

PENSION CONTRIBUTIONS ALTERNATIVE PAYMENT POLICY

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Target Audience:

| | |
|---|---|
| People who need to know about this document in detail | Author/Owners of this procedure. |
| People who need to have a broad understanding of this document | Board Members, Management Board, Senior Leaders, Board Committees. |
| People who need to know that this document exists | Medical and Dental employees of Cwm Taf Morgannwg University Health Board and its hosted organisations. |

Integrated Impact Assessment:

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|---|--|
| Equality Impact Assessment Date & Outcome | Date: 05/03/2022 Outcome: This policy has been screened for relevance to equality. It may have a negative impact on younger and female employees. |
| Welsh Language Standard | Yes - If Standard 82 applies you must ensure a Welsh version of this policy is maintained. |
| Date of approval by Equality Team: | 01/03/2022 |
| Aligns to the following Wellbeing of Future Generation Act Objective | Co-create with staff and partners a learning and growing culture |



Disclaimer:

If the review date of this Policy has passed, please ensure that the version you are using is the most up to date version either by contacting the author or email CTM_Corporate_Governance@wales.nhs.uk

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1. POLICY STATEMENT

This policy outlines an option for medical and dental employees who are current active members of the NHS Pension Scheme, who can demonstrate that they will be affected by the lifetime allowance or annual allowance, in respect of their pension savings.

For most medical and dental employees, it will likely be in their best financial interests to remain in the NHS Pension Scheme. This policy is only intended for those medical and dental employees affected by the lifetime or annual allowance tax issue and sets out one potential option for these individuals. This may not be the best financial option for affected employees; therefore, they should consider this option and any associated information carefully before deciding.

Medical and dental employees are strongly encouraged to obtain their own financial advice before making any changes. The Health Board has in place a Pensions Advice Salary Sacrifice Scheme, to make use of the tax exemption, which allows employees to save Tax and National Insurance on the first £500 worth of pensions related Financial Advice, each tax year. Further details on the scheme, including the list of the organisations which can provide expert guidance and the process to be followed can be via the [Pension Advice through salary sacrifice](#) link.

2. PRINCIPLES

This policy does not form part of any medical and dental employee's contract of employment and can be withdrawn at any time.

The alternative payment will not form part of a medical and dental employee's base salary and will not be included in the calculation of any overtime, or other entitlements.

This policy will be kept under review and considered in the light of any progress on the introduction of pension flexibilities, within the NHS Pension Scheme.

3. SCOPE

This policy will apply to those medical and dental employees who can demonstrate the lifetime, or annual allowance, pension tax thresholds affect them.

This option is only available to medical and employees should they decide to opt out of the NHS Pension Scheme, thereby choosing to forego pension tax relief.

The policy will be reviewed in the light of any progress on the introduction of pension flexibilities within the NHS Pension Scheme, at the start of each financial year.

4. AIMS AND OBJECTIVES

This policy aims to address operational risks that have been identified, because of the pension tax regime. The Health Board has received a number of requests for reduced contractual hours and experienced a reluctance from some medical and dental employees to take on additional work and a desire to focus on private work as a direct result of the pension tax regime. This policy is an attempt to address these operational issues by providing such staff with an alternative option.

This policy will apply to those medical and dental employees who believe they may be impacted by the lifetime allowance or an in year annual allowance tax charge. The alternative payment options will allow them to continue to work in their present role, at their present level of service, and continue to develop in their career journey. This option will also encourage affected staff to continue to support service delivery.

The policy will provide affected medical and dental employees with an optional alternative for their unused employer pension contributions to be paid to them directly, as additional pay. This option can only be utilised where the employee can demonstrate the lifetime or annual allowance, pension tax thresholds affects them.

The Health Board will determine the effective date for any applications (the first day of the month) and consider whether any retrospective payments will be made to medical and employees who have already opted out of the NHS Pension Scheme within the current financial year.

Other options for addressing this issue are available and these are set out in the [Pension Tax Guidance for Employers - Local Measures to Support Staff and Service Delivery](#) published by NHS Wales Employers.

5. THE OPTIONS

Where medical and dental employees are currently active members of the

NHS Pension Scheme and consider that they will be affected by the lifetime allowance or annual allowance they can continue in the NHS Pension Scheme and bear any additional tax charges that arise (in the tax year for their annual allowance or at retirement under the lifetime allowance arrangements) or they may pursue one of the following options;

- a. **Opt out of the NHS Pension Scheme** and apply to be paid an alternative payment, as explained in the next paragraph below ("alternative payment"). Employees who opt out of the NHS Pension Scheme will become deferred members and will not be able to make any further money purchase, added years or additional voluntary contributions into the NHS Scheme during this period. The **alternative payment** will be paid to an employee, in the event of them optioning out of the NHS Pension Scheme. The alternative payment will be the sum equivalent to the **Employer's Pension Contribution** (amount that the employer ordinarily pays into the employee's NHS Pension Scheme if they had remained a member of the scheme) **net of the employer's National Insurance Contributions, maintaining cost neutrality to the Health Board.**

The additional payments will be paid to the employee as a supplement to salary and so will be subject to income tax. The amount will be circa 12.4% of pensionable pay (14.38% of pensionable pay net of employer's national insurance contributions at a rate of 13.8%).

Although the employer contribution increased by 6.3% from 1 April 2019, the funding for this increase is not available to Health Boards.

Pensionable pay for the purpose of calculating the alternative payment will be determined by the Health Board, but it will be based on what the pensionable pay would have been for the purpose of calculating the **Employer Pension Contributions** paid by the Health Board to the NHS Pension Scheme, had the individual continued to participate in scheme.

Where a medical and dental employee opts out of the NHS Pension Scheme, it is their responsibility to provide the Pension Scheme Administrator with effective notice of their opt-out and provide a copy of their opt out confirmation.

Where individuals opt out of the NHS Scheme there may be a significant impact on the level of benefits, which may be received from

the NHS Pension Scheme. In particular, there is likely to be a notable reduction in ill-health benefits and death benefits from the NHS Pension Scheme, and potentially redundancy benefits.

Medical and dental employees considering the alternative payment should carefully review and consider the impact of opting out of the NHS Pension Scheme on all of their benefits.

It should be noted this is not the only option.

- b.** Other options are available and the [Pension Tax Guidance for Employers - Local Measures to Support Staff and Service Delivery](#) published by NHS Wales Employers, outlines a range of other flexibilities, which the Health Board may wish to make available to affected employees. These include;
- **Time off in Lieu Arrangements** –The Health Board will offer the employee the provision to take time off work, where there is a requirement to work beyond their contractual hours as an alternative to pay. Time off in Lieu serves as an alternative to pay, meaning that any overtime hours worked by the employee can be taken as part of their annual leave entitlement. Such hours are reallocated, based on plan time rates i.e. 1 hour of TOIL for every 1 hour worked. See Appendix 1 for Principles;
 - **Use of Multiple Contracts of Employment** – The Health Board will offer the provision to hold more than one contract of employment for a substantive post, to enable pension contributions to be paid on only part of the contracted hours worked, to avoid annual or life-time pension tax issues; and
 - **Opting out of the NHS Pension Scheme** for whole or part of a year.

Should an employee be concerned about pension tax issues, they should contact the Health Board's Workforce and OD / Medical Workforce Team, to determine which of these options could be made available to them.

6. IMPACT OF ALTERNATIVE PAYMENTS

Although not forming part of a medical and dental employee's base salary, the alternative payment will increase the amount they are paid each month. It will also affect the following:

- a. The amount of holiday and sick pay received. Such calculations will include an element to reflect the alternative payment.

- b. The amount of any redundancy pay calculation, but only in so far as any statutory cap. Where an employee's weekly pay is higher than any statutory cap applicable at the point of redundancy, then the alternative payment will not be included in the calculation.
- c. Income for the purposes of the tapered annual allowance may be higher than before and so the annual allowance may reduce for any pension savings already built up in the tax year. This means employees may be entitled to a lower amount of tax relief on their pension contributions.
- d. The alternative payment will be paid in equal monthly instalments, ***in arrears***. Payments will be subject to deductions for Income Tax and National Insurance Contributions.
- e. In deciding on applying to receive the alternative payment, employees may wish to consider whether it would be financially beneficial to receive it (subject to Income Tax and National Insurance Contributions), as compared with paying an additional pension tax charge by staying in the NHS Pension Scheme. They may also wish to consider the effect on pension benefits and growth by staying in the scheme, versus opting out.
- f. Medical and dental employees who are considering opting out of the NHS Pension Scheme are therefore strongly encouraged to obtain their own independent financial advice. They may benefit from using the Health Board's Pensions Advice Salary Sacrifice Scheme. Click on the following link for information [Pension Advice through salary sacrifice](#).

7. Making a Request for an Alternative Payment

To make a request under this policy, medical and dental employees must comply with all of the following criteria, be:

- in the employment of the Health Board.
- an active member of an NHS Pension Scheme at the point of application*.
- able to evidence they have a reasonable expectation of an annual allowance tax charge for the respective financial year, or be able to evidence that they have reached the lifetime allowance limit.

* Health Boards will need to determine whether to approve any retrospective payments for opt-outs already made within the current financial year, based on the criteria within this policy.

As indicated above, medical and dental employees must be reasonably expecting a tax charge for the financial year for which they are making an

application for the alternative payment. Given an annual allowance tax charge will not be confirmed until after the end of the tax year (saving statements are issued in the October, following the end of the respective tax year) an assessment must be made to provide a best estimate to evidence the likelihood of an annual allowance tax charge arising.

The NHS Employers Annual Allowance Ready Reckoner may be used to provide an indication of the likelihood of an annual allowance tax charge. Medical and dental employees are responsible for obtaining whatever financial advice is necessary for them to make an informed decision, including where appropriate (though not limited to) ***professional advice from an accountant or independent financial advisor, guidance from the NHS Pension Scheme (Member hub | NHSBSA), information from reputable sources such as professional organisations and unions, HM Revenue and Customs.***

Meeting the criteria as set out in the paragraph above, does not automatically mean that applications for the payment of employer contributions will be approved. The approval process as set out in Section 10, will consider all applications as set against the employee's submission and the need for each outcome to be clearly recorded as to the reason for its approval or rejection. This is important should the Health Board have to defend any indirect discrimination claims.

8. Evidence to Support an Additional Payment Application

The section provides guidance to medical and dental employees regarding the information and evidence required to support an application:

8.1 Retrospective evidence an employee is or could be affected by the annual allowance limit

This will usually be in the form of acceptable documentary evidence from NHS Business Services Authority, confirming the annual increase in the employee's NHS pension benefits. The Health Board will also accept documentary evidence confirming an employee may be subject to an annual allowance tax charge e.g. from the NHS Employers Annual Allowance Ready Reckoner (note that where employees are subject to the tapered annual allowance, this may take the form of proof of earnings from all income sources).

8.2 Prospective evidence an employee will be affected by the annual allowance or lifetime allowance limit

This evidence will typically be in the form of pension/pay modelling data, using evidence from sources contained within Section 7 above, taking into account, for example, incremental pay progression and changes in working patterns. Proof of projected income from multiple sources, in the relevant financial year or a Total Reward Statement reflecting a level of pension accrual, which will exceed the lifetime allowance limit, will also be accepted as evidence.

9. Application Process

Application for an alternative payment must be made on the Alternative Payment Application Form (**Appendix 1**).

A completed NHS Pension Scheme Opt Out Form must accompany all application forms. The Health Board's Additional Payment Panel, will review the application, to determine whether the applicant meets the eligibility criteria.

If the medical and dental employee's application is approved, the NWSSP Payroll Team will be asked to calculate the amount of the alternative payment. It will be the responsibility of the NWSSP Payroll Team to provide the employee and the Workforce and OD Team with this information.

10. Approval Process

The Health Board will be required to establish an Additional Payment Panel, (comprising of a very senior manager, Workforce and Finance Representative and a local Trade Union Representative) with clear accountability to the Chief Executive and Executive Director for People.

Where an application relate to an Executive or Very Senior Manager, the Health Board Remuneration Committee will act as the Additional Payment Panel. (Noting: The Health Board Remuneration Committee is currently considering whether this policy should be extended to Executive, Very Senior Managers and Senior Managers Band 8d and 9). If this is not approved, this section will be removed prior to publication.

The Panel will be under a duty to consider the eligibility criteria defined in this policy when deciding to approve or reject an application. They must always record the reason and provide the justification for each decision.

The panel will meet regularly, to ensure all applications can be considered and a decision made within ten working days of receipt of the completed application form and the supporting evidence and completed NHS Pension Scheme Opt Out Form.

The Panel will report outcomes to the Chief Executive and Executive Director for People, on a regular basis.

Should an application be approved, the medical and dental employee will be issued a letter confirming the additional payment (which will be temporary in the case of annual allowance approvals), within five working days of the panel's decision.

11. Implementation Process

Where an application has been successful, the Health Board will activate the medical and dental employee's NHS Pensions Opt Out Form. The alternative payment will be paid to the employee on a monthly basis, in arrears.

The continuance of the alternative payment will be subject to the Health Board's over-riding legal duties. The alternative payment will apply to the medical and dental employee's current role only. In the event that a medical and dental employee in receipt of the allowance changes roles, then the continuation of the alternative payment will be at the absolute discretion of the Health Board, although it will not be unreasonably withheld.

If a medical and dental employee subsequently choose to reduce sessions /working hours, while in receipt of the alternative payment, this will automatically trigger a review, to assess their ongoing eligibility.

For medical and dental employees who determined they would be affected by an annual allowance charge and are in receipt of an alternative payment, this will only be for the duration of the financial year, within which the annual allowance charge would be incurred and will therefore cease, at the end of that financial year i.e. 31 March. At this point, the alternative payment will cease and employee should determine whether they wish to be re-enrolled into the NHS Pension Scheme and make the necessary arrangements.

If the medical and dental employee chooses not to re-join the NHS Pension Scheme at this point, they will remain opted out with the scheme until the next Health Board date for auto enrolment. At this time, the employee would be automatically re-enrolled, providing they meet the necessary auto re-enrolment requirements. An opt out of the pension scheme can then be submitted, if desired by the employee.

Where the employee considers that they would be affected by an AA charge in the subsequent financial year a new alternative payment application must be made.

12. Appeals Process

Where an alternatives payment application decision is in dispute, it will be referred to the Executive Director for People, for a final decision. There is no further right of appeal regarding either the process or the outcome and no right to raise a grievance under the Respect and Resolution Policy.

13. Equality Impact Assessment Statement

The policy relevance to equality has been screened using the Equality Impact Assessment. It has identified that the alternative payment option may indirectly discriminate against two groups, younger and female staff, who tend to work in lower paid roles.

To mitigate the risk of indirect discrimination against younger, female and disabled employees, the Health Board is aware it must clearly demonstrate there are objectively justified reasons for approving pension contribution alternative payments to individual medical and dental employees.

The NHS Employer's [Pension Tax Guidance for Employers - Local Measures to Support Staff and Service Delivery](#) states "*in all cases it will be important to take legal considerations into account and carry out an equality impact assessment, so as to clearly set out the objective justification for the application of the respective model policy's provisions*". For example, there may be an objective justification based on the risk to service delivery, posed by a member of staff reducing their hours or being reluctant to take on additional work. Where an employee's application to have their employers pension contribution, paid as an alternative payment, the approving panel must clearly document the justification for the decision.

14. Getting Help

The Executive Director of People will ensure that copies of this policy are archived and stored in line with CTMUHB Records Management Policy, and are made available for reference purposes should any situation arise where they are required.

All eligible employees are required to comply with this policy. It is a serious offence to fail to comply with the policy. It could therefore, result in disciplinary action.

15. Related Policies

- [NHS Business Authority Application to Leave the NHS Pension Scheme \(SD502\)](#)

- [NHS Pension Scheme Booklet](#)

16. Information, Instruction and Training

Employees and the Alternative Application Panel Members will receive support with the implementation of this policy, as required.

17. Main Relevant Legislation

The NHS Business Authority who has responsibility for administering the NHS Pension Scheme, provide some limited member flexibilities.

In October 2021, the Welsh Government reminded NHS Wales Organisations, they were able to consider using local flexibilities, where appropriate, to respond to the impact pension taxation was having on the delivery of NHS Services in Wales.

One of these flexibilities is the option of employee's opting out of the NHS Pension Scheme, and their **Employer Pension Contributions** being made as an additional payment to them instead. This flexibility can only be applied where an employee can evidence their lifetime, or annual allowance, pension tax thresholds, affects them.

18. APPENDICES

Appendix A - Alternative Payment Application Form

Appendix B - Guidance and Principles - Time off in Lieu (TOIL) as an Alternative to Payment

Appendix C - Example Time of in Lieu Record Form

APPENDIX A

ALTERNATIVE PAYMENT APPLICATION FORM

| Part A: To be completed by the employee | |
|--|------------------------|
| Employee's Name: | |
| Payroll Number: | |
| National Insurance Number: | |
| SB Number for NHS Pension Scheme: | |
| Job Title: | |
| Base and ILG: | |
| Contact Number and email address: | |
| Please specify which date you wish to commence receipt of the alternative payment <i>(Note: this should be the 1st of the month, and should be the same as the date given in your NHS Pension Scheme Opt Out Form).</i> | ____ / ____ / ____ |
| Employee's Declaration | |
| I confirm I have taken the necessary steps to obtain appropriate advice in respect of my voluntary decision, to opt out of the NHS Pension Scheme and understand the consequences on further and future pension savings and accrual. | |
| I have attached evidence, I have either: | |
| A reasonable expectation of exceeding the annual allowance limit for pension growth in the current financial year and this breach is likely to generate a tax charge. | Tick Box if Applicable |
| Please list below the details of the evidence attached. | |
| OR | |
| Reached the level of pension savings, which would generate a Lifetime Allowance Charge. | Tick Box if Applicable |
| Please list below the details of the evidence attached to the application form. | |
| AND | |



GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Cwm Taf Morgannwg
University Health Board

| | | |
|--|------------------|--------------------------|
| My completed NHS Pension Scheme Opt Out Form. <i>Without this information, application will not be considered.</i> | | Tick Box if Attached. |
| I confirm 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 NHSBA. | | |
| I further confirm 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. | | |
| Employee's: | Signature: _____ | Date: ____ / ____ / ____ |
| Part B: To be completed by the Panel – The Decision | | |
| The application was approved. | | Tick Box if Applicable |
| The Application was rejected. | | Tick Box if Applicable |
| Please set out the reasons below for the decision. It is important in all cases, the Panel considers the potential indirect discrimination in respect of younger and female staff and considers these considerations. The Panel must clearly set out the objective business justification when approving an application e.g. There may be an objective business justification, based on the risk to service delivery, and posed by the employee reducing their hours or being reluctant to take on additional work. | | |
| Authorised by: Chair of Panel: | Signature: _____ | Date: ____ / ____ / ____ |
| Authorised by: Executive Director for People: | Signature: _____ | Date: ____ / ____ / ____ |

This application must be completed in full before being forwarded to the Executive Director for People

Hywel.daniel@wales.nhs.uk or Post to Pontypridd and District Cottage Hospital, The Common, Pontypridd, CF37 4AL

WOD to place a copy on the employee's personal file

Appendix B

Guidance and Principles

Time off in Lieu (TOIL) as an Alternative to Payment

The Health Board will offer employees the provision to take time off work in lieu of payment, where there is a requirement to work beyond their normal contractual hours, as an alternative to pay, where they are affected by annual or lifetime Pension Tax issues.

Noting TOIL cannot be claimed for a lunch break / rest break, as the Working Time Regulation require all employees to take a minimum 20 minute break after working a period of six consecutive hours.

Time off in Lieu (TOIL) serves as an alternative to pay, meaning that any overtime hours worked by the employee can be taken as part of their annual leave entitlement. Such hours will be reallocated to the employee, based on plain time rates.

Principles governing the use of TOIL

- Working additional hours to accrue TOIL through this Scheme is voluntary;
- TOIL will normally only be granted were the employee agrees it in advance with their manager.
- The accrual of TOIL does not apply to any period of less than 15 consecutive minutes.
- The employee must take appropriate breaks during a period of additional work to comply with the legislative requirements and to protect their health, safety and wellbeing and that of their patients and colleagues etc.;
- TOIL can only be accumulated within an agreed work plan with the employee's manager. Any additional hours worked must be agreed in advance. If this agreement is not in place, then the additional hours will not qualify for the accrual of TOIL and will be lost;
- When an employee identifies additional hours, which might justify TOIL, they should raise this with their manager in advance of working the additional hours;
- Time off accumulated through TOIL arrangements will be equal to the time actually worked. I.e. 1 hour of TOIL for every 1 hour worked. Noting the enhancements relating to pay do not relate to TOIL;
- TOIL should be taken as soon as practicably possible after it has been accrued. If this is not possible, it must be taken within 6 months of the accrual.

- TOIL accrued and not used as outlined above, will be considered lost and no monetary compensation will be offered. In exceptional circumstances the employee may submit a request to their manager to extend the timescale to use their TOIL;
- Where an employee is due to retire from the Health Board within the following 2 year period, they may accumulate their leave and request to take it, to bring forward their planned retirement date. This provision will only be made available to eligible employee, to ensure this additional leave is planned and managed appropriately;
- The manager should ensure that employees are given every reasonable opportunities to take their accrued TOIL within the approved six month period;
- Managers and the employees must keep a robust and agreed TOIL record of any additional hours worked and TOIL taken. It is for the manager and the employee to agree how this is documented i.e. a paper form or electronic form etc. an example form is set out in **Appendix 3** below; and
- TOIL under this scheme will be subject to regular audits.



| | |
|-----------------------------------|--|
| Employee's Name: | |
| Employee's Job Title: | |
| Base: | |
| Contracted Hours per week: | |

[illegible]