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Pension tax rules - impact on NHS consultants and GPs

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Summary

This note looks at the concerns about the impact of the 'tapered annual allowance' on some senior NHS clinicians and GPs.

Pension tax rules

The annual allowance (AA) limits the amount of annual pension savings that benefit from tax relief. The standard AA is now £40,000, down from £255,000 in 2010. To mitigate the impact of reductions in the AA, the Coalition Government legislated to allow people to carry forward unused allowances from the previous three years.

There is also a tapered AA, introduced in April 2016, which operates to reduce an individual's AA, by £1 for every £2 of 'adjusted income' (essentially, total taxable income plus the real growth in value of pension rights over the year) over £150,000, down to a minimum of £10,000.

These rules apply across pension schemes in the public and private sectors. However, the nature of work - with consultants taking on additional work, often at short notice, to cover service pressures – means there has been an impact across the NHS. The tapered AA is having a greater impact in 2019/20, because this is the fourth year since its introduction, meaning that the capacity to carry forward unused allowances from previous three years is greatly reduced (DHSC consultation, July 2019).

Plans for NHS pension scheme flexibility

The DHSC consulted earlier this year on proposals to allow senior medical staff to opt to build up pension benefits at a lower rate, in order to reduce the risk of incurring a tax charge. The BMA described the proposals as a 'sticking plaster' and said that the pension tax rules needed to change - in particular, that the tapered AA should be scrapped.

On 18 November 2019, NHS England Chief Executive, Simon Stevens, asked Health Secretary, Matt Hancock, to agree to a plan to allow the NHS to compensate senior clinicians incurring a pension tax charge in 2019/20. In support, he included evidence from the Academy of Royal Medical Colleges, which said that its findings showed that "service is being put at risk because of the current pension taxation position." The Secretary of State for Health agreed to the proposal for reasons of "urgent operational necessity" and on 7 December confirmed that this would be a binding contractual commitment.

The NHS England explains that "clinicians who are members of the NHS Pension Scheme and who as a result of work undertaken in this tax year (2019/20) face a tax charge in respect of the growth of their NHS pension benefits above their pension savings annual allowance threshold will be able to have this charge paid by the NHS Pension Scheme (by completing and returning a 'Scheme Pays' form before 31 July 2021)."

The BMA said it was reassured by this but that urgent reform of the pension tax rules was needed. On 17 December, it called for Scottish doctors to have the same option, in addition to the short-term scheme already offered by the Scottish Government.

Review of pension tax rules

HM Treasury said in August that it would "review how the tapered annual allowance supports the delivery of public services, such as the NHS." On 18 December 2019, the DHSC confirmed that it would "carry out an urgent review of the pensions annual allowance taper problem" which would report at the Budget.

1. Pension tax rules

Pension tax relief works on the principle that contributions to pensions are exempt from tax when they are made, but taxed when they are paid out. Pension contributions made by individual employees are usually paid out of pre-tax salary, so tax relief is received at the individual's marginal tax rate. The main limits that apply are:

- The annual allowance (AA) - which limits the amount of annual pension savings that benefit from tax relief. There is a tax charge if contributions, or the value of benefits accrued in a year, exceed the AA.[1] This is broadly intended to recoup the tax relief they would have received on the excess contributions.[2]
- The lifetime allowance (LTA) - which limits the amount of pension saving over an individual's lifetime that can benefit from tax relief. Pension savings are tested against the LTA at 'benefit crystallisation events', for example, when an individual becomes entitled to a lifetime annuity. A breach of the LTA leads to a charge (25%, if the excess is a pension, or 55% if it is a lump sum). [3]

1.1 Reductions in the AA

At introduction in 2006, the AA was set at £215,000 and the LTA at £1.5 million.[4] Both were set to increase in stages, with the LTA reaching £1.8 m and the AA £255,000 by 2010.[5] Since 2010, both allowances have been reduced:

- The LTA is now £1,055,000.
- The standard AA was reduced from £255,000 to £50,000 in 2011 and then to £40,000 in 2014.
- From April 2016, there has been a tapered AA, applying to higher income individuals.

The legislation is in the *Finance Act 2004* (part 4, chapter 5). Detailed guidance is in HMRC's Pension Tax Manual – Lifetime Allowance and Annual Allowance.

Measuring DB pension rights against the AA

The NHS Pension Scheme – like the other main public sector schemes – is a defined benefit (DB) scheme i.e. one which provides pension benefits based on salary and length of service. Rights in DB schemes are measured against the tax limits not by looking at the contributions made, but at the value of annual pension benefits that have been built up and multiplying it by a set figure. In the case of the AA, you look at

1 *Finance Act 2004*, Pt 4; HMRC Pension Tax Manual – annual allowance
2 HMRC, Pension Tax Manual - Annual Allowance: tax charge/rate of tax charge/general
3 Pension Tax Manual – Pension Tax Manual – The Lifetime Allowance charge
4 Ibid
5 Budget 2004, para 5.45

the increase in the value of pension rights over the year and multiply it by 16.[6]

Measures to mitigate the impact of the reduced AA

When bringing forward its proposals to reduce the standard AA in October 2010, the Coalition Government said those who could "save more than an AA in the range of £30,000 to £45,000 in a year are concentrated among the highest earners."[7] However, the nature of DB schemes could lead to some individuals on low to moderate incomes exceeding the AA (for example, on promotion).[8] It noted that:

> 1.5 It is relatively simple for individuals who are members of defined contribution (DC) schemes to identify and control contributions into their pension pot. However, the Government recognises that this is more difficult for members of defined benefit (DB) schemes, particularly traditional final salary schemes. This is because DB pension-holders receive a future pension promise determined by various factors including length of service, scheme accrual rate, level of salary, and rate of salary increase. In particular circumstances, the combination of these factors could create uneven, and potentially sizeable, annual increases in pension in certain years.[9]

It considered whether increases in pension rights relating to past service should be ignored for these purposes but decided against.[10] Instead, it decided to allow individuals to "offset excess contributions against unused allowance from up to the previous three years."[11]

It recognised that there would still be cases where a tax charge would arise that would be difficult to meet out of current income.[12] Following consultation it legislated to allow members to elect for a charge to be met from their pension benefits where: they have exceeded the standard AA (£40,000); and the tax charge is more than £2,000.[13]

Sometimes referred to as 'scheme pays', this involves the scheme effectively making a loan to the individual to pay the charge, which they must later repay with interest.[14] Pension schemes have discretion to offer 'scheme pays' in a wider range of circumstances.[15]

6 *Finance Act 2004*, s234; Gov.UK, Work out your reduced (tapered) annual allowance/work out your pension savings. In the case of the LTA, a multiplier of 20 applies (*Finance Act 2004*, s212 and 276)
7 HM Treasury, Restriction of pension tax relief: a discussion document on the alternative approach, July 2010, para 3.1
8 Ibid, para 3.4
9 HM Treasury, Options to meet high annual allowance charges from pension benefits: a discussion document, November 2010
10 HM Treasury, Restriction of pension tax relief: a discussion document on the alternative approach, July 2010, para 3.4
11 HM Treasury, Restricting pensions tax relief through existing allowances: a summary of the discussion document responses, October 2010, summary and para 3.6
12 HM Treasury, Options to meet high annual allowance charges from pension benefits: a discussion document, November 2010, para 1.7
13 HC Deb, 3 March 2011, c31-2WSHMRC's Pensions Tax Manual – Annual allowance: tax charge: scheme pays: general
14 HL 17506, PQ 6 August 2019; NHSBA/Member Hub/Annual Alllowance/Scheme Pays FAQs. See also NHSBA 'Scheme Pays Election Guide'
15 Ibid; NHS Pension Scheme, Annual Allowance – scheme pays election

1.2 How the tapered AA works

The tapered AA applies if an individual has:

- 'adjusted' income over £150,000 per year; 'adjusted income' is essentially total taxable income plus the real growth in value of pension rights over the year AND
- 'threshold' income over £110,000 per year; 'threshold' income is essentially total taxable income, but net of the value of any employee pension contributions.

See HMRC guidance - work out your (reduced) tapered annual allowance.

For individuals who tick both these boxes, every £2 of adjusted income over £150,000 reduces the amount they can contribute tax free to their pension (their AA) by £1, down to a minimum of £10,000:[16]

Adjusted income	AA
£150,000	£40,000
£160,000	£50,000
£170,000	£30,000
£180,000	£25,000
£190,000	£20,000
£200,000	£15,000
£210,000	£10,000

Why it was introduced

In 2015, the Government estimated that reductions in the AA and LTA meant that had contributed "over £6 billion a year to repairing the public finances" and "significantly reduced the share of pensions tax relief that goes to additional rate taxpayers." It expected the introduction of the tapered AA to continue these trends.[17]

When the legislation was before Parliament, the then Treasury Minister David Gauke explained that the tapered AA was "focused on the wealthiest pension savers, to ensure that the benefit they receive is not disproportionate to that of other pension savers."[18] The Government estimated that the tapered AA measure would save some £4bn over the six years to 2020-21, with the annual saving rising to £1.28 billion in 2020-21:[19]

16 BMA Annual allowance examples; See also, Gov.UK tapered annual allowance policy paper; Royal London, Finding the right medicine, May 2019.
17 HM Treasury, Strengthening the incentive to save: a consultation on pensions tax relief, Cm 9102, July 2015, para1.5 and 2.6
18 PBC Deb 13 October 2015 c83
19 HM Treasury, Overview of tax legislation and rates, July 2015, p62

2. Impact on the NHS

In its consultation published on 22 July 2019, the Department of Health & Social Care (DHSC) said that the nature of work meant it was having more of an impact in the NHS than elsewhere. It was having more of an impact in 2019/20 than in previous years because the passage of time meant that the potential for carry forward of unused AA from previous years had been greatly reduced.:

> 1.11 In April 2016, tapering of the Annual Allowance for those whose net income (the taxable income shown on their payslip) exceeds £110,000 and whose adjusted income (net income plus annual pension growth) exceeds £150,000 was introduced. Tapering reduces the amount of annual allowance by £1 for every £2 over £150,000. The minimum annual allowance for adjusted income over £210,000 is £10,000. The tax year 2019/20 is the 4th year since tapering was introduced and therefore the potential for carry forward of allowances has been greatly reduced. Critically, the tapered annual allowance calculation includes non-pensionable pay, including pay for additional sessions above full-time hours worked by many consultants and therefore has brought increasing numbers of high earners in the NHS within the scope of pension tax. Whilst we have received a number of representations on this issue and its impact on consultants, in particular, matters of tax policy are the responsibility of the Treasury.
>
> 1.12 NHS consultants and GPs have the opportunity to take on additional work each year and can flex their income up or down. Consultants typically volunteer for additional non-pensionable sessions of work, often at short notice, to cover service pressures. As payment for this work counts towards the tapered annual allowance, many more senior clinicians are being caught by pension tax. The design of the taper also creates cliff edges. It has been argued by some that the operation of the taper is difficult to predict, particularly when a senior clinician is unsure what level of income that they will earn within a tax year. Around a third of NHS consultants and GP practice partners have earnings from the NHS that could potentially lead to them being affected by the tapering annual allowance.[20]

In March 2019, the BMA wrote to the then Chancellor Exchequer Philip Hammond saying that the rules were "forcing some of our most experience doctors to retire, reduce their workload, abandon leadership positions and stop covering vacancies":

> The causes of this problem are complex and are explained more fully in the appendix to this letter. However, in essence the nature of the calculation of pension growth in defined benefit schemes such as the NHS pension scheme, the introduction of tapering to Annual Allowance coupled with the way pension growth is calculated for members who are members of two NHS pension schemes, means that significant – four, five and six figure charges in addition to PAYE and other tax charges - and regular Annual Allowance charges have now become a problem that will affect all full time consultants. In order to avoid these Annual Allowance charges, consultants must limit their income, and in most cases, this means stopping doing regular overtime in the form of

> additional programmed activities. The majority of NHS services rely, at least in part, on these additional programmed activities to deliver routine patient care. Astonishingly, as a result of these Annual Allowance tax charges, it may also make financial sense for consultants to consider working part-time. This is because the majority of consultants cannot afford to pay these bills from their 'net' take-home pay, since they are such substantial sums, and have no choice but to pay these tax bills from their pension using the 'scheme pays' option. Consequently, as a result of paying this tax and the interest rate charged on this loan, they may paradoxically receive a significantly higher pension by working part-time once the 'scheme pays' loan is deducted.
>
> A further problem is that large numbers of doctors have incomes close to the 'threshold income'. Again, because of the way that pension growth is calculated and then included in the calculation of 'adjusted income', very small increases in taxable income can push doctors over a 'tax cliff' resulting in tax rates in excess of several hundred percent where this coincides with a pensionable pay rise. At a time when the NHS is reliant on its staff doing additional sessions and waiting list initiatives to prop up front line clinical services, this provides a powerful disincentive as doctors may find that they not only derive no financial benefit from the extra work but are in effect themselves paying significant sums in order to take on this extra work. Alternatively, and equally unattractive than paying to go to work, consultants using 'scheme pays' may find this work significantly reduces their pension, for work that is non-pensionable and would have given them no gain to their pension.[21]

The DHSC consultation published on 22 July explains that, for some higher earners, the effect had been to reduce their total reward package compared with members at lower earnings:

> The NHS Pension Schemes are a valuable part of the total reward package for NHS staff and are among the most generous pension schemes available. However, for a relatively small but important group of staff, the interaction of the Schemes with the pension tax regime has created significant challenges. The evidence the Department has demonstrates that the largest groups affected are high earning consultants and GPs. Stakeholders have suggested that the effect of this is that for some high earners, the value of the total reward package that they receive with employer pension contributions of 20.6% is diminished compared with members at lower earnings levels.[22]

There was evidence that some senior clinicians were reducing their workload to manage their tax charge liability:

> 1.23 The NHS Pension Schemes are a valuable element of the total reward package offered by the NHS to staff. The NHS Pension Schemes provide generous benefit accrual for members and the Department understands this means many senior clinicians are exceeding their annual allowance for tax-free pension saving, producing a tax charge. In response, there is evidence that senior clinicians are managing their annual allowance tax charge liability by reducing their workload, turning down extra responsibilities or opportunities and/or retiring early.

[21] BMA letter to Chancellor to the Exchequer, Philip Hamond, March 2019
[22] DHSC, NHS Pension Scheme: proposed flexibility, 22 July 2019

> Consequently, there is a reduction in NHS service capacity and patient care is adversely affected.[23]

On 20 October, the Royal College of Physicians said a survey of its members had revealed that almost half (45%) have decided to retire at a younger age than previously planned, with 86% of them citing pension concerns as one of their reasons for this decision. Furthermore:

> The survey of 2,800 doctors nearing retiring age, showed that in the last 2 years, 38% of clinicians aged 50 to 65 report having had an annual pension allowance tax charge due to exceeding their pension threshold.
>
> As a consequence:
>
> - 62% of senior clinicians said that they avoided extra paid work (such as waiting list initiatives or covering for colleagues)
> - 25% have reduced the number of programmed activities they work
> - 22% have reported having stepped down from a leadership or other role with extra remuneration.[24]

On 4 November 2019, the Academy of Royal Medical Colleges wrote to the Chancellor of the Exchequer and the Health Secretary with evidence that it had gathered, which it said painted "a stark picture of the negative impact across different specialties and across the UK." It urged the Government to consider reform of the pension tax rules:

> It is evident from the findings that, due to severe medical staff shortages, the NHS has become entirely dependent on consultants delivering service provision over and above their existing contracts; this service is being put at risk because of the current pension taxation position. Furthermore, our findings indicate that pensions taxation is undermining staff morale, which is detrimental to the recruitment and retention of the medical workforce. Staff shortages in the NHS are a significant concern and we must ensure these pressures do not intensify further as a result of the pension arrangements. The Academy welcomes the UK government's decision to review the current rules for clinicians and is seeking a more flexible approach for doctors to ensure that they are not deterred from taking on the essential additional work needed to support patient care. We are particularly concerned with the taper on the annual allowance and believe that the proposed flexibility around accrual will be insufficient to tackle the long-term problems. We urge the Government to consider how it can reform pension arrangements to best support doctors to deliver high-quality patient care.[25]

In November, the Royal College of Surgeons said a survey of its members had found that

> […] 69% of consultant surgeons have reduced the amount of time they have spent working in the NHS as a direct result of changes to pension taxation rules. This coincides with a period of rising and record waiting lists for planned operations.

23 Ibid para 1.23
24 Pension tax driving doctors to retire early, Royal College of Physicians, October 2019
25 See appendix of letter from Simon Stevens to Matt Hancock of 18 November 2019

> In addition, our survey shows that 68% of consultant surgeons are considering early retirement because of the new pension arrangements.[26]

2.1 Impact elsewhere

This is not just an issue for the NHS. The pension tax rules apply in the same way across registered pension schemes in the public and private sector.

The nature of work in the NHS - with consultants having the opportunity to volunteer for additional sessions of work, often at short notice, to cover service pressures – may mean there is more of an impact in this area. The BMA has also raised concerns about the impact on doctors in the Defence Medical Services.[27] The impact on other public servants – including the senior military, the judiciary, and senior civil servants – has featured in reports of the pay review bodies.[28] The impact on judges is discussed in Library Briefing Paper CBP 8540, section 2.2.

The fact that there is often more flexibility in remuneration packages in the private sector may mean there is less of an impact there. In April 2019, the then Chancellor of the Exchequer, Philip Hammond said to the Treasury Select Committee that someone in the private sector who found they were likely to face a tapered annual allowance charge would "often be able to arrange to change to their remuneration package, so they get more pay and less pension contribution."[29]

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[26] RCS Survey on the NHS Pension Scheme, 7 November 2019; Royal College of Surgeons press release, 22 November 2019

[27] https://www.bma.org.uk/news/media-centre/press-releases/2019/may/bma-calls-on-government-to-address-pension-crisis-facing-armed-forces-medical-workforce

[28] E.g, Review Body on Senior Salaries, Cm 9694, Sept 2018, para 3.89-90; Doctors' and Dentists Pay Review Body, Cm 9670, July 2018 – see also table 11.1

[29] HC2506 24 April 2019

3. The Government response

3.1 NHS Pension Scheme flexibilities

On 10 April 2019, the then Health Minister Stephen Hammond said scope of the 'voluntary scheme pays' facility in the NHS scheme would be extended to cover the payment of tax charges from breaches of the tapered AA (i.e. individuals could apply to have a charge arising from the tapered annual allowance to be paid from their pension benefits).[30]

On 22 July 2019, the DHSC launched a consultation on introducing more flexibility into the NHS Pension Scheme – in the force of a "50:50 option whereby senior clinicians who expect to be affected by the annual allowance can elect at the beginning of the year to reduce their contributions and their pension accrual by 50%."[31]

On 6 August 2019, the Government said that the Department for Health and Social Care would launch a further consultation, replacing that launched on 22 July, on a proposal to allow senior clinicians in the NHS in England and Wales to set the exact level of pension accrual at the start of each year and allowing employers the option to recycle their unused pension contribution back into the clinician's salary.[32]

A further consultation, launched on 11 September to run to 1 November 2019, included proposals that would allow clinicians whose 'work patterns mean they have a reasonable prospect of incurring an annual allowance tax charge' to:

> • Choose before the start of each scheme year (1 April) a personal accrual level and pay correspondingly lower employee contributions. The accrual level chosen would be a percentage of the normal scheme accrual level in 10% increments. For example, 50% accrual with 50% contributions, 30%:30% or 70%:70%.
>
> • Fine tune their pension growth towards the end of the scheme year by updating their chosen accrual level when they are clearer on total earnings. For example, go from 50%:50% to 60%:60%. The updated accrual level would be higher than initial level and have retrospective effect from the start of the scheme year. Contribution arrears from the higher accrual level would be payable by the member and employer before the end of the scheme year.
>
> Where clinicians use the flexibilities to choose a lower accrual level than the full rate, the employer will also pay lower contributions. Employers have the discretion to pay to the member unused employer contributions in these circumstances, although this would be a decision for individual employers. Unused employer contributions could be paid by nonrecurrent lump sum at the end of the scheme year after any updating of the chosen accrual level for that year.[33]

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30 PQ 239952, 10 April 2019; NHS Pensions, Scheme pays - FAQs, Feb 2019; PQ 261238, 11 June 2019; *Finance Act 2011*, Sch 17

31 Ibid, para 1.21

32 HM Treasury, NHS pensions for senior clinicians: new changes announced to improve care, 7 August 2019

33 NHS Pension Scheme: increased flexibility, September 2019

The Department would also work on measures to help those affected "understand their tax liability and how these new flexibilities can be best used to support individual circumstances and preferences."

In its response to the consultation published on 23 October 2019, the BMA described the proposals as a 'sticking plaster' and said changes in the pension tax rules were needed:

> While the proposals in the consultation from the DHSC offer short-term mitigations, they are merely a sticking plaster that fail to address the crux of the problem. Only by scrapping the damaging annual and tapered annual allowance will the government stem the flow of doctors refusing additional work or considering leaving the profession over the issue. This lies with the Treasury […] Any flexibilities without insisting that employers fully recycle their contributions back to the employee is worthless. During their career, a doctor's pension forms a vital part of their reward package, and we cannot support what is effectively a pay cut for our colleagues.[34]

Compensation for senior clinicians

On 18 November 2019, Chief Executive of the NHS, Simon Stevens, wrote to Health Secretary Matt Hancock asking for his agreement to a proposal to compensate certain senior NHS clinicians who incur a tapered annual allowance charge arising from their membership of the NHS Pension Scheme in 2019/20:

> As you know, there is sustained concern across the NHS about the operational impact of pensions tax penalties on the availability of clinical staff. Staffing constraints and the nature of clinical contracts mean the NHS is arguably much more exposed to these impacts than other public services. While the various in-year flexibilities already announced are helpful, they are clearly not sufficient to prevent large numbers of senior clinicians reducing their sessional commitments, including in A&E departments, general practice and undertaking waiting list operations.[…]
>
> Given the deferral of the Budget and the calling of an election, it is now clear that a substantive answer to the tapered annual allowance issue is unlikely to be forthcoming until the new tax year, from April 2020. In the mean-time there is an urgent operational requirement to remediate further the situation, so as to try and remove barriers to needed clinical staffing over the winter period.
>
> To that end, as you know, we have been working with your officials and HMT on an in-year mitigation. This will involve a commitment to make payments to certain clinical staff outside of the NHS pension schemes to restore the value of their pension benefits package, if they have elected to use the "Scheme Pays" facility to settle an annual allowance tax charge arising from of their pension saving in the NHS schemes in 2019/20.[35]

In a letter of 22 November, Mr Hancock gave his consent to these proposals. He advised that that in drafting the details of the scheme, the

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[34] 'Government pension plans threaten 'significant' cuts in doctors' pay, warns BMA'. GP online, 24 October 2019

[35] Letter from Simon Stevens to Matt Hancock, 18 November 2019

NHS should take steps to minimise the risk of it constituting tax avoidance.[36]

The FT reported that the BMA was seeking a "legal guarantee from the National Health Service that it will cover pension tax bills as front-line staff appear sceptical about a government plan to convince them to work extra shifts to prevent a winter care crisis."[37]

On 7 December, the Secretary of State for Health confirmed that these contractual commitments would be honoured when clinicians retired:

> This statement confirms in relation to the NHS in England that the contractual commitments being entered into to make payments to clinicians affected by annual allowance pension tax will be honoured when clinicians retire.
>
> NHS England has set up special arrangements under which certain clinicians who provide services to the NHS and incur annual allowance tax charges as a result of their continued membership of any NHS pension scheme in 2019/20 (the Tax Charge):
>
> - will be able to look to the NHS Pension Scheme to pay those tax charges under the Scheme Pays arrangements
> - will receive additional payments in the future to compensate for any reduction in such payments as a result of the payment by NHS Pensions of the Tax Charge under the Scheme Pays rules/[38]

NHS England explains:

> We have heard loud and clear from NHS staff that pensions tax rules are impacting upon staff who want to help their patients by working additional hours.
>
> There is an urgent operational requirement to tackle the problem in the NHS in England. As a result, NHS England and NHS Improvement have decided to take exceptional action:
>
> - Clinicians who are members of the NHS Pension Scheme and who as a result of work undertaken in this tax year (2019/20) face a tax charge in respect of the growth of their NHS pension benefits above their pension savings annual allowance threshold will be able to have this charge paid by the NHS Pension Scheme (by completing and returning a 'Scheme Pays' form before 31 July 2021) meaning that they **don't have to worry about paying the charge now** out of their own pocket.
> - **and**
> - The NHS employer will make a contractually binding commitment to pay them a corresponding amount on retirement, ensuring that they are **fully compensated in retirement** for the effect of the 2019/20 Scheme Pays deduction on their income from the NHS Pension Scheme in retirement.

36 Letter from Matt Hancock to Simon Stevens, 22 November 2019
37 'Doctors seek legal guarantee from NHS on pensions tax', *FT*, 28 November 2019
38 Gov.UK, Statement from the Secretary of State on the Clinician Pension Tax Scheme; Gov.UK, Senior Clinicians Pensions, Letters between DHSC and NHS England

> This scheme will be implemented with no net cost to trusts or CCGs.[39]

3.2 Review of pension tax rules

Some commentators have argued strongly that more flexibility in pension arrangements will not go far enough. The BMA has said that the 50:50 proposal would "categorically not solve the problem." It would "not only result in doctors receiving a lower pension, but also does not remove the perverse incentive for doctors to reduce the work they do for the NHS."[40] Royal London agreed, saying:

> **The best solution would be to remove a complex and unpredictable feature of the tax system**– the tapered annual allowance – even if this required a reduction in the overall annual allowance.[41]

In April 2019, the then Chancellor of the Exchequer, Philip Hammond, said it would be difficult to change the rules for one group: "because it is already extraordinarily generous, particularly to those on the highest incomes. Clearly, we cannot say that we will treat NHS staff differently from everybody else, just because we are the employer in that case."[42]

However, on 6 August 2019, the new Chancellor of the Exchequer, Sajid Javid, said HM Treasury would "review how the tapered annual allowance supports the delivery of public services such as the NHS".[43] The BMA welcomed this as a step forward.[44]

The *FT* reported that unions representing dentists and firefighters had warned the government it could face a legal challenge if it failed to extend pension flexibility to other public sector workers.[45]

In a report published on 10 October 2019, the Office of Tax Simplification recommended that the Government "continue to review the annual allowance and lifetime allowances and how, in combination, they deliver against their policy objectives, taking account of the distortions (such as those affecting the National Health Service) they sometimes produce."[46]

On 18 December 2019, following the general election, the DHSC said it would conduct an urgent review, to report at the next Budget:

> The measures will be part of the upcoming NHS People Plan, which will set out work to reduce vacancies across the NHS and secure the staff needed for the future.
>
> As part of a wider drive to make sure the NHS continues to have the staff it needs to meet demand, the government has also confirmed that it will carry out an urgent review of the pensions

39 NHS England Pension tax annual allowance
40 Letter to the Prime Minister on 8 June 2019, the BMA
41 Royal London, Finding the right medicine, May 2019.
42 Oral evidence to Treasury Select Committee, HC 2056, 24 April 2019 Q336
43 Ibid
44 BMA press release, 7 August 2019
45 'Unions threaten legal challenge over pension measures', *Financial Times*, 7 August 2019 (£)
46 Office of Tax Simplification, Taxation and life events, 10 October 2019

> annual allowance taper problem. This issue has caused some doctors to turn down extra shifts for fear of high tax bills.
>
> Treasury and health ministers will meet the Academy of Medical Royal Colleges and the British Medical Association as part of this review and the government will continue to hear evidence from other relevant professional bodies. The review will report at Budget.[47]

3.3 The Scottish Government's proposals

The Scottish Government has the power to make regulations for the NHS Pension Scheme in Scotland.[48] BMA Scotland called on it to "respond rapidly to ensure Scottish doctors are in no way disadvantaged compared to UK counterparts."[49] Pension tax legislation is UK-wide.[50] Power to change it is reserved to the UK Government.[51]

In November 2019, the Scottish Government announced a short-term scheme to mitigate the impact.[52]

BMA Scotland described it as "fiendishly complicated", with several hoops to jump through, but "a welcome step in the right direction."[53]

On 17 December, the BMA called for the compensation scheme for senior clinicians in England also to be an option in Scotland:

> Fundamentally, this situation can only be solved in the long term by a complete overhaul of the pension tax rules. However, in acknowledgement of the impact that doctors being forced to reduce hours is having on capacity in the NHS, the Scottish Government recently introduced a **short-term scheme**. This allows doctors to receive payments in lieu of the employer pension contribution if they leave the NHS pension scheme and are able to demonstrate the did so due to potential tax charges.
>
> In England many individual employers have offered a similar scheme to REC, however in addition NHS England have now launched a further **nationwide scheme** where they have guaranteed in retirement to make up the costs of any 'scheme pays' loan a doctor has to take out to pay their 2019-20 pension tax bill. This scheme is not yet available to doctors in Scotland.[54]

It said that while neither scheme was perfect, both should be an option until a longer-term resolution was found:

> To be clear, neither of the short-term schemes in either England or Scotland are perfect. They both come with risks and neither provide the long term, complete resolution that we desperately need. The new Government in Westminster must make reform of the annual allowance and taper an urgent priority.
>
> "However, the Scottish Government have listened to us and taken some steps forward with the REC scheme in Scotland, which will

[47] Nursing students to receive £5,000 a year, DHSC press release, 18 December 2019
[48] *Public Service Pensions Act 2013*, s2 AND Sch 2
[49] BMA Scotland respond to Westminster Pension Tax Announcement, 7 August 2019
[50] *Finance Act 2004*, Part 4
[51] *Scotland Act 1998*, (as amended), Sch 5 (II) (A1); Library Briefing Paper CBP 8544
[52] NHS circular PCS (PP) 19/1
[53] BMA Scotland blog, Pensions update – a small step forward, November 2019
[54] Scottish doctors must have access to all options to mitigate pension tax charges, BMA press release,17 December 2019

help some doctors for this tax year. In England, the BMA has worked hard with independent legal counsel to ensure that clinicians covered by the national scheme introduced there have a legally binding, contractual entitlement to receive payments when they retire in return for using Scheme Pays – a mechanism to cover their current bills - backed by any future UK government.

"Given this development, we are asking the Scottish Government to work with their UK counterparts to also make this option available to Scottish doctors. The English scheme does mean that doctors would not have to leave the pension scheme to benefit and may also ultimately provide some help for some GPs. So, it is crucial that those Scottish doctors who may benefit should have access to it.

"Having both schemes on offer in Scotland would allow doctors to choose the option best suited to them until more long-term solutions are introduced.[55]

[55] Ibid

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