



Scottish Public
Pensions Agency

Buidheann Peinnseanan
Poblach na h-Alba

**NHS Pension Scheme (Scotland):
proposed changes from April 2025**

**Scottish Government
Consultation 2025**

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 offers the security of a guaranteed income in every year of retirement for all its members.

The Scottish Public Pensions Agency (SPPA) continuously monitors the rules of the pension scheme to ensure it continues to help the NHS in Scotland to attract and retain the staff needed to deliver high quality care for patients. The changes proposed in this consultation document are split into five key areas:

1. To revise the employee contribution tier earnings thresholds in line the Agenda for Change pay award for 2024-25.
2. To retrospectively amend the definition of overtime in the 2015 Scheme so that it aligns with the long-standing policy and practice for additional hours worked by part-time staff to be pensionable up to whole-time equivalent (WTE) hours.
3. To clarify the method for calculating member contributions where pay reduces during a period of absence.
4. To provide for general practitioner (GP) partners and non-GP (general practitioner) providers to update their annual certificate of pensionable profits for 2024 to 2025 to the amount declared to HM Revenue and Customs (HMRC) on their revised tax return. This is required as a result of HMRC's reforms to standardise the accounting period for businesses.
5. To make other technical and miscellaneous amendments, including new references to neonatal care leave that the UK Department for Business and Trade will bring into law from 6 April 2025

Duration of Consultation

This consultation will run for a period of five weeks commencing on Friday 21 February 2025 and ending on Friday 28 March 2025.

How to respond

Please use the consultation response form which can be downloaded from the SPPA website and once completed, send to sppapolicyconsultationresponses@gov.scot before midnight on the closing date.

Alternatively, responses can be posted to:

Policy Team
SPPA
Tweedside Park
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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.

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.

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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.

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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.>

1. Revised employee contribution tables

Background

1.1. On behalf of Scottish Ministers, the SPPA published a [consultation response](#) in September 2023 on changes to the member contribution structure in the NHSPS(S) from 1 October 2023. Amongst other changes, the response confirmed that the member contribution tiers would be uprated annually in line with the average uplift in Agenda for Change (AfC) pay. This is to ensure that the majority members are not moved into a higher contribution tier as a result of the pay award.

Proposals

1.2. For officer members there are currently two tables included in the scheme regulations which are used to assess the contribution rate applied to the member's earnings. For the majority of members, who are active in the scheme on the last day of the previous scheme year and the first day of the current scheme year, their contribution rate is assessed using actual pensionable earnings received during the previous scheme year. For this purpose, their earnings are assessed against Table 1 below. Table 1 is updated to reflect the pay 2024-25 average uplift in the AfC pay award which was 5.5% introduced with effect from 1 April 2024.

1.3. Contribution Table 2 is used to assess contribution rates for officer members who start a new job in the current scheme year or where a member has an employment change which results in a change in actual pensionable pay during the current scheme year. The contribution tier bandings in Table 2 above are also due to increase in line with the 2025-26 AfC pay award. However, until the pay award is agreed, both tables will have the same tier bandings based on the 2024-25 pay award.

Table 1 - Used in respect of members in pensionable employment on the last day of the previous scheme year and the first day of that current scheme year.

Column 1 Pensionable earnings band in 2024/2025	Column 2 Contribution percentage rate
Up to £13,330	5.7%
£13,331 to £26,762	6.4%
£26,763 to £31,669	7.0%
£31,670 to £39,734	8.7%
£39,735 to £41,669	9.8%
£41,670 to £50,650	10.5%
£50,651 to £54,811	11.2%
£54,812 to £76,652	11.6%
£76,653 and above	12.7%

Table 2 - This table will apply to any member who starts a new job or whose annual rate of pensionable pay changes during the current scheme year.

Column 1 Pensionable earnings band in 2025/2026	Column 2 Contribution percentage rate
Up to £13,330	5.7%
£13,331 to £26,762	6.4%
£26,763 to £31,669	7.0%
£31,670 to £39,734	8.7%
£39,735 to £41,669	9.8%
£41,670 to £50,650	10.5%
£50,651 to £54,811	11.2%
£54,812 to £76,652	11.6%
£76,653 and above	12.7%

1.4. The draft amending instrument will therefore insert into regulations amended member contribution tables at the appropriate points to reflect the pay uplift, with effect from 1 April 2025. Please note the table inserts new pay/earnings bands only and does not increase the percentage of contributions payable.

Draft Amending regulations

1.5. This section outlines the draft regulations which will give legal effect to the proposals.

1.6. The amending regulations will amend regulation 30 (members' contributions: employees) of the 2015 Regulations to add a new contribution table for officer members with effect from 1 April 2025. It will also amend regulation 31 (members' contributions: practitioners and non-GP providers) to add the same contribution table for practitioner members applicable for scheme year 2025-26.

Q1. Do you agree or disagree that the amended employee contribution tables in the draft regulations give effect to the previously agreed policy of uprating the earnings tiers in line with the average uplift in AfC pay? If you disagree or don't know how to answer, please explain why.

2. Pensionability of additional hours for members who work part time

Background

2.1. The NHS Pension Scheme (Scotland) regulations provide that overtime payments are not pensionable.

2.2. Under the AfC pay framework, full-time staff currently earn overtime pay for hours worked beyond 37 per week, typically at a premium rate. For part-time employees, hours up to 37 are paid at the standard rate, while hours exceeding this threshold qualify for premium pay. Consequently, it has been a longstanding practice - backed by the 1995 and 2008 Regulations - that additional hours worked up to whole-time equivalent (WTE) are not considered to be overtime and are therefore pensionable.

2.3. The consultation on the introduction of the 2015 NHS Pension Scheme (Scotland) indicated that this practice would continue under the new regulations. Specifically, paragraph 127 of the [consultation on the 2015 Regulations](#) clarified that part-time work and earnings up to a WTE would continue to be pensionable.

2.4. The scheme has since been administered based on this understanding, as outlined in the scheme documentation. However, it was recently discovered that the wording of the 2015 Regulations unintentionally prevented this from being applied.

2.5. After a [consultation](#) earlier this year, the 2015 Regulations were amended with effective from 1 April 2024 to address this oversight. The new definition of overtime in the 2015 Regulations now aligns with the longstanding policy established for the 1995 and 2008 Sections. As a result, part-time staff will have any additional hours worked up to a WTE automatically included in their pension calculations. Overtime hours worked beyond WTE, for both part-time and full-time employees, will continue to be non-pensionable.

Proposals

2.6. The SPPA is proposing changes to the 2015 Regulations so that the definition of overtime aligns with the original policy intention and reflects how the scheme operated from 1 April 2015 to 31 March 2024.

2.7. The long-standing position has been that any extra hours worked by part-time employees have been considered pensionable, up to the limit of their full-time contracted hours. Hours exceeding this full-time threshold are regarded as overtime, as outlined in the scheme documentation.

2.8. The scheme relies on employers to implement these rules effectively. It is reasonable to expect that employers have adhered to the scheme literature and guidance provided by SPPA, ensuring the collection of pension contributions based on any additional hours within the full-time ceiling. Members will have accrued pension rights built up on this basis. The proposed retrospective adjustment aims to formalise this approach and protect accrued rights.

2.9. While unlikely, there is a possibility that some members may not have had their additional hours pensioned if their employer followed the actual 2015

Regulations instead of the scheme guidance. In making these regulatory changes, we want to ensure we do not inadvertently disadvantage these members by requiring them to pay unexpected contribution arrears. To address this, we propose introducing a 'carve out' for any member whose additional hours were treated as non-pensionable. The revised regulations would allow these members to maintain their current status (i.e., non-pensionable) unless they choose to have those hours counted as pensionable and agree to pay the associated contribution arrears.

2.10. Employers will be aware of how they have interpreted the rules and whether they have adhered to the guidance. Those who have followed the guidance and the established practice of treating additional hours worked by part-time staff (up to the full-time limit) as pensionable will not need to take any further action.

2.11. Where an employer has not followed scheme guidance, we propose that the 2015 Regulations be amended to require that the employing authority notifies affected members of their ability to elect for all their additional hours that had been classed as non-pensionable overtime in the 2015 to 2024 period, to be converted into pensionable additional hours. The notification must be made before 1 October 2025 and should outline the contributions owed by both the member and the employer, as well as the pensionable pay and service the member will be eligible to count upon making this election. Members will have three months from the receipt of the employer's notification to make their election, with a final cut-off date for any elections set for 1 April 2026.

2.12. It is proposed that contribution refunds will not be issued to members who pensioned their additional hours worked between 1 April 2015 and 31 March 2024. This decision is based on the clear published policy intention and scheme materials regarding the pensionable status of additional hours up to full-time. Moreover, members will gain more value in the long term by accumulating pension rights rather than opting for a refund.

Draft Amending regulations

2.13. This section outlines the draft regulations which will give legal effect to the proposals.

Retrospectively aligning the definition of overtime with long-standing practice to pension additional hours worked between 1 April 2015 and 31 March 2024

2.14. The updated regulations seek to retrospectively align the definition of overtime with established practices, for additional hours worked between 1 April 2015 and 31 March 2024. The definition of overtime will be modified in Schedule 13 of the 2015 Regulations. This revised definition will be applicable to work performed during the specified timeframe. In section (a), 'overtime' pertains to any hours worked beyond the full-time commitment as outlined in the member's employment contract. This applies to two distinct groups of members. The first group includes those whose extra hours, up to full-time, were considered pensionable in accordance with longstanding practices and scheme documentation during that timeframe. The second group consists of members who did not have their extra hours treated as pensionable but choose to elect for pension coverage for those hours (refer to 'Making an election' section below).

2.15. In the second component of the revised definition, section (b) maintains the

current understanding of 'overtime.' This applies to members whose additional hours up to full-time have not been considered pensionable and who wish to retain this stance. Members in this category will be those who opt not to elect for pension contributions on those hours.

Making an election

2.16. The amending regulations introduce new regulation 27A (pensionable earnings: scheme years 2015-16, to 2023-24) into the 2015 Regulations. This regulation is relevant to members who worked part-time during the specified scheme years and received a 'relevant payment.' A relevant payment refers to salary, wages, fees, or other regular payments treated by the member's employer as payment for non-pensionable overtime. This pertains specifically to payments made for work undertaken that was over and above their part-time work, but not exceeding whole-time as per their employment contract.

2.17. If this regulation applies, the member has the option to elect for the payment to be considered pensionable. The employing authority is required to provide the member with a notice, before 1 October 2025, outlining their right to make such an election. This notice should detail the contributions that both the member and their employer are responsible for and specify the pensionable earnings the member will entitled to count within the 2015 Scheme if they proceed with the election.

2.18. Members must submit their election in writing, including any information specified by their employer. The election will encompass all relevant payments received by the member, which includes any payments associated with 2015 Scheme service that has been rolled back to the legacy scheme under the McCloud remedy. Members must make their election within 3 months or within a time frame deemed reasonable by the employer, but it's essential to complete the election before 1 April 2026.

Members whose service between 1 April 2015 and 31 March 2022 in the 2015 Scheme has rolled back into the legacy scheme ('remedy members')

2.19. The amending regulations introduce new paragraphs (20) to (26) to the 1995 Section regulation C1, which defines 'pensionable pay.' Likewise, new paragraphs (12) to (18) are added to the 2008 Section regulation 2.A.9, also related to the meaning of 'pensionable pay.'

2.20. These new paragraphs function similarly to the 2015 Scheme regulation 27A mentioned earlier. They allow remedy members the choice to opt in or out of making contributions for any relevant payments received during their 2015 Scheme membership that have now reverted back to the member's legacy section, which were treated by their employer as payments for overtime.

2.21. The election procedure mirrors that of the 2015 Regulations, adhering to the same timeline and deadlines. Members must make an election for all pertinent payments across both the legacy and 2015 Scheme.

2.22. Should a member choose not to make an election, any relevant payments will be classified as non-pensionable overtime within their legacy section, thus preserving the existing treatment of those payments.

Q2. Do you agree or disagree with the proposal to retrospectively amend regulations to align with long-standing practice, so that additional hours worked between 1 April 2015 and 31 March 2024 by part-time staff are pensionable up to WTE?

Q3. Do you agree or disagree that affected members who did not pension their additional hours during the period 1 April 2015 to 31 March 2024, should now be given the option to do so?

3. Calculating contributions where members are on reduced pay

Background

3.1. As part of the reforms to the member contribution structure which were introduced from 1 October 2023, member contribution rates have been based on actual annual pay instead of the notional WTE pay. This adjustment has resulted in many part-time members experiencing a decrease in their contribution rate from that date. With this change in calculating contribution rates, it is also important to review how contributions are determined for members receiving less than full pay, such as during maternity leave or illness. It is our intention to ensure that those on reduced pay will have their contribution rates calculated based on their actual annual pay rather than the full pay they would have earned.

3.2. Importantly, how contribution rates are determined will not impact members' benefit accrual. According to existing legislation, members continue to accrue pension benefits as if they were receiving full pay, even where their pay reduces. These new proposals will not affect benefit accrual; members will still accrue pension benefits as though they are on full pay. Only the calculation of the member contribution rate and the resulting contributions some members will pay are affected by these proposals.

The types of leave affected by these proposals are:

- adoption leave
- carers' leave
- leave due to illness or injury
- maternity leave
- neonatal care leave (to be added - see the proposal in the technical and miscellaneous amendments section of this document)
- parental bereavement leave
- parental leave
- paternity leave
- shared parental leave

Member contribution rates for leave where pay reduces

3.3. Members may take leave for various reasons, which can lead to a reduction in their pay. The specific entitlements and the amount of pay they receive are influenced by each member's unique situation and their employer's policies.

3.4. Traditionally, members have maintained the same contribution rate even when their pay decreases. This is because their contribution rate is based on their assumed earnings - what they would have earned had they not experienced a pay reduction (referred to as their deemed pay). While their overall contributions decrease due to applying the rate to their reduced pay, the rate itself remains unchanged.

3.5. However, it's important to revisit this calculation to ensure that our principles align with the updates implemented since 1 October 2023, specifically regarding the use of actual annual pensionable pay for determining the contribution rate.

3.6. If the contribution rate is changed to be based on actual annual pensionable pay, members will make lower contributions, but their pension benefits will remain unchanged. Therefore, they are better off overall. This change aligns with the reforms that took effect on 1 October 2023, basing contribution rates on actual annual pensionable pay.

3.7. Upon reviewing the regulations, it has been identified that there is some confusion regarding how contribution rates should be determined for members on reduced pay. To address this, we plan to clarify the regulations and ensure they reflect the new method of using actual pay for setting contribution rates for those with reduced pay. We also intend for the amendments to have a retrospective effect, being backdated to 1 October 2023.

3.8. Since the implementation of these regulations on 1 October 2023, there may have been variations in how they were applied. Some members may have contributed more under the previous system, while others may have benefited from lower contributions as per the new structure. Those who have contributed more than they would have under the revised approach will receive a refund.

3.9. Importantly, the proposed modifications to the regulations will ensure that members on reduced pay do not face any negative impact from this new approach, as they will be required to contribute less. This change in calculation does not create a situation where members will be asked to pay increased contributions compared to what they will have already paid.

Unpaid Leave

3.10. Certain types of leave are unpaid, which means they don't typically attract pension contributions, and therefore, there are no associated pension benefits. This is because a contribution percentage of zero pay is effectively zero. Nevertheless, the regulations of the NHS Pension Scheme (Scotland) do allow for a few specific situations in which members can still make contributions and accumulate pension benefits, even during periods without pay.

3.11. The following types of unpaid leave provide for the option to continue to accrue pension benefits:

- adoption leave
- carers' leave
- maternity leave
- neonatal care leave (to be added - see the proposal in the technical and miscellaneous amendments section of this document)
- parental bereavement leave
- parental leave
- paternity leave
- shared parental leave

3.12. Carers' leave was added on 1 April 2024, and it's proposed that neonatal care leave is included from 6 April 2025. Unpaid leave due to illness or injury is not eligible for pension accrual.

3.13. The current position in regulations is that the member will continue to pay contributions at the same level as they were paid directly before they went on to zero pay.

3.14. There will be no changes to how member contributions are calculated for those on unpaid leave. The existing calculation method will be maintained, which uses the contribution rate and pensionable pay just prior to the member's unpaid leave.

3.15. Currently, the regulations allow members to continue accruing pension benefits only if their unpaid leave follows a period of reduced pay. They do not extend this benefit to situations where unpaid leave follows a period of full pay or regular work. Our intention is to amend the regulations to enable members to build up pension benefits in such cases, where members transition directly from full pay to zero pay. Additionally, we propose to apply the same contribution calculation method that is currently used for members moving from reduced pay to zero pay, to those transitioning directly from full pay to zero pay.

3.16. It is proposed that the amendments will take effect retrospectively from 1 April 2015, when the 2015 Regulations came into force. This means that any members who have continued to contribute to their pension and accrue benefits when they went straight from full pay to unpaid leave (for example, taking shared parental leave without pay) will be able to keep their pension accrual for this period. If members would have chosen to contribute to their pension and accrue benefits when going straight to zero pay during a prescribed absence in this period but weren't able to do so, due to the way the regulations were drafted, then we will look at how best to enable them to do so now.

3.17. It is acknowledged that the current method for calculating contribution rates during unpaid leave results in members with reduced pay before taking unpaid leave contributing less than those who are paid at their standard rate prior to their leave. An alternative approach could involve using a different calculation to determine member contributions during unpaid leave, potentially involving a hypothetical pay rate. However, implementing a new calculation would diverge from the existing scheme structure and may not yield a fair outcome, as the

scheme is not intended for pension benefits to accrue while a member is on unpaid leave. These are notable exceptions that provide for continuity of membership in limited circumstances.

Draft Amending regulations

3.18. This section outlines the draft regulations which will give legal effect to the proposals.

3.19. Regulation 28 of the 2015 Regulations will be updated to reflect the proposed changes detailed in this section. These changes apply to members who are on unpaid leave, allowing this leave to count towards their pension if it directly follows a period of work or leave with full pay. This provides members the opportunity to accumulate pension benefits under these conditions. The amendments will have retrospective effect to 1 April 2015.

3.20. Regulation 37 will be modified, clarifying that contributions for members on reduced pay (excluding zero pay) are calculated based on their actual reduced pay rather than a deemed pay amount. This applies to both medical practitioners and non-GP providers. Additionally, schedule 9 is amended to ensure the same treatment for officer members. These changes will be effective retrospectively from 1 October 2023, consistent with past adjustments to reflect actual pay.

Q4. Do you agree or disagree with the proposal to clarify that member contribution rates should be based on actual annual pensionable pay for members who are in receipt of reduced pay? If you disagree or don't know how to answer, please explain why.

Q5. Do you agree or disagree that, for members on unpaid leave who choose to continue building up pension scheme benefits, their member contributions should be based on their pay period immediately before they went on unpaid leave? If you disagree or don't know how to answer, please explain why.

4. GP and non-GP provider annual certificates of pensionable profit

Background

4.1. Starting from 6 April 2024, unincorporated businesses will need to have their profits taxed based on a 'tax year' basis. In the past, they could choose to be taxed according to their annual accounting period, even if that didn't match the tax year. This change will particularly affect GP practices that have not aligned their annual accounting periods with the tax year.

4.2. This new requirement has been introduced through modifications to primary legislation by HMRC, specifically changes to the Income Tax (Trading and Other

Income) Act 2005 as set out in the Finance Act 2022.

4.3. The implications of this change extend to the income tax affairs of GP partners, non-GP partners, or shareholders involved in GP practices. These members will now need to report and pay income tax on the basis of their tax year rather than their practice's accounting year profits.

4.4. For tax year 2024 to 2025 onwards, where a GP practice prepares their accounts for a period that does not coincide with a tax year, GP partners and non-GP providers in that practice may need to apportion the profits (or losses) of the next or previous accounting periods to determine the relevant tax year's profits. This may involve the use of a provisional figure in their tax return.

4.5. This consultation addresses the effects of upcoming tax changes on how NHS Pension Scheme pensionable earnings are calculated for certain GP partners and non-GP providers from the tax years 2024 and 2025 and proposes a revised approach as a consequence.

4.6. At present, the calculation of pensionable earnings for each scheme year (which runs from 1 April to 31 March) is based on an annual certificate of pensionable profits. These certificates allow a member to declare their pensionable income. The certificates are sent to Practitioner Services Division (PSD), who identify whether the member's pension contributions are correct. PSD then updates the SPPA with the certified pensionable earnings. This figure is then used as the pensionable earnings on which the member's pension benefits are calculated.

4.7. Currently, these certificates rely on the self-assessment tax returns that members file with HMRC. and so given the HMRC changes outline above, could now be based on provisional figures which would not take account of the final figures provided to HMRC.

Proposal

4.8. Minor changes are proposed to the 2015 NHS Pension Scheme regulations to provide clear direction on the process for reporting future tax years from 2024 to 2025 onwards. This means that affected GP partners must provide a revised annual certificate of pensionable earnings to PSD where their GP practice accounting year is not aligned with the tax year, and where their certificate was based on a provisional figure submitted to HMRC in their self-assessment tax return.

4.9. An updated annual certificate must be filled out and sent to PSD within one month of the deadline for notifying HMRC of the corrected amount on their amended tax return. Subsequently, PSD will then assess and determine the accurate amounts for pension contributions and pensionable earnings.

Draft amending regulations

4.10. This section outlines how the proposed regulations would function and give legal effect to the recommendations.

4.11. Schedule 10 (practitioner contribution payments) of the 2015 Regulations is updated in line with the proposed amendments discussed here. It adds two new

paragraphs, (4) and (5), to paragraph

4.12. The new paragraph (4) provides that from 1 April 2025, when a certificate with provisional figures is included in a medical practitioner's or non-GP provider's tax return, the member must provide a revised certificate which includes the actual figures within one month of the starting date of when the revised return containing the final figures was required to be submitted to HMRC. Since HMRC mandates that the actual figures be submitted within 12 months of the provisional figures, the member must therefore provide the updated certificate within 13 months. The new paragraph (5) clarifies the definition of 'provisional figure' for the purposes of paragraph (4).

4.13. Additionally, two new paragraphs, (4) and (5), are added to paragraph 2 of schedule 10, extending the same amendments to medical practitioners who do not belong to a practice.

Q6. Do you agree or disagree that the proposed changes to scheme rules about the annual certificate of pensionable profit should be implemented? If you disagree or don't know how to answer, please explain why.

5. Technical and miscellaneous amendments

Neonatal care leave

Background

5.1. Neonatal care leave and pay is a new entitlement designed for employees who are responsible for children receiving neonatal care. This allows parents to take up to 12 weeks of paid leave, in addition to other leave entitlements such as maternity and paternity leave, in circumstances where their child receives neonatal care as a neonate (28 days old or less) for a period of at least 7 days without interruption. The entitlement to neonatal care leave will be a 'day one' right, meaning that parents can claim from the first day of their employment. However, to qualify for neonatal care pay, parents must have been employed for at least 26 weeks leading up to the relevant week and must meet the minimum earnings criteria.

5.2. The regulations pertaining to neonatal care leave and pay, implemented by the UK Department of Business and Trade, will take effect on 6 April 2025. These will be made under section 80EF Employment Rights Act 1996 (section 80EF was introduced by the Neonatal Care (Leave and Pay) Act 2023) and section 171ZZ16 of the Social Security Contributions and Benefits Act 1992 (also introduced by the Neonatal Care (Leave and Pay) Act 2023).

Proposals

5.3. It is proposed that the 2015 Regulations will be updated to include references to neonatal care leave, alongside other authorised types of leave, like maternity leave. Member contributions for individuals on neonatal care leave will be calculated as outlined in section 3 above, ensuring that the handling of neonatal care leave aligns with the treatment of other authorised absences from work, including

maternity leave, some of which may be unpaid.

Draft amending regulations

5.4. Regulation 21 (absence from work) of the 2015 Regulations is revised to add 'neonatal care leave' to the types of absences considered as pensionable service for members contributing to the pension scheme under regulations 30 and 31.

5.5. Additionally, regulation 28 (pensionable earnings: break in service) of the 2015 Regulations is updated to include 'neonatal care leave' amongst the accepted absences. Regulation 28 serves as a deeming provision, meaning that if a member is absent from work for any of the listed reasons, and their pay decreases or becomes zero while they continue contributing to the NHS Pension Scheme, they will still be regarded as receiving their usual earnings for pension benefit accrual.

5.6. Regulation 67 (effect of being absent or leaving and re-joining scheme during contributions payment period) of the 2015 Regulations is revised to insert 'neonatal care leave' into the list of absences. Members who have agreed to pay contributions for additional pension must persist in making these payments during such leave unless they stop paying their basic contributions as stated in regulations 30 and 31.

5.7. Moreover, schedule 8 (practitioner income) to the 2015 Regulations is updated to include 'neonatal care leave' in the type of leave payments that are included when calculating practitioner income for dental practitioners.

5.8. Schedule 10 (practitioner contribution payments) of the 2015 Regulations is revised to add payments related to neonatal care leave into the amounts dental contractors and group D dentists must report on their annual reconciliation notice or performers' notice.

5.9. Finally, schedule 13 (definitions) of the 2015 Regulations is amended, providing a definition for 'neonatal care leave' in accordance with section 80EF of the Employment Rights Act 1996.

Q7. Do you agree or disagree that provision should be made for members to continue building up pension benefits while on neonatal care leave? If you disagree or don't know how to answer, please explain why.

Parental bereavement leave

Background

5.10. Amendments to the NHS Pension Scheme (Scotland) regulations, introduced by the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 ('the 2020 Regulations'), established provisions for the treatment of members on parental bereavement leave. These amendments aimed to align the treatment of members on parental bereavement leave with that of those on maternity leave, adoption leave, paternity leave, as well as parental and shared parental leave. While this alignment has been achieved in practice, the amendments from the 2020 Regulations to the 2008 Section

regulations failed to include references to parental bereavement leave in three specific instances within parts 2 (benefits for officers) and 3 (benefits for practitioners, etc.) of those regulations.

Proposals

5.11. It is proposed to correct the omissions retrospectively from 6 April 2020.

Draft amending regulations

5.12. Regulations 2.A.5 (pensionable service: breaks in service) and 3.A.4 (pensionable service: breaks in service) of the 2008 Regulations are updated to extend the references to the types of leave excluded from the effect of paragraphs (3) and (3A) of those regulations, so that parental bereavement leave is also excluded. Paragraphs (3) and (3A) cover periods of authorised unpaid leave where a member may elect to pay contributions for a period of up to 18 months.

5.13. Additionally, regulations 2.A.10 (pensionable pay: breaks in service) and 3.A.8 (pensionable earnings: breaks in service) of the 2008 regulations similarly amended to include parental bereavement leave in the list of leave types referenced in paragraph (4)(b) of those regulations. Those paragraphs make provision for what happens if a member's pay stops during a period of maternity leave, adoption leave, paternity leave and parental and shared parental leave.

Q8. Do you agree or disagree that the 2008 Regulations should be amended to fully reflect the practice of treating members on parental bereavement leave in the same way as members on maternity leave, adoption leave, paternity leave and parental and shared parental leave? If you disagree or don't know how to answer, please explain why.

Implementation of revised costs for additional pension

Background

5.14. From time to time, factors used to establish the cost of purchasing additional pension change. Long-standing policy is that the new factors may apply immediately to new purchases that begin after revised factors are introduced but, for purchases already in progress, the new factors apply from the beginning of the next scheme year.

5.15. However, the 2015 Regulations provide for all additional pension contributions to change from the beginning of the next scheme year following a factor change. This inconsistency with the way the 1995 and 2008 Regulations work was unintentional.

Proposals

5.16. It is proposed to bring all 3 sets of regulations into line with effect from 1 April 2025.

Draft amending regulations

5.17. Regulation 59 (determination of contribution payable) in the 2015 Regulations is amended so that it works in the same way as regulation Q8 in the 1995 Regulations and regulation 2.C.8 and 3.C.6 in the 2008 Regulations. This will mean that new factors apply immediately to new additional pension purchases that begin after revised factors are introduced but, for purchases already in progress, the new factors apply from the beginning of the next scheme year.

Q9. Do you agree or disagree that the 2015 Regulations should be amended so that new purchases of additional pension that begin after an in-year change to the cost, will be based on that new cost? If you disagree or don't know how to answer, please explain why.

Members who incorrectly accrued benefits in the 2008 Section after 1 April 2015

Background

5.18. Many members were prevented from building up benefits in the legacy public service pension schemes from 1 April 2015 due to provisions established under the Public Service Pensions Act 2013 ('the 2013 Act'). The 2013 Act allowed certain older members, who met specific eligibility criteria, to keep accruing benefits in legacy schemes beyond that date. A key criterion was that a member had to have been part of a public service pension scheme prior to 1 April 2012. However, this requirement was inaccurately defined in the 2008 Regulations, indicating that a member needed to have service in the 2008 Section on or before 1 April 2012.

5.19. As a result of this error, we anticipate that a very small number of members who initially joined the 2008 Section on 1 April 2012 were allowed to continue their membership in that section after 1 April 2015 when they should have transitioned to the 2015 Scheme at that time. We are currently investigating exactly how many members are affected. Some of these members may have since retired, and the benefits accrued in the 2008 Section could now be in payment.

Proposals

5.20. The provision in question is not allowed under the 2013 Act and is required to be corrected retrospectively from 1 April 2015. Once this correction is made, the 135 members in this group will automatically become entitled to 2015 Scheme benefits for any service between 1 April 2015 and 31 March 2022 when the 2008 Section closed to all members. However, no member will be worse off as a consequence of this retrospective correction.

Members whose benefits are in payment and will be higher following the correction

5.21. Most members of this group can expect an increase in their benefits from the 2015 Scheme following the correction. The SPPA will recalculate the benefits and ensure the higher amounts are put into payment along with any back payments,

and applicable interest, as soon as possible after the correction is finalised. Members don't need to do anything at this time. The SPPA will notify members or their dependants (if the member is deceased) with details of the revised benefits that are now due.

Members whose benefits will not be higher following the correction

5.22. It is estimated that the benefits from the 2008 Section may be greater for some of the impacted members. To guarantee that these members are not worse off because of the correction, the intention is to make further provision in regulations to provide for an additional payment to be paid to bring the members' 2015 benefits earned during the period 1 April 2015 to 31 March 2022 up to the same level as the benefits that would have been paid from the 2008 Section.

5.23. For those members already receiving their 2008 benefits, there will be no change to the payment amounts. For members whose benefits are not yet in payment, at retirement the scheme administrator will compare the 2 sets of benefits for the period 1 April 2015 to 31 March 2022, and, if benefits in the 2008 Section would have been higher, they will pay 2015 benefits plus the additional payment to bring those benefits up to the higher level.

Draft amending regulations

5.24. The error will be corrected by removing the words 'on or' from before '1 April 2012' in sections 2.B.1(3)(a)(i) and 3.B.1(3)(a)(i) (eligibility: general) of the 2008 Regulations. This change is effective from 1 April 2015, ensuring that only those members who meet the age conditions and had service in the 2008 Section prior to 1 April 2012 (as outlined by the 2013 Act) will be able to accrue service in that section from 1 April 2015.

5.25. Additionally, a new regulation 39A (entitlement to additional retirement benefits) will be introduced into the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015. Regulation 39A applies to members who joined the 2008 Section for the first time on 1 April 2012 and were born on or before 31 August 1960. This is the latest date of birth of members who were permitted to remain in the 2008 Section from 1 April 2015. The regulation applies where, on the coming into force of amendments that correct the error in the 2008 Regulations, 2008 Section benefits for service between 1 April 2015 and 31 March 2022 that have been paid or would have become payable but for that correction, exceed the 2015 Scheme benefits now due for that period. Where that is the case, the scheme manager must pay an amount equal to the difference to the beneficiary or to the beneficiary's personal representative if the beneficiary is deceased.

Q10. Do you agree or disagree that members should not be worse off as a result of the retrospective correction to membership eligibility and should, if necessary, receive an additional payment from the 2015 Scheme to make up any difference between 2008 Section benefits and 2015 Scheme benefits for service between 1 April 2015 and 31 March 2022? If you disagree or don't know how to answer, please explain why.

Forfeiture of Lump Sums

Background

5.26. An adult survivor pension or a lump sum upon death may be forfeited if the intended recipient is found guilty of murder or manslaughter of that member, or of any other offence of which unlawful killing of that member is an element.

5.27. The 2008 and 2015 Regulations providing for lump sums on death clarify that these will not be payable to the convicted beneficiary by references to other regulations that contain the power to forfeit the beneficiary's benefits in these circumstances. However, current references point to offences of which the member is convicted when, in line with practice and policy, they should rightly point only to offences that may be committed by an intended recipient of benefits payable on the death of a member.

Proposals

5.28. It is proposed to correct the relevant cross references with retrospective effect from 1 April 2008 (with regards to the 2008 Scheme) and 1 April 2015 (with regards to the 2015 Scheme).

Draft amending regulations

5.29. Regulations 2.E.22 (payment of lump sums or pensions on death) and 3.E.22 (payment of lump sums or pensions on death) of the 2008 Regulations will be updated so that the cross references in paragraphs (7) of those regulations to the conviction of an offence specified in paragraph (2) of regulations 2.J.8 and 3.J.8 (forfeiture of rights to benefits) is changed to paragraph (4) of those regulations.

5.30. Schedule 12 (payment of lump sums on death) of the 2015 Regulations will also be amended so that the cross reference in sub-paragraph (7) to the conviction of an offence specified in paragraph 12 of schedule 3 is changed to sub-paragraph (4) of paragraph 12 of schedule 3.

Q11. Do you agree or disagree with the proposal to correct scheme regulations so that the power to forfeit lump sums accurately refers to a beneficiary's conviction for unlawfully killing the member, rather than any offence for which the member had been convicted? If you disagree or don't know how to answer, please explain why.

Retrospective correction of regulations allowing pensionable re-employment for 1995 scheme members

Background

5.31. Following a [consultation](#) in early 2023, it was confirmed that the scheme regulations would be amended to allow members who retire and take their benefits in the 1995 Section to return to work and build further pension in the 2015 Scheme. This change was introduced through amending regulations with effect from 1 April 2023.

5.32. However, it has since become clear that those amendments were not introduced completely or correctly in regulation and there requires to be a further amendment to ensure the regulations are aligned with the policy intention. This correction will be introduced retrospectively from 1 April 2023. There are no issues with the way this change has been communicated or implemented administratively.

Proposals

5.33. It is proposed to amend The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 to ensure the eligibility of all 1995 Section pensioners (with the exception of upper-tier ill health pensioners) to join new scheme from 1 April 2023.

Draft amending regulations

5.34. Schedule 1 of the 2015 Transitional Regulations requires to be updated. Schedule 1 sets out when pensioner members of the 1995 Section and 2008 Section are eligible to become members of the 2015 Scheme. Paragraph 1 of Schedule 1 is updated to include two further groups (9 and 10).

5.35. 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 E5 of the 2011 Regulations spans 1st April 2023 or begins on or after 1st April 2023.

5.36. 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(d) of the 2015 Regulations, allow them to be a member of the 2015 Scheme. Regulation 19(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.

5.37. As a consequence of regulation 22, regulation 21 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.

Q12. Do you agree with the retrospective corrections to the regulations which allow retired 1995 scheme members to rejoin the 2015 Scheme? If you disagree or don't know how to answer, please explain why.

6. Equality Impact Assessment

6.1. 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.

6.2. 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.

6.3. 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.

6.4. The equality duty is an ongoing duty, and we will continue to consider and amend this assessment until the final regulation amendments are laid.

6.5. The proposals concerning additional hours for part-time staff cover the timeframe from 2015 to 2024, a period during which the regulations did not align with policy intentions. This discrepancy could have led to part-time staff receiving different pension benefits from the scheme than they had expected. Our solution is to address the historic gap by retrospectively applying the policy intention and underwriting administrative practice. Members who, if any, had employers adhere to the earlier regulations instead of the scheme guidance will now be able to pension any additional hours worked. This evaluation specifically targets part-time staff and has been assessed in relation to the protected characteristics outlined below.

6.6. The proposals regarding member contributions during times of reduced pay are backdated to October 2022 and will apply to members taking various forms of authorised leave, including maternity leave. Given that pregnancy and maternity are protected characteristics, we have examined the implications of these proposals on this particular group in further detail below.

6.7. The proposals concerning annual certificates of pensionable profit are applicable to all GPs and non-GP providers alike. There has not been any differential impact identified from these proposals based on any specific characteristic.

6.8. The various proposed technical and consequential amendments will also apply uniformly across all scheme members. The only exception is a small group of members who mistakenly accrued 2008 Scheme benefits after 1 April 2015 due to their age. The proposed correction will impact only that group, but it ensures that none of those members will face a financial disadvantage as a result. In conclusion, our analysis of the technical and consequential amendments did not reveal any differences in impact based on particular characteristics.

6.9. In summary, we have taken the time to evaluate the proposals in relation to each protected characteristic. For most of the proposals, our analysis did not identify any specific concerns. Where we believe there may be an impact, we have explored it in further detail below.

Age

6.10. The proposed amendments regarding additional hours will affect all members who have been working part-time from April 2015 to March 2024. Table 3 below illustrates the age distribution of part-time workers, as of September 2024, based on NHS Scotland workforce data. We have taken into account the possible effects on members across various age groups.

Table 3: NHS staff who work part time and full time by age

Age	Full-time	Part-time	Total
Under 25	5%	3%	4%
25 to 29	11%	5%	9%
30 to 34	11%	10%	10%
35 to 39	10%	12%	11%
40 to 44	12%	14%	13%
45 to 49	16%	17%	16%
50 to 54	18%	17%	17%
55 to 59	12%	13%	13%
60 and over	6%	9%	6%

6.11. The data in table 3 indicates that as staff members age, they are more inclined to work part-time. For instance, individuals under 25 represent 4% of the total workforce, constituting 5% of the full-time workforce but only 3% of those working part-time. In comparison, those over 60 make up 6% of the overall workforce, with only 6% in full-time positions and 9% in part-time roles.

6.12. The proposal to permit part-time employees to pension additional hours could enable them to enhance their retirement savings while maintaining flexible working arrangements.

6.13. This proposed approach allows staff to keep what they have built up and provides those who have not previously pensioned the hours, with an opportunity to do so.

Pregnancy and Maternity

6.14. Changes to member contribution rates due to reduced pay will impact staff on maternity leave. A member who first receives full maternity pay, then half pay, statutory pay, and finally goes on unpaid leave will benefit from these proposed changes since their contribution rates will align with their actual pay. Meanwhile, their pension benefits will still accrue at the regular rate. Additionally, members who have taken maternity leave since October 2022 may be eligible for a retrospective

refund of contributions.

Disability

6.15. The [NHS Scotland workforce data to 31 March 2024](#) reveals that 1.6% of the NHS workforce self-reported a disability, marking a 0.4 percentage point rise compared to data at 31 March 2022.

6.16. In comparison, statistics from the Department for Work and Pensions, derived from the Family Resources Survey, estimate that 23% of working-age adults in the UK had a disability during the financial year 2022-2023.

6.17. There is some data to suggest that disabled people are more likely to work part-time at higher rates. According to [the Department for Work and Pensions, based on the Annual Population Survey data](#), 32.4% of disabled workers and 21.8% of their non-disabled counterparts were engaged in part-time employment in 2022-2023. Between 2013-2014 and 2022-2023, the percentage of part-time workers declined for both groups.

6.18. However, the proportion of workers working part time has decreased more slowly (by 1.4 percentage points) for disabled workers than for non-disabled workers (by 2.8 percentage points, after rounding).

6.19. The proposal to permit part-time employees to contribute additional hours to their pension may provide these individuals with a means to enhance their pension savings while maintaining flexibility in their work schedule. The proposal to allow part-time staff to pension additional hours may allow these staff to supplement their pension saving while working flexibly.

Sex

6.20. The Equality Act 2010 recognises 'sex' as a protected characteristic, and information regarding the NHSPS(S) is categorised by sex. It's crucial to understand that sex and gender are distinct concepts. A person's gender identity might not align with the sex assigned to them at birth, and some individuals may identify as non-binary or choose not to identify with any gender. Furthermore, gender reassignment is also protected under the Equality Act 2010.

6.21. As of May 2024, [NHS Scotland workforce data to 31 March 2024](#) indicates that 77% of the NHS Scotland workforce are female. However, while the NHS Scotland is a female-dominant workforce, male members of the NHSPS(S) typically receive higher pensions than their female counterparts. Membership data from the [NHSPS\(S\) 2020 Scheme Valuation](#) indicates that the average pension for male members in the NHSPS(S) is £20,360, compared with £7,660 for female staff, a difference in average pension payments of 62.4%.

6.22. The difference in average pensions between male and female members may stem from various factors, such as differences in pay, differing work patterns, and career breaks. As well as generally receiving higher pay than female employees, 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's worth noting that not all female members will take parental leave or have caring responsibilities.

6.23. The proposal to allow part-time staff to pension additional hours may allow female staff to supplement their pension saving while working flexibly and help address the gender pension gap.

Other protected characteristics

6.24. We have evaluated the potential equality impacts of the proposed changes for members who possess the remaining protected characteristics (such as ethnicity, gender reassignment, marital or civil partnership status, religion or belief, and sexual orientation), as well as those who do not. The proposals do not raise significant concerns regarding these protected characteristics.

Q12. Are there any further equality issues as a result of the proposed changes, that you think should be considered?

7. Next steps

7.1. SPPA will consider the responses to this consultation and feedback from stakeholders before finalising its proposals and draft regulations. It is anticipated that the draft amending regulations would come into force with retrospective effect from 1 April 2025. This consultation document sets out where the proposed amendments would have retrospective effect to any earlier date.

7.2. After reviewing the feedback and considering whether changes should be made, a consultation response will be published.