



Scottish Public
Pensions Agency
Buidheann Peinnseanan
Poblach na h-Alba

***NHS Pension Scheme (Scotland):
proposed changes to member
contributions from 1 April 2022***

***Scottish Government consultation
2022***

Consultation Response

1. Background

1.1. The NHS Pension Scheme (Scotland) (NHSPS[S]) rules place certain restrictions on the earnings and working commitments of some retired and partially retired staff who return to NHS employment.

1.2. As part of the Scottish Government's response to the Coronavirus (Covid-19) pandemic, measures were introduced to boost the available NHS workforce. One such measure was to suspend the applicable NHSPS(S) rules to allow retired and partially retired staff to return to work or increase their working commitments without having their pension benefits suspended or abated.

1.3. The pension scheme restrictions were suspended from 25 March 2020 to 25 March 2022 by section 46 of the Coronavirus Act 2020. Following the expiry of that section of the Coronavirus Act, Scottish Ministers made the decision to extend the suspension of the rules from 25 March to 31 October 2022 via temporary amendments to the NHSPS(S) regulations. The restrictions are therefore due come back into effect from 1 November 2022 as previously advised in [SPPA circular 2022/02](#).

1.4. For the vast majority of NHS staff, the NHSPS(S) does not place any limits on the amount they can work should they return after claiming their pension benefits. However, there are three rules across the schemes which limit the amount some retired staff can work in specific circumstances:

I. The '16-hour rule'

- This rule prevents members who return to work after retirement from the 1995 Section of the NHSPS(S) from working more than 16 hours per week in the first calendar month after retirement. Where staff work more than 16 hours per week in the first month their pension ceases to be payable until the member leaves NHS employment or reduces to 16 hours per week.
- The current suspension of this rule allows members to return immediately to work after taking a minimum 24-hour retirement and continue their existing working commitments, or increase them, whilst they remain in receipt of their full pension benefits.

II. Abatement for Special Class Status (SCS) holders in the 1995 Section

- This rule applies to SCS members, including mental health officers, who are eligible to retire from the 1995 section at age 55, instead of 60, without an actuarial reduction in their pension: abatement applies where staff return to work before age 60 and their pension plus salary exceeds their pre-retirement income.

III. Abatement in the 2008 Section and 2015 Scheme for members who have taken partial retirement.

- This is where a person has elected to take partial retirement and 'draw-down' a portion of their benefits. In order to access partial retirement members must have a reduction in their actual pensionable pay of at least 10%. If the member's pensionable pay increases in excess of 90%, of the level before draw-down was taken, within 12 months of its reduction, then member's pension is abated.

2. Consultation Proposals

2.1. The suspension of the NHSPS(S) restrictions relating to retired staff returning to work will cease to have effect from 31 October 2022 when current temporary provisions expire. However, the Scottish Government recognise that suspension of these rules is currently allowing skilled and experienced staff, who have recently retired from the NHS, to return to work and is providing valuable additional capacity to NHS Scotland. This is particularly important given the potential challenges the health service could face over the winter period, in addition to continued challenges posed by Covid-19 on staff sickness rates and absences of NHS staff. Therefore, there is a case for continuing the temporary easements to deal with the potential challenges of the upcoming winter period.

2.2. On behalf of the Scottish Ministers, SPPA published a consultation which set out the Scottish Government's intention to continue with the temporary suspension of the restrictions on retired staff returning to work via temporary modifications to the NHSPS(S) regulations. The consultation sought views on proposed amending regulations which extend the suspension of the restrictions from 31 October 2022 until 31 March 2023.

3. Consultation Process

3.1. Proposals and draft legislation were subject to public consultation which began on 2 September 2022 and ended on 19 September 2022. Given that the easements had been in place for two years, a short consultation was considered appropriate. A consultation paper, [NHS Pension Scheme \(Scotland\): Consultation on the continued suspension of return to work restrictions](#) was published on the SPPA website www.pensions.gov.scot and responses were invited by way of a response form to be returned via email or post to SPPA.

3.2. NHS Trade Unions, a number of NHS employers and other interested parties and stakeholders were formally notified of the Consultation.

3.3. Prior to publication of the Consultation, SPPA worked with the NHS Pension Scheme (Scotland) Advisory Board (SAB) to review the current suspension of the return to work restrictions and sought their advice on a potential extension. The SAB is a statutory board comprising trade union and employer representatives whose remit includes providing advice to Scottish Ministers on prospective changes to the NHSPS(S).

3.4. A total of 10 responses were submitted to SPPA, with 5 received from scheme members and 5 from staff associations and employing authorities.

4. Consultation Responses

Proposed draft amending regulations

4.1. In order to implement the planned changes, SPPA proposed to amend the scheme rules. The rules of the NHSPS(S) are set out in regulations, which is a form of secondary legislation. The consultation document sought feedback on the draft amending regulations and whether they met the policy objectives as set out in the consultation document.

The draft amending regulations were proposed in order to implement:

- The continued suspension to 31 March 2023 of NHSPS(S) rules allowing retired and partially retired staff to return to NHS employment to assist the healthcare response to Covid-19 without negative impact on their pension entitlements.

4.2. The consultation document posed the following question in relation to the draft regulations.

“Q1. Do you agree or disagree that the proposed draft amending regulations deliver the policy objectives of continuing the temporary suspension of restrictions relating to retired staff returning to work until 31 March 2023”

4.3. Table 1 provides a brief analysis of the responses received to the question and shows that all respondents to the consultation agree that the suspension of return to work restrictions currently in effect should continue.

Responses	Percentage
Agree	100%
Disagree	0%
Do not Know / No Response	0%

4.4. Of the responses to this question, approximately 75% felt that staffing levels within the NHS were currently causing difficulties in the provision of services and that this will be made more challenging over the winter period. The Royal College of Podiatry (RCPod) commented that,

“this will help with retired staff returning to the workforce over the winter period. With the onset of winter pressures, anything that can be done to encourage staff to return to the workforce should be done.”

4.5. One respondent commented that to *“retain experienced staff or even encourage them to continue will be extremely beneficial”*, suggesting that this was *“much more cost-efficient...than using agency staff”*. Another respondent commented that

“partially retired personnel have a multitude of skills that is helpful for newer and less experienced staff and can provide knowledge, wisdom and support”.

4.6. Although the proposition was widely approved of, the British Medical Association (BMA) questioned the timing of the consultation and any changes being introduced, commenting that while they agreed with the extension they considered it was too late, pointing to *“short sightedness in only extending this provision for 6 months”*.

4.7. The BMA further commented that as senior doctors may have begun retirement planning several months prior to the consultation or the changes, this would diminish *“any benefit that could have been accrued from this, as was highlighted when the initial extension was proposed”*.

4.8. Some respondents used their response to this question to raise concerns over taxation rules affecting doctors, however, this subject was not part of the consultation and no further comment is made in this response.

Continued suspension of retire and return restrictions

4.9. The consultation document additionally sought feedback on the proposed length of the easement continuation and asked:

“Q2. Do you agree or disagree that the continuation of the easements until 31 March 2023 is a reasonable length of time?”

4.10. Table 2 provides a brief analysis of the responses received to the question and shows that most respondents disagreed that the proposed six month extension was a reasonable length of time.

Responses	Percentage
Agree	10%
Disagree	90%
Do not Know / No Response	0%

4.11. While all respondents agreed with the premise of extending the easements, 90% disagreed with the specific timescale for extension as proposed by the consultation. Further analysis highlighted two themes within these responses, with one group of respondents calling for an extension of longer than the six months proposed, and a second cohort seeking the complete removal of the abatement rules.

4.12. Of the respondents who disagreed with the proposed six month extension, 44% of respondents felt that the easements should remain in place on a longer-term basis beyond 31 March 2023, with respondents indicating current and future NHS staff pressures as a primary consideration. As part of their response, the Royal College of Nursing (RCN) argued that an extension of 12 months would benefit employers and employees by allowing more time for organisational or personal planning. The RCN commented: *“Reviewing the rules on a 6-month basis does not provide sufficient*

certainty for workforce planning or for staff themselves. Instead, we would support a 12-month continuation of the easements, until 31st October 2023". The RCN added that this, "would give significant notice to employers and to staff as well as time to consider and develop a long-term policy view on the future of the easements".

4.13. A majority of respondents (56%) who disagreed with the proposed extension felt that the abatement rules should be removed permanently, with many citing similar concerns surrounding workforce planning and staff shortages. In their response, the Royal College of Podiatry (RCPod) commented that permanent removal would be preferable due to: *"...ongoing concerns over staff shortages within the NHS in Scotland even before the pandemic"* adding that permanent removal was critical to ensure *"that the NHS has unfettered access to experienced staff and make it easy for them to return to the workplace"*.

4.14. A number of respondents highlighted the benefits afforded by experienced doctors and medical staff being retained in the service as reasons for the complete removal of the restrictions. As part of their response, the BMA commented that *"in addition to driving productivity in secondary care, their contributions and leadership have become even more evident throughout the COVID-19 pandemic"*.

4.15. Again, concerns were raised by some respondents as to the timing of the changes, with some respondents highlighting that as many employees had already made retirement plans, the benefits of the extension would be limited. The RCN commented that, *"employers will already be progressing retirements in anticipation of the rules being reintroduced on 31st October 2022 and likewise, staff will be making plans based on this timetable"*. The BMA additionally commented that the, *"delay may have therefore ensured that this will only have a limited effect in retaining senior doctors"*.

The 16-hour rule

4.16. A number of respondents commented that the 16-hour rule specifically should be permanently removed on the basis that it serves little practical use for staff, employing authorities or the wider scheme. The RCN supported the rule's permanent removal, commenting: *"We believe that the 16-hour rule provides little value to the pension scheme, hinders continuity of care and creates an unnecessary administrative burden for employers. We would welcome...suspension of the 16-hour rule and for this to continue to be suspended until the rule can be permanently removed"*.

5. Scottish Government Response

5.1. SPPA thanks all respondents for providing feedback on the consultation which has provided valuable insight from across the NHSPS(S) membership and interested stakeholders.

5.2. On behalf of the Scottish Ministers, the SPPA consulted those who would likely be affected by the changes to the regulations with a view to reaching an agreement on the proposals. Overall, respondents agreed with the proposal to extend the duration of the easements currently in place, however, agreement was not reached on the proposed length of the continued extension.

5.3. The Scottish Government has listened to the feedback from this consultation and agrees that the suspension of retire and return restrictions should be extended over a longer period. While the restrictions were originally introduced to support NHS Scotland's response to the pandemic, it recognised that the recovery of the NHS, following the pandemic, is still putting significant demands on workforce capacity. **Therefore, the suspension most of the retire and return restrictions will be extended until 31 March 2025.**

5.4. A number of respondents expressed support for the permanent removal of the 16-hour rule. The Scottish Government recognises that some staff who are approaching retirement want more flexibility around their retirement options and the ability to continue in employment while claiming their pension. The Scottish Government recently published [retire and return guidelines](#) which make it easier for experienced staff who wish to continue in a part-time role following retirement.

5.5 Therefore, SPPA intend to consult with the SAB around the introduction of a new package of retirement flexibilities, including allowing members of the 1995 section of the Scheme to partially retire but to continue working and building up further pension. The flexibilities would also allow those who have already retired and returned to work to re-join the pension scheme. These proposals would require the permanent removal of the 16 hour rule, therefore, we intend to extend the current suspension of the rule until 31 March 2025, with a view to permanently removing it should the SAB be supportive of the proposed retirement flexibilities.

5.6. The proposed retirement flexibilities would introduce partial retirement to the 1995 section of the Scheme. If partial retirement was introduced, it would be proportionate to apply abatement for those members who choose to 'draw-down' their benefits and partially retire from the 1995 section. This draw-down abatement would apply in the same way as in the 2008 section and 2015 Scheme, where the member's pension would be reduced if their pensionable pay does not decrease by 10% following partial retirement.

5.7. Therefore, if proposed retirement flexibilities are implemented, draw down abatement in the 2008 section and 2015 Scheme, which has been suspended since March 2020, would be re-introduced to ensure consistency across the schemes. Draw-down abatement will remain suspended until 31 March 2023 and at that point we will review the position based on progress with introduction of retirement flexibilities.

5.8. The SPPA therefore intends to extend the suspension of the retire and return restrictions as follows:

- I. The 16-hour rule will be suspended to 31 March 2025, with further proposals to remove it permanently, as part of a new package of retirement flexibilities, to be considered by the SAB**
- II. Abatement for special class status holders in the 1995 Section will be suspended to 31 March 2025**
- III. Abatement of draw-down members of the 2008 section and 2015 Scheme will be suspended to 31 March 2023**

6. Equality Impact Assessment (EQIA)

6.1. The proposed amendments to the NHSPS(S) regulations will continue the suspension of the retire and return restrictions as provided for by Section 46 of the Coronavirus Act 2020. Therefore, the EQIA remains consistent with the initial assessment carried out as part of the introduction of the Coronavirus Act.

6.2. The equality assessment can be found at the following link: [Coronavirus Act 2020: the public sector equalities duty impact assessment - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/coronavirus-act-2020-the-public-sector-equalities-duty-impact-assessment)

7. Next Steps

7.1. The retire and return restrictions will be further suspended, as set out above, via amendments to the NHSPS(S) regulations. It will not be possible to introduce these regulations from 1 November 2022, however, the regulations will be amended at the earliest opportunity and will have retrospective effect from 1 November 2022 to ensure continuation of the suspended rules. The Scottish Government will keep the impact of the continued suspension under review.