scheme relates, or specific offences under the Official Secrets Acts 1911 to 1989 or in recovery of losses to public funds that resulted from criminal, negligent or fraudulent actions.

The arrangements specified above and the contract variation to implement those arrangements, will take effect automatically unless you write to us at the address given at the head of this letter, formally objecting to the proposed variation of your contract.

We understand that staff may be worried or anxious that any commitment from the Trust which is given now (but which may not come into effect until many years in the future), might in some way be at risk of being lost or eroded over time. However, the legally binding contractual offer given by [*the Trust*] in this letter, to make additional payments in retirement, like the benefit promise under the NHS Pension Scheme itself, is also underwritten by the Government. We have also received an equivalent confirmation from NHS England that the Trust and its successors will be funded to meet these costs in future. Should the Trust cease to exist, there are statutory provisions to ensure its liabilities, including commitments to staff, would be transferred to one or more existing NHS bodies, or the Secretary of State. As such these payments, as contractual liabilities will be honoured even if the Trust no longer exists in the future or defaults for any reason in making 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

This means that all financial commitments entered into by [the Trust] are safeguarded. [The Trust] confirms that, in the event that it is subject to any future re-organisation involving the proposed dissolution of the Trust (for example, a merger), it undertakes to take all reasonable steps to secure that the liabilities created by this agreement are provided for in any transfer order or scheme made by Secretary of State or NHS Improvement and transferred to the Trust's successor body, another NHS body or the Secretary of State. The liability to make the payments under this arrangement is not contingent on your remaining as an employee of [the Trust].

This letter therefore gives you the necessary assurance to be certain that you can undertake any combination of NHS roles during the 2019/20 tax year without suffering any financial loss as a result of the annual allowance pensions tax, subject to using the Scheme Pays mechanism as explained in the FAQ document.

This will apply to registered doctors, nurses, AHPs and other clinicians in active clinical roles who are members of the 1995/2008 and 2015 NHS Pension Schemes. It will apply to all pension savings built up in the NHS Pension Schemes in 2019/20 (but not annual allowance tax charges which may arise due to pension savings you have built up outside the NHS Pension Schemes, nor additional voluntary contributions (AVCs) within the NHS Pension Scheme such as additional pension purchases in 2019/20). You will be able to have this charge paid by the NHS Pension Scheme by completing and returning a 'Scheme Pays' election before the 31 July 2021 deadline meaning that you don't have to worry about paying the charge now out of your own pocket. In certain circumstances you may need to make this election earlier, we will provide further guidance on the necessary steps well in advance of any deadline.

Please do take some time to read the accompanying FAQs, which can be found at <https://www.england.nhs.uk/pensions/> which should help you understand how the new initiative operates, and what you need to do in order to ensure that it works for you personally.

Some other pension flexibilities are also being introduced locally by [*the Trust*] alongside the new NHSEI initiative. Please don't ignore these other flexibilities, although some of these may not offer you the advantages of remaining in the NHS Pension Scheme. Further pension flexibilities are expected to be introduced by DHSC in 2020 which may help in reducing the ongoing risk of you breaching the annual allowance pension tax threshold in the future.

Finally, pensions tax is a complex subject. NHS Employers have provided guidance on the pensions annual allowance available at www.nhsemployers.org/pay-pensions-and-reward/pensions/pension-resources/annual-and-lifetime-allowance.

Yours faithfully