background tax law (at the time of my October 2019 update)

The law about pension schemes and their taxation was reformed radically on 6 April 2006 by the Finance Act 2004 and the Pensions Act 2004. The problem that had caused so much concern was about Members' annual allowance ("AA"), which restricts the amount of the tax relief on contributions paid to pension schemes.

If the contributions paid by and for a member exceed the member's AA, the excess is taxed by adding it to the member's taxable earnings. If the pension is DC, the chargeable amount is based on the contributions paid in the tax year. If the pension is DB, the chargeable amount is reached by a formula, based on the increase in the calculated value of a members' pension over the year: the value of the pension is increased merely by the additional year of pensionable service, and is likely to be increased more substantially by any salary increase or bonus paid in the year.

Initially (2006/07) the AA was £215,000, which was increased annually until it was reduced to £50,000 for 2011/12 and to £40,000 for 2014/15. In order to reduce the tax relief for high earners still further, the FA (No 2) 2015 introduced a tapered reduction of the AA. There are two tests, which are "threshold income", which determines whether the individual's AA is liable to tapering, and "adjusted income" by which the amount of the reduction is calculated. Both "incomes" involve detailed calculations or the use of tables: simplistically the former is an individual's taxable income taking into account contributions paid, tax relief on them and salary sacrifice, while the latter is similar but grossed up for all contributions paid (to prevent the avoidance of tapering by making the pension scheme non-contributory with a reduced income). From 6 April 2016, the threshold income was £110,000 and the AA was reduced by £1 for each £2 by which his or her adjusted income exceeded £150k pa up to a maximum reduction of £30k, so anyone earning over £210k pa had an AA of £10,000.

background pension law

One of the reforms introduced on 6 April 2006 is flexible retirement. Previously an approved pension scheme could not allow a member to draw pension, if he or she remained in the scheme employer's employment. The flexibility to to draw pension while remaining employed is not automatic, but schemes may change their rules to permit flexible retirement.

impact of tapered allowance and the NHS Pension Scheme

The FA (No 2) 2015 was not, of course, aimed at the NHS's highly paid staff, but applied to members of all registered pension schemes. Its impact on NHS staff (mainly consultants and GPs) was caused not by the change in the law alone, but also by the NHS's failure to loosen the rigidity of its employment terms and its pension scheme rules in order to take advantage of the flexibility permitted by the 2004 legislation, with the result that the imposition of the AA charge, left its high paid staff with few, if any, options other than leaving the NHS, leaving the NHS Pension Scheme and losing not just pension accrual but also sick pay and benefits for dependants on death in service, and reducing or at least not increasing pensionable pay eg by refusing extra shifts or reducing hours of work.

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mitigation by taxation policy

An existing mitigation is the "scheme pays" facility under which, from 2011/12, a member with an annual allowance charge liability above £2,000 may require the scheme to pay it and dedicated it from the scheme benefits when taken.

The government could not make any mitigation specifically for NHS Pension Scheme members, but it reduced the impact of tapered relief generally by reducing the number of people affected. It did so from 2020/21 by increasing the threshold income to £200,000, the adjusted income to £240,000, and the maximum reduction to £36,000, so anyone earning over £312k pa has an AA of £4,000.

mitigation by the NHS

The consequent serious disruption to the provision of NHS services prompted the DHSC to negotiate with the medical profession to introduce some flexibility into the NHSPS with the intention of enabling members to control their accrual of pension and contributions order not to exceed the AA and to aim for the maximum lifetime allowance (£1,055,000 in 2019/20) to be reached at a time which matches their target retirement dates. Its first proposal, a 50:50 option by which members could reduce their pension contributions and pensions accrual by 50%, was found to produce insufficient flexibility, which led to a new consultation paper (11 September 2019), suggesting a two stage process to control pension accrual and contributions and, at each year end, paying any unpaid contributions as additional taxable income.

The government's response of 3 February 2021 was that, because its proposed increase of the threshold income would remove 96% of GPs and 98% of consultants from the tapered allowance, there was no need for the proposed flexible accrual facility and it would not be introduced.

The DHSC's most recent consultation, which will close on 30 January 2023, is in a paper issued on 5 December 2022,and, in the words of the document, "proposes changes to the NHS Pension Scheme:

- new retirement flexibilities
- aligning the timing of CPI inflation rates used for revaluing pension benefits and the annual allowance tax calculation
- scheme access for primary care networks (PCNs)
- technical updates to member contributions provisions"

The flexibilities proposed in this consultation include removing the prohibition of pensioners in the 1995 section from accruing benefits in the current (2015) section if they return to work, permitting members of the 1995 section to retire partly from it while continuing to work and accrue benefits in the 2015 section, allowing members of the 2008 and 2015 sections who retire partly to take up to 100% of their benefit, removing the restriction in the 1995 section to 16 hours a week in their first months back to work.

other points

The temporary easement of restrictions in the NHSPS under the Coronavirus Act 2020, which should have expired on 31 October 2022, has been extended to 31 March 2023.

All active members in the 1995 and 2008 sections (both final salary) were transferred to the 2015 section (career average) on 1 April 2015, except members, who had fewer than ten years until their normal retirement dates, who were permitted to continue to accrue benefits in their existing sections. As a consequence of the McCloud decision, they were, instead, moved into the 2015 section on 1 April 2022.

Sick pay and death in service benefits are still dependant on membership of the NHSPS.