Scottish Public Pensions Agency
Buidheann Peinnseanan Poblach na h-Alba

NHS Pension Scheme (Scotland): proposed changes to member contributions from 1 October 2023 and miscellaneous amendments

Scottish Government consultation 2023

About This Consultation

The NHS Pension Scheme (Scotland) continues to be an integral part of the NHS 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. The NHS Pension Scheme (Scotland) offers the security of a guaranteed income in every year of retirement for all its members, on some of the most generous terms available from a pension scheme.

In 2008, tiered contribution rates were introduced to reflect that higher earners were likely to receive proportionally more benefits than lower earners in a final salary pension scheme. To ensure the cost of the NHS Pension Scheme was fairly distributed and affordable for all members, these tiered contribution rates asked higher earners to pay proportionally more than lower earners to access the valuable benefits of the scheme.

As part of the McCloud remedy, from 1 April 2022 all members moved to the NHS Pension Scheme 2015 which is a Career Average Revalued Earnings (CARE) scheme where member pensions are increased by a percentage of their salary for each year they work. This change ensures that the costs and benefits of the scheme are more evenly shared.

On behalf of Scottish Ministers, SPPA ran an initial consultation between 24 January 2022 and 27 February 2022 which sought views on a number of proposals for reforming the member contribution structure. While some of the proposals were welcomed by stakeholders, the majority of respondents rejected proposals to flatten the tiered contribution structure. As a result of concerns about the cost-of-living pressures on NHS staff, the implementation of all proposals was postponed.

The Scottish Government response to the initial consultation confirmed the intention to proceed with proposals to move to using actual rates of pensionable pay to determine members' contribution rates and to increase contribution thresholds annually in line with a single annual pay award percentage. However, the consultation response committed to consult further on proposals to rebalance the contribution structure and also on whether or not the implementation should be phased. This consultation seeks views on the phased implementation of a revised contribution structure proposal and the rationale for those changes.

The consultation also seeks views on the attached draft amending instrument which introduces changes to the scheme regulations in order implement contribution changes and other previously consulted on proposals. The draft Scottish Statutory Instrument (SSI) makes changes to the regulations to; allow members who take their benefits in the 1995 Section to return to work and build further pension in the 2015 Scheme, to permanently remove 'the 16-hour rule' and to make changes to the scheme rules regarding inflation, as confirmed in the consultation response published on 28 March 2023.

The draft SSI also makes changes to retrospectively extend the suspension of retire and return restrictions in the scheme, as set out in the consultation response published on 21 October 2022.

Finally, the consultation seeks views on a number of miscellaneous scheme amendments which include changes to the final pay control regulations in the 1995 Section, changes to the opt out rules for Practitioner members and small amendments to the definition of a Practitioner and rules around pensionable pay.

Duration of Consultation

This consultation will run for a period of twelve weeks commencing on Tuesday 23 May and ending on Tuesday 15 August 2023.

How to respond

Please use the consultation response form which can be downloaded from the SPPA website 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 (No. 2) SPPA,
Tweedside Park
Tweedbank
Galashiels
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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.

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

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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.

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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

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1. Background - member contributions

1.1. The NHS Pension Scheme (Scotland) [NHSPS(S)] remains an integral part of the NHS Scotland remuneration package, offering significant value to NHS staff, providing generous retirement and life assurance benefits including a retirement lump sum (optional in some cases), an annual pension that increases yearly in line with price inflation, and pensions for a surviving partner and dependants.

1.2. At present employers contribute 20.9% of each member's pensionable pay towards the cost of scheme benefits. Members are required collectively to contribute 9.8% across the whole scheme membership. This is known as the member contribution 'yield.'

1.3. Prior to April 2008, NHS employee pension contribution levels were 5% for manual workers and 6% for non-manual workers. From April 2008 to March 2012 there were four contribution tiers (based on whole time equivalent pensionable pay) ranging from 5% for members earning below £19,683 to 8.5% for members earning above £102,500.

1.4. In 2011, the Independent Public Service Pensions Commission (IPSPC), chaired by Lord Hutton, concluded in its Final Report that reform of public service pension schemes was necessary and that there was a case for a fairer distribution of the cost of public service pensions between employees and other taxpayers. The IPSPC'S main recommendation was that the UK Government should adopt a scheme based on career average earnings as the core public service pension scheme, to ensure an effective balance of risks between scheme members and employers. This was the catalyst for the 2015 Public Service Pension Scheme reforms and the introduction of the NHSPS(S) CARE Scheme from 1 April 2015

1.5. Prior to the publication of its Final report, the IPSPC has published an Interim Report in October 2010 that had recommended an increase to member contribution rates. In response, the 2010 UK Government Spending Review announced that public service workers would be asked to contribute more towards their pensions as part of wider reforms to put public service pensions on a sustainable footing. Contributions would increase by an average of 3.2% over the following three years. In the NHS Scheme, the yield rose from 6.6% to the present 9.8%, with the increase phased in over the three years from 2012/2013 to 2014/ 2015. The 9.8% yield was factored into the costings and design of reforms to the 2015 NHS Pension Scheme in England and Wales, set out in the 2012 Proposed Final Agreement (PFA), which was subsequently adopted for the NHSPS(S).

1.6. While the yield is a fixed percentage, there are a range of approaches that could be taken to ensure that 9.8% is collected from across the whole scheme membership. The simplest method would be to ask each member to contribute a flat rate of 9.8%. An alternative is to share out the 9.8% requirement across the workforce by charging a sliding scale of rates to members according to their pensionable earnings. The aggregate amount collected across members adds up to 9.8%. This approach is known as 'tiered contributions' and is the method adopted across most public service pension schemes in the UK.

1.7. Tiering of member contributions has allowed the NHSPS(S) to reduce potential financial barriers and encourage all staff to participate in the pension scheme, which is intended as a mutual scheme for the whole of NHS Scotland. The NHS workforce encompasses a broad range of professions and occupations with a wide difference in earnings - from porters and healthcare assistants to senior nurses and doctors. Tiering has also allowed the scheme to recognise through higher contribution rates the beneficial effect of income tax relief on contributions and the additional value that higher earners tend to achieve from pension benefits built up under the 'final salary' accrual method that is a feature of the 1995 and 2008 sections of the scheme.

1.8. Tiering has helped deliver the following shared priorities that underpin the current approach to member contributions:

- include protections for the lower paid
- minimise the risk of opt-outs from the scheme across the whole membership
- ensure that the scheme remains sustainable and a valuable part of the reward package and affordable to all members

1.9. Both the Scottish Government and the NHS Pension Scheme (Scotland) Advisory Board (SAB), comprising trade union and employer representatives, remain committed to these principles.

Current Rates

1.10. As part of the tiered contribution approach, pensionable pay amounts are grouped into tiers and a contribution rate is set for each tier. The member pays the contribution rate on their actual pensionable earnings that corresponds to their notional whole-time equivalent (WTE) pensionable earnings. From 2015/16 there were seven tiers ranging from 5.2% for below £15,828 to 14.7% for above £111,377 which are shown in table 1 below:

Table 1 – 2015-16 Contribution Structure

Tier	Whole-time Equivalent Pay	Contribution Percentage Rate
1	Up to £15,828	5.2%
2	£15,829 to £21,601	5.8%
3	£21,602 to £27,089	7.3%
4	£27,090 to £49,967	9.5%
5	£49,968 to £71,337	12.7%
6	£71,338 to £111,376	13.7%
7	£111,377 and above	14.7%

1.11. While this broad structure has been in place since 2015-16 and the percentage rates have remained the same, the pay bands have increased annually in line with Agenda for Change (AfC) pay awards. The current structure which has been in place since 1 April 2022 is shown in table 2 below:

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Table 2 – Contribution Structure from 1 April 2022

Tier	Whole-time Equivalent Pay	Contribution Percentage Rate
1	Up to £21,614	5.2%
2	£21,615 to £25,981	5.8%
3	£25,982 to £32,914	7.3%
4	£32,915 to £66,017	9.5%
5	£66,018 to £92,423	12.7%
6	£92,424 to £123,147	13.7%
7	£123,148 and above	14.7%

Introduction of the Career Average Revalued Earnings (CARE) Scheme

1.12. The 2015 public service pension scheme reforms introduced the new NHSPS(S) 2015 Scheme where pension is built up on a career average basis. As a result of the McCloud remedy, the final salary NHSPS(S) closed to further accrual from 1 April 2022 and all members moved into the 2015 CARE scheme for future service from that point. Therefore, given the design of the CARE scheme, it was felt appropriate to review the member contribution structure from April 2022.

1.13. In a CARE scheme, members accrue the same proportion of pension in relation to their earnings over the course of their career, and on that basis is there is an argument that everyone should pay the same rate - that is the 9.8% yield. However, in his 2011 report, Lord Hutton proposed that a tiered contribution approach could be justified, to reflect the differing characteristics of higher and lower earners. This recognises the mutual intention of the scheme and the continuing desirability of facilitating participation across the whole workforce having regard to potential affordability concerns for lower earners.

1.14. The considerations in the IPSPC report apply equally to NHS Scotland. In addition, many members will have a 'final salary link' applied to their accrued 1995/2008 scheme service, meaning that higher earners will continue to derive more value from that service than members who experience steadier pay progression through their career.

Contribution Yield

1.15. As summarised above in paragraph 1.5., following the IPSPC interim report in 2010, the UK government announced an average 3.2% increase to employee contributions across the public service pension schemes in over the period 2012 and 2014. As a result, the required yield in the NHSPS(S) rose from 6.6% to the present 9.8% of pensionable pay. The continued requirement for a 9.8% yield was then set out in the Proposed Final Agreement for the 2015 NHS Pension Scheme England & Wales and was automatically adopted for the scheme in Scotland.

1.16. The tiered contribution structure implemented from 1 April 2015 (shown in table 1 above) was designed accordingly so that the 9.8% yield was achieved. In addition, in

Scotland, but not in England & Wales, a further 0.2% was added to each contribution tier allow for the contribution tiers to be increased annually in line with Agenda for Change pay awards. This ensured that members were not moved into a higher contribution tier as a result of an annual pay award. The additional 0.2% was to recognise the potential reduction in contribution yield over time as the tier thresholds continued to rise.

1.17. However, in recent years the NHSPS(S) has begun to underperform against the target yield. This is as a result of a number of factors, including changes to the salary profile of the scheme membership and the annual uprating of contribution tiers to align with AfC pay bands, which has meant some members have ended up paying a lower contribution rate than they did in the previous year. Over the last three years the contribution yield from the Scheme has continued to drop from 9.6% to around 9.3%. The reduction in the contribution yield was recognised at the last scheme actuarial valuation in 2016, which set the employer contribution rate for the 2019 to 2023 and estimated that the scheme would only achieve a yield of 9.6% for the same period. The employer contribution rate was therefore set at 20.9% in the context of a lower expected employee contribution yield of 9.6% up to March 2023 and in the knowledge that the original 9.8% target yield would not be met.

1.18. Notwithstanding the increase made to the employer contribution rate to account for the expected 9.6% member contribution yield over the period 2019 to 2023, HM Treasury require that the revised member contribution structure must achieve the original target yield of 9.8%.

1.19. While, the Scottish Ministers have executively devolved responsibility for the NHSPS(S), occupational pensions in general are a reserved matter outside the powers of the Scottish Parliament. The Scottish Ministers must therefore implement policy which reflects UK government primary legislation and any secondary legislation introduced by Scottish Ministers requires HM Treasury approval. Therefore, the Scottish Government must comply with HM Treasury's requirement that member contributions in NHSPS(S) deliver a yield of 9.8%.

1.20. As a result, before any structural changes to member contributions can be considered, the contribution rates for all members need to increase by around 0.5%, as compared to the current rates, to ensure the target 9.8% contribution yield is met.

2. Review of member contributions

2.1. The SPPA has worked closely with the SAB since June 2021 to review the member contribution structure. The SAB were commissioned to make recommendations on a new contribution structure, as part of their responsibility to provide advice to Scottish Ministers on the desirability of changes to the scheme.

2.2. The SAB previously made recommendations about changes to members contributions in their 2018 advice to SPPA on potential options for rectifying the provisional cost cap floor breach arising from the 2016 scheme valuation. These proposals included the following:

- Use actual pay rather than WTE pay to determine the tier used to set member contribution rates
- Combine the three highest member contribution rates [12.7%, 13.7%, 14.7%] at 12.7% of pay
- Index the pay tier boundaries of the member contribution rate structure annually in line with the general AfC pay award.

2.3. These changes to the contribution structure (as well as member benefit improvements) were not implemented due to the 'pausing' of the cost cap valuation in response to the court ruling in *McCloud*. A subsequent decision to treat costs arising from the McCloud remedy as member costs meant that cost cap rectification was no longer required.

2.4. Following extensive consideration during 2021, the SAB submitted advice to Scottish Ministers which indicated the areas on which SAB held a consensus view, and those on which the majority of the SAB agreed. The SAB was in full agreement that the current member contribution structure should be amended and considered a number of potential options.

2.5. There were several aspects of a future member contribution structure with which all employer and staff side SAB representatives were in full agreement, and which SAB expected to be reflected in the reformed member contribution structure:

- Moving to actual pensionable pay rather than WTE pay to determine the contribution rate payable by an individual
- Maintaining the indexing of contribution tiers to remove cliff edges from the structure by ensuring that inflationary pay increases alone do not push individuals into a higher tier.
- Minimising opt-outs across the whole membership.

<u>Staff side consensus view</u>

2.6. While the staff side were not able to reach unanimous agreement, they did express a consensus view on the importance of the following three principles:

- include protections for the low paid
- minimise the risk of opt outs from the scheme
- ensure that the scheme remains sustainable and a valuable part of the reward package.

2.7. In addition, the staff side were also in unanimous agreement that any review of member contributions should deliver a structure that is perceived to be fair and equitable across the whole of the pension scheme membership.

<u>AfC staff side view</u>

2.8. AfC staff side provided formal advice to Ministers in 2021 which detailed their agreement with the following principles:

- It is felt that the minimum change to contributions is appropriate given the uncertainties arising from the McCloud judgement. (It should also be noted that some staff representatives do not agree with the outcome that the cost of the McCloud remedy is treated as a "member cost.")

- SAB feels that the challenges posed by COVID-19 and the subsequent pressures on service delivery make it an inappropriate time to introduce wholesale changes in the contribution structure.

- Moving to actual pensionable pay is appropriate for determining contributions for a CARE scheme. Also, some part-time workers will pay a lower contribution rate which aligns to the benefit building up rather than linked to WTE pay.

- The structure should retain broadly progressive contribution rates before and after income tax relief on contributions

- The number of tiers should be reduced from the current structure so that the scope for cliff edges due to individual pay increases is reduced.

- The contribution tiers should be indexed to reduce the scope for cliff edges due to general pay increases.

- It is important that the structure protects the lower paid.

- The new structure should reduce the highest contribution levels (which will involve some flattening of the tiering).

- A significant tranche of the membership should pay the 9.8% contribution rate which is required by HM Treasury in order to appropriately balance mutuality and affordability.

- The contribution structure could act as a staging post to a flatter structure in the longer term which perhaps better matches a CARE benefit structure. However, the high required yield makes this a difficult task to balance with retention of staff, particularly staff at the upper and lower ends of the pay scale.

2.9. The AfC staff side did not believe there should be significant changes to the member contribution structure at this time given the uncertainties arising from issues such as McCloud and COVID-19. They were, therefore, in favour minimal change to both contribution increases and change to tiers at this stage.

BMA and BDA view

2.10. As part of the 2021 SAB advice, the BMA and BDA highlighted the importance of moving towards a much flatter contribution structure given that all staff would be building up their pension in a CARE scheme from April 2022.

2.11. The BMA and BDA did not agree with some of the principles put forward by AfC staff side (above) for the following reasons:

- A minimal change to contributions is not appropriate because historical mistakes in the contribution structure that did not take into account pension taxation or the move to a CARE scheme need to be rectified.
- They support some mutuality within the scheme but only in a contribution structure which takes into account all applicable taxes (not just income tax relief).

2.12. The BMA/BDA were of the view that the current contribution structure fails to consider the impact of pensions taxation. This means that whilst the headline tiers of 5.2% for the lowest paid and 14.7% for the highest paid, the true cost of scheme membership for the highest paid is significantly underestimated.

2.13. The BMA/BDA highlighted a further difficulty with the target net yield of 9.8% which has been set by the UK government. The BMA/BDA feel there has been no justification for this figure, which is significantly higher than other public sector pension schemes.

2.14. Consequently, the BMA/BDA felt that no contribution structure can simultaneously include protections for the low paid, address the impact of pensions taxations, and minimise the risk of opt-outs across the whole membership whilst achieving the required 9.8% yield.

2.15. As the SAB were unable to recommend a preferred option due to the wide range of stakeholder views, this meant that consensus option could not be presented for public consultation. SPPA have therefore taken the advice received from SAB into account in developing the member contribution structure proposed in the initial consultation.

3. Results of Initial Consultation published in January 2022

3.1. On behalf of Scottish Ministers, SPPA ran an initial consultation between 24 January and 27 February 2022. In response to all members moving to the CARE scheme from 1 April 2022 and the requirement to correct the falling contribution yield, the consultation sought views on four proposed changes to the member contribution structure. The changes were as follows:

Change 1: move to assessing contribution on actual pensionable pay

3.2. The NHSPS(S) currently calculates contribution rates for employed members based on their notional whole-time equivalent (WTE) pensionable earnings. A notional WTE is used for part-time members, where the member is assigned a contribution rate based on their full-time earnings for the role but pays a percentage of their actual earnings. This provided fairness in the final salary scheme where part-time and full-time staff both pay the same rates, but part-time members only pay a percentage of their actual pay which reflects they are accruing less pensionable service.

3.3. All members are now in the CARE scheme, where members accrue pension based on their pensionable earnings in each scheme year. Therefore, it is right that part-time members' contribution rates are based on their actual earnings and the not their WTE pay. However, a large proportion of the current scheme membership still benefit from the 'final salary link' which provides transitional protection for those moving from the final salary schemes and means that their benefits will be calculated using their pensionable pay at retirement, rather than the date of leaving the old scheme. Therefore, WTE has been retained as the basis for deducting contributions during the initial years of the new CARE scheme.

3.4. As we move forward, there will be an increasing number of members who do not have transitional protection provided by the final salary link and the justification for continuing to use of WTE will diminish over time. 91% of respondents to the initial consultation agreed with moving away from using notional WTE and instead basing members' contribution rates on their actual annual rates of pensionable pay. SPPA confirmed in the consultation response there would be no further consultation on this proposal, and it would be implemented when the package of contribution reforms was introduced.

3.5. **The move to using actual annual rates of pensionable pay (instead of WTE) will benefit members who work part-time, as the member contribution will be lower for many and better reflective of the amount of pension that they are building up. Around 40% of the NHSPS(S) membership work part-time, and most will pay less contributions as a result of this reform.**

Change 2: Change to the approach of increasing tier boundaries in line with annual AfC pay awards

3.6. When the current member contribution structure was implemented in 2015, one design feature was that the pay/earnings bands set out in each tier were to be increased each year in line with national NHS pay awards in Scotland. The intention was to ensure that the tiers remained in line with annual increases in individual members pay and to avoid individual scheme members being moved into a higher contribution tier as a result of the national NHS pay awards.

3.7. The approach that has been taken since 2015, to avoid scheme members' seeing a reduction in their take-home pay as a result of the AfC pay award, has been to link the tier boundaries to a particular pay point in the AfC pay scales and for the tier boundary to track that pay point. However, in recent years, as the number of points has been reduced in each pay band, this has caused issues with setting the tiers and led to some tier boundaries increasing well in excess of the headline pay increase. This has subsequently impacted on the contribution yield and is part of the reason why the scheme is currently underperforming against the target yield.

3.8. In order to avoid negatively impacting the yield going forward, it was proposed that all tier boundaries will be increased by the overall average uplift in AfC pay, which for example was 7.5% in 2022/23. Whilst there are different processes for determining the pay award for different parts of the workforce, it was proposed that the earnings ranges in the contribution tiers will be increased each year in line with the average AfC pay award. This means that the contribution tiers would remain consistent across all areas of the workforce.

3.9. Respondents to the initial consultation were in favour of continuing to uprate the thresholds annually and 88% of the respondents agreed that uprating of the tier thresholds should be done by a single average pay uplift figure. However, of those respondents who disagreed, most objected to using the AfC pay increase figure to uplift the tiers, many suggesting the percentage should be the greatest of the average AfC or medical staff pay rises. In the consultation response SPPA committed to consider further which pay uplift figure would be most appropriate, however, it was confirmed there would be no further consultation on the principle of increasing the thresholds in line with a single annual pay uplift percentage and that will be implemented as part of the reforms.

Change 3: Rebalancing contribution rates

3.10. The initial consultation recognised that the existing contribution structure is tiered on the basis that those earning more pay a higher contribution tier than those earning less. This tiering recognises that, in a final salary scheme, high earners tend to derive more value from their ultimate pension benefits relative to the amount contributed over their career. However, in a CARE scheme, there is no pay progression benefit; pension is calculated based on earnings in each year of membership and therefore this reduces the justification for retaining the very highest tiers in a CARE scheme and generally should result in a narrower range of contribution rates.

3.11. The consultation sought views on two contribution structures proposals, one which delivered 9.6% in 2022-23 and one which delivered 9.8%. The proposed structures aimed to reduce the highest contribution tiers, initially from 14.7% to 13.7% from April 2022 and then to 12.7% from 1 April 2023. As a result of the need to narrow the range of contribution rates, the consultation proposed that the cost of moving to actual pay (0.5%) was not added the highest member contribution rate but is instead spread across the other contribution tiers.

3.12. Responses to the consultation showed there was very little support for the proposed structures put forward in the consultation and only 13% of respondents were in agreement. SPPA noted in the consultation response that proposals to rebalance the contribution structure are an area of tension between respondents who wish to see a flatter contribution structure, or single contribution rate, and those who have raised concerns around affordability and wish to see slower progress to narrowing the tiers. Therefore, given the decision to delay implementation in 2022, SPPA confirmed they would take the opportunity to consider the proposals further and to consult again on this key aspect of the reforms.

Change 4: Phased Implementation of contribution reforms

3.13. The consultation proposed that the new member contribution structure should be phased in over two scheme years: 2022 to 2023 and 2023 to 2024. The aim of the phasing was to help minimise opt-outs and reduce the impact on take-home pay for members who will be paying higher contribution rates under the new structure, while ensuring that the new member contribution structure is implemented in a timely manner. Responses to this proposal were evenly split between those who supported a phased approach over two years and those who did not. Of those who disagreed with the proposal, most did so because they felt the move towards a flatter contribution structure should be happening at a quicker pace and the phased approach would slow that progress. However, some respondents also disagreed because they felt phasing these changes should be done over a longer period.

3.14. SPPA confirmed that because the delay in introduction of the contribution reforms had led to changes in the original planned phased implementation period, and because there was a lack of consensus of over phasing, SPPA would reconsider proposals around a phased approach to be included in the revised consultation.

4. Proposed changes to member contributions

4.1. This section sets out revised contribution structure proposals for implementation from 1 October 2023.

4.2. Whilst retaining a tiered contribution structure remains the preferred approach, we accept there is a need to reduce the steepness of the tiers. This is more appropriate in view of the CARE scheme accrual method and consequently means that high earners would see a reduction to their contribution rates. Rebalancing the rates will mean that lower earners who work full-time will be asked to contribute more than they currently do. It is therefore proposed that adjustments to contribution tiers are done gradually to reduce the impact on take home pay for staff and mitigate the risk of staff leaving the scheme on grounds of affordability.

4.3. The structure set out in the Table 3A aims to strike the right balance between maintaining the affordability of the scheme and ensuring that the member contribution structure better reflects the nature of accrual in a CARE scheme.

4.4. These proposals aim to bring the contribution rates in the NHSPS(S) in line with health service pension schemes in the rest of the UK.

Phased implementation of new rates

4.5. We remain of the view that a phased implementation is preferable to help protect scheme affordability for some scheme members and minimise the impact on take-home pay of increases to member contribution rates. However, this is balanced against providing certainty and stability for members.

4.6. Therefore, we propose to phase the introduction of the new member contribution structure over two years, with the first phase being introduced from October 2023 and the second phase from October 2024. This phasing will help to minimise opt-outs and reduce the impact on take-home pay for members who will be paying higher contribution rates under the new structure, while ensuring that the new member contribution structure is implemented in a timely manner.

4.7. It is proposed that the new member contribution structure would be introduced in the phased steps set out in table 3A below.

Q1. Do you agree or disagree that the proposed member contribution structure should be phased over 2 years? If you disagree or don't know how to answer, please explain why.

4.8. For the purpose of determining a member's contribution tier, their pensionable earnings are rounded down to the nearest whole pound. In practice, the tier thresholds will be uprated annually and therefore the figures will be different for future scheme years.

<u>Proposed contribution structure</u>

Table 3A

A	B	C	D
Current tiers	Pensionable earnings	Rate from 1 Oct 2023 (9.8% yield)	Rate from 1 Oct 2024 (9.8% yield)
		(Actual pay)	(Actual pay)
Tier 1	Up to £13,330	5.8%	5.8%
Tier 2	£13,331 to £23,819	6.2%	6.5%
Tier 3	£23,820 to £28,186	6.8%	7.1%
Tier 4	£28,187 to £35,365	8.3%	8.7%
Tier 5	£35,366 to £43,421	10.5%	10.6%
Tier 6	£43,422 to £48,784	11.0%	11.4%
Tier 7	£48,785 to £68,222	11.6%	11.7%
Tier 8	£68,223 and above	13.7%	12.7%

4.9. Table 3B below shows a comparison of the existing contribution structure and tier thresholds against the proposed new structure.

Table 3B – Comparison of proposed new structure with existing structure

<table>
<tr><td>A</td><td>B</td><td>C</td><td>D</td><td>E</td><td>F</td><td>G</td></tr>
<tr><td colspan="3">Current Structure</td><td colspan="4">Proposed new structure</td></tr>
<tr><td colspan="3"></td><td></td><td>Rates from 1/10/2023</td><td>Rates 1/10/2024</td><td></td></tr>
<tr><td>Current tiers</td><td>Pensionable earnings based on 2021/22 AfC Pay Rates</td><td>Current rate</td><td>Pensionable earnings based on 2022/23 AfC Pay Rates</td><td>9.8% yield</td><td>9.8% yield</td><td>New tiers</td></tr>
<tr><td></td><td></td><td>WTE pay</td><td></td><td>Actual pay</td><td>Actual pay</td><td></td></tr>
<tr><td rowspan="2">Tr 1</td><td rowspan="2">Up to £21,614 ➔</td><td>5.2%</td><td>Up to £13,330</td><td>5.8%</td><td>5.8%</td><td>Tr 1</td></tr>
<tr><td>5.2%</td><td>£13,331 to £23,819</td><td>6.2%</td><td>6.5%</td><td>Tr 2</td></tr>
<tr><td>Tr 2</td><td>£21,615 to £25,981 ➔</td><td>5.8%</td><td>£23,820 to £28,186</td><td>6.8%</td><td>7.1%</td><td>Tr 3</td></tr>
<tr><td>Tr 3</td><td>£25,982 to £32,914 ➔</td><td>7.3%</td><td>£28,187 to £35,365</td><td>8.3%</td><td>8.7%</td><td>Tr 4</td></tr>
<tr><td rowspan="3">Tr 4</td><td rowspan="3">£32,915 to £66,017 ➔</td><td>9.5%</td><td>£35,366 to £43,421</td><td>10.5%</td><td>10.6%</td><td>Tr 5</td></tr>
<tr><td>9.5%</td><td>£43,422 to £48,784</td><td>11.0%</td><td>11.4%</td><td>Tr 6</td></tr>
<tr><td>9.5%</td><td>£48,785 to £68,222</td><td>11.6%</td><td>11.7%</td><td>Tr 7</td></tr>
<tr><td>Tr 6</td><td>£66,018 to £92,423 ➔</td><td>12.7%</td><td rowspan="3">£68,223 and above</td><td rowspan="3">13.7%</td><td rowspan="3">12.7%</td><td rowspan="3">Tr 8</td></tr>
<tr><td>Tr 7</td><td>£92,424 to £123,147 ➔</td><td>13.7%</td></tr>
<tr><td>Tr 8</td><td>£123,148 and above ➔</td><td>14.7%</td></tr>
</table>

Examples of Impact

4.10. Please see below some examples showing the impact on members once the new rates have been phased in from 1 October 2023:

- a healthcare assistant working full-time earning £23,362 (point 1 of the AfC band 2 pay scale) would pay an additional £16 a month after tax relief but still pay £56 a month less than if on the average 9.8% contribution rate. The same healthcare assistant working 50% of full-time hours would pay £6 more but £43 per month less than if on the 9.8% rate.

- a nurse working full-time earning £32,300 (point 2 on the AfC band 5 scale) and therefore paying 8.3% contribution would pay an additional £21 a month after tax relief but still pay £32 a month less than if on the average 9.8% contribution rate. The same nurse working 60% of full-time hours would pay £14 a month less and £46 per month less than if on the 9.8% rate

- a consultant earning £125,000 would pay £38 less a month, after tax relief but still be paying £150 a month more than on the average 9.8% rate. The same consultant working 60% of full-time would pay £73 a month less but still £105 more than if on the average 9.8% rate

4.11. The SAB will be asked to keep the contribution rates under review, monitoring membership and participation data to inform any future adjustments.

4.12. The proposed changes to the member contribution structure would come into effect on 1 October 2023. The new structure would use annual rates of pay and would require a rebalancing of the contribution rates because most part-time members will pay less in contributions. It is estimated that this on its own would lead to a 0.5% reduction in the contribution yield. As the contribution yield is already around 0.5% below the 9.8% target yield, an increase of 1% across the contribution structure is required to address the shortfall. Therefore, the member contribution structure requires to be adjusted to accommodate this change.

4.13. In line with previous proposals, the proposed structure aims to reduce the highest contribution tiers, initially from 14.7% to 13.7% from October 2023 and then to 12.7% from 1 October 2024. These reductions to the highest tiers are necessary because the high level of cross-subsidy between higher and lower earning members in the current structure is no longer appropriate in a CARE scheme, where all members get the same proportional benefit.

4.14. As a result of the need to narrow the range of contribution rates, the cost of moving to actual annual rates of pay to determine contribution rates and increases to address the existing contribution shortfall are not added to the highest member contribution rate but instead spread across the other contribution tiers.

4.15. The proposal includes a discounted rate for members earning less than £13,331 a year in order to retain the affordability of the scheme for members who are earning less than this amount. These members will all work less than full-time hours and are unlikely to receive income tax relief on their pension contributions which may reduce the affordability of the scheme.

4.16. Most part-time members, accounting for around 40% of NHS Scotland staff, will see their contribution rate reduce under these proposals as a result of using actual annual rates of pay to set the contribution tier, instead of notional WTE.

4.17. In this proposal, contribution increases for all staff in AfC bands one to five are limited to a maximum of 1% in the first year of implementation. This reflects the advice from the SAB that the revised contribution structure should include protections for lower-paid members.

4.18. Tier 4 of the existing structure has been divided in to three tiers in this proposal, with those earning up to £43,421 paying 10.5%, those earning between £43,422 and £48,784 contributing 11% and those earning up to £68,222 paying 11.6%. A number of respondents to the initial consultation objected to the contribution increase for this cohort of members who were previously paying close to the target yield and felt this change was counter to the intention of the reforms. We recognise that this group are being asked to contribute at a rate above the average yield, however, this is necessary to balance the contribution structure.

4.19. It is also proposed that the top three contribution rates will be merged into a single tier (tier 8). This means that all members earning above £68,222 will pay the highest contribution rate. As part of the phased implementation, in the first year, those in the old tier 5 would see a temporary increase in their contribution rate from 12.7% to 13.7%. This aligns old tier 5 with the two tiers above and creates a single tier 8. This highest tier then reduces to 12.7% from October 2024. By increasing the old tier 5 by 1% in the first year of implementation, this supports a phased approach and the transition to increased contribution rates for lower paid members. The increase for members in the current tier 5 is consistent with increases applied to other tiers as part of the changes.

4.20. A criticism of the contribution proposals put forward in the previous consultation was that they did not go far enough to address the overall high costs of the scheme and the impact of pensions taxation for high earners. However, those costs will have been partially reduced for the majority of members as a result of the changes to the pension taxation rules at the UK Spring Budget 2023.

Q2. Do you agree or disagree with the proposed member contribution structure set out in this consultation document? If you disagree or don't know how to answer, please explain why.

Approach to increasing tier boundaries in line with annual pay awards

4.21. As discussed in paragraphs 3.6 to 3.9 above, in recent years, as the number of salary points has been reduced in each AfC pay band, this has caused issues with setting the tiers and led to some tier boundaries increasing well in excess of the headline pay increase. This has subsequently impacted on the contribution yield as the tier boundaries have increased and is part of the reason why the scheme is currently underperforming against the target yield.

4.22. The previous consultation response concluded that going forward all tier boundaries will be increased by the overall average uplift in pay. Whilst there are different processes for determining the pay award for different parts of the workforce, our position remains that the contribution tiers should be automatically increased each year in line with the average AfC pay award because this is the pay uplift figure that is applied to the majority of the workforce.

4.23. Most members will have their contribution rate based on their previous year's pensionable pay. However, for some members who join the scheme mid-year or receive a promotion it will be either impossible or inappropriate to use their previous year's pensionable pay to calculate their contribution rate. Consequently, an updated table which increases the thresholds in line with the AfC pay award terms will be brought forward for consultation and included in regulations.

Q3. Do you agree or disagree that the annual increase in contribution tier thresholds should be based on the average uplift in AfC pay. If you disagree or don't know how to answer, please explain why.

Concurrent part-time employments

4.24. It is proposed that where members have multiple concurrent roles which they build up pension benefits for, their contribution rate should be based on the aggregate of these different employments. It is important that members who have multiple part-time roles will pay the same contribution rate as members earning the same amount through a single employment and ensures consistency across different types of working arrangements.

4.25. Through discussion with stakeholders, we understand that aggregating multiple roles will be administratively difficult, particularly where members hold different contracts of employment with more than one employer.

4.26. Therefore, it is proposed that the NHSPS(S) will move to aggregation of multiple posts over a longer period of time. Members who hold multiple posts with different employers will not be aggregated for 1 October 2023. Instead, the intention is to bring forward further proposals for consultation during 2023 on approaches to aggregating posts with different employers with the aim of making regulatory amendments from 1 October 2024.

5. Proposed Miscellaneous Scheme Amendments

Final Pay Controls in the 1995 Scheme

5.1. Final pay controls are provided for under Regulation D3 of the 2011 Regulations (1995 scheme) to safeguard the NHSPS(S) from the increased cost of paying pension benefits inflated by excessive late career pay rises. The controls are only relevant to members with final salary pension benefits.

5.2. Under Regulation D3, pensionable pay increases in the last three years before retirement cannot exceed an 'allowable amount' without the employer incurring a charge. Currently, a pay increase is considered 'excessive' if the annual percentage increase in pay for one or more of a member's final three years' service prior to retirement exceeds the consumer prices index (CPI) measure of inflation plus 4.5%.

5.3. The employer is charged an ‘excess employer contribution,’ known as a final pay control charge, for the cost of pension benefits calculated on pay increases above the allowable amount. This ensures that the employer meets the cost of paying the excess pension benefits and not the NHSPS(S), its members or other employers. The member’s increased pension benefits are unaffected by the final pay control charge issued to their employer.

5.4. After the implementation of the final pay control policy in 2014, an exemption was introduced to prevent employers receiving a final pay control charge where there has been a significant pay increase for reasons outside of their control. This amendment, introduced in 2020 exempted pay increases due to pay increases pursuant to the ‘Framework agreement on the reform of Agenda for Change’ (AfC) adopted on 17 August 2018.

5.5. Under the current policy if a scheme member receives a pensionable pay increase above the allowable amount in the final three years of their employment, they will be subject to a final pay control charge. The employing authority awarding the excess pay will be liable to pay this charge. This power is in order to safeguard the NHSPS(S) against excessive pensionable pay increases for members approaching retirement.

5.6. The final pay control policy was introduced from 1 April 2014, and the allowable amount is currently 4.5% plus CPI. Where CPI is nil or negative the allowable amount is 4.5%. This was decided following consultation with stakeholders, including the Government Actuary’s Department (GAD).

5.7. Following consultation, the NHS Pension Scheme in England and Wales (E&W) confirmed changes to the final pay control rules from 1 July 2021. The most notable change was to increase the allowable amount from CPI 4.5% to CPI plus 7%.

5.8. The E&W scheme also introduced a number of exemptions, where the increase in pensionable pay is as a result of:

- nationally agreed contracts, framework agreements or re-banding where this is authorised under particular NHS terms and conditions
- a National Clinical Excellence Awards (CEA)
- promotions following fair and open competition
- the ending of a salary sacrifice arrangement
- an increase in practice profits impacting non-GP providers (in certain scenarios)

5.9. The E&W changes were applied retrospectively to 1 April 2018. Employers who had paid or received an invoice for a final pay control charge on or after 1 April 2018 were able to request for this to be reviewed after the legislation took effect on 1 July 2021.

5.10. SPPA had become aware that the pandemic had been exacerbating some of the issues around final pay controls where staff have been asked to take on additional responsibility or have been promoted to a new role as part of the pandemic response. A number of NHS employers in Scotland have highlighted the inconsistency between treatment of final pay control policy in E&W and in Scotland. Highlighting that under the E&W rules their charge would have been less or one of the exemptions would have applied.

5.11. Therefore, following consultation with the SAB, we are proposing to align the final pay control rules with those in the E&W Scheme, including an increase in the allowable amount to CPI plus 7% and to include the exemptions above.

Amendment to scheme opt out rules for Practitioner members

5.12. A recent independent review of NHS Primary Care Out of Hours (OOH) Services highlighted that changes to pension rules would be an effective means to incentivise OOH working. One of the barriers to GPs taking on OOH work is that it contributes to their pension growth and increases their exposure to pension tax. We are therefore proposing to amend the scheme rules to allow GPs to opt out the scheme for individual employments without having to opt out of all employments which is currently the position, e.g., a GP could opt out of the scheme for OOH work but remain in the scheme for their GP practice earnings.

5.13. Connected to the change to the opt out rules for GPs, we also propose to amend the NHS 2015 Scheme regulations to include a definition of 'Assistant Practitioner' which corrects a pervious omission from the regulations and aligns with the legacy scheme rules. This will help to provide clarity for employers on the treatment of salaried GPs.

Amendments to clarify position on salary sacrifice

5.14. At the request of the SAB, we are seeking to clarify the position with salary sacrifice schemes and the impact on pension scheme contributions. Currently, salary sacrifice is not covered by scheme regulations, and we are proposing to amend regulations to give powers to the scheme manager (SPPA on behalf of Scottish Ministers) to determine whether salary sacrifice schemes are pensionable.

(Amendments to the scheme regulations to provide for changes to salary sacrifice are not included in the initial draft of the attached instrument and will follow)

Q4. Do you agree or disagree with the miscellaneous scheme amendments as proposed in this consultation. If you disagree or don't know how to answer, please explain why.

6. Proposed draft amending regulations - Member contribution changes

6.1. To apply the proposed changes, we will need to amend scheme rules. The rules of the NHSPS(S) are set out in regulations, which is a form of secondary legislation. Those rules can be amended or replaced by new regulations drawn up in accordance with the powers and requirements of the Public Service Pensions Act 2013 and the Superannuation Act 1972 as relevant.

6.2. The National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2023 are presented for consultation in draft. These regulations would amend the 2011 (1995 Section), 2013 (2008 Section) and 2015 regulations to implement:

- the new tiered contribution rates from 1 October 2023 that correspond to the first year of the proposed phased introduction
- the assessment of a tiered contribution rate for part-time employed members based on their actual annual rate of pay rather than the notional whole-time equivalent
- a mechanism in regulations that uses two contribution rate tables to allow:
- members who have their contribution rate based on their previous year's pensionable earnings to use the contribution rates before any increase to tier boundaries is applied
- members who have their contribution rate based on current pensionable earnings to use contributions rates that have increased in line with the AfC pay award for that scheme year.

6.3. This section describes how the draft regulations amend the scheme regulations to deliver those objectives. It should be read in conjunction with the draft regulations which are published alongside this consultation. Please note that these are draft regulations, and the drafting approach and other technical aspects may change following the consultation and before the final instrument is laid before the Scottish Parliament.

6.4 A further set of regulations would be required to implement the contribution rates from 1 October 2024 that correspond to the second year of phasing, together with applying any increase to the 2023 to 2024 contribution tier boundaries in line with the general AfC pay award for that year. Those draft regulations would be published for consultation in 2022.

<u>Assessment of a tiered contribution rate for employed members (Regulation 30 and Schedule 9)</u>

6.5. Regulation 30 (members' contributions: employees) requires employed members to make scheme contributions at the rate that applies to the member for a scheme year. A scheme year runs from 1 April to 31 March each year. The contribution rates for each scheme year from 2015/16 to 2021/22 are currently set out in tables 1 to 7 in regulation 30 (the contribution tables). The contribution tables show the percentage contribution rates that apply to a member's pensionable earnings depending on where those earnings fall within seven pensionable earnings bands.

6.6. Schedule 9 (determination of pensionable earnings: setting contribution rates) sets out how a member's pensionable earnings are determined for the purpose of establishing which band and therefore which contribution percentage rate applies to the member.

6.7. Employed members active in the scheme before the beginning of a scheme year generally have their contribution rate assessed using pensionable earnings received during that preceding year. If a member started a new job or their contribution rate changed during that preceding year, pensionable earnings from the date of change are used to determine the member's band. Such earnings are increased so they are representative of a full year. Likewise, if a member changes jobs or has a pay increase during a current scheme year their contribution rate is reassessed. New earnings increased to represent a full year are used to see if those earnings fall into a different band and therefore a different percentage rate should apply from the date of change to the end of the scheme year.

6.8. Currently, each employment is assessed separately in this way and the applicable whole-time rate of pay is used to assess contribution rates for a part-time member. A part-time member's contribution rate is only reassessed in a current scheme year if the whole-time rate of pay for their job changes.

6.9. The draft Scottish Statutory Instrument (SSI) makes changes to both regulation 30 and Schedule 9 to:

- implement the proposed contributions tiers corresponding to the first year of phasing
- provide the necessary structure in regulations to allow for the tiered contribution rates for members being assessed or re-assessed for a contribution rate using earnings in a current scheme year to be assessed against a contribution table in which the tier thresholds have been increased in line with any AfC pay award for that year.

6.10. These changes, as implemented by the amending regulations in the draft SSI, are described in detail below.

6.11. Amending regulation 13 amends regulation 30 (members' contributions: employees) by replacing the existing contribution table with 2 new tables that will be used to assess members' contribution rates from 1 October 2023.

6.12. The first contribution table, effective from 1 October 2023, is added to the list of contribution tables paragraph 3 or regulation 30 for each scheme year. This table will be used to set a contribution rate in respect of members who are in pensionable employment on the last day of the previous scheme year and the first day of the current scheme year and who fit the description in one of the revised cases in Schedule 9 at paragraph (2). Earnings from the previous scheme year are used to determine the contribution rate for members in this group (see the changes described below for amending regulation 7).

6.13. The second contribution table inserted at new paragraph (3A) of regulation 30 also applies to the scheme year 2023-24 from 1 October 2023. This table will apply to any member who cannot be matched to a case description in Schedule 9, or who starts a new job or whose annual rate of pay changes during the course of the current scheme year. Earnings for the current scheme year increased to represent a full year are used to determine the contribution rate or the revised contribution rate for members in this group (see again the changes described below for amending regulation 7).

6.14. Amending regulation 21 amends Schedule 9 (determination of pensionable earnings: setting contribution rates) to implement changes to contribution assessment in respect of part-time members and to ensure that Schedule 9 works correctly with the two new tables inserted into regulation 30.

6.15. Schedule 9 paragraph 1 (introduction) is amended by amending regulation 7(2) so that part-time concurrent pensionable employments will only be assessed separately for a contribution rate if the employments are held with different employing authorities. Where the concurrent employments are held with the same employing authority, pensionable earnings from all employments with that authority are added together for the purposes of determining the pensionable earnings as set out in the cases descriptions in paragraph 2 of Schedule 9.

6.16. Schedule 9 paragraph 2 (continuous employment spanning two years) is amended by amending regulation 7(3). The twelve case descriptions in paragraph 2 that currently set out how a member’s pensionable earnings should be determined in order to set a tiered contribution rate are replaced by five new case descriptions. Cases that covered part-time employment and combinations of part-time and whole-time employment are no longer necessary. However, one bespoke case description for part-time members is retained at new case 5 to assist with transition to the new assessment method for the first year of implementation (see the description for that case below).

6.17. All five of the new cases apply to actual pensionable earnings, not notional whole-time equivalent for part-time members. This is a result of changes made to paragraph 1 of Schedule 9, which would allow part-time pensionable earnings for concurrent employment with the same employing authority to be aggregated for the purposes of establishing the pensionable earnings for assessing a contribution rate. The five new cases used to determine pensionable earnings are explained in detail below:

- **Case 1** applies to members who were employed continuously throughout the previous scheme year with an employing authority and who paid the same contribution rate throughout that year.

If the case 1 description fits a member, pensionable earnings assessed for a contribution rate for the next scheme year will be pensionable earnings received in that previous scheme year.

- **Case 2** applies to members who were employed continuously throughout the previous scheme year with an employing authority and who did not pay the same contribution rate throughout that year. This will be because a new job was started, or a member's annual rate of pay changed during that year.

- If the case 2 description fits a member, pensionable earnings assessed for a contribution rate for the next scheme year will be determined by taking the member's pensionable earnings for the period starting when their contribution rate last changed to the end of the previous scheme year, dividing that amount by the number of days in that period and multiplying the result by 365 so that the final amount represents a full year of pensionable earnings.

- **Case 3** applies to members who started pensionable employment with an employing authority during the previous scheme year and who paid the same contribution rate through to the end of that year.

- If the case 3 description fits a member, pensionable earnings assessed for a contribution rate for the next scheme year will be determined by taking the member's pensionable earnings for the period starting when their pensionable employment started to the end of the previous scheme year, dividing that amount by the number of days in that period and multiplying the result by 365 so that the final amount represents a full year of pensionable earnings.

- **Case 4** applies to members who started pensionable employment with an employing authority during the previous scheme year and who did not pay the same contribution rate through to the end of that year.

- If the case 4 description fits a member, pensionable earnings assessed for a contribution rate for the next scheme year will be determined by taking the member's pensionable earnings for the period starting when their contribution rate last changed to the end of the previous scheme year, dividing that amount by the number of days in that period and multiplying the result by 365 so that the final amount represents a full year of pensionable earnings.

- **Case 5** applies to part-time members who were employed throughout the previous scheme year with an employing authority and who paid the same contribution rate throughout that year but whose annual rate of pensionable earnings changed during that year (this change to pensionable earnings could be because they reduced or increased the number of part-time hours worked).

- If the case 5 description fits a member, pensionable earnings assessed for a contribution rate for the next scheme year will be determined by taking the member's pensionable earnings for the period starting when their pensionable earnings changed to the end of the previous scheme year, dividing that amount by the number of days in that period and multiplying the result by 365 so that the final amount represents a full year of pensionable earnings.

- Case 5 is needed for the first year that changes are implemented for part-time members because, under the current method of assessment, their contribution rate only changes during a current scheme year if the whole-time rate of pay for their job changes. This means that without case 5, no account would be taken of an increase or decrease to actual pensionable earnings during the scheme year 2021/22 when using earnings from that year to set a contribution rate for scheme year 2022/23. This could mean that pensionable earnings used to set a contribution rate are overstated or understated in relation to the members likely pensionable earnings for the coming scheme year.

Cases that do not fall into any of the cases described above

6.18. To better distinguish between circumstances when the table at paragraph (3A) of regulation 30 applies instead of the table at paragraph (3) of that regulation, amending regulation 20(3) also removes existing sub-paragraphs (3) and (4) of paragraph 2 of Schedule 9. Sub-paragraph (b) covers circumstances where the member does not fit any of the case descriptions in sub-paragraph (a) of Schedule 9.

6.19. Amending regulation 7(b) then re-inserts those sub-paragraphs into a new paragraph 2A entitled 'Members who do not fall within any of the cases in paragraph 2'. This is a technical change only, and, as now, in those circumstances new paragraph 2A requires the scheme manager to determine the member's pensionable earnings having taken advice from the scheme actuary and having taken account of pensionable earnings attributable to earnings for service comparable to the members, prevailing pay scales and prevailing rates of allowances. The table that applies when pensionable earnings for a current scheme year are used to assess a contribution rate (at paragraph (3A) of regulation 30) is then used to determine the contribution rate for the member. Sub-paragraphs (4), (5) and (6) of new paragraph 2A replicate the current provision made at as sub-paragraphs (5), (6) and (7) of paragraph 2. They make the same provision in respect of unpaid absences, pensionable earnings the member is deemed to have received and the rounding up of earnings to the nearest number of whole pounds.

6.20. Paragraph 3 of Schedule 9 (change to employment or rate of pensionable earnings or allowances) provides for a contribution rate to be assessed or re-assessed in circumstance where a member starts a new job, or a change is made to a member's annual rate of pay or allowances during the current scheme year. Paragraph 3 is amended by amending regulation 20(d) as follows. The requirement that a contribution rate is only re-assessed for a part-time member if the whole-time rate of pay changes is removed.

6.21. The table to be used for the assessment or re-assessment of a contribution rate during the current scheme year is changed to the table at paragraph (3A) of regulation 30 (the table that will be updated to take account of any AfC pay uplifts). Finally, the formula for determining the pensionable earnings to be assessed against that table is also changed so that elements that required WTE pay to be used for part-time members are removed. Pensionable earnings for both part-time and whole-time members who start a new job or have a pay change during a current scheme year will be determined by dividing the pensionable earnings the employing authority estimates will be payable to the member from the start of the new employment to the end of the current scheme year by the days in that period and multiplying the result by 365 so that the final amount represents a full year of pensionable earnings. (For members who have a pay change, a new employment is deemed to have started from the first day of the next pay period immediately following the period in which the change is made).

Assessment of a tiered contribution rate for practitioners and non-GP providers (Regulations 31, 37, 38 and Schedule 10)

6.22. Regulation 31 (members' contributions: practitioners and non-GP providers) requires practitioners and non-GP providers to make scheme contributions at the percentage contribution rate that applies to a member's pensionable earnings depending on where those earnings fall within seven pensionable earnings bands. The contribution rates and pensionable earnings bands for this group of members in respect of each scheme year are currently set out in contribution tables in regulation 31.

6.23. Regulations 37 (members' contributions: supplementary: medical practitioners and non-GP providers) and regulation 38 (members' contributions: supplementary: dental practitioners) provide a bespoke process for the estimation of pensionable earnings and the setting of a temporary contribution rate for this group of members pending the confirmation of their final earnings for each scheme year. Once final pensionable earnings are confirmed for a scheme year, members in this group pay contributions at the rate set out in the table that applies to that scheme year and the temporary rates and contributions paid based on estimated pay are adjusted. The temporary contribution rate is set by reference to the latest available table, the confirmed rate is set by the table that applies to each scheme year.

6.24. The draft SSI makes changes to regulation 31, 37 and 38 in order to:

- retain the existing contribution table for the scheme year 2021/2022 so that the final contribution rate that applies to a member can be confirmed once earnings for that scheme year have been finalised
- insert the latest table containing the revised contributions tiers for the purpose of setting a temporary contribution rate based on estimated pensionable earnings for the scheme year 2022/2023
- provide the necessary structure in regulations to allow for the potential insertion of a new contribution table for each scheme year, starting with the 2022/23 scheme year, so that a final contribution rate can be confirmed once earnings for that scheme year have been finalised.

6.25. These changes, as implemented by the amending regulations in the draft SSI are described in detail below.

6.26. Amending regulation 14 amends regulation 31 (members' contributions: practitioners and non-GP providers) to add Table 8 for scheme year 2022/23'.

6.27. Amending regulation 15 amends regulation 37 (members' contributions: supplementary: medical practitioners and non-GP providers) and Amending regulation 16 amends regulation 38 (members' contributions: supplementary: dental practitioners).

7. Proposed draft amending regulations – Pensionable Re-employment for 1995 Section Members

7.1. SPPA's consultation response published on 28 March 2023 confirmed changes to the scheme 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. 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.

7.2. The National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2023 gives effect to this change retrospectively from 1 April 2023.

7.3. Regulation 24 of this statutory instrument inserts two further groups (9 and 10) to paragraph 1 of Schedule 1 to the 2015 Transitional Regulations. Schedule 1 sets out when pensioner members of the 1995 Section and 2008 Section are eligible to become members of the 2015 Scheme. Inserting Group 9 allows members in receipt of an upper tier pension under regulation E3 of the 2011 Regulations who return to NHS employment to join the 2015 Scheme after their protection period in regulation E5(6)(b) of the 2011 Regulations ends, if the first anniversary of their return to NHS employment is on or after 1st April 2023 and their protection period for the purposes of regulation E3 of the 2011 Regulations spans 1 April 2023 or begins on or after 1 April 2023. Inserting group 10 allows all other 1995 Section pensioners (with the exception of upper tier ill-health pensioners) who do not fall within one of the other groups at schedule 1 to join or re-join the 2015 Scheme on the first day on or after 1st April 2023 on which they are in an employment that would, apart from the operation of regulation 19(1)(d) of the 2015 Regulations, allow them to be a member of the 2015 Scheme. Regulation 19(1)(d) of the 2015 Regulations restricts pensioner members of the 1995 Section and 2008 Section from joining the 2015 Scheme unless they are covered by the 2015 Transitional Regulations.

7.4. As a consequence of regulation 24, regulation 23 of this statutory instrument amends regulation 37(1) of the 2015 Transitional Regulations such that it includes the new groups at Schedule 1. Regulation 37(1) details the lump sums payable for 1995 and 2008 pensioners who join the 2015 Scheme.

7.5. Regulation 10 of this statutory instrument omits regulation S1 (suspension of pension on return to NHS employment) in the 2011 Regulations. Regulation S1 means that if a pensioner enters NHS employment of more than 16 hours per week, the pension must cease to be paid for a period of one month.

7.6. As a consequence of regulation 10, regulation 8 of the draft instrument also amends regulation K2 of the 2011 Regulations, such that it does not refer to S1.

7.7. Also as a consequence of regulation 10, regulation 11 of the instrument amends the definition of 'NHS employment' in regulation S2, such that it does not refer to the definition previously provided at S1.

7.8. Regulation 9 omits paragraph (6) at regulation R4 of the 2011 Regulations. This paragraph 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, as at regulation S1. Given that regulation 10 of this statutory instrument will permanently remove regulation S1, it is also appropriate to remove regulation R4(6).

7.9. Regulation 17 of the draft instrument amends regulation 85 of the 2015 Regulations. This is a correction to the rules surrounding draw down abatement, following retirement from that scheme where members hold additional pension (AP) to ensure consistency with the rules in the 2008 Section. The existing 1995 Section regulations prevented members who claimed their retirement benefits from returning to pensionable employment within the scheme and required any members returning to work following retirement to do so on a non-pensionable basis.

8. Proposed draft amending regulations – Changes to the 2015 Regulations regarding inflation

8.1. SPPA committed to press ahead with changes to the Public Service Pensions Revaluation Order 2023 in respect of the NHSPS(S). The proposal was to 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. Moving the date by five days means that the same CPI percentage rate would be used, meaning that the pension input amount calculation for Annual Allowance (AA) tax purposes would only consider growth in pension savings of above inflation.

8.2. Changing the revaluation date ensures that the AA operates largely as originally intended in relation to NHSP(S) pensions and means the high inflation environment would not create larger tax charges for senior clinicians on the amount of pension earned in 2022/23. This change would be effective from 1 April 2023.

8.3. While this change is primarily delivered through the Public Service Pensions Revaluation Order, there are consequential amendments required to the NHSPS(S) regulations to give effect to this change. Regulations 17 and 19 of the attached draft instrument amend the 2015 Regulations to ensure that the date on which CARE pensions accruing in the 2015 Scheme are revalued each year is aligned with the date on which the annual Public Service Pensions Revaluation Order 2023 and subsequent orders will come into effect. In respect of the 2015 Scheme, this date will change from

1 April each year to the 6 April each year with effect from the financial year commencing 6 April 2023. This will align the rate of CPI used in the in-service revaluation of CARE pensions and the pension benefit growth calculation for annual allowance purposes.

8.4. Regulation 17 of the draft instrument amends regulation 104 of the 2015 Regulations to change the definition of "re-valued pensionable earnings" so that it refers to the part of the Public Service Pensions Revaluation Order that applies in respect of the 2015 Scheme.

8.5. Regulation 19 of the instrument amends Schedule 7 of the 2015 Regulations to change the definitions of "index adjustment," "AP index adjustment," "leaver index adjustment" and "AP leaver index adjustment" so that "the percentage increase or decrease in prices" references in scheme regulations are those specified in the Public Service Pensions Revaluation Order 2023 and subsequent orders, which apply in respect of the 2015 Scheme.

9. Proposed draft amending regulations – Continued suspension of retire and return restrictions

9.1. The draft SSI also makes changes to retrospectively extend the suspension of retire and return restrictions in the scheme. The NHSPS(S) rules which place certain restrictions on the earnings and working commitments of some retired and partially retired staff who return to NHS employment have been suspended since March 2020. SPPA's consultation response, published on 21 October 2022, confirmed that abatement for Special Class Status (SCS) holders in the 1995 Section of the scheme would remain suspended until 31 March 2025. Also, abatement for 2008 Section and 2015 Scheme for members who have taken partial retirement would be suspended until 31 March 2023.

9.2. Regulation 3 of the draft instrument amends S2(4) of the 2011 Regulations to temporarily omit the words "or (c)" from the opening words until 31 March 2025, which removes abatement for SCS holders. Regulations 4 and 5 suspend abatement for members who have taken partial retirement in the 2008 Section and 2015 Scheme respectively. This suspension is applied retrospectively to the period before 31 March 2023. These provisions are now back in force from 1 April 2023.

Q5. Do you agree or disagree that the proposed draft amending regulations deliver the policy objectives set out in the consultation? If you disagree or don't know how to answer, please explain why.

10. Equality Impact Assessment

10.1 A full Equality Impact Assessment has been published alongside this consultation document.