

Scottish Public Pensions Agency

Buidheann Peinnseanan Poblach na h-Alba

Flexible Retirement

Employer Guide

August 2023



1. Introduction

- 1.1 This guide has been written to assist employers with the introduction of flexible retirement in the NHS Pension Scheme (Scotland). The guide will cover the option for members to **Retire and Re-join** the pension scheme and also the option to take **Partial Retirement.** The difference between the two options is set out in the <u>frequently asked questions</u> (FAQ) section below
- 1.2 SPPA recently undertook a <u>consultation</u> between 22 December 2022 and 16 February 2023 on proposals to allow for the introduction of new retirement flexibilities to the NHSPS(S). These flexibilities primarily impact members who are retiring, or have retired from, the <u>1995 Section</u> of the scheme. On 28 March 2023, SPPA published a <u>consultation response</u> which confirmed the intention to implement flexible retirement proposals covered in this guide.
- 1.3 This guide covers:

<u>Retire and Re-join</u>

- <u>changes to rules for 1995 Section members from 1 April 2023</u>
- <u>eligibility to re-join the NHS Pension Scheme for members following</u>
 <u>retirement</u>
- <u>NHSScotland Retire and Return Arrangements</u>
- where an eligible member has already returned to work prior to 1 April 2023
- <u>removal of the maximum service limits</u>
- the 24-hour break requirement
- <u>removal of the 16-hour rule</u>
- <u>suspension of abatement for special class and MHO status members</u>

Partial Retirement (draw down)

- <u>introduction of partial retirement for 1995 Section members from 1 October</u> 2023
- requirement for 10 per cent reduction in pensionable pay
- abatement for members accessing Partial Retirement
- processing applications for partial retirement

<u>Flexible Working</u>

• <u>flexible working for staff in the later stages of their career</u>

Frequently Asked Questions

1.4 If you have a query about any of the information provided in this guide, would like us to consider any amendments or have noted areas that need additional guidance, you should contact SPPA at sppacentactus@gov.scot.



2. Retire and Re-join

Changes to rules for 1995 Section members from 1 April 2023

- 2.1 From 1 April 2023, all retired members have the option to return to work, re-join the 2015 NHS Pension Scheme and earn further pension benefits after a break of at least 24 hours.
- 2.2 Under the NHSPS(S) rules before 1 April 2023, members who took their 1995 Section benefits were not allowed to return to the NHSPS(S) and build up further pension in the 2015 Scheme if they returned to work.
- 2.3 As the 1995 Section does not have any late retirement factors, if members choose to leave these benefits unclaimed after age 60, they do not increase in value. With all members having been moved to the 2015 Scheme from 1 April 2022 in respect of building up future pension benefits, these rules could have caused problems for those who need to carry on working to be able to afford to retire but wish to claim their 1995 Section benefits when they are most valuable.
- 2.4 Therefore, the rules were changed from 1 April 2023 to allow members who take their benefits in the 1995 Section to return to work and build further pension in the 2015 Scheme, if they wish.
- 2.5 This may help some retired staff to bridge the gap between claiming their NHS pension benefits and receiving their State Pension while supporting NHS capacity.
- 2.6 Members who have benefits in the 1995 and 2008 Sections who were nonpensionable before 1 April 2023 because they had exceeded maximum service limits and therefore had to stop contributing, can also join the 2015 Scheme from 1 April 2023 providing they claim their pension benefits in full.
- 2.7 The age limit for 2015 Scheme membership (75 years) still applies from 1 April 2023

Eligibility to re-join the NHS Pension Scheme for members following retirement

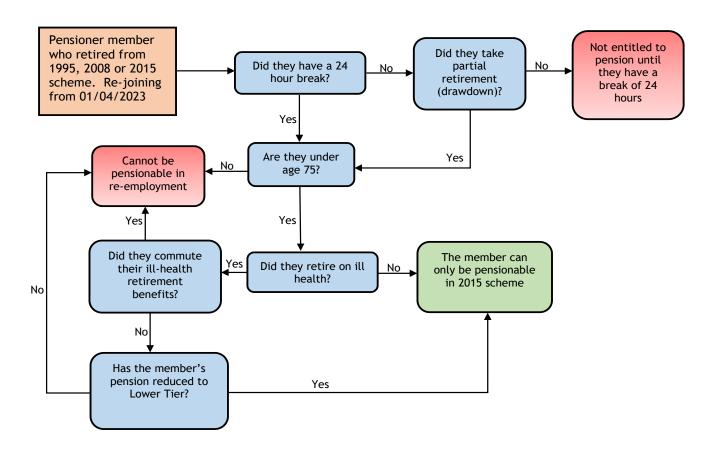
- 2.8 A member will not be eligible to re-join the 2015 Scheme if they are age 75 or over.
- 2.9 A member will not be eligible to re-join if they have taken their benefits as a serious ill health lump sum.



- 2.10 A member who retired on the grounds of ill-health with a <u>lower-tier ill health</u> <u>pension</u> can re-join the 2015 scheme straight away in respect of any further NHS employment. While the lower-tier ill health pension may remain in payment it will be subject to the abatement rules.
- 2.11 A member who retired on the grounds of ill-health with an <u>upper-tier ill health</u> <u>pension</u> can re-join the 2015 Scheme after a period of one year, beginning with the first day they return to work. This is also the date at which the upper-tier pension will be reduced to a lower-tier pension. The lower-tier pension may remain in payment but will be subject to the abatement rules
- 2.12 Any member eligible to re-join the Scheme following ill-health retirement will join the 2015 Scheme.

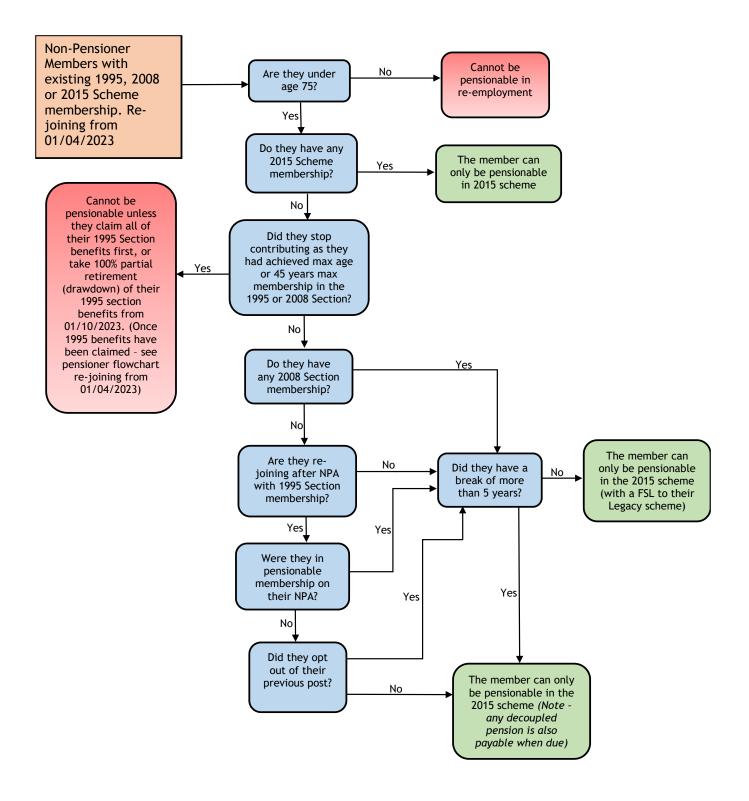
Flowchart to determine if a member can return to pensionable employment following retirement

2.13 This flowchart should be used if the member is claiming benefits from all Schemes/Sections they have membership in and they have taken a 24-hour break in employment between their last day of pensionable employment and the payable date:





2.14 The following flowchart should be used if the member is not claiming benefits from all Schemes/Sections they have membership in and has existing deferred 1995/2008 Scheme membership or 2015 Scheme membership.





NHSScotland Retire and Return Arrangements

- 2.15 The NHSScotland <u>Retire and Return Guidance</u> provide employers with guidance on the process to be followed when an employee wishes to retire and return.
- 2.16 The guidance notes that there is no automatic right for an employee to return to work following their retirement. However, the policy offers an accelerated route to support a return to work, where appropriate, potentially benefiting both the employer and employee. The policy provides guidance for employers on employees returning to an existing post, returning to a different band or role, or returning to a bank contract. It also provides guidance on any contractual issues.
- 2.17 The employee should complete a Retire and return application form attached to the <u>Retire and Return Guidance.</u>

Where an eligible member has already returned to work prior to 1 April 2023

- 2.18 If a member is newly eligible to join the 2015 Scheme on 1 April 2023, having already returned to work prior to this date, you are not required to enrol them into the scheme. However, you must notify all staff, who have taken their benefits from the 1995 Section and returned to work before 1 April 2023, that they are eligible to join the 2015 Scheme from 1 April 2023 if they wish.
- 2.19 As these members will previously have been unable to build up further benefits in the 2015 Scheme. they may have an alternative pension arrangement, for example, the National Employment Savings Trust (NEST), or they may not be contributing to a pension scheme.
- 2.20 If they choose to end their membership to an alternative pension arrangement, for example NEST, and join the 2015 Scheme, they may be able to transfer their benefits from the alternative pension arrangement into the 2015 Scheme. They have 12 months to transfer their benefits after becoming eligible to join the Scheme and must do so before their normal pension age.
- 2.21 You can find more information on <u>transferring</u> on the SPPA website.

Removal of the maximum service limits

- 2.22 From 1 April 2023, maximum service limits will be removed. Members who have benefits in the 1995 and 2008 Sections who have previously been non-pensionable because they have exceeded maximum service limits will be able to join the 2015 Scheme from 1 April 2023, providing they claim their pension benefits in full.
- 2.23 The age limit for 2015 Scheme membership (75 years) still applies.



- 2.24 Most members retiring on grounds of age, Voluntary Early Retirement (VER) or where benefits have been deferred must take a 24-hour break in NHS employment/work to access their NHS pension in full.
- 2.25 The 24-hour break normally follows a member's last day of NHS employment.
- 2.26 NHS employment means any post where a member holds an NHS contract, this could also be an approved organisation whether it is pensionable or not.
- 2.27 A member can take their 24-hour break from employment on retirement any day of the week, including the weekend or a bank holiday, regardless of their working contracted hours / regular working pattern.
- 2.28 To satisfy the 24-hour rule a member must terminate their contract of service (i.e. contract of employment), or contract for services if they are a self-employed practitioner or non-GP provider.
- 2.29 Practitioner must also take a 24-hour break on retirement. To do this they must:
 - give the contract back to NHSScotland (if they are the sole holder of the contract)
 - give up their shares and be removed from the Limited company (if they are a shareholder)
 - resign from the partnership (if they are a partner).
- 2.30 A 24-hour break is not required to claim benefits if any of the following conditions are met:
 - Members with separate entitlement (no final salary link) in the 1995/2008 Scheme and the 2015 Scheme, can continue paying into the 2015 Scheme after claiming benefits from the 1995/2008 Scheme and do not need a 24hour break.
 - Members who have deferred pension benefits in the 1995 and/or 2008 Section(s) who have had a break of more than five years (loss of final salary link) may claim their deferred benefits (on a reduced basis) once they reach their minimum pension age or unreduced once they reach their normal pension age for the 1995 or 2008 Section, without having to take a 24-hour break in their NHS employment.
 - The member is aged 55 or over and claiming redundancy pension benefits from one post only.
 - The member has partially retired through partial retirement, known as draw down.
 - The member has reached the maximum pensionable age of 75 (or, for 1995 Section members, age 70 before 01/04/2008).



2.31 If the member has concurrent part time posts a 24-hour break must be taken from all posts.

Removal of the 16-hour rule

- 2.32 Members who choose to re-join the NHS following retirement can now work as many hours as they want straightaway.
- 2.33 Scheme regulations prior to the 1 April 2023 meant members of the 1995 Section were limited to working 16 hours a week in the first month after retirement to avoid having their pension payments affected.
- 2.34 The 16-hour rule had previously been suspended due to COVID, but it has now been permanently removed from the regulations.
- 2.35 From 1 April 2023, the member must still have a 24-hour break in their contract of employment but can then move into a new contract for any amount of hours and re-join the Scheme and start building 2015 Scheme benefits immediately.
- 2.36 As the SPPA is removing the 16-hour rule, the 1995 Section regulations have also been changed to remove the 16-hour rule for members with more than one employment. From 1 April 2023, members with more than one employment have to take a 24-hour break from all employments to be able to claim their pension.

Suspension of abatement for special class and MHO Status members

- 2.37 Abatement for Special Class or Mental Health Officer status is currently suspended until 31 March 2025.
- 2.38 This means Special Class or Mental Health Officer members will be able to return to NHS employment or increase their working commitments without having their pension payments reduced whilst abatement remains suspended.
- 2.39 Once the suspension ends, they will be subject to abatement until age 60 under normal circumstances.
- 2.40 Read more about the suspension of abatement guidance in SPPA <u>Circular</u> <u>2022/11</u>



- 3.1 Partial retirement, sometimes known as draw down, is already available to staff who have pension benefits in the 2008 Section and/or the 2015 Scheme and will become available to those with pension benefits in the 1995 Section from 1 October 2023.
- 3.2 Partial retirement enables active members of the scheme who have reached minimum pension age to take all or part of their pension whilst continuing to work.
- 3.3 Members may draw down from 20 per cent up to 100 per cent of their pension benefits without having to leave employment. Members can claim pension benefits on up to two occasions before fully retiring. For example, a member could take 50 per cent of their pension (and applicable lump sum) at their first draw down, continue in employment and then take a further 25 per cent at a second draw down, before then fully retiring and taking the remaining 25 per cent of their pension benefits. A further example is shown in the FAQ section below.
- 3.4 Members must reduce their pensionable pay by at least 10 per cent in order to take partial retirement.
- 3.5 After taking partial retirement, members will continue to build up further pension in the 2015 Scheme unless they make a separate decision to opt-out of the pension scheme.
- 3.6 Employees must be active members of the Scheme to be eligible for partial retirement. If individuals have opted out of the NHS Pension Scheme, they are not eligible to claim their pension under the partial retirement rules. Once members have taken partial retirement, they can choose to opt out of the Scheme, this will become effective from the end of their next pay period. Individuals must be an active member for a minimum of at least one day after taking partial retirement.
- 3.7 Partial retirement is similar to retire and re-join, in that it aims to enable employers to retain experienced colleagues. However, with partial retirement, there is no need for the employee to end their contract of employment, or have a break in service, in order to take their pension benefits. Members also have more flexibility to choose to take some or all of their pension benefits whilst continuing to work for the NHS. As there is no break in service, terms and conditions of employment will continue unchanged.
- 3.8 In order to achieve a 10% reduction in pensionable pay, the employee will have to discuss and agree flexible working arrangements with their employer, e.g., part time working or reduced part time working, or any other arrangements that may be necessary, e.g., cessation of a role that provides an additional



pensionable payment. Working flexibly in the lead up to final retirement may enable employees to achieve healthy working lives and to stay in the NHS for longer.

Members may need to consider the following points when deciding the proportion of pension they wish to take

- 3.9 Taking a pension or partial pension in addition to income from employment may alter the employee's personal tax position.
- 3.10 If a member takes their benefits before the normal pension age (NPA), their benefits will be reduced. The reduction is approximately 5 per cent for each year the pension is taken early. Different NPAs apply in the 1995 section, 2008 section and 2015 scheme (shown in the table below). This may affect the member's preferences around how much pension they wish to take and when.

Scheme	Normal Pension Age
NHS Superannuation Scheme – 1995 Section	Age 60 (age 55 for special class members)
NHS Superannuation Scheme – 2008 Section	Age 65
NHS Pension Scheme 2015	Same as State Pension Age

- 3.11 When a member chooses to take partial retirement, their chosen percentage is applied sequentially across all their benefits in the NHS Pension Scheme. This means they effectively take or use up their 1995/2008 scheme benefits first, followed by their 2015 scheme benefits. **Members cannot partially retire from the 2015 Scheme if they have not already taken all their 1995/2008 Section benefits**. If the member wishes to take their 1995/2008 scheme benefits but not their 2015 scheme benefits (perhaps to avoid an early retirement reduction being applied to their 2015 scheme benefits) members will need to indicate this on the retirement application form.
- 3.12 Members are not able to take their lump sum from the 1995 section separately from their pension. Taking partial retirement involves claiming a proportion of their pension and any lump sum associated with that pension. The member will have the option to exchange some of their pension to provide for a lump sum (2008 section/2015 scheme) or an additional lump sum (1995 section).

Requirement for 10 per cent reduction in pensionable pay

3.13 Partial retirement is intended to facilitate a gradual move from work to retirement. Therefore, members are required to reduce their pensionable pay by at least 10 per cent for 12 months on taking partial retirement. We understand that most staff, when presented with the ability to take some or all of their pension benefits, will be happy to reduce their hours or level of responsibility, and partially retire – as the name suggests. The partial retirement

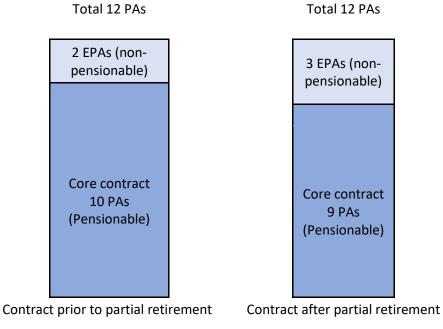


policy has been primarily designed with these situations in mind and should allow staff to work in a more sustainable way and remain in NHS service for longer.

- 3.14 Employers are already experienced in dealing with requests for changes to working patterns, for example for staff returning from career breaks or parental leave and should approach requests for partial retirement in a similar way. While existing terms and conditions of employment will continue unchanged, due to there being no break in service, employees will need to discuss and agree a change to working arrangements with their employers to achieve the reduction in pensionable pay.
- 3.15 The scheme regulations require members to have a reduction in pensionable pay as a result of a change in their terms and conditions of employment. However, the regulations do not necessarily require a reduction in overall take home pay.

NHS Scotland Employer flexibility

3.16 We understand that not all staff will want to reduce their hours immediately. Doctors who wish to take partial retirement but work the same total number of Programmed Activities (PAs), can agree with their employer a change to their contract, so that they reduce the number of pensionable PAs in their core contract, therefore reducing pensionable pay, and instead work these as nonpensionable Extra Programmed Activities (EPAs). Below is an illustration of how the contract might be adjusted in order to take partial retirement and reduce pensionable pay by 10%:





- 3.17 Non-medical staff who wish to take partial retirement but work the same total number of hours, could agree with their employer a change to their core contract to 0.9 FTE or less, and then work the remainder of their hours on a bank basis, additional hours worked above the core contract, on the bank, would be non-pensionable. Staff would still retain a substantive contract and the benefits this provides, and employers are free to offer them similar terms in their bank roles. We understand that the use of overtime is not as common as bank work across the NHS, but where this approach is taken, any use of overtime for part-time staff is non-pensionable according to the 2015 Regulations and payroll should ensure that any additional hours worked above core contract are not pensioned.
- 3.18 Employers must comply with the NHS Pension Scheme regulations which define pensionable earnings as follows:
 - Pensionable earnings are broadly all salary, wages, fees and other regular payments.
 - Non-pensionable payments include bonuses, non-regular payments, payments made to cover expenses or overtime and pay awards or increases which are expressed by Scottish Ministers to be non-consolidated.
- 3.19 Employers may be able to use flexibility in the scheme regulations to determine some payments as non-pensionable so that the member's pensionable pay is reduced, without reducing their overall working commitments and take-home pay.

Temporary payments

• Most temporary payments are non-pensionable. Exceptions include temporary pay increases, unsocial hours for shift working and on call allowances.

Local payments

• Most local payments can be determined as non-pensionable.

<u>One off payments</u>

• Employers may wish to explore options to establish non-pensionable one-off bonus payments in recognition of additional activity.

<u>Overtime</u>

• All overtime payments are non-pensionable. Overtime is defined in the 2015 Scheme Regulations as any period of time worked in excess of an individual's standard contracted hours.

Extra programmed activities (as mentioned above)



• Extra PAs which exceed the standard contractual limit of 10 are nonpensionable. Employers should ensure job planning processes and any supporting documentation clearly sets out that extra PAs are over and above the standard contract and are subject to regular review.

Allowances for undertaking management responsibilities

• Allowances will be non-pensionable if they are temporary and subject to review, or if they are linked to a non-pensionable PA that exceeds the standard contractual limit of 10 or more.

Waiting list initiative (WLI) payments

• WLI payments should be non-pensionable if the activity exceeds wholetime or if the payment is made as a one-off bonus.

Weekend and on-call payments

• Availability allowance for on-call work is only pensionable if there is a specific rota commitment that an individual is paid for on a regular basis.

Abatement for members accessing Partial Retirement

- 3.20 Members taking partial retirement must reduce their pensionable pay by 10 per cent for 12 months. If the terms of the member's employment are changed again within 12 months of taking partial retirement, so that their pensionable pay returns to more than 90 per cent of their pensionable pay before their partial retirement, abatement will apply and benefits in payment will be reduced.
- 3.21 It is important to remember that the aim of the policy is to provide flexibility for staff and employers, and to support retention of experienced staff. The aim is not to catch employers out where they are acting in the spirit of the regulations and have confirmed that a member will reduce their pensionable pay by 10% for the next 12 months. For example, if a member's terms of employment change within these 12 months because they are promoted to a higher grade and their pensionable pay increases, this would not meet the requirements of the policy. However, if unsocial hours payments fluctuate and may tip pensionable pay temporarily above 90% in these 12 months, this would not be seen as a breach of the required reduction. If a member receives a nationally agreed pay award in these 12 months which does not change their terms of employment, for example an AfC pay increase, this would not be an issue.
- 3.22 Employers should, however, make staff aware that their pension payments may be reduced if the 10 per cent reduction in pensionable pay is not maintained during the first 12 months after taking partial retirement.
- 3.23 Abatement on partial retirement for members of the 2008 section and 2015 scheme was suspended until 31 March 2023. This temporary suspension was intended to support retired staff to return to work and boost capacity during



the pandemic. Abatement for those taking partial retirement was resumed from 1 April 2023 and will continue to operate as described above.

Processing applications for partial retirement

- 3.24 Members must discuss their partial retirement application with their employer to agree any changes to their working arrangements that may be needed to achieve the required 10% reduction in pensionable pay.
- 3.25 The member and employer must then complete and send the retirement application form <u>NHS:RET</u> (officers) or <u>PRAC:RET</u> (practitioners) to SPPA. Section 1 of the form allows members to indicate what percentage of pension they would like to take between 20% and 100%.
- 3.26 Section 3 should be completed by the employer to certify that the member's pensionable earnings will reduce by 10% for a period of 12 months.



- 4.1 The definition of retirement is changing and broadening. Many employees are considering how they can gradually adjust their working patterns to achieve a healthy work-life balance and a smoother transition from their working life into retirement. This shift towards retiring flexibly leaves behind the expectation that retirement means permanently leaving the workplace and employment, or that full time work should immediately be replaced with full time retirement.
- 4.2 Flexible working is just as valuable for staff approaching the end of their careers, and for retired staff who are returning to the NHS, as it is for those joining the NHS for the first time or returning from parental leave.
- 4.3 Flexible working is key to retention, employee engagement and supporting staff to live healthy working lives, and NHS Scotland is committed to offering more flexible, varied roles and opportunities to their employees.
- 4.4 On request, employers should consider flexible working patterns for employees in the lead up to full retirement. The arrangements agreed should reflect the employee's experience, skills and preferences as well as the needs of the service.

Options for flexible working on return

- Part-time work including job shares, term time only work, annualised hours.
- Fixed working patterns to give certainty around days, times and location of work.
- Compressed or elongated working hours.
- Fixed-term contracts
- 4.5 If the retired employee is returning to a post that is related to a specific timelimited project or funding stream, or to cover a period of temporary absence for example, maternity leave, then in those circumstances, a fixed-term contract may be appropriate for the employee and employer.
- 4.6 Employers should carefully consider their reasons and objectives for offering a fixed-term contracts, if the fixed-term contract is necessary, and if there are any alternative ways to achieving their aims.
- 4.7 Employers should consider how a fixed-term contract may be perceived and valued by the employee. Some staff may find a fixed-term contract attractive if it fits with their personal circumstances and plans. For others, the long-term uncertainty may discourage the employee from returning.



Bank / locum work

- 4.8 Bank or casual work (zero hours contract) is seen by many employees and employers to offer the greatest level of flexibility.
- 4.9 However, some employees may feel their status in the organisation would be lessened by moving from a substantive post to a bank post. There may be other implications of moving to a bank contract, for example loss of voting rights or loss of control over certain processes, that may make an employee feel undervalued or unable to contribute to their full potential. Again, it is important for employers to consider how offering a bank or locum contract of employment would be perceived and valued by the employee and how this may impact their decision to return.



Q1. What is the difference between Retire and Re-join and Partial Retirement?

A1. The key distinction between retire and return and partial retirement is that with retire and return, the member must leave NHS employment with a 24-hour break in service, take all of their pension benefits and be re-employed on a new contract of employment at a later date. With partial retirement, the member can take their pension without leaving their job or taking a break in service and so their existing contract of employment continues to be in place.

Another important difference is that members who retire and return must take all their benefits from the 1995 Section at once, whereas partial retirement provides additional flexibility for members to take some or all of their pension in one or two payments.

As partial retirement provides a more seamless approach, it is expected that going forward, partial retirement may be more attractive for staff who already know they plan to continue working after taking their pension.

After the introduction of partial retirement, retire and return may still be used where a member retires and then decides sometime later that they wish to return to work in the NHS. Retire and return will continue to be a useful tool for employers to attract and welcome back retired staff to the NHS workforce workplace to fill gaps in capacity and help deliver high-quality patient care.

Q2. The guidance outlines that members can take between 20% and 100% of all their pension benefits in one or two drawdown payments, without having to leave their current job. Could a member take 20% at age 58 (with an approximate 10% reduction for taking early) and the other 80% at age 60 while working on to age 63?

A2. Yes, that's correct the member could take 20% before age 60 at the first draw down which would attract an early retirement reduction. They could then take the remaining 80% at a second draw down at age 60 (with no reduction on 1995 Section benefits) and then work on until age 63 and finally retire, taking any benefits subsequently accrued in the period between age 60 and 63.

Q3. For 1995 Section pension benefits, what final pensionable pay figure will be used at each draw down?

A3. The final pensionable pay at each draw down will be the pensionable income paid during the best year of the last three years of pensionable service immediately prior to the draw down date. Therefore, the final pensionable pay will likely be different at each draw down.



Q4. If the member is affected by the McCloud ruling will partial retirement trigger a deferred choice from the first draw down?

A4. Yes. Partial retirement is treated, for the purposes of the McCloud remedy, as a retirement event and going forward members will be required to make their choice about which benefits to take (1995/2008 Section or 2015 Scheme) for the remedy period at the first draw down.

However, from 1 October 2023, members affect by the McCloud ruling will have their pensionable service for the period 1 April 2015 to 31 March 2022, known as the remedy period, automatically be put back into the 1995/2008 Section. Initially, partial retirement benefits will be calculated on that basis and then SPPA will contact the member within 12 months to ask them to choose their benefits for the remedy period.

Q5. Do members get a tax-free lump sum when taking partial retirement?

A5. Yes, a percentage of the automatic retirement lump sum would be payable from the 1995 Section at each drawdown. For the 2008 Section and the 2015 Scheme, members will have the opportunity to give up some of their pension for lump sum at each draw down based on the percentage of their pension being claimed.

Q6. Can employees who are currently opted out of the scheme with deferred pension benefits take partial retirement?

A6. No, if individuals have opted out of the NHS Pension Scheme, they are not eligible to claim their pension under the partial retirement rules. Employees must be active members of the Scheme to be eligible for partial retirement and, therefore, members would require opt to rejoin the scheme to be eligible. Once members have taken partial retirement, they can choose to opt out of the Scheme, this will become effective from the end of their next pay period. Individuals must be an active member for a minimum of at least one day after taking partial retirement.