



Scottish Public
Pensions Agency
Buidheann Peinnseanan
Poblach na h-Alba

**NHS Pension Scheme (Scotland):
Retirement flexibilities and changes
to pension rules regarding inflation**

**Scottish Government consultation
2022**

About This Consultation

The National Health Service Pension Scheme (Scotland) continues to be an integral part of the remuneration package, and offers significant value in retirement, to people who have chosen to dedicate part, or all, of their careers to the NHS in Scotland. As a defined benefit pension scheme, it provides the security of a government-backed guaranteed income in every year of retirement for all of its members.

The Scottish Government recognises that some NHS Scotland staff who are approaching retirement might prefer more flexibility around their retirement options and the ability to continue in employment while claiming their pension. This consultation therefore proposes the introduction of new retirement flexibilities to the NHS Pension Schemes (Scotland) which would offer staff more options at the end of their careers, so that they can partially retire or return to work seamlessly and continue building pension after retirement if they wish to do so.

As well as giving staff a greater flexibility around how they take their pension benefits, these measures can also support patient care. If members of the NHS Pension Scheme (Scotland) are able to continue working longer but more flexibly in ways that suit both individuals and employers, then NHS Scotland will also continue to benefit from their skills and experience. This could provide an important boost to NHS capacity at a crucial time and help deliver essential care services.

In addition to the new retirement flexibilities, this consultation also proposes to address some issues in relation to inflation and its impact on pension accrual for some members of the NHS Pension Scheme (Scotland). It is hoped that by taking action on these rules, there will be less likelihood that NHS staff face annual allowance tax charges as a result of high inflation, which might otherwise lead to, for example, senior clinicians and GPs reducing or limiting their hours in the workplace or seeking early retirement.

Consultation Process

The Scottish Government welcomes views on the proposals set out in this document that seek to introduce new retirement flexibilities and amend pension rules regarding inflation to the NHS Pension Scheme (Scotland).

Respondents are invited to consider the following:

Q1. – Do you agree or disagree that the new retirement flexibilities should be introduced as proposed in this consultation document?

If you disagree in full or in part, or don't know, please explain your answer.

Q2. – Do you agree or disagree that the changes to the pension rules regarding inflation should be implemented as proposed in this consultation document?

If you disagree or don't know, please explain your answer.

Q3. – Are there any further considerations and evidence that you think the Scottish Government should take into account when assessing any equality issues arising as a result of the proposed changes?

Duration of Consultation

This consultation will run for a period of eight weeks commencing on Thursday 22 December 2022 and ending on Thursday 16 February 2023.

How to respond

Please use the [consultation response form](#) and once completed send to sppapolicy@gov.scot before midnight on the closing date.

Alternatively, responses can be posted to:

NHSPS(S): Member Contributions Consultation
SPPA,
Tweedside Park
Tweedbank,
Galashiels, TD1 3TE

Further information

If you are unable to access an electronic version of the document, please write to the above address and a paper copy will be provided.

Data Protection Statement

The Scottish Public Pensions Agency (SPPA) is an executive Agency of the Scottish Government and forms part of the legal entity of the Scottish Ministers (Framework Document).

This framework of statutory powers and responsibilities, as agreed with the Scottish Ministers, enables SPPA to undertake the role of data controller for the processing of personal data which is provided as part of your response to the consultation. Any response you send us will be seen in full by SPPA staff dealing with the issues which this consultation is about or planning future consultations.

The process allows informed decisions to be made about how SPPA exercises its public function.

Where SPPA undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. SPPA use Scottish Government standard terms and conditions for such contracts which set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the SPPA intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response.

If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response, then these published reports will be retained indefinitely. Any of your data held otherwise by SPPA will be kept for no more than three years.

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be ‘erased’
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner’s Office (ICO) who is the independent regulator for data protection.

For further details about the information the SPPA holds and its use, or if you want to exercise your rights under the GDPR, please refer to our Privacy Policy in the first instance or contact:

Agency Data Protection Officer
Scottish Public Pensions Agency
7 Tweedside Park
Tweedbank
GALASHIELS
TD1 3TE

Tel: 01896 892 469

Website: <https://pensions.gov.scot/>

The contact details for the Information

Commissioner’s Office are:
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113

Website: <https://ico.org.uk>



Scottish Public
Pensions Agency
Buidheann Peinneanan
Poblach na h-Alba

Contents

1. New retirement flexibilities	page 7
2. Changes to pension rules regarding inflation	page 13
3. Equality Impact Assessment	page 17

1. New Retirement Flexibilities

Background

1.1. The NHS Pension Scheme (Scotland) is made up of two existing schemes: the final salary scheme, or legacy scheme, which has two sections, [the 1995 Section](#) and [the 2008 Section](#); and [the 2015 Scheme](#) which is a career average revalued earnings (CARE) scheme that provides benefits based on average earnings over a member's career. The 1995 and 2008 Sections closed to all members on 31 March 2022 and from 1 April 2022 all members join the 2015 Scheme. The key differences between the schemes, other than the way benefits are calculated, are different normal pension ages (NPAs) and accrual rates, as shown in table 1 below.

Table 1

Scheme or Section	Normal Pension Age	Pension Benefit Accrual Rate
1995 Section	60	1/80 th of final salary
2008 Section	65	1/60 th of final salary
2015 Scheme	State Pension Age	1/54 th of annual earnings

1.2. The 2015 Scheme was introduced as part of wider reforms implemented by regulations made under the Public Service Pensions Act 2013. As part of these reforms, public service pension scheme members within 10 years of retirement were originally given transitional protection, and so remained in their legacy pension schemes. Other members who were between 10 and 13.5 years from retirement were also given some protection, on a tapered basis.

1.3. In December 2018, the Court of Appeal found this protection to be discriminatory against younger members. This has become known as the 'McCloud judgment.' The UK government accepted the judgment applies to [other public service schemes, including the NHS](#), and has set out how the discrimination will be remedied. This is known as the 'McCloud remedy.'

Retirement options

1.4. At the time the 1995 Section was designed, retirement patterns were understood to be relatively binary; staff would typically work full-time until claiming their benefits and retiring. After this point, members were unlikely to return to NHS service, and the rules of the NHS Pension Scheme (Scotland) restricted the incentives to do so by preventing any further pension accrual.

1.5. However, we understand that retirement today can often be a gradual process over a number years, rather than a cliff edge. The Scottish Government recognises that some staff who are approaching retirement may prefer more flexibility around their retirement options and the ability to continue in employment after claiming their pension. To that end, the Scottish Government recently

published [retire and return guidelines](#) which make it easier for experienced NHS staff who to return to work following retirement.

1.6. The new retirement flexibilities outlined in this consultation document have therefore been designed to offer staff increased options at the end of their careers, so that they can partially retire or return to work seamlessly and continue building pension after retirement if they wish to do so.

1.7. Also, as a result of the McCloud remedy, all eligible staff were moved to the 2015 Scheme for future accrual from 1 April 2022. This means that some members will now have service in both the 1995 Section and 2015 Scheme, which have different rules on how members can claim their benefits. We have therefore designed the proposed retirement flexibilities to address this issue and ensure that the rules are aligned for all members of the NHS Pension Scheme (Scotland).

Retirement flexibility proposals

1.8. The new retirement flexibilities being proposed for the 1995 Section are as follows:

- pensionable re-employment
- partial retirement
- removing the 16-hour rule

1.9. As well as supporting members' work/life balance and giving them a greater degree of flexibility around how they take their pension benefits, we have also designed these measures to support patient care. If members of the NHS Pension Scheme (Scotland) are able to continue working longer but more flexibly in ways that suit both individuals and employers, then NHS Scotland will also continue to benefit from their skills and experience. This could provide an important boost to NHS capacity at a crucial time and help tackle care backlogs.

1.10. We are also proposing to make a number of small changes to the 2008 Section and 2015 Scheme. More information about the proposed changes is provided in the relevant sections of this consultation document.

Pensionable re-employment

1.11. Under the existing regulations of the NHS Pension Scheme (Scotland), members who take their 1995 Section benefits are not permitted to build up any further pension in the 2015 Scheme. If they do return to work, this is on a non-pensionable basis. Because the 1995 Section does not have any late retirement factors (LRFs), if members choose to leave these benefits unclaimed after the NPA, they do not increase in value.

1.12. Now that all members have been moved to the 2015 Scheme for future accrual, these rules could cause problems for those who need to carry on working to

be able to afford to retire but wish to claim their 1995 Section benefits when they are most valuable.

1.13. We therefore propose an amendment to allow members who take their benefits in the 1995 Section to return to work and build further pension in the 2015 Scheme if they wish. We think that this may help some retired staff to bridge the gap between claiming their NHS pension benefits and receiving their State Pension. This could in turn support NHS Scotland capacity, as allowing staff to build up further benefits in the 2015 Scheme may make returning to service more attractive.

1.14. It is also proposed to allow members who are currently non-pensionable in the 1995 and 2008 Sections, because they have breached the maximum service limits, to join the 2015 Scheme. The age limit for 2015 Scheme membership (75) will apply as normal.

1.15. Under the proposal, members with special class status (SCS) would still be subject to abatement until age 60 under normal circumstances. This would mean that their pension is reduced if their pension plus salary after returning to work exceeds their pre-retirement income. However, abatement for SCS members is currently suspended until 31 March 2025. More information on the [suspension of abatement](#) is provided in the next section of this consultation document.

Partial retirement

1.16. Under the current 1995 Regulations, members are currently unable to partially retire, or to take some of their pension benefits whilst continuing to work and build further pension. Taking part of your pension benefits is also sometimes known as 'draw down.'

1.17. This is different to the rules for 2008 Section and 2015 Scheme members in the NHS Pension Scheme (Scotland), and for members of other comparable public service pension schemes, such as the Teachers' Pension Scheme and the Civil Service Pension Scheme. We think that increasing the level of flexibility may have a positive impact on some members' work/life balance later in their careers, when they may prefer to retire more gradually, reducing their work commitment for a period of time before retiring completely.

1.18. Furthermore, the McCloud remedy may mean that some staff aged 55+ are able to retire earlier than they previously planned, which when combined with other factors, could have an impact on NHS capacity. A lack of partial retirement in the 1995 Section may discourage staff from remaining in the workforce for longer than they might if more flexible options were available.

1.19. We are therefore proposing an amendment to the 1995 Section regulations to allow members to partially retire and claim up to 100% of their 1995 Section benefits whilst continuing to work and accrue further pension in the 2015 Scheme. Under this proposal, on reaching minimum pension age (currently 55), members will

become eligible to partially retire if they reduce their pensionable pay by at least 10%. For GPs, a 10% reduction in commitment would be required. Members with a protected minimum pension age of 50 will be able to partially retire from age 50.

1.20. We believe the proposal for partial retirement will better support members' work/life balance and may also help NHS Scotland to retain valued experienced staff in the workforce, as members may wish to partially retire and work for longer than they had previously planned. For those impacted by pension tax, this proposal would also allow them to manage their tax position by partially retiring and remaining in work, rather than opting out of the NHS Pension Scheme (Scotland) or leaving the NHS completely. We think that this is especially important in the current context, as maximising workforce capacity by retaining experienced staff will be crucial to reducing elective care backlogs.

1.21. The option to partially retire would be open to all members, although SCS members would be subject to abatement under normal circumstances until age 60. However, abatement for SCS members is currently suspended until 31 March 2025.

1.22. From 25 March 2020 to 25 March 2022, the retire and return easements were provided by section 46 of the Coronavirus Act 2020, one of the pieces of emergency legislation introduced to provide the government and the NHS with the tools required to deal with the COVID-19 pandemic. Since 25 March 2022, these easements have been continued through temporary modifications to NHS Pension Scheme (Scotland) Regulations. These temporary modifications were originally due to expire on 31 October 2022 but the expiry date have been extended. As a result, all of the temporary easements will now expire on 31 March 2023, except for the suspension of SCS members abatement, which will expire on 31 March 2025.

1.23. To ensure consistency with the 2008 Section and the 2015 Scheme, under the proposal for partial retirement abatement will apply to 1995 Section members who choose to partially retire (reducing their pensionable pay by at least the required 10%) but whose terms of employment later change again so that their pensionable pay increases to more than 90% of what it was before the original reduction. As outlined above, drawdown abatement for members of the 2008 Section and 2015 Scheme is currently suspended until 31 March 2023 through the retire and return easements and will resume on 1 April 2023.

1.24. We propose that new regulations will be added to Part E of the 1995 Section, setting out the rules governing partial retirement. These rules will follow the approach to partial retirement taken in the 2008 Section and 2015 Scheme.

1.25. Timings for the availability of partial retirement will be confirmed following the consultation findings and subsequent decisions on final policy design, but it is expected to be implemented in summer 2023.

Other proposed changes in relation to partial retirement

Allowing 100% drawdown in the 2008 Section and 2015 Scheme

1.26. Under the current 2008 Section regulations and 2015 Scheme regulations, members can only claim a maximum of 80% of their benefits. However, under these proposals, members who partially retire would be able to claim, or 'draw down,' up to 100% of their 1995 Section benefits under partial retirement.

1.27. To ensure that the partial retirement provisions are aligned across the 1995 Section, 2008 Section and 2015 Scheme, it is also proposed to amend the relevant provisions governing partial retirement in the 2008 Section (regulation 2.D.5) and 2015 Scheme (regulation 83) to permit the maximum drawdown of 100% instead of the existing 80%.

1.28. The 2008 Section and 2015 Scheme already have late retirement factors, which is a benefit for members who want to retire after their normal pension age and have their pension benefits remain in the scheme, where they are subject to revaluation. The proposed change, to allow up to 100% drawdown, will not remove this benefit for members, but it will offer them more flexibility if they do want to partially retire and take 100% of their pension benefits.

Correcting regulation 85(3) in the 2015 Scheme

1.29. Furthermore, when reviewing the provision for partial retirement, an error in regulation 85(3) of the 2015 Regulations has been identified in respect of abatement following retirement from that scheme where members hold additional pension (AP).

1.30. Under the 2008 Section regulations, if members who partially retire are subject to abatement, then their AP continues in payment, whereas under the 2015 Scheme regulations the AP is also deemed subject to abatement. It is proposed that AP should not be subject to abatement, and so the drafting of the 2015 Scheme regulations contains an error which should be corrected. Regulation 85(3) states that the member's pension mentioned in regulation 84(2) will be abated to zero. However, that regulation 85(3) should only refer to the member's pension in regulation 84(2)(a) and (b) being abated to zero, because regulation 85(2)(c) refers to the member's AP.

Removing the 16-hour rule

1.31. Under the current 1995 Regulations, members who choose to take their pension benefits and then return to work can only work a maximum of 16 hours per week in their first month back without impacting their pension. This rule can be administratively difficult for employers to manage, and it may also discourage staff from returning to work or increasing their commitment to more than 16 hours per

week after their first month back. The 16-hour rule is also not a feature of the 2008 Section or 2015 Scheme regulations for NHS staff, or of other comparable public service pension schemes.

1.32. It is therefore proposed to amend the 1995 Section regulations to permanently remove this rule. This would apply to all members, including SCS members. This amendment has been designed to complement the proposal for pensionable re-employment in the package of retirement flexibilities, by allowing staff to have a smooth transition back into work after claiming their 1995 Section benefits and allowing them to maximise the hours they contribute, if they wish, without impacting their pension.

1.33. It is proposed that regulation S1 of the 1995 Section regulations, which contains the 16-hour rule, will be permanently removed from 1 April 2023.

1.34. The 16-hour rule has been suspended since 25 March 2020 as explained above. The suspension of the 16-hour rule is due to continue until 31 March 2023, the day before it is intended to be permanently removed under these proposals.

Removing regulation R4(6) from the 1995 Section

1.35. Regulation R4(6) applies to members with more than one employment and means that if they retire from at least one NHS employment, they can remain working in the NHS and still be entitled to claim their pension, provided they do not work for more than 16 hours per week. This is the same number of hours members can currently work on their first month back after retirement without impacting their pension. Given that the intention is to permanently remove the 16-hour rule, it has considered that it is also appropriate to remove regulation R4(6).

1.36. Because of the intention to introduce pensionable re-employment, if this regulation remained in place, from 1 April 2023 impacted members would be able to claim their 1995 Section benefits and continue working and building further pension in the 2015 Scheme, without a break. Therefore, this may be unfair on members who work more than 16 hours per week and wish to continue without a break, as they would be required to take partial retirement and reduce their pensionable pay by at least 10%, whereas members impacted by regulation R4(6) may not need to.

1.37. There is also not a similar rule in the 2008 Section or 2015 Scheme, which means that members with more than one employment must cease them all to be able to claim their pension. Therefore, to align the rules of the 1995 Section, 2008 Section and 2015 Scheme, it is proposed to permanently remove this regulation from 1 April 2023.

2. Changes to the pension rules regarding inflation

Background

2.1. The recent rapid increase in Consumer Price Index (CPI) inflation has shown there to be a timing mismatch between the CPI rate that is used to revalue accrued benefits in the NHS Pension Scheme (Scotland) and the CPI rate that is allowed for in annual allowance (AA) tax calculations. Aligning these timings will ensure that the AA measures only the pension growth that occurs above inflation.

Pension benefits in the 2015 Scheme

2.2. The amount of pension a 2015 Scheme member earns each year is determined by what is known as the 'build-up rate'. In the 2015 Scheme the build-up rate is 1/54th, so members earn a pension of 1/54th of their pensionable earnings each scheme year. For active members of the 2015 Scheme the pension they earn is increased yearly by a percentage rate, known as 'in-service revaluation'. This continues to occur yearly until a member retires or ends their active membership of the 2015 Scheme before retirement.

2.3. The revaluation of public service pensions is reserved to the UK Government. The percentage rate of in-service revaluation is determined by a yearly Public Service Pensions Revaluation Order (the Treasury Order), plus an additional 1.5%. Treasury Orders are the method by which HM Treasury notifies the value of the CPI change to be applied as part of the in-service revaluation. The pension earned in a scheme year, 1 April to 31 March, is added to the aggregate pension earned in previous scheme years and increased by the in-service revaluation rate. The in-service revaluation rate may go up, remain the same or even go down and be a negative amount. If a member leaves the 2015 Scheme before 31 March, they become entitled to a proportion of the in-service revaluation after 31 March. The proportion is dependent on how far through the scheme year the member left the scheme.

2.4. If a member leaves the 2015 Scheme to retire, the in-service revaluation stops, they receive a proportion of the in-service revaluation after 31 March and while in payment the 2015 Scheme pension increases yearly by the 'pensions increase rate, determined by the yearly Treasury Order. The pensions increase is used to maintain the value of public service pensions against rises in the cost of living. If the CPI is a negative amount, the pensions increase is zero.

2.5. 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.

Pension benefits in the 1995/2008 Scheme

2.6. Pension benefits in the 1995/2008 Scheme for medical, dental and ophthalmic practitioners, as a group referred to as 'practitioners', are calculated as using a career average revalued earnings (CARE) method. Practitioner pensionable earnings, for each scheme year a practitioner is an active member, are uprated using a factor known as the 'dynamising factor.' Practitioner pensionable earnings are multiplied by the relevant dynamising factor yearly. The practitioner pension accrual rate is then 1.4% in the 1995 Section and 1.87% in the 2008 Section, of the total uprated practitioner pensionable earnings amount.

2.7. Practitioner pensionable earnings earned up to the closure of the 1995/2008 Scheme on 31 March 2022 – and if appropriate a practitioner pensionable earnings credit in respect of any added years being purchased – are uprated yearly using dynamising factors aligned to the pensions increase, the CPI rate used to increase NHS pensions in payment, plus an additional 1.5%. The 1995/2008 Scheme closed on 31 March 2022 and all practitioners were moved to the 2015 Scheme. As a result, the uprating continues for as long as the practitioner remains an active member of the 2015 Scheme. The percentage rate of CPI, to be added to the additional 1.5% to determine the dynamising factors, is confirmed in the yearly Pensions Increase (Review) Order by the UK Government Department for Work and Pensions.

The annual allowance

2.8. The annual allowance (AA) is the maximum amount of pension savings an individual can make in any one tax year, from 6 April to 5 April, which benefit from tax relief. The standard AA limit is currently £40,000. However, the limit can be tapered down to a lower tapered AA for very high earners. The growth in pension savings during a tax year is referred to as the pension input amount (PIA).

2.9. The PIA is based on how much the value of the individual's accrued pension has gone up from the 'opening value' immediately before the start of the tax year to the 'closing value' at the end of the tax year. If an individual's PIA is more than their AA, the individual may be liable to pay tax on the amount that is over their AA.

2.10. The intention is that the PIA should only consider growth in pension savings above inflation and so the opening value is uplifted by the CPI, from the previous September, in the calculation of the PIA.

CPI disparity

2.11. The 2015 Scheme in-service revaluation and the calculation of the PIA both use CPI. However, there is a disparity between the CPI used for the in-service revaluation of the 2015 Scheme pension and the CPI used to increase the opening value, as part of the calculation to determine the PIA.

2.12. The Treasury Order has come into force on 1 April each year since the introduction of the 2015 Scheme. This means that the 2015 Scheme earned pension up to 31 March was revalued on 1 April. In contrast, the opening value of 2015 Scheme pension on 5 April is increased by an earlier September's CPI percentage rate.

2.13. The issue for practitioners with CARE benefits in the 1995/2008 Scheme is similar to the issue for practitioners and other members with CARE pensions in the 2015 Scheme. Dynamising factors are currently applied to practitioner pensionable earnings on 1 April. In contrast, the opening value of 1995/2008 Scheme benefits is uplifted by an earlier September's CPI amount.

2.14. Effectively there is a one-year CPI disparity for both the uprating of 1995/2008 Scheme pensionable practitioner earnings, and the in-service revaluation of the 2015 Scheme earned pension. Recent higher inflation means that this mismatch has become more acute, leading to more members being potentially at risk of breaching their annual allowance.

2.15. For the 2022 to 2023 tax year, the September 2022 CPI of 10.1% is higher than it has been in recent years. This higher CPI will lead to high in-service revaluation of 2015 Scheme earned pension up to 31 March 2023. However, the CPI increase to the opening value of NHS Pension Scheme pension in the PIA calculation is based on the lower value of CPI in September 2021 of 3.1%. This increases the risk of annual allowance tax charges for 1995/2008 Scheme practitioners and 2015 Scheme members for tax year 2022 to 2023 as a result of the higher inflation.

Proposed changes to correct the CPI disparity

2.16. Pension taxation is reserved to the UK Government. Whilst one way to remove this issue in full would be to make appropriate changes to the Finance Act 2004, the UK Government has proposed a solution seeking to mitigate the impact by making changes to the Public Service Pensions Revaluation Order 2023. This proposal would move the date on which CARE benefits are annual revalued, to align the CPI rates used for in-service revaluation, with CPI rates used in the PIA calculation.

2.17. The UK Government Department for Health and Social Care (DHSC) is proposing that this change in revaluation date is applied to the NHS Pension Scheme in England and Wales. Therefore, this would move the applicable date that is used for the yearly in-service revaluation in the 2015 Scheme, and uprating 1995/2008 Scheme practitioner earnings, from 1 April to 6 April each year. This would be effective from 6 April 2023.

2.18. Moving the date by five days means that the same CPI percentage rate is used, meaning that the PIA calculation will only consider growth in pension savings of above inflation.

2.19. The Scottish Government recognises that while changing the revaluation date would ensure that the AA operates largely as originally intended in relation to NHS

pensions, and mean the high inflation environment would not create larger tax charges for senior clinicians on pension earned this year, it does not fully mitigate the impacts of this issue.

2.20. The Scottish Government considers that this solution is administratively complex and requires changes to pension administration systems, as well as legislation. Introducing these changes to schemes during 2023, when administrators and stakeholders are already faced with the considerable challenges of correcting age discrimination in the 2015 reforms and other associated tax changes, significantly risks scheme management and, crucially, the delivery of the McCloud remedy.

2.21. Therefore, the Scottish Government considers that a fairer approach to delivering the intention would be to amend sections 234 and 235 of the Finance Act 2004, which would have the advantage of simplicity and could also resolve other issues in relation to annual allowance. The Scottish Government hopes that the UK Government gives full consideration to delivering the changes through primary legislation.

2.22. However, should the changes to the Finance Act 2004 not be possible, the Scottish Government proposes to move the revaluation date in the NHS Pension Scheme (Scotland) in the same way as proposed by DHSC.

2.23. Moving the revaluation date would also require that consequential minor amendments are made to the 2015 Regulations. These changes would be solely focused on the schedule 7 interpretations of: 'index adjustment', 'AP index adjustment', 'leaver index adjustment' and 'leaver AP index adjustment', as well as a minor amendment in regulation 104, regarding the definition of 're-valued pensionable earnings'.

The 1995 Regulations and the 2008 Regulations

2.24. In line with moving the revaluation date in 2015 Scheme it is also proposed to move the date that dynamising factors are applied to 1995/2008 Scheme practitioner pensionable earnings yearly from 1 April to 6 April, from 6 April 2023.

2.25. The process by which the uprate is applied to the 1995/2008 Scheme is set out in: paragraph 15 of schedule 1 of the 1995 Regulations; and regulation 1 of Part 3D of the 2008 Regulations. Both the 1995 Regulations and the 2008 Regulations draw on the Pensions (Increase) Act 1971 and the Social Security Pensions Act 1975, for an explanation as to how the CPI annual increase figure is defined. As the 1995 Regulations and the 2008 Regulations do not set a specific date on which the dynamising factors need to be applied, there is no requirement to change either the 1995 Regulations or the 2008 Regulations to implement this proposal.

2.26. **For members unaffected by the AA, this proposed change would have no impact on the amount of NHS pension benefits they are entitled to on retirement.**

3. Equality Impact Assessment

3.1. The Public Sector Equality Duty ('PSED') was created by the Equality Act 2010 and is supported by the specific duties contained in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, as amended.

3.2. The PSED requires the Scottish Government to assess the impact of applying a proposed new, or revised, policy or practice. Scottish Ministers must have 'due regard' to the need to eliminate discrimination, advance equality of opportunity and foster good relations between people with different protected characteristics when carrying out their activities.

3.3. There are nine protected characteristics identified in the Equality Act 2010: (1) sex, (2) age, (3) disability, (4) race, (5) religion or belief, (6) gender reassignment, (7) pregnancy and maternity, (8) sexual orientation, (9) marital or civil partnership status.

New retirement flexibilities

Sex

3.4. The Equalities Act 2010 lists 'sex' as a protected characteristic. Data for the NHS Pension Scheme is also divided by sex. However, it is important to note that sex and gender are 2 different concepts. A person's gender identity is not always the same as the sex assigned to them at birth, and some people may not identify as having a gender or as non-binary. Gender reassignment is also a protected characteristic under the Equality Act 2010.

3.5. The proposed retirement flexibilities will be available to all members regardless of sex. However, in developing the proposals, the Scottish Government has considered the potential impacts of the new retirement flexibilities on members from this perspective, taking into consideration members' salary progression, career breaks and work patterns.

3.6. The NHS is a female dominant workforce, and the majority of NHS Pension Scheme membership is female. Within the NHS Pension Scheme as a whole, male members tend to receive higher pensions than female members.

3.7. The gap between the average pension for male and female members may be attributed to several factors, including differences in pay, working patterns and career breaks due to maternity and caring responsibilities. As well as receiving higher pay than female employees, generally across the public sector male employees are less likely to work part-time and have gaps in their length of service. This is partly due to female members being proportionally more likely to have career breaks due to maternity and caring responsibilities. However, it is worth

noting that not all female members will take parental leave or have caring responsibilities.

3.8. If the proposals for partial retirement and pensionable re-employment are not implemented, members who claim their 1995 Section benefits will be unable to accrue any further pension benefits in the 2015 Scheme. However, in light of the information above on average pension payments from the NHS Pension Scheme, it is possible that female members may be more likely to need to build up further pension than male members.

3.9. Therefore, it is considered that the new retirement flexibilities are likely to benefit female members. They may also help to reduce the current gap in average pensions for male and female members of the NHS Pension Scheme. If the retirement flexibilities are not implemented and members cannot build up any further pension after taking their 1995 Section benefits, female members may be more likely to feel the impact of this than male members.

Age

3.10. The Scottish Government has also considered the potential impact of the new retirement flexibilities on members in different age cohorts.

3.11. As this consultation document sets out, to introduce the new retirement flexibilities it will require amendments to the 1995 Section regulations. Because the 1995 Section closed to new members in 2008, the membership of this section is typically older. Therefore, if the proposed retirement flexibilities are implemented then it would be primarily older members who would benefit from them.

3.12. If implemented, the new retirement flexibilities will allow older members to retire more flexibly, in a way that supports their work/life balance later in their career. They will also give members the ability to build further pension in the 2015 Scheme after claiming their 1995 Section benefits.

3.13. Provisions for partial retirement and pensionable re-employment already exist within the 2008 Section and 2015 Scheme. This means that younger members, who are more likely to be members of the 2008 Section or the 2015 Scheme, will already have access to flexible retirement and would not be negatively impacted by the introduction of this option in the 1995 Section. The 16-hour rule, which is proposed to be permanently removed, has never been a feature of the 2008 Section or the 2015 Scheme, and so this change should not impact on members of the 2008 Section or 2015 Scheme, who are more likely to be younger.

3.14. If the new retirement flexibilities are not implemented then members of the 1995 Section, who are more likely to be older, will not have the same retirement flexibilities when they retire as other members who are more likely to be younger. However, younger members are also more likely to be further from retirement due to their age and it is therefore difficult to draw a direct comparison.

3.15. The 1995 Section regulations currently require members to leave service to claim their pension and do not provide late retirement factors. This means that members who claim their pension at a later age do not benefit from doing so through increased pension. Under the current regulations, if members do choose to leave service and crystallise their benefits, then they will not be able to build up further benefits in the 2015 Scheme. Therefore, retiring at a later age means that some members might miss out on the pension benefits they could have accrued during this time.

3.16. The proposal for partial retirement is therefore designed to address this issue. The original intention was to introduce partial retirement on the same basis as that currently offered in the 2008 Section and 2015 Scheme, which allow members to draw down a maximum of 80% of their benefits. However, it is proposed that members be permitted to draw down up to 100% of their 1995 Section benefits. This approach ensures that no element of members' benefits is required to be left unclaimed. If the proposal for partial retirement is not implemented, it is possible that this might have a detrimental impact on some younger members of the 1995 Section.

3.17. Furthermore, the proposal to amend the 2008 Section and 2015 Scheme to allow for 100% draw down will ensure that the partial retirement provisions are aligned across the 1995 Section, 2008 Section and 2015 Scheme. This means that whilst the new retirement flexibilities will be of most benefit to members of the 1995 Section, they will not benefit from any more flexibility than members of the 2008 Section or the 2015 Scheme, who are likely to be younger.

Special class status

3.18. Special class status (SCS) is a historic provision awarded to certain professions which, subject to qualifying criteria being met, allows members to retire at age 55 without a reduction to their benefits. It is a continuation of the arrangements that existed before the start of the NHS in 1948 and closed to new members on 6 March 1995. As SCS members therefore tend to be older, the impact of the new retirement flexibilities on SCS members is considered as part of the age section of this analysis.

3.19. Given SCS members already benefit from getting to take their pension early, without actuarial reduction, it is felt that it is proportionate for them to be subject to abatement under normal circumstances if they decide to make use of the proposed provision for partial retirement or pensionable re-employment between the ages of 55 and 60. This is in line with existing abatement provisions in the 1995 Section, which ensure fairness to all scheme members and protect the public purse from the impact of staff continuing to work full time whilst in receipt of generous pension benefits.

3.20. Because SCS does not exist in the 2008 Section or 2015 Scheme, the implementation of the flexibilities for SCS members will not have an impact on members of the 2008 Section and 2015 Scheme, who are more likely to be younger.

3.21. Given that the majority of SCS members are female, there is also some read across to the analysis on sex. However, as the proposals will apply to SCS members regardless of sex, it is considered that the flexibilities will not impact members beyond the ways outlined above.

Disability

3.22. The proposals will apply to all members regardless of disability. However, the potential impact of the new retirement flexibilities on members with disabilities has been considered.

3.23. There is some evidence to suggest that disabled people are more likely to work part-time. Data from the Office of National Statistics (ONS) on disability and employment shows that working disabled people were more likely to work part-time than non-disabled people, with 32% of disabled people working part-time in comparison with 21.3% of non-disabled people.

3.24. Given that those who work part-time are more likely to have accrued smaller pensions and so may be more likely to need accrue further pension after taking their 1995 Section benefits, it is considered therefore that the proposals are likely to benefit members with disabilities.

Pregnancy and maternity

3.25. There is limited data available on this group specifically in relation to the NHS workforce. However, the potential impact of the proposals on members who have this protected characteristic as part of the analysis on sex.

Ethnicity, sexual orientation, religion, marital or civil partnership status and gender re-assignment

3.26. The proposed retirement flexibilities will be available to members regardless of ethnicity, sexual orientation, religion, marital or civil partnership status and gender reassignment. It is not considered that the proposals raise any specific equality issues for members in relation to these characteristics.

Changes to the pension rules regarding inflation

3.27. The proposed changes are primarily a technical amendment to address the CPI disparity between the pension input amount calculation, for annual allowance purposes, and CARE revaluation in both the 2015 Scheme and 1995/2008 Scheme.

3.28. It is therefore considered the proposed changes do not directly impact on any protected characteristics. Moreover, to leave the pension rules regarding inflation unchanged may have a perverse outcome for older members, who have more service in the NHS Pension Scheme (Scotland) and given their longer careers the potential to have higher pensionable earnings. Without the proposed changes

these members are more likely to have a tax charge, or a higher tax charge, when, like in the period to September 2022, inflation has risen sharply.