

The Scottish Government

Health Workforce, Leadership and Service Reform Directorate,
NHS Pay and Conditions



Scottish Government
Riaghaltas na h-Alba
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Dear Colleague

**NHS SCOTLAND STAFF PENSION POLICY ON RECYCLING
EMPLOYERS CONTRIBUTIONS 2019-2020**

Summary

1. This circular notifies employers of the agreed changes to the NHS Pension Scheme and the Terms and Conditions for recycling employer contributions in the 2019-2020 tax year.

Agreement

2. The Scottish Government has updated the NHS Pension Scheme Terms and Conditions on recycling employers contributions for the 2019-2020 year.

Amendments to Terms and Conditions

3. The pension policy for recycling employer contributions is attached in Annex A as temporary guidance for NHS Scotland staff.

Action

4. NHS Employers are required to make the necessary arrangements to implement, and apply the new arrangements as notified in Annex A of this Circular in full with effect from 18 November 2019.

18 November 2019

Addressees

For action

Chief Executives, Directors of Finance, Directors of Human Resources, NHS Boards, Special Health Boards, NHS National Services Scotland (Common Services Agency), Healthcare Improvement Scotland

For information

Members, Scottish Partnership Forum Members, Scottish Terms and Conditions Committee Members, Scottish Workforce and Governance Group, Management Steering Group

Enquiries to:

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5. NHS Employers are asked to make their own arrangements for obtaining any additional copies of this circular which is available on the SHOW website at <https://www.publications.scot.nhs.uk/> or the MSG website at <http://www.msg.scot.nhs.uk/publications>.

Enquiries

6. **Employees** should direct their personal enquiries to their employing Board, Special Health Board or NHS National Services Scotland (Common Services Agency).

7. **NHS Employers** should direct enquiries to the Scottish Government contact detailed on page one of this circular.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sean Neill'.

SEAN NEILL

Deputy Director for Health Workforce

DIRECTION

Scottish Ministers, in exercise of the powers conferred on them by Regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 and Section 105(7), paragraph 5 of Schedule 1 and paragraph 7 of Schedule 5 to, the National Health Service (Scotland) Act 1978, hereby gives to NHS Boards and Special Health Boards and NHS National Services Scotland (the Common Services Agency) the following Direction.

NHS Scotland staff will have the option of opting out of the NHS Scotland Pension Scheme and receiving the employer contributions, net of employer National Insurance Contributions, for tax year 2019-20, according to the parameters set out in this circular. This policy has been approved by Scottish Ministers on 18 November 2019 with effect from 18 November 2019.



SEAN NEILL
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18 November 2019

RECYCLING OF EMPLOYERS CONTRIBUTIONS (REC Payment) APPLICATION AND GUIDANCE

Introduction

The NHS Pension Scheme is a key element of the overall reward package offered to the workforce, allowing NHS employers to attract and retain employees. The Scottish Government and NHS Scotland are committed to encouraging participation in the scheme at all levels ensuring those eligible for scheme membership can effectively plan for retirement.

The Scottish Government and NHS Scotland recognise that some employees are disproportionately affected by additional tax charges and may find that their future pension benefits are affected. This is because they are or may be affected by the Annual Allowance (AA) particularly when the taper applies. See Appendix A for further information on these provisions.

As a result of pensions taxation arrangements some affected staff may make unexpected working life choices which can include:

- Reducing working hours on a temporary or permanent basis.
- Refusing additional work or responsibility such as management or education roles.
- Refusing or not applying for promotion.
- Retiring earlier than planned.

This has a direct impact on sustainability and service delivery as vital senior expertise is lost from the service, but is also damaging to overall staff morale.

The REC payment will allow those staff who believe they may be impacted by the AA tax charge an alternative choice, allowing them to continue to work in their present role at their present level of service, and continue to develop in their career journey. **AA tax charges are based on an individual's pension growth in the year concerned so receiving this payment may still result in an AA tax charge being due for 2019/20.**

This guidance is not intended to encourage employees to leave any of the NHS Pension Schemes or to provide advice on options or liabilities. For a REC payment to be made, applicants must provide evidence of a likely AA tax liability at the time of applying to receive the REC payment, and opt out of the NHS Scotland Pension Scheme from the date the REC payment becomes effective.

Individuals are strongly advised to seek independent financial advice beforehand as to whether the REC payment outweighs the benefits of continued membership of the NHS Pension Scheme. The REC payment will be subject to PAYE and National Insurance deductions, so this is not a straightforward decision and in some instances, further accrual of pension benefits, albeit above the AA limits, could provide better

value than a REC payment. Your employer cannot provide this advice. **Receiving this payment may still result in an AA tax charge being due for 2019/20.**

Employees must however be aware that a REC payment and opting out of the NHS Pension Scheme will not replicate all of the benefits provided as an active member of the NHS Pension Scheme, for example in particular **life cover, ill health retirement protection and death benefits, and you will not be accruing any pension benefit during the period of REC payment/opt out of the Pension Scheme.**

Scope

Application is open to all eligible staff who are employed by NHS Boards, Special Health Boards, NHS Education for Scotland, Healthcare Improvement Scotland and NHS National Services Scotland (Common Services Agency) and for whom the Board pays an employer contribution into the NHS Scotland Pension Scheme. This policy does not apply to staff for whom the NHS Board pays an employer contribution to the National Employment Savings Trust (NEST).

As there is a current consultation in progress to determine what flexibilities may be available to scheme members from the 2020/21 financial year and a review of the AA taper on public sector organisations is underway, this is a time limited scheme only until the end of the current financial year, 31st March 2020, given flexibilities are under consideration. At 31st March 2020, any REC payments will cease and individuals should determine whether they wish to re-join the NHS Pension Scheme and make the necessary arrangements. If they choose not to re-join at this point they will remain outwith the NHS Pension Scheme until the next date within their organisation for auto enrolment when they will be automatically re-enrolled, providing they meet the necessary auto re-enrolment requirements. An opt out can then be submitted if desired.

Eligibility

Eligible staff may apply for a REC payment.

To be eligible for a REC payment, an employee must comply with **all** of the following:

- Be in the employment of an NHS Board, Special Health Board, NHS Education for Scotland, Healthcare Improvement Scotland or NHS National Services Scotland (Common Services Agency).
- Be an active member of an NHS Pension Scheme at the point of application.
- Be able to evidence that they have a reasonable expectation of an AA tax charge for the financial year 2019/20

To be eligible for a REC payment an individual must be reasonably expecting a tax charge for 2019/20. Given that any AA tax charge will not be confirmed until after the end of the 2019/20 tax year (2019/20 saving statements will be issued in October 2020) an assessment must be made to provide a best estimate to evidence the likelihood of 2019/20 AA tax charge arising.

Applicants must provide the following evidence in support of their application:

- An SPPA savings statement for 2018/19; and
- Cumulative pensionable pay earnings from last payslip, plus estimate of earnings for remaining months (based on contractual payments); and
- Evidence relating to non-NHS sources of income for the YTD; and
- Relevant information on any additional non-NHS pensions that would also count towards the annual allowance; and
- The results from inputting the relevant information into the HMRC calculator.

Alternatively, for those who have not received an SPPA savings statement for 2018/19 but anticipate that they will be subject to a tax charge in 2019/20 they should email SPPA at sppacontactus@gov.scot including the words 'RECpayment' in the subject line and providing their name, national insurance number, date of birth, as well as details of their expected total gross NHS earnings for 2019/20. SPPA will produce an estimate of pension growth for 2019/20 and a pensions statement, based on the information available for any previous tax years. The applicant should then use this detail to complete the HMRC calculator and provide the result to the employer. This will then be considered by the panel as part of their application for a REC payment.

Applicants will also need to opt out of the NHS Scotland pensions scheme (link below) if their application is successful. The opt out form is available at:

https://sppa.gov.uk/Documents/NHS/NHS%20Useful%20Resources/NHS%20Forms/Opting%20out/NHS%20Opt%20Out%20Form_1.pdf

Completed opt out forms should accompany any REC payment applications.

They should be pre-dated 1 December 2019 (or a later, mutually agreed, date if desired; note that the date should be the first of a month). The opt out will be activated by the employer at the same time as the REC payment is activated, should the application be accepted.

Any member of staff who chooses to reduce sessions/working hours while in receipt of a REC payment will automatically trigger a review to assess ongoing eligibility.

Process for applications

Application for a REC payment should be made on the form at Appendix B. All applications should be accompanied by a completed opt out form.

The application will be verified by Boards to determine whether the employee meets the eligibility criteria.

If eligible, payroll will calculate the amount of the REC payment and notify the applicant. Upon receipt of confirmation from the applicant that they wish to proceed, the applicant's opt out of the NHS Pension Scheme(s) will be activated by the employer. The REC payment will be paid to the employee on a monthly basis.

Individuals on multiple contracts with more than one scheme membership will be required to opt out of all of their schemes.

The completed application form (Appendix B), should be signed, scanned and emailed to [employers to advise]. As this is a time limited scheme until 31 March 2020 only, applications should be submitted no later than 28 February 2020.

On receipt of a completed application, employers should ensure that the applicant has provided the correct information including checking the figures used to generate outcomes from the HMRC calculator insofar as that information relates to NHS earnings and pension scheme membership, and if necessary assist the applicant to overcome technical errors in their application. The panel should only receive fully completed applications for consideration.

This is a time limited scheme only until the end of the current financial year, 31st March 2020. At this point, any REC payments will cease and individuals should determine whether they wish to be re-enrolled into the NHS Pension Scheme and make the necessary arrangements. If they choose not to re-join at this point they will remain out with the NHS Pension Scheme until the next date within their organisation for auto enrolment when they will be automatically re-enrolled, providing they meet the necessary auto re-enrolment requirements. An opt out can then be submitted if desired.

Approval

Each board will be required to establish a decision making panel with clear accountability to the Director of Finance and Director of Workforce. The Panel will be under a duty to approve or reject applications strictly and solely against the eligibility criteria defined in this policy.

The panel should meet on a weekly basis until at least the 28th February 2020 so that all applications can be considered and a decision made within ten working days of receipt of completed application forms, appropriate supporting evidence and completed opt out forms. The Panel should report outcomes to the Director of Workforce and Director of Finance on a regular basis.

If the application is accepted, the employee will be issued a letter confirming this temporary payment within five working days of the panel meeting. This letter must be signed, dated and returned to the agreed contact within five working days of receipt.

Appeals Process

Where a Panel decision is in dispute this will be referred to the Director of Workforce and Director of Finance for a final decision.

REC Payment

Eligible individuals will receive the employer contribution paid direct to them as a REC payment. For the 2019-20 financial year the payment will be 18.365% of basic pay.

The REC payment will not form part of an employee's basic salary and will not be included in the calculation of other benefits such as overtime, additional hours, or WLI payments. The REC payment will be subject to PAYE and National Insurance deductions.

Although not forming part of basic salary, the REC payment will increase the amount a member of staff is paid each month. It will also impact on the following –

- The REC payment will be adjusted accordingly if the member of staff increases their contracted hours of work.
- The REC payment will continue to be paid during periods of annual leave and sick leave. It will therefore not be included in any Payment As If At Work calculation for periods of annual leave or sick leave.
- The REC payment will not be included in any occupational payments that are based on basic pay only.
- The REC payment will be included in any occupational payments that are based on average earnings e.g. occupational maternity pay, and will be included in any legislative payments that are based on National Insurance earnings levels e.g. Statutory Maternity Pay.
- The REC payment will be adjusted accordingly during periods of half sick pay and/or no sick pay
- The REC payment will be included in any redundancy calculation, but only in so far as the calculation of a week's pay for redundancy purposes, does not exceed the statutory cap. Where the week's pay is higher than the statutory cap applicable at the point of redundancy, then the REC payment will not be included in the redundancy calculation.
- The REC payment will be included in any calculation of payment in lieu of notice.

This is a time limited scheme until 31st March 2020 at which point payments will cease. Payments will also cease if employee leaves the board or re-joins the NHS Pension Scheme before 31st March 2020.

Retrospection

This scheme is available from 1st December 2019, and if accepted any REC payment will be calculated from this date, unless a mutually agreed future date applies. We encourage applicants to apply as soon as possible and the final date for submission of applications is the **28th February 2020.**

Appendices

Appendix A: Definitions

Appendix B: Application Form

Definitions

Annual allowance

The annual allowance is the amount of pension savings an individual can make in one year before receiving a tax charge. The standard annual allowance limit has been set at £40,000 since 6 April 2014. Employees may be subject to a lower tapered annual allowance, depending on their taxable income. If, after taking account of any unused AA available from the previous 3 years, an individual's pension savings exceed the annual allowance, they will receive a tax charge on the additional amount. The tax rate charged will reflect the individuals' marginal tax rate.

It is possible to carry forward any unused annual allowance for a maximum of three years provided the individual was a member of a qualifying pension scheme, at some time during all of the three previous tax years.

Tapered annual allowance

The tapered annual allowance was introduced in April 2016 with the intention of reducing pension tax relief for high earners. It applies to those with adjusted incomes (taxable income and pension savings) of over £150,000 and threshold incomes (taxable income excluding the value of pension savings) of over £110,000. It also takes account of all occupational and personal pension arrangements such as private practice, bonuses, rental property and investments.

The rate of reduction in the annual allowance (from the current maximum of £40,000) is by £1 for every £2 that the adjusted income exceeds £150,000, up to a maximum reduction of £30,000 at £210,000. This means an individual's tapered annual allowance will be between £40,000 and £10,000.

For defined benefit schemes like the NHS pension schemes pension benefits are tested against the annual allowance limit by applying a factor of 16 to the increase in the benefit (the pension input amount) over the year so for example a pension increase of £3,000 would equate to £48,000 pension growth the annual allowance.

Appendix B

RECYCLING OF EMPLOYER CONTRIBUTIONS (REC) PAYMENT APPLICATION FORM

Please complete in full and forward to [Boards to complete]

Name:

Post:

Payroll Number:

National Insurance No:

SB Number for Pension Scheme:

The REC payment will normally start from 1 December 2019. If you wish to start it at a later date, please specify which date:

(note: this should be the 1st of the month, and should be the same as the date given in the opt out form)

I have attached evidence that I have a reasonable expectation of exceeding the Annual Allowance for pension growth in the financial year 2019-20 and that this breach is likely to generate a tax charge.

I confirm that to the best of my knowledge the information I have provided on this form is correct, including information I have provided to HMRC and/or SPPA.

I confirm that I understand that opting out of the NHS Pension Scheme will mean I will not benefit from active members provisions including ill health retirement benefits and death in service benefits.

Name.....

SignatureDate

Authorised byDate.....
(Chair of Panel)

Authorised byDate.....
(Director of Finance)

Authorised byDate.....
(Director of Workforce)

REC Payment – Q&A

Q. Why introduce recycling of employers contributions?

The Government wants to encourage workers to save for their retirement, so have made savings toward pension tax efficient in that employee contributions are deducted before calculating taxable pay, meaning savers benefit from tax relief at their top rate of tax. The capping of this tax relief by means of an Annual Allowance (AA) (which reduces on a tapered basis for high earners) can result in tax charges when the increased pension value exceeds the AA.

Q. What is a REC payment and I am eligible to apply?

The REC payment reflects the employer NHS Scheme pension contributions, net of employer National Insurance Contributions, which is paid to an individual who complies with all of the following and subsequently opts out of the pension scheme:

- Employee of an NHS Board, Special Health Board, NHS Education for Scotland, Healthcare Improvement Scotland or NHS National Services Scotland (Common Services Agency).
- An active member of an NHS Pension Scheme at the point of application.
- Able to evidence that they reasonably expect to have an AA tax charge for the financial year 2019/20.

Q. What are employer pension contributions?

The NHS scheme is an unfunded scheme where contributions paid by employers and current members are used to pay pensions in payment. The employer contribution rate is set by regular scheme valuations and the current rate of 20.9% of member's pensionable pay and this rate applies for the period 1 April 2019 to 31 March 2023.

Q. What is the AA and AA taper?

More information on the Annual Allowance is available here:

<https://www.gov.uk/tax-on-your-private-pension/annual-allowance>

More information on the Tapered Annual Allowance can be found here:

<https://www.gov.uk/government/publications/pensions-tapered-annual-allowance>

Q. I do not comply with all of the eligibility criteria. Can I apply for a REC payment?

You must meet all of the eligibility criteria to apply for a REC payment. Any applicant who does not comply with all the eligibility criteria will not be approved.

Q. Will the REC payment replicate my pension benefits?

You will not be accruing any pension benefit during the period of the REC payment/opt out of the pension scheme, and you will not receive any of the NHS Pension Scheme benefits during this time available to active members of the scheme for example death in service benefits.

Q. I believe I meet the criteria but am unsure whether to apply for the REC payment and opt out of the pension scheme?

This is a decision only you can make. Employers, SPPA and the Scottish Government are unable to provide advice on this. Independent financial advice is strongly recommended.

Employers are relying on the information you provide and your own assessment that a charge is likely. Approving the application does not imply that the NHS Board has verified the tax charge and the applicant should take their own tax advice if they are in any doubt.

Q. I have just received a 2018/19 savings statement from SPPA and the HMRC calculator has confirmed I have a tax charge for 2018/19. Is this enough evidence for my employer to meet the criteria for a REC payment?

In addition to this information you will also need to confirm details about your current NHS pay, working pattern and any outside NHS income. This information will allow your employer to consider if there is likely to be an AA tax charge for 2019/20.

Q. I wasn't issued with a 2018/19 SPPA savings statement but anticipate that I will be subject to an AA tax charge for 2019/20 does this mean I can't apply?

No. Using information regarding your previous pensions growth, estimated income and working pattern for 2019/20 you should approach SPPA for an estimate of whether you are likely to be subject to a 2019/20 AA tax charge. This information can then be considered by your employer as part of the eligibility conditions for a REC payment.

Q. What is Scheme Pays?

Scheme pays is the process that allows a scheme member to elect that the scheme pays their AA charge to HMRC on their behalf. The cost of the scheme meeting that tax charge is then reflected in a permanent debit to the member's pension.

Q. How do I apply for the REC payment?

The guidance details the application process.

Q. What evidence do I need to supply?

The guidance details the evidence individuals must provide to support their application.

Q. How do I know whether I have an AA tax charge for 2018/19?

If you breached the AA limit for 2018/19 you should have already received a pensions savings statement from SPPA. You are required to calculate any AA tax charge by completing the tax calculator on the HMRC website. Your pensions savings statement will have included relevant details to do this. The HMRC calculator will advise of any AA tax charge for 2018/19.

Q. How do I opt out of the NHS Pension scheme?

The guidance provides a link to the Opt Out form, which is available from the SPPA website. The Opt Out form should be completed, dated 1 December 2019 or a future date if you wish, and be submitted with your REC payment application. If your application is approved, the Payroll team will activate your opt out from the scheme.

Q. How do I opt back in to the NHS Pension scheme?

You need to advise your Payroll team that you wish to re-join the NHS Pension scheme. Normally, an email from your NHS email account suffices but please check with your Payroll team.

Q. How will the REC payment be paid?

You will be paid the REC payment in addition to your monthly pay on your normal pay day.

Q. Will the REC payment stop me from receiving a tax charge?

Not necessarily. By opting out of the pension scheme, which is a requirement for a REC payment to be made, your pension no longer continues to grow from that point. However the pension you have earned up to that point, along with any other pension savings you may have, may already be in excess of the AA limit for 2019/20. Any AA tax charge remains the responsibility of the individual concerned and you may want to seek independent financial advice before you make your final choice.

Q. When will the REC Payment cease?

It will be paid as part of your monthly pay until the 31st March 2020 only.

Q. What deductions will be made from the REC payment?

The REC payment will be subject to normal PAYE and National Insurance deductions. This will be handled by your employer.

Q. Can I receive the REC payment and remain in the NHS Pension Scheme?

No. To receive the REC payment, you must opt out of the NHS Pension Scheme. This process is detailed in the guidance.

Q. I am currently not in the NHS Pension Scheme. Can I apply for the REC payment?

To be eligible for the REC payment you must be an active member of the pension scheme at the point of application.

Q. What happens at 31st March 2020?

At 31st March 2020, any REC payments will cease and individuals should determine whether they wish to re-join the NHS Pension Scheme and make the necessary arrangements. If they choose not to re-join at this point they will continue to remain out with the NHS Pension Scheme until their employer re-enrols them in the scheme as part of the Auto Enrolment requirements. Individuals can confirm from their employer when they will be re enrolled into the scheme and they can choose at that point to opt out if desired.

Q. How much will the REC payment be?

The REC payment will be 18.365% of your basic pay only. You will be advised of the exact monetary value of this.

Q. If my REC payment application is not approved, how do I appeal?

The guidance details clear eligibility. If however you feel you meet the criteria and your REC payment application has not been approved, you should first ensure that the evidence you supplied was correct and that it fulfilled the eligibility criteria. You may then wish to reapply for the REC payment. If following this you still feel that your REC payment application has been unfairly refused, you can appeal this decision to the Director of Finance and the Director of Workforce who will consider your case and make a decision. Their decision is final.

Q. Can the REC payment be backdated?

This scheme is only available from 1st December 2019, and if an application is approved any REC payment will be made from 1 December 2019, unless a mutually agreed future date applies. Backdating beyond 1 December 2019 is not possible.

Q. When is the final date for applications to be submitted?

The application deadline is 28th February 2020, although early application is encouraged.