EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE PENSION SCHEME (MEMBER CONTRIBUTIONS) (AMENDMENT) REGULATIONS 2025

2025 No. 821

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Karin Smyth, Minister of State for Health (Secondary Care) at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

2.2 Fiona Walker, Deputy Director for NHS Pensions Policy, at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kate Solomon at the Department of Health and Social Care Telephone: 0113 254 6863 or email: nhspensions@dhsc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the rules of the 2015 NHS Pension Scheme to update the member contribution tier thresholds from 1 April 2025 onwards. These thresholds, based on pensionable pay, determine the rate of contributions members must pay in order to accrue benefits in the NHS Pension Scheme.

4.2 By way of background, there are two NHS Pension Schemes. The legacy NHS Pension Scheme, which closed to new members from 1 April 2022, is comprised of two Sections (the 1995 Section and the 2008 Section). The reformed NHS Pension Scheme (the 2015 Scheme) is open to new members and is the scheme to which all members and employers currently pay contributions. This instrument amends the statutory instrument that governs the 2015 Scheme: the National Health Service Pension Scheme Regulations 2015 (SI 2015/94) ("the 2015 Regulations").

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

5. Policy Context

What is being done and why?

5.1 This instrument uplifts the member contribution tier thresholds in the 2015 Scheme in line with the Agenda for Change (AfC) pay award in England for 2025-2026. To match the terms of the pay award, the instrument uplifts the tier thresholds with retrospective effect from 1 April 2025.

5.2 In doing so, this instrument delivers on a commitment made by the Department in February 2024 to uplift the member contribution tier thresholds in the 2015 Scheme annually according to a 'better of' test. Under this policy, the tier thresholds in the 2015 Regulations are uplifted automatically each year by the percentage increase in the Consumer Prices Index (CPI)[1] from the previous September. Then, the 'better of' test is applied once the AfC (England) pay award for the year is known. If this pay award is higher than the percentage increase in CPI from the previous September, the Department will consult on and lay an instrument to apply the marginal increase to the tier thresholds in the 2015 Regulations.

5.3 This policy acts to ensure that the tier thresholds remain up to date, and to reduce the likelihood of members moving into the next contribution tier solely as a result of receiving a nationally agreed pay award. Whilst not all members of the NHS Pension Scheme will receive the AfC pay award in England, the Department considers this to be the most appropriate of the pay awards to use in uplifting thresholds, as it is received by the greatest number of scheme members.

5.4 For scheme year 2025/2026, the tier thresholds increased automatically on 1 April 2025 by 1.7%, the percentage increase in CPI from September 2024. The AfC pay award in England has now been announced and is 3.6%. Therefore, in line with the 'better of' test, this instrument is required to uplift the tier thresholds.

5.5 To do this, amending regulation 2 amends regulation 30 'Members' contributions: employees' of the 2015 Regulations, such that the pensionable earnings bands (tier thresholds) which apply to employee members of the NHS Pension Scheme at table are uplifted in line with the 2025/2026 AfC pay award in England. This amending regulation also amends the relevant dates in this regulation, such that the tables containing these pensionable earnings bands apply from scheme year 2025/2026 rather than 2024/2025, and the bands are updated automatically – in line with CPI – from scheme year 2026/2027 onwards, rather than 2025/2026.

5.6 Regulation 3 of this instrument amends regulation 31 'Members' contributions: practitioners and non-GP providers' to make similar changes for practitioner and non-GP provider members of the NHS Pension Scheme. Amending regulation 3 creates a new table with the uplifted pensionable earnings bands to apply from scheme year 2025/2026 until 2027/28 and amends the dates during which the existing table applies, from scheme years 2024/25 to 2027/28 to simply scheme year 2024/2025. This difference in approach, which maintains the 2024/2025 table in regulations for practitioner and non-GP provider members, is necessary due to the different method required to calculate these members' contributions, with practitioner and non-GP providers undergoing a reconciliation process which requires looking back to the table for the previous scheme year.

[1] For this purpose, the "consumer prices index" is defined as the general index of consumer prices (for all items) published by the Statistics Board.

What was the previous policy, how is this different?

5.7 In the time between announcing the 'better of' test in February 2024 and laying this instrument, the Department has applied the 'better of' test once, for the 2024/2025 scheme year. However, this did not result in a statutory instrument as the AfC pay award in England (5.5%) was lower than the percentage increase in CPI from the previous September (6.7%).

5.8 Prior to the announcement of the 'better of' test in February 2024, the member contribution tier thresholds were increased each year in line with the AfC pay award for England, through a series of statutory instruments. However, before the 'better of' test was announced there was no mechanism in the regulations for the tiers to be uplifted automatically in line with CPI, unlike in comparable public sector pension schemes. Because the Department was required to conduct a public consultation process and lay a statutory instrument in the time between the AfC pay award being announced and it being paid to staff, there was often a delay in between the implementation of the pay award and the uplifting of the tier thresholds,

5.9 Whilst under the current policy, the uplift to the tier thresholds in line with the AfC pay award in England is not automatic (this is not possible, due to the nature of this pay award), the 'better of' test minimises the risk of members moving into a higher contribution tier upon receiving their pay award, as by that time the contribution tier thresholds will have already been updated once, in line with CPI, in the April of that year.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2013 Act provides a power for the Secretary of State to make regulations establishing the 2015 Scheme. The 2015 Scheme is set out by the National Health Service Pension Scheme Regulations 2015 (SI 2015/94).

6.2 This instrument gives effect to the policy changes described in section 5 by making amendments to the 2015 Regulations as described in paragraphs 5.5. and 5.6.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes. The NHS Pension Schemes are statutory, and the scheme rules are set out in regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department of Health and Social Care consulted with the Scheme Advisory Board (SAB) for the NHS Pension Scheme on these changes. In accordance with section 7 of the 2013 Act, the NHS Pension Scheme has a SAB, made up of representatives from NHS employers, NHS trade unions and the scheme administrator. The SAB has responsibility for providing advice to the Secretary of State for Health and Social Care on the desirability of changes to the NHS Pension Scheme when requested.

7.2 Consulting with the SAB, rather than the general public, was appropriate on this occasion as the policy underpinning the changes made by this instrument was the

subject of a previous public consultation[2], which ran from 26 October 2023 to 7 January 2024. The 'better of' test, which this instrument delivers, was formally announced in the Department's response to this consultation. This response was published on GOV.UK on 22 February 2024[3].

7.3 In this response, the Department stated that it would consult with the SAB when it had applied the 'better of' test and intended to uplift the member contribution tier thresholds in line with the AfC pay award in England. This is a proportionate way of minimising the time between the pay award going into payment and the increased tier thresholds taking effect, because the SAB comprises representatives of individuals and groups who are likely to be affected by the increase in tier thresholds.

7.4 The consultation with the SAB this year therefore focused on the detail of the new member contribution structure that would implement this previously agreed policy. SAB members were asked two questions: if they agreed or disagreed that the proposed new tier thresholds accurately increased the member contribution thresholds by the 2025/26 AfC pay award in England, and if it should be inserted into the 2015 Regulations; and, if they agreed or disagreed that the draft amending regulations gave effect to the policy intentions the Department had set out.

7.5 The consultation launched on Thursday 22 May 2025 and closed on Friday 6 June 2025. The SAB provided its response to the Department on Friday 6 June 2025. This confirmed that SAB members agreed that the proposed new tier thresholds accurately increased the member contribution thresholds by the 2025/26 AfC pay award in England, and that it should be inserted into the 2015 Regulations. In this consultation response, the SAB also confirmed that members agreed that the draft amending regulations gave effect to the policy intentions the Department had set out. The SAB provided some other comments on other aspects of pay and pensions policy in its response, but these were outside the scope of this consultation.

7.6 The Department's response was issued to the SAB on Friday 27 June 2025.

8. Applicable Guidance

8.1 Guidance on the NHS Pension Scheme guidance is provided to scheme members via a range of resources including factsheets, online videos and scheme guides on the NHSBSA website[4].

8.2 The department also commissions NHS Employers to provide further guidance to employers on the NHS Pension Scheme[5].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no, or no significant, impact on business, charities, voluntary bodies or the public sector is foreseen.

[2] Available from: https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-policy-changes-for-april-2024
[3] Also available from the link above.
[4] Available from: https://www.nhsbsa.nhs.uk/nhs-pensions
[5] Available from: https://www.nhsemployers.org/pensions

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant impact on business, charities or voluntary bodies. The only impacts to businesses, charities and voluntary bodies will be if they employ members of the NHS Pension Scheme. The impact to them will be the same as for public sector organisations who employ members of the NHS Pension Scheme.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is minimal, but these changes will impact NHS workers who are members of the NHS Pension Scheme and their employers.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring and reviewing this legislation is through the SAB.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Karin Smyth MP has made the following statement: "The NHS Pension Scheme Regulations amended by this instrument are not considered to make regulatory provision in relation to a qualifying activity or amend any regulatory provision relating to that activity for the purpose of section 28 of the Small Business, Enterprise and Employment Act 2015. They regulate only the activities of public bodies. The exempting provision of section 29(3)(b) of the same Act therefore applies".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Regulations 2 and 3 of this instrument have retrospective effect. This instrument also makes changes to protected elements of scheme regulations within the protected period, within the meaning of section 22 of the 2013 Act.

11.2 Section 3(3)(b) of the 2013 Act confers a power to make retrospective provision but refers the reader to section 23. Section 23 provides the procedure for making scheme regulations containing retrospective provision which appear to the responsible authority to have significant adverse effects in relation to the pension payable to or in respect of members of the scheme or appear to have significant adverse effects in any other way in relation to members of the scheme (for example, in relation to injury or compensation benefits).

11.3 All of the amending regulations in this instrument have retrospective effect to 1 April 2025, the date the AfC pay award in England takes effect. The Secretary of State is of the view that the retrospective provision will not have significant adverse effect for the purposes of section 23 of the 2013 Act. This is because uplifting the tier thresholds retrospectively will not cause any members to receive reduced pension or pay more in contributions. Conversely, it may lead to some members receiving a refund of contributions, if between 1 April 2025 and 1 August 2025 they were in a higher contribution tier than they should have been.

11.4 Section 22 of the 2013 Act provides the procedures to be followed when changing the protected elements of Scheme regulations within the protected period. Amendments to members' contribution rates are a protected element of Scheme regulations under section 22(5) of the 2013 Act. As all of the amending regulations in this instrument relate to the tier thresholds which determine the contribution rates payable by

members, the department has consulted with the representatives of the persons who appear to the Secretary of State likely to be affected by this instrument, with a view to reaching agreement on these changes. A report setting out why the Secretary of State proposes to make these regulations has been laid before Parliament in accordance with section 22(2)(b) of that Act.

12. European Convention on Human Rights

12.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").