

Focus on...

The Dynamising Factor (March 2007 update)

March 2007

This guidance note has been produced by the General Practitioners Committee and the BMA's Pensions Department to help GPs and Local Medical Committees to understand the arrangements for the dynamising factor, which is applied to GPs' pensions. This has been updated in March 2007 to include changes to the process as a result of intervention in the agreement by the Secretary of State for health.

In view of ongoing legal proceedings by the BMA as a result of the Secretary of State's intervention, it is impossible for the GPC to be certain which dynamising factors will ultimately be applied to GP pensions. Once the legal process has been completed, the GPC may need to update this guidance. We would therefore urge caution when making any long-term decisions with regard to retirement and would suggest seeking independent financial advice at each step.

The guidance applies to all four UK countries. Where there are differences in approach or detail, this is indicated in the text of the guidance.

Introduction

The NHS Pension Scheme regulations provide for GPs pension to be based on 1.4% of the members uprated earnings. Earnings are uprated (dynamised) to maintain their value.

The dynamising factor is set for each financial year and is compounded with each year's previous factors, dependant on years actually worked with the NHS. The result is used to calculate each GP's pension at the time it is first claimed. The uprating now relates to an average of all GPs' profits.

What is the dynamising factor?

Practitioners' pensions are calculated by recording the pensionable earnings that are received throughout the whole of their NHS career and uprating (dynamising) these recorded earnings annually by a factor in order to maintain their value.

The dynamising factor could be based on any index or, indeed, be a fixed amount. However, historically, it has been calculated as the change in intended average net income (IANI) for practitioners, year on year. Thus, the sector has its pension based on the earnings relevant to its members and it is not influenced by external changes in, for example, retail prices or national average earnings.

During the new GMS contract negotiations, it was agreed to continue with the process of basing changes in relation to the sectors' earnings but as there would be no longer a figure for IANI the dynamising factor would be based on the actual increase in average pensionable profit year on year. This is because, as a result of the new GMS agreement, a figure for intended average net income (IANI) would no longer be available. Under the old arrangements, a precise figure for GP pay increases

could be estimated prospectively based on the increase in gross fees and allowances that were announced to deliver the intended increase to average net income. Under the new agreement, GP pay is assessed retrospectively based on the profits made by GPs from the total funding available to them via the different funding streams of their contracts.

This new calculation requires new methods to capture the relevant data, new definitions of pensionable profit and, because it is necessarily retrospective, it causes a delay to the process while data are prepared, made available and then analysed. This means that the final figure for any particular year will not be known until about fifteen months after the end of the relevant year.

Due to this delay, it has therefore been necessary to estimate an interim figure to ensure that those who retire in a particular year have their pensionable earnings uprated to some degree before the final figure is known. This is known as the interim dynamising factor.

This factor provides doctors who are retiring (or receiving a pension estimate) with a more accurate level of pensionable earnings and prevents them having to wait for a long period before benefiting from the total growth in their pensionable earnings. When the profits' data are available, a final figure will be determined and this final figure will be the one that will apply. Any adjustment to pensionable earnings resulting from a difference between the interim and final figures will then be made.

The interim dynamising factor was set at a level that was expected to be exceeded, thus when benefits are re-calculated they should be higher and arrears paid. This is preferable to recovering overpayments should the final factor be smaller.

How is the dynamising factor calculated?

The methodology for the final dynamising factor and for the interim dynamising factor is basically the same: the difference in earnings between the previous year and the current year. The change is that the interim figure is based on an estimation of the likely increase in GPs' profits and the final factor is based on total final data.

The Secretary of State's Intervention.

In December 2006 the Secretary of State intervened in the process and stated that she intended to impose dynamising factors for the years 2004 to 2008. She tried to justify this unprecedented move by arguing it was due to profits from GPs in the early years of the period appearing to be in excess of Government expectations.

This intervention potentially changes the basis of the dynamising factor calculation and removes any link to the actual earnings of the profession.

The intended, imposed factors for the years in question are:-

2004/5	6.9%
2005/6	7.3%
2006/7	6.9%
2007/8	6.9%

These figures, when combined with the agreed DF for 2003/4 (calculated on the method described above) of 12.9%, provide a cumulative DF for the five year period of 48%. As the final DFs for the years in question have not yet been calculated it is not possible to determine exactly what the difference is for each year, or for the total period; however, estimates for the 2004/5 year based

on incomplete data were predicting a figure significantly in excess of the imposed percentage. Of course, GPs have not even started to work the 2007/8 year so it is not possible to guess at the likely level of increase for this period.

Scotland and Northern Ireland have separate pension schemes and the BMA has received letters advising that ministers in these Nations are 'minded' to follow the lead of the Secretary of State in England and Wales.

What is the BMA's position on this decision?

The BMA has responded formally to the government stating that failure to honour full dynamisation, using the original agreed method, is a very serious matter and is seen by the GPC as a breach of the original agreement by the government. The BMA is currently in the process of seeking leave from the court to pursue a Judicial Review action. The BMA understands the depth of frustration and anger felt by doctors and, as previously reported, will seek to challenge this decision using every legal, economic and political means at its disposal.

Members Questions.

The BMA has received a large volume of queries from concerned members, on both technical and more general points. Answers to some of the more common queries are listed below.

Q1: What legal action is the BMA taking?

A1: Since the Secretary of State announced her intention to impose dynamising figures, the BMA has sought detailed legal advice about the best course of action. On March 7th 2007 the BMA formally lodged its application for a Judicial Review action with the courts. It is anticipated that it will be known whether leave has been granted within about six weeks from the date of this guidance being published. If leave for a Judicial Review is granted it is likely that this process will be lengthy, as many legal processes are, with the result unlikely to be known until around the end of the year.

Q2: I have already retired. Will the government seek to claw back any of the pension that I am currently receiving?

A2: No. The figures shown in the table above indicate that for GPs who retired on or after 2 April 2003 their pensions will be recalculated and increased by the final dynamising factor for 2003/04 (if not already included) and the proposed figures for 2004/05 and 2005/06, if applicable. As the proposed figures are equal to or in excess of the interim dynamising figures, no pensions or lump sums, that have already been determined, will be reduced.

Q3: I retired after 2003/04 but, so far, have only received the interim increase of 7.2%. Will I still get the extra 5.7% so that I receive the full factor of 12.9% for this year?

A3: Yes. The NHS Pensions Agency is currently working through this backlog and backdated increases will be paid when that process is complete. We are trying to establish from them what the timescale is for completing these. If this process of revaluation is delayed it has already been agreed that interest will be paid to those doctors affected.

Q4: I haven't retired yet and won't be doing so until after 2007/08, what are the implications for me?

A4: For GPs in this situation, (and this will be the majority) they will receive a minimum of 48% increase on their pensionable earnings earned prior to 2003 and a proportionate increase on earnings during the 2003-2008 period but this increase might have been higher had the government not intervened and could still be so if the GPC's legal challenge is successful.

Q5: How do I know if I will be affected and by how much?

A5: It is not possible to do any precise calculations until we know what the 2004-05 dynamising factor would have been, nor is it possible to do the final calculations, until the final dynamising figures up to and including 2007-08 are calculated. Until we know for certain what these figures are we cannot assess the actual impact that the Government's decision will have had on GPs' pensions.

Q6: What is the worst case scenario for GPs?

A6: The worst case scenario is that the government cannot be persuaded to change this decision and the dynamising factors are implemented as outlined above i.e. a 48% increase over the five year period 2003-08 .

Q7: I have read that, according to the NHS pension scheme regulations, the Secretary of State can impose a DF. Is this true?

A7: No, the BMA does not believe that the wording of the regulations as they stand allows the Secretary of State to impose a dynamising factor. So as not to compromise any legal action, it is not possible to give any further information on this point.

Q8: Hasn't the BMA already agreed to major changes in the NHS Pension Scheme?

A8: The review of the whole NHS pension schemes is underway in all three schemes (Scotland; Northern Ireland; England and Wales). The BMA has responded to the consultations for each nation, the outcome of which is expected to be published in early 2007. Whilst this may result in some changes to the NHS pension scheme in future, this is a separate issue to the current action that the government has taken of imposing a cap on dynamisation.

Q9: What else is the BMA doing about this issue?

A9: The GPC has made it clear to the government that it does not accept this decision. The GPC has decided that, at this stage, it would not be in the best interests of any intended legal action to take any direct action against the Secretary of State's imposition of dynamising factors by, for example, withdrawing from any enhanced services. This does not mean that the door has been closed to consideration of any further action in the future. The BMA is also adopting a joint approach to work with other health unions to emphasise that we consider that the government has made a retrospective change and breached a negotiated agreement with a trade union.

Q10: Is there anything else I can do on a personal level?

A10: The BMA has received offers from GPs to act as test cases for individual legal action and is keeping these for future reference. However until the full financial effect of the Secretary of State's decision has been determined (i.e. until we know the final dynamising factors for these years) this would be difficult to pursue. You could also raise this issue directly with your local MP if you wish to express frustration at the government's decision to renege on a negotiated agreement.

Q11: What will happen to future DFs?

A11: As part of the review of NHS pensions it is proposed to set dynamising factors directly in relation to the retail price index plus 1.5%. This is broadly equivalent to National Average Earnings and is also broadly equal to the long-term growth in GP earnings since the NHS pension scheme began.

Q12: When will GPs who have already left the NHS get their final pension calculations?

A12: Anyone who has left the NHS should be able to have their benefits re-calculated to include these latest DFs, regardless of any legal outcome. The BMA pensions committee is making strong representations to all the administrators of the NHS schemes across the UK as there are lengthy delays in finalising doctors' pension calculations. If you have left and have not had a recalculation you should contact the relevant pension agency for an indication of when your benefits will be completed. BMA members who have problems receiving information should write to the BMA pensions department with full details.