

Health, Social Care and Sport Committee  
Tuesday 12 November 2024  
31st Meeting, 2024 (Session 6)

## The National Health Service Superannuation and Pension Schemes (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/272)

### Overview

- At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 27 November 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
- More information about the instrument is summarised below:

**Title of instrument:** [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendment\) \(Scotland\) Regulations 2024](#)

**Laid under:** Sections 10 and 12 and schedule 3 of the [Superannuation Act 1972](#), sections 1(1) and (2)(e) and 3(1), (2) and (3) of, and paragraph 5(b) of schedule 2, and schedule 3 of, the [Public Service Pensions Act 2013](#).

**Laid on:** 3 October 2024

**Procedure:** Negative

**Deadline for committee consideration:** 25 November 2024 (Advisory deadline for any committee report to be published)

**Deadline for Chamber consideration:** 27 November 2024 (Statutory 40-day deadline for any decision whether to annul the instrument)

**Commencement:**

### Procedure

- Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
- Once laid, the instrument is referred to:
  - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
- Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the

Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

7. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

## Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 5 November 2024 and reported on it in its [64th report, 2024](#). The DPLR Committee made no recommendations in relation to the instrument.

## Purpose of the instrument

9. The purpose of this instrument is to make amendments to the NHS Superannuation Scheme (Scotland) (NHSSS[S]) and the NHS Pension Scheme (Scotland) (NHSPS[S]). The instrument introduces legislative changes to the scheme, including; retirement flexibilities, amendments to abatement rules and final pay controls, changes to the 2015 Regulations regarding inflation and other miscellaneous amendments.
10. The instrument also introduces a new employer contribution rate from 1 April 2024 and reforms the employee contribution rates in the NHSPS(S) in two phases from 1 October 2023 and 1 October 2024.
11. The Policy Note accompanying the instrument is included in **Annexe A**. It includes detail of the consultation undertaken, impact assessments carried out on the instrument, and the anticipated financial effects.
12. The full equality impact assessment (EQIA) is included at **Annexe B**. This outlines some of the possible impact of the changes. The EQIA notes that “it is also possible that women may be more likely to feel the impact of these changes than their male counterparts, as they are more likely to be among lower earning staff at present”. The EQIA also points to evidence that “could suggest that the proposed changes to contribution rates are likely to affect those with disabilities more than those without disabilities, as the tier structure is flattened and the gap between the lowest and highest contribution rate narrows”. However, it also notes that the move toward calculating contribution rates using actual annual pensionable pay rather than the whole-time equivalent delivers a fairer outcome for members who work less than full-time, with many likely to pay a lower contribution rate under these proposals.
13. The Scottish Government determined that a Fairer Scotland Duty Assessment may not be required for this instrument and an ‘Assessment not Required’ document in relation to the Fairer Scotland Duty Assessment completed. This is included at **Annexe C**. [The Fairer Scotland Duty](#) places a legal responsibility on public bodies to actively consider (‘pay due regard’ to) how they can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions.
14. The policy note states that a number of respondents to the consultation raised concerns about the proposals to change the member contribution structure. The reasons for objecting to the proposals were split into responses from those representing lower earners of the membership and those representing higher earners of the membership. The policy note goes on to say that the revised

proposals which went forward for consultation presented a compromise position. The EQIA states: “As doctors, particularly consultants, are typically some of the highest earners in the NHS, it is therefore likely that this group will benefit from the change in contribution rates, as their current contribution rates are likely to decrease”.

## **Committee consideration**

15. So far, no motion recommending annulment has been lodged.

16. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

- seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

17. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

18. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

**Clerks to the Committee**  
**November 2024**

## Annexe A: Scottish Government Policy Note

### POLICY NOTE

#### THE NATIONAL HEALTH SERVICE SUPERANNUATION AND PENSION SCHEMES (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2024

#### SSI 2024/272

The above instrument was made in exercise of the powers conferred by section 10 and 12, and Schedule 3 to the Superannuation Act 1972, and by section 1(1) and (2) (e) and paragraph 5(b) of schedule 2 of the Public Service Pensions Act 2013 (“the Act”). The instrument is subject to negative procedure.

#### Summary Box

- 1. The purpose of this instrument is to make amendments to the NHS Superannuation Scheme (Scotland) (NHSS[S]) and the NHS Pension Scheme (Scotland) (NHSPS[S]). The instrument introduces legislative changes to the scheme, including; retirement flexibilities, amendments to abatement rules and final pay controls, changes to the 2015 Regulations regarding inflation and other miscellaneous amendments.**
- 2. The instrument also introduces a new employer contribution rate from 1 April 2024 and reforms the employee contribution rates in the NHSPS(S) in two phases from 1 October 2023 and 1 October 2024.**

#### Policy Objectives

There are two NHS Pension Schemes. The legacy pension scheme, which is made up of two sections, is legislated for by the National Health Service Superannuation Scheme (Scotland) Regulations 2011 (S.S.I. 2011/117) (the “1995 Section”) and the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013 (S.S.I. 2013/174) (the “2008 Section”). The reformed pension scheme is legislated for by the National Health Service Pension Scheme (Scotland) Regulations 2015 (S.S.I. 2015/94) (the “2015 Scheme”).

This instrument amends the 1995 Section, the 2008 Section, the 2015 Scheme and the National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 (S.S.I. 2015/95) (“the 2015 Transitional Regulations”).

#### New retirement flexibilities

The amendments in this instrument implement, in two phases, changes to introduce new retirement flexibilities to the 1995 Section. The first phase of changes, creates provision for pensionable re-employment for members of the 1995 Section. This means that staff who retire and claim benefits from that scheme can, from 1 April 2023, re-join the 2015 Scheme should they return to work. The instrument also permanently removes the 16-hour rule from 1 April 2023, meaning that the number of hours re-employed staff can work after claiming their 1995 benefits is no longer restricted.

The second phase creates provision for partial retirement for members of the 1995 section from 1 October 2022, and makes other changes related to the over-arching retirement flexibility policy, which are a) allowing members of the 1995 and 2008 Sections who had previously breached the maximum service limits to join the 2015 Scheme if they wish and b) allowing 2008 Section and 2015 Scheme members to draw down 100% of their benefits if partially retiring.

### Changes to the employee contribution structure

This instrument also implements phased changes to employee contribution structure. The first phase of contribution rate changes was implemented administratively from 1 October 2023, with the second phase of changes to contributions rates effective from 1 October 2024.

Employee contributions, tiered by pay levels, must yield 9.8% of total pensionable pay as required by HM Treasury. The current structure was underperforming, necessitating increases to contribution rates to meet the target yield and also changes to make the contribution structure more appropriate for the 2015 Scheme which is a career average revalued earnings (CARE) scheme. All members have been part of the 2015 Scheme since April 2022. The new structure therefore narrows the range of tiers and reduces the highest rates from 14.7% to 12.7%. Some employees will pay increased contributions to cover the shortfall against the yield, however, increases are capped at 0.9% for those earning up to £37,831 in the first year. By 1 October 2024, the range of contribution rates will narrow to 5.7% to 12.7%, from 5.2% to 14.7% previously.

### Amendment to the employer contribution rate

The other key aim of this instrument is to implement a revised employer contribution rate which will increase from 20.9% to 22.5% from 1 April 2024. Reserved primary legislation and HM Treasury (HMT) Directions set out the process for assessing the employer contribution rate for the NHSPS(S), as part of the quadrennial scheme valuation, and the date it should be applied from. The main reason for the employer contribution rate increase is the reduction the discount rate set out in HMT Directions and used in the most recent valuation of the NHSPS(S) (the 2020 valuation), which was concluded earlier this year.

### Reform of the Final Pay Control charges

Final pay controls protect the NHS pension scheme from the increased cost of paying retirement pensions which have been inflated by excessive late career pay rises and are relevant to the final salary pension benefits of members of the 1995 Section of the

NHS pension scheme. Employers, in certain circumstances, are charged an 'excess employer contribution' for the cost of pension benefits calculated on pensionable pay

increased beyond the allowable amount. The benefits payable to scheme members are unaffected. A pay increase is considered excessive if the annual percentage increase exceeds the rate of the Consumer Price Index (CPI) plus 4.5%.

Following consultation with the NHS Pension Scheme (Scotland) Advisory Board (SAB), who are a statutory board comprising member and employer representatives, it was agreed that final pay controls served an important purpose and should be retained. However, it was considered that there should be some reform, the 'allowable amount should be increased from 4.5% to 7% and a number of pensionable pay increases should be exempt from final pay control charges. The amendments reduce the number of retirement awards falling to be considered for a charge, whilst maintaining the original policy intention of charging employers where final salary pay rises are excessive. This instrument gives effect to those changes.

### *Changes to the 2015 Regulations regarding inflation*

This instrument makes technical amendments 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 changed from 1 April each year to the 6 April each year with effect from the financial year commencing 6 April 2023. This change aligns the rate of CPI used in the in-service revaluation of CARE pensions and the pension benefit growth calculation for annual allowance purposes.

### *Miscellaneous amendments*

The instrument also implements various smaller technical amendments to the NHSPS(S) that consolidate various changes made to the scheme. These technical amendments were introduced following significant stakeholder engagement exercises with trade union and employer representatives which sought to rectify previous administrative and technical issues with the application of the regulations.

## **UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility**

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the NHS Superannuation and Pensions Scheme (Miscellaneous Amendment) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

## **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

## **Consultation**

To comply with the requirements of section 21(1) of the Public Service Pensions Act 2013 a formal policy consultation took place on retirement flexibility (December 2022 - February 2023), employee contributions (May - August 2023), and employer contribution rates and other amendments (December 2023 - February 2024).

In particular, representatives of NHS employers and employees in Scotland, other Scottish Government interests and UK Government departments were consulted. Consultation responses were submitted to SPPA from scheme members, trade unions and an employer associations.

### **Introduction of new retirement flexibilities**

The introduction of retirement flexibilities received substantial support from consultation respondents with many outlining the positive impact these flexibilities would have on retaining experienced staff. It was also particularly welcome because respondents felt it provides flexibility for NHSPS(S) members to manage their retirement and return to work in the future if they wish to do so. In particular the proposal to allow members to access 100% of their 1995 Section benefits was widely welcomed.

While 'partial retirement' was roundly welcomed, respondents were negative about some aspects of that proposal. In particular the requirement for members to reduce their earnings by 10% in order to access partial retirement. Many respondents felt this requirement was unnecessary and would lead to members reducing their commitments at a time where NHS Scotland needs to maximise existing capacity. However, in order for staff to partially retire, SPPA considered that some reduction in working commitment is required, and as the NHSPS(S) records members' pensionable pay, this is a reasonable way of assessing if members are taking steps towards retirement. This is also how partial retirement operates for members of the 2008 Section and 2015 Scheme in the NHS, and similarly for members of other public sector pension schemes. This requirement will remain in place for the 12 months after members take partial retirement.

Based on the overwhelmingly positive feedback received for these proposals, SPPA proceeded with the introduction of pensionable re-employment administratively from 1 April 2023. SPPA also proceeded with the implementation of Partial Retirement administratively from 1 October 2023.

### **Increase to the employer contribution rate from 1 April 2024**

The principal reason for employer contributions increasing is the UK Government's decision to reduce the SCAPE discount rate used in the valuation process. The Chief Secretary to the Treasury's statement announcing the change in the discount rate, confirmed that the UK Government will provide funding for increases in employer contribution rates resulting from the 2020 valuations because of changes to the

SCAPE discount rate. For the NHS valuation the full 1.6% increase is a consequence of these SCAPE discount rate changes.

The UK government's funding commitment is for employers whose employment costs are centrally funded through departmental expenditure. The UK Government has provided funding for devolved administrations via the Barnett formula.

In line with the outcome of the 2020 scheme valuation process, the Scottish Government are required to increase the employer contribution rate from its current rate of 20.9% to 22.5% effective from 1 April 2024.

### *Changes to the member contribution structure*

A number of respondents raised concerns about the proposals to change the member contribution structure. However, the reasons for objecting to these proposals were split into responses from those representing lower earners of the membership and those representing higher earners of the membership. There were also several other respondents who raised concerns around those middle earners who will see the sharpest increase in member contribution because of the proposed reforms.

Those using the UNISON Scotland template (approximately 82% of responses) objected to the increases in contribution structure while the cost of living remains high and believe this may have an impact on the affordability of the scheme. These respondents also voiced concerns that lower and middle earners of the scheme will be expected to pay more while higher earning members will pay less.

On the other hand, those using the British Medical Association (BMA) response template (approximately 14% of respondents) stated that the proposals to flatten the structure did not go far enough and emphasised that it is inappropriate to have a system of tiered member contribution structure within a CARE scheme. They therefore believe that the members contribution structure should be based on a single contribution rate.

Overall, these two groups of respondents, those representing the lower paid and those representing the higher paid, within the NHS workforce are diametrically opposed in their view of the proposed contribution structure. Therefore, due to the diverse nature of the NHS Workforce, any revision or changes to the member contribution structure must strike the appropriate balance between maintaining the affordability of the scheme for lower earners, meeting the contribution yield required by HM Treasury and ensuring any revised structure better reflects the nature of accrual in a CARE scheme.

Following discussions with stakeholders and much analysis, the revised proposals which went forward for consultation presented a compromise position as there was no alternative structure which was agreeable to both staff groups.

### *Reform of the Final Pay Control charges*

Most respondents to the consultation agreed with the proposed changes to final pay controls. In particular, stakeholders agreed that aligning the final pay control



provisions with those in place for the comparable NHS pension scheme in England and Wales was preferable.

### Changes to the 2015 Regulations regarding inflation

While 97% of respondents were supportive of the proposal to align the CPI values used for the in-service revaluation of the 2015 Scheme pension with that used as part of the annual allowance calculation, they did not agree that it should be done in this way. Many respondents highlighted their preference for the UK government to amend the Finance Act 2004 as means to addressing this issue.

### **Impact Assessments**

Equality impact assessments in respect of the provisions contained within The NHS Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2024 were prepared and presented as part of the consultation documents on the SPPA website<sup>1</sup>.

### **Financial Effects**

The Minister for Public Finance confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as most of the changes will have no significant financial effects on the Scottish Government, local government or on business. The instrument does implement an increase in scheme employer contributions from the current rate of 20.9% to 22.5% from 1 April 2024. However, funding provided from HM Treasury, via Barnett consequentials, is being provided to employers in the NHSPS(S) who are being fully funded for the increase. The increase in the employer contribution rate is because of HM Treasury Directions used in the scheme valuation which are mandated in UK Government legislation.

Scottish Public Pensions Agency  
An Agency of the Scottish Government  
1 October 2024

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<sup>1</sup> [NHS Scotland pension schemes' consultations | SPPA](https://pensions.gov.scot/nhs/scheme-governance-and-legislation/consultations)  
<https://pensions.gov.scot/nhs/scheme-governance-and-legislation/consultations>

## Annexe B: Scottish Government equality impact assessment (EQIA)

### Equality Impact Assessment - Results

Title Of Policy	NHS Pension Scheme (Scotland) (NHSPS[S]): proposed changes to member contributions
Summary of aims and desired outcomes of the policy	To change members' contribution rates so that they would be based on actual pensionable pay instead of members' notional whole-time equivalent pay. To ensure the rebalancing of the contribution structure by narrowing the range of contribution rates. To implement changes to the approach of increasing tier boundaries in line with annual AfC pay awards. To phase in the member contribution structure over 2 years.
Scottish Government Directorate	The Scottish Public Pensions Agency

### Executive Summary

1. This assessment measures the impact of policy proposals to implement the NHSPS(S): changes to member contributions.
2. The summary of the aims and desired outcome of the policy is to:
  - a) Change members' contribution rates so that they would be based on actual pensionable pay instead of members' notional whole-time equivalent pay.
  - b) Rebalance the contribution structure by narrowing the range of contribution rates.
  - c) Change to the approach of increasing tier boundaries in line with annual AfC pay awards.
  - d) Phasing in the member contribution structure over 2 years

3. The assessment finds that the policy changes will not disproportionately benefit or harm the protected groups of scheme members and will maintain the overriding principle of ensuring that the scheme remains a sustainable and valuable part of the reward package for NHS Scotland staff.

### **The Public Sector Equality Duty**

4. 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.
5. 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. 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.
7. The equality duty is an ongoing duty and we will continue to consider and amend this assessment until the final regulation amendments are laid.

### **Background**

The NHSPS(S) continues to be an integral part of the NHS Scotland remuneration package and offers significant value in retirement to NHS staff.

The current contribution structure is tiered to reflect that higher earners receive proportionally more pension benefits than lower earners from the final salary NHS pension scheme. To ensure the costs of the NHSPS(S) are fairly distributed and affordable for all members, these tiered contribution rates ask higher earners to pay proportionally more than lower earners to access the valuable benefits of the scheme.

The 2015 public service pension scheme reforms introduced a new NHSPS(S) scheme where pension is built up on a Career Average Revalued Earnings (CARE) basis. The [McCloud \(2015\) remedy](#) closed further final salary accrual in the 1995/2008 scheme from 1 April 2022 and moved all members into the 2015 CARE scheme for future service from that point. In a CARE scheme, all members accrue the same proportional benefit and therefore, there is less justification for the current steeply tiered contribution structure where higher earners pay significantly higher contribution rates.

In the existing contribution structure, contributions are calculated based on whole-time equivalent (WTE) pay which is appropriate for a final salary scheme where pension

benefits are based on WTE. The introduction of a CARE Scheme means that all members now accrue pension based on their actual pensionable earnings in each scheme year. Therefore, it is appropriate to amend the contribution structure to ensure members contribution rates for part-time members are based on actual earnings.

In addition, HM Treasury require that contributions collected from scheme members meet an overall yield of 9.8% of pensionable pay. As a result of changes to the salary profile of scheme members, the NHSPS(S) has begun to underperform against the yield. Changes to the contribution structure are required in order for the yield to be achieved.

As such, the SPPA have published this public consultation which seeks views on changes to member contributions, which are aimed to preserve participation in the scheme while protecting its substantial value for members in retirement. The SPPA seek to reach agreement on the proposals through public consultation and consultation with key stakeholders through the Scheme Advisory Board

## Key Findings

### Age

While the proposed changes will be applied to all members regardless of age, the Scottish Government has considered the potential impact of changes to the member contribution structure on members in different age cohorts.

From 1 April 2022, all active members of the NHSPS(S), regardless of their age, are now members of the 2015 NHS Pension Scheme. The 1995/2008 Scheme closed on 31 March 2022 and all future accruals from 1 April 2022 are now within the 2015 Scheme. The 2015 Scheme will use a CARE approach based on pensionable pay throughout the member's career. As a result of this, the proposal of moving to contribution rates based on actual pensionable pay is more appropriate for determining contributions for a CARE scheme for members of all ages.

The table below show NHS Pension Scheme membership split by Agenda for Change (AfC) band as at quarter 3 of 2022/23. Table 1 shows that pension scheme participation amongst NHS Scotland staff increases between from bands 1 to 4 before decreasing at bands 5 to 7 and increasing again until the highest Band levels of 8c, 8d and 9.

Participation amongst Medical and Dental staff and Senior managers, who will generally be amongst the highest earners, is lower than the average AfC participation. It should be noted that this data does not cover staff working in primary care who may be members of the NHSPS(S).

**Table 1: Agenda for Change staff participation by band at Q3 2022/23**

Band level	Pension Membership %
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Band 1	78.0%
Band 2	89.2%
Band 3	91.8%
Band 4	94.1%
Band 5	92.3%
Band 6	93.0%
Band 7	93.2%
Band 8a	95.2%
Band 8b	95.2%
Band 8c, 8d and 9	95.3%
Medical and Dental	91.9%
Senior Managers	92.2%

For higher earning members, with pensionable earnings of over £92,424 (those staff in band 8D and above), the proposed changes to the contribution tier structure will result in a drop in contributions of between 1 to 2% once the phasing in is complete. Although all members have been moved into the CARE scheme for future accrual from 2022, many members will have a 'final salary link' applied to their accrued 1995/2008 scheme service. This means that higher earners will continue to derive more value from that service than members who experience steadier pay progression through their career. As set out in the consultation document, it is appropriate to reduce the degree of cross-subsidy within the tiering so that higher earners pay a lower contribution rate, closer to the required 9.8% yield. Conversely, lower earners, earning up to £32,914, will see an increase in their respective contribution rates. However, this group will still pay a lower rate than the 9.8% yield, as their contributions continue to be subsidised by higher earners but to a lesser extent.

Table 2 below outlines the AfC and Medical & Dental membership participation by age as at Q3 2022/23. This data does not cover staff working in primary care who may be members of the NHSPS(S).

**Table 2 - Staff participation by age at Q3 2022/23**

<b>Age Group</b>	<b>AfC Pension Scheme Membership %</b>	<b>Medical &amp; Dental Pension Scheme Membership %</b>

15 to 19	92.6%	N/A
20 to 24	96.2%	98.3%
25 to 29	95.7%	97.1%
30 to 34	94.7%	96.7%
35 to 39	94.3%	95.5%
40 to 44	94.7%	95.6%
45 to 49	95.2%	92.8%
50 to 54	95.3%	91.9%
55 to 59	89.5%	82.5%
60 to 64	77.6%	41.6%
65 to 69	63.5%	

For AfC staff, the table details an increase in membership participation between age group 15 to 19 and 20-24 before decreasing slightly for each age group until the cohort 40 – 44 where membership participation marginally increases. This initial increase in participation between the ages of 15 to 24 could be due to the youngest cohort having fewer financial responsibilities than ages 25 and above. For example, members in the age groups of 25 and above are more likely to have different financial priorities such as student loan repayments, saving for a house deposit or supporting young families.

A [report](#) published by the Department of Work and Pensions (DWP) in June 2019 on trends in workplace pension participation and savings, showed that across the public and private sector, those in age groups 22 to 29 and 30 to 39 were less likely to participate in a pension scheme than those in the 40 to 49 and 50 to State Pension Age groups.

From age group 50 to 54 onwards, membership decreases significantly and at the oldest age group of 65 to 69 membership participation is at 63.5%. This significant decrease in participation membership within the oldest cohort may be explained by pension age members retiring and returning to service, as members of the 1995 section at the time this data was published could not build up any further NHS pension if they return to work following retirement.

For Medical and Dental staff, with the exception of those aged between 40 and 44, the data shows that participation decreases the older the member gets. Participation rates peak with members aged between 20 and 24 at 98.3%, progressively reducing through the age groups to 82.5% for those aged between 55 and 59, and then to 41.6% for those aged over 60.

We have also considered the possibility that the proposed changes could increase the number of members opting out of the scheme on affordability grounds.

**Table 3** - Percentage breakdown of reasoning for members opting out of the NHS Pension Scheme (Scotland) in 2022.

<b>Reason Given for Opting Out</b>	<b>Percentage of Opt-Outs</b>
Affordability	50.2%
Contribution Increases	0.96%
Joined Another Scheme	1.03%
Scheme Changes (other than Contribution Increases)	0.51%
Other	47.34%

By phasing in the changes gradually, we anticipate that this will dampen the impact on take home pay for lower earners and mitigate the risk of increasing the number of staff leaving the scheme on grounds of affordability.

For older members, the proposal to calculate the contribution rate based on actual annual pensionable pay rather than WTE pay will benefit those wishing to work more flexibly as they get older by working part time, as they are likely to be placed in a tier with lower contributions. While the move to a CARE scheme flattens out the added benefit from late career pay progression for higher earning members, many older members will have a ‘final salary link’ applied to their accrued old scheme service, so that they will continue to derive more value from that service than members who experience steadier pay progression through their career.

## **Sex**

The proposed changes to members contribution will apply to all members regardless of sex. However, the potential impact of the new proposals on male and female members has been considered.

Data for NHS Pension Scheme participation is also divided by sex. However, it is important to note that sex and gender are 2 different concepts. A person’s gender identity is not always the same as the sex assigned to them at birth, and some people may not identify as having a gender or as non-binary. Under the Equality Act 2010, gender reassignment is also a protected characteristic and the potential impact of these new proposals on this protected cohort has also been considered.

Data from the NHS Pension Scheme (Scotland) on membership participation relating to sex details that 79.1% of scheme members are female and 20.9% are male. It is

also the case that 79.1% of the workforce (including those who are not members of the NHS Pension Scheme) are female and 20.9% are male.

Although the NHS is a female dominant workforce, male members of the NHS Pension Scheme typically receive higher pensions than their female counterparts.

**Table 3 - Average (mean) annual basic pay in NHS Scotland, by gender and job family, with % pay gap - 2019/20 to 2020/21 (Source: Information Services Division (ISD) pay bill files 2019/20, 2020/21, from Scottish Workforce Information Standard System (SWISS))**

Job family	Female		Male		% Pay gap (1)	
	2019/20	2020/21	2019/20	2020/21	2019/20	2020/21
Allied health professions	£33,503	£34,770	£33,274	£34,616	0.7%	0.4%
Administrative services	£26,652	£27,805	£34,907	£35,663	-23.6%	-22.0%
Emergency services	£23,769	£24,462	£24,393	£24,882	-2.6%	-1.7%
Healthcare science	£32,192	£33,435	£33,209	£34,175	-3.1%	-2.2%
Medical and dental support	£26,429	£27,652	£32,228	£33,199	-18.0%	-16.7%
Medical and dental	£58,177	£59,167	£69,274	£69,804	-16.0%	-15.2%
Nursing and midwifery	£27,948	£28,852	£27,338	£28,212	2.2%	2.3%
Other therapeutic services	£38,447	£39,897	£40,205	£41,969	-4.4%	-4.9%
Personal and social care	£28,942	£29,762	£35,051	£35,703	-17.4%	-16.6%
Support services	£19,342	£20,371	£21,730	£22,551	-11.0%	-9.7%
Other	£25,602	£28,272	£26,553	£28,743	-3.6%	-1.6%
<b>Overall total (2)</b>	<b>£29,885</b>	<b>£30,939</b>	<b>£37,021</b>	<b>£37,838</b>	<b>-19.3%</b>	<b>-18.2%</b>

Source: ISD pay bill files 2019/20, 2020/21 (from SWISS)



Table 3 outlines the average (mean) annual basic pay in NHS Scotland, by gender and job family, with % pay gap - 2019/20 to 2020/21. The pay gap percentages use the average (mean) annual basic pay for males as the reference point. Therefore, the average (mean) annual basic pay for males is taken to be 100% and so a negative pay gap figure means that average (mean) annual basic pay for females is less than for their male counterparts, and vice versa.

The table outlines a total gender pay gap % within the NHS Scotland Workforce as - 18.2%. In other words, this means that females experience a pay gap of around 18%. As well as receiving higher pay than female employees, generally across the public sector male employees are less likely to work part-time and have gaps in their length of service. This is partly due to female members being proportionally more likely to have career breaks due to maternity and caring responsibilities. However, it is worth noting that not all female members will take parental leave or have caring responsibilities. Therefore, taking into consideration members' salary progression, career breaks and work patterns it is likely that male members of the NHS Pension Scheme (Scotland) typically receive higher pensions than their female counterparts. Given the long medical career ladder that many step off, this detriment is extended and cumulative, resulting in marked career-earnings, pension gaps and disproportion pension values between male and females within NHS Scotland.

A report on public sector pensions published in March 2021 by the National Audit Office (NAO), states that the average pension for male employees in the NHS in England and Wales is £17,541, compared with £6,440 for female staff. The NAO report also states that the difference in average pension payments is 63% for the NHS Pension Scheme, which is far greater than the average of 29% (Teachers' Pension Scheme) and 47% (Civil Service Pension Scheme), both of which also have a more equal spread of male to female members. Although this data relates to NHS England and Wales Pension Scheme and similar data relating to average pensions in the NHS Scotland Pension Scheme is limited, given the similar pay gap % (29% in England and Wales) and female workforce dominance (78% female in England and Wales) it is likely that this average pension disparity between male and female employees within the NHS in Scotland is also apparent.

While the move to a CARE scheme flattens out the added benefit of late career pay progression for higher earners who are more likely to be male, the proposed changes to the tier structure mean that those currently in the highest contribution tiers would benefit from a decrease in contributions. Therefore, it is also possible that women may be more likely to feel the impact of these changes than their male counterparts, as they are more likely to be among lower earning staff at present.

However, we are also aware that a considerable proportion of the NHS workforce are women who work on a part-time basis. Therefore, the move toward calculating contribution rates using actual annual pensionable pay rather than the whole-time equivalent delivers a fairer outcome for members who work less than full-time, with many likely to pay a lower contribution rate under these proposals.

### **Pregnancy and Maternity**

There is no available data on this protected group in relation to the NHS workforce or NHS Pension Scheme membership. However, we have considered the potential impact of the proposals on members who have this protected characteristic as part of our analysis on sex.

### **Disability**

The proposed changes to members contribution will apply to all members regardless of disability. However, the potential impact of the new proposals on members with disabilities has been considered.

There is some evidence to suggest that disabled people are more likely to work part-time. Data from the Office of National Statistics (ONS) on disability and employment shows that working disabled people were more likely to work part time than non-disabled people, with 32% of disabled people working part-time in comparison with 21.3% of non-disabled people. The proposed change to calculating contribution rates based on actual annual pensionable pay is therefore likely to benefit people with disabilities who are working part-time, as their contribution rate will be lower.

Furthermore, according to the Annual Population Survey data, fewer people report disabilities in occupations which are more highly paid, for example doctors (4%). However, the rate is above average in lower paid occupations, for example cleaners and housekeepers (23%) and care workers (19%). This could suggest that the proposed changes to contribution rates are likely to affect those with disabilities more than those without disabilities, as the tier structure is flattened and the gap between the lowest and highest contribution rate narrows.

### **Race/Ethnicity**

The proposed changes to members contribution will apply to all members regardless of their ethnicity. However, the potential impact of the new proposals on members of varying ethnic backgrounds has been considered.

Research has shown there are several reported barriers in the collection of ethnicity data in the UK and available data on the NHS Pension Scheme membership only covers members' age and sex.

However, The Annual Population Survey data shows that the proportion of doctors from minority ethnic backgrounds is 3 times higher than the UK workforce average for all occupations (36% compared with 12% respectively). As doctors, particularly

consultants, are typically some of the highest earners in the NHS, it is therefore likely that this group will benefit from the change in contribution rates, as their current contribution rates are likely to decrease.

Ethnic minority staff who work part-time are also likely to benefit from the proposed change to calculate contribution rates using actual annual pensionable pay rather than WTE, as this is likely to result in some members moving into a lower contribution tier.

### **Religion or belief, sexual orientation, gender reassignment and marital or civil partnership status**

The information available is not detailed enough to analyse the characteristics with regards to religion or belief, sexual orientation, gender reassignment and marital or civil partnership status. However, as contributions to the NHS Pension Scheme apply to all members equally and are based on pensionable pay, we do not believe these members are adversely, or otherwise, impacted by these proposals.

### **Recommendations and Conclusion**

#### **Members' contribution rates should change to be based on actual pensionable pay instead of members' notional whole-time equivalent pay.**

As a reflection of the increasing number of scheme members with no active final salary link, this proposal would mean that many part-time members will see their contribution amounts reduce. Members who work part time would benefit from their contributions more accurately reflecting the amount of pension they are building.

#### **The structure of member contributions should change.**

The proposed member contribution tiers were set out in this consultation document, this included a reduction in the number of tiers to 'flatten' the contribution model. These have been designed to ensure the required yield of 9.8% average member contribution is met while protecting the affordability of the scheme for the whole NHS workforce.

#### **The thresholds for the member contribution tiers would be increased in line with annual AfC pay awards.**

This proposal would benefit members under the current structure who find that small salary increases due to centrally agreed annual pay awards can lead to moving up a contribution tier, and a net reduction in take-home pay.

#### **The proposed member contribution structure would be phased over 2 years.**

As the proposals mean that some members will see an increase in their pension contributions, the changes are proposed to be introduced over a phasing of 2 years. This approach would minimise the impact on take-home pay while giving members time to adjust to the change.

# Annexe C: Scottish Government ‘Assessment not Required’ document in relation to the Fairer Scotland Duty Assessment

## Fairer Scotland Duty

### Assessment not required declaration

Policy title	The NHS Superannuation and Pension Schemes (Scotland)(Miscellaneous Amendment) Regulations 2024
Directorate: Division: Team:	Scottish Public Pensions Agency (SPPA) Policy Team
Policy lead responsible for taking the decision	Iain Coltman

Rationale for decision
After consulting SGLD, it was concluded that the making of the above SSI does not qualify as a strategic decision, as outlined on page 15 of the Fairer Scotland Duty Guidance. Therefore, it has been determined that a Fairer Scotland Duty Assessment may not be required.

**I confirm that the decision to not carry out a Fairer Scotland assessment has been authorised by:**

Name and job title of Deputy Director (or equivalent)	Date authorisation given
Stephen Pathirana, Director, Chief Executive, SPPA	1 October 2024