



Scottish Public  
Pensions Agency  
Buidheann Peinnseanan  
Poblach na h-Alba

# **Flexible Retirement**

## **Employer Guide**

**Updated February 2024**

## 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 Rejoin** the pension scheme and also the option to take **Partial Retirement**. The difference between the two options is set out in the [frequently asked questions](#) (FAQ) section below.
- 1.2 SPPA recently undertook a [consultation](#) 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 [1995 Section](#) of the scheme. On 28 March 2023, SPPA published a [consultation response](#) which confirmed the intention to implement flexible retirement proposals covered in this guide.

- 1.3 This guide covers:

### Retire and Re-join

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

### Partial Retirement (draw down)

- [introduction of partial retirement for 1995 Section members from 1 October 2023](#)
- [Achieving a contractual change and the 10 per cent reduction in pensionable pay](#)
- [Reducing pensionable pay while maintaining the same level of working commitment](#)
- [Determining certain elements of the employee's pay as non-pensionable](#)
- [Determining programmed activities \(PAs\) and extra programmed activities \(EPAs\) as non-pensionable](#)
- [Reducing hours in a substantive contract and using bank contracts to work additional capacity](#)
- [Achieving the 10 per cent reduction in pensionable pay with concurrent employments](#)
- [Achieving the 10 per cent reduction for staff who work sporadically as a locum or bank worker](#)

- [Abatement for members accessing Partial Retirement \(Monitoring the 10 per cent reduction in pensionable pay\)](#)
- [McCloud Remedy and Partial Retirement](#)
- [Processing applications for partial retirement](#)

#### Flexible Working

- [flexible working for staff in the later stages of their career](#)

#### [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 [sppacontactus@gov.scot](mailto:sppacontactus@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 non-pensionable 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.

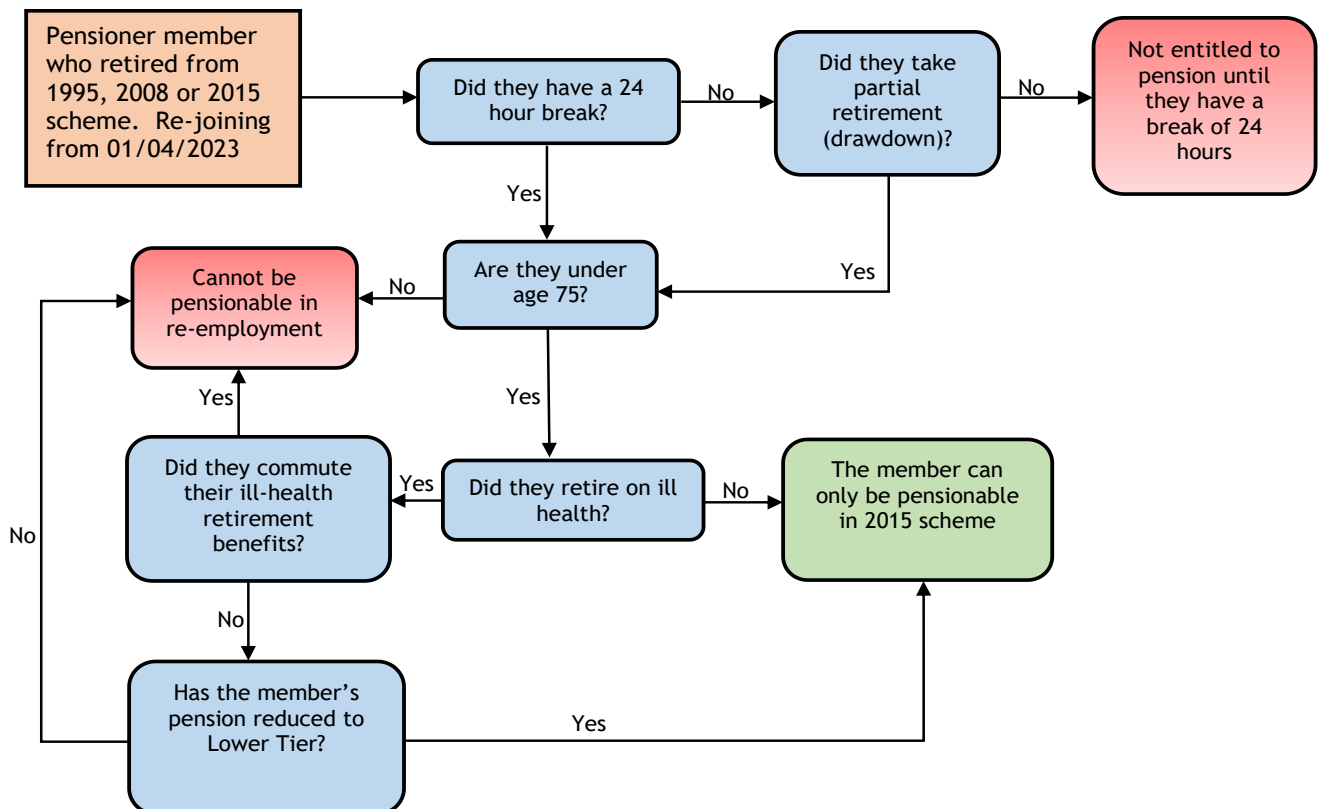
- 2.7 The age limit for 2015 Scheme membership (75 years) still applies from 1 April 2023

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

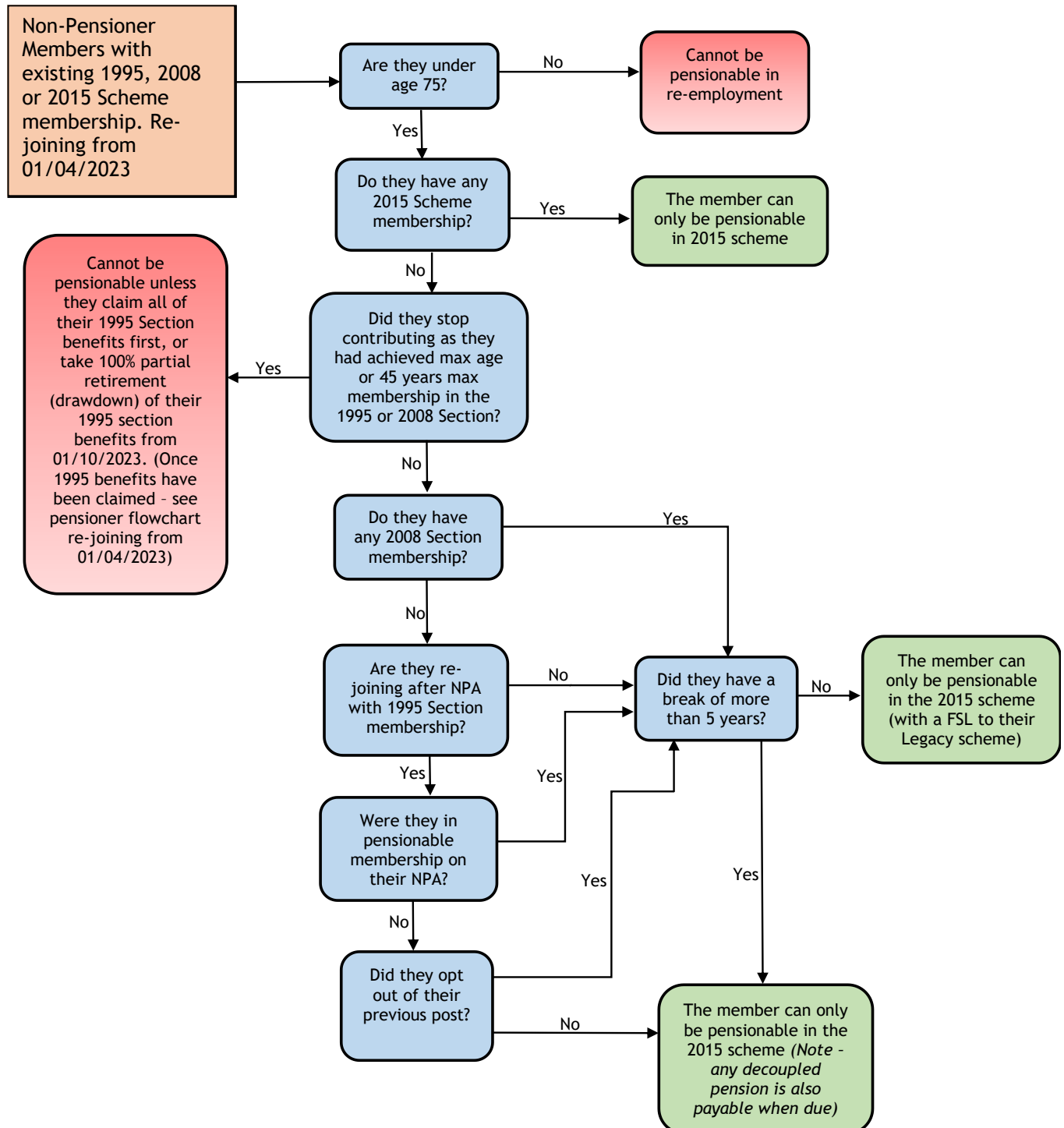
- 2.8 A member will not be eligible to re-join the 2015 Scheme if they are age 75 or over.
- 2.9 A member will not be eligible to re-join if they have taken their benefits as a serious ill health lump sum.
- 2.10 A member who retired on the grounds of ill-health with a [lower-tier ill health pension](#) 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 [upper-tier ill health pension](#) 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 [Retire and Return Guidance](#) 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 [Retire and Return Guidance](#).

## **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 [transferring](#) 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.

## **24-hour break rule**

- 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 24-hour 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 number 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 must 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 [Circular 2022/11](#)

### 3. Partial Retirement (draw down)

- 3.1 From 1 October 2023, staff who have pension benefits in the 1995 Section, the 2008 Section or the 2015 Scheme can access partial retirement.
- 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 for 12 months starting from their partial retirement date.
- 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 (Scotland), 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 of the scheme for at least one month before taking partial retirement. This is because they need some pensionable pay in order to calculate the required 10 per cent reduction.
- 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 per cent 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 (Scotland). 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).
- 3.13 Where a member has had a break in scheme membership of 5 years or more, the pension benefits before the break become “decoupled” from the subsequent pension accrual. Decoupling means that the pension benefits accrued before the break are not final salary linked. Any decoupled benefits are excluded from partial retirement.

**Achieving a contractual change and the 10 per cent reduction in pensionable pay**

- 3.14 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.

- 3.15 Employees who are considering partial retirement will need to have a conversation with their employer to agree a change to their terms and conditions of employment, in order to achieve the required 10 per cent reduction in pensionable pay. The employer and the employee must come to an agreement on how to reduce the member's pensionable pay before the member's application for partial retirement can proceed. The 10 per cent reduction should be calculated based on their total pensionable pay over the 12 months prior to their chosen partial retirement date, ending on the day they take partial retirement.
- 3.16 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, referring to the NHS Scotland [Flexible Work Pattern Policy](#). 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.
- 3.17 There are many ways of reducing pensionable pay and the most effective method will depend on the individual circumstances of the employee and employer. To achieve the 10 per cent reduction, the employee and employer could consider together options such as stepping down to a lower paid role and reducing the employee's level of responsibility or reducing the employee's contractual working hours or commitments. However, there is no one size fits all solution to reducing pensionable pay and, in some cases, bespoke arrangements will need to be agreed. Where the 10 per cent reduction in pensionable pay is being achieved through a reduction in hours, an application should be made under the NHS Scotland [Flexible Work Pattern Policy](#).
- 3.18 The reduction should stay in place for at least 12 months following the date partial retirement is taken. The employee will no longer be eligible if the reduction is breached, and their pension payments will be stopped until their pensionable pay reduces again.
- 3.19 Annual pay awards and pay increases (including backdated pay awards) members receive as they move through their pay band or pay scales do not count towards this. Pay increases resulting from a contractual change will count, such as a promotion, an increase to their hours or working commitments.

- 3.20 Open conversations between the employee and the employer will be key to understanding the employee's circumstances, needs and preferences. The needs of the employee should be considered and balanced alongside the aims and priorities of the employing organisation, in order to agree a solution which suits both parties.

### **Reducing pensionable pay while maintaining the same level of working commitment**

- 3.21 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.
- 3.22 We understand that not all staff will want to reduce their hours immediately. In cases where the employer and employee agree that the individual should continue to work in the same role, with no reduction in working hours, commitments or responsibilities, employers may review the structure of the employee's remuneration to reduce their level of pensionable pay, while maintaining their level of overall pay.
- 3.23 To access partial retirement, a contractual change must be made to the employee's substantive contract of employment that achieves the required 10 per cent reduction. Additional work may then be undertaken separately to supplement their newly reduced substantive work commitment.

### **Determining certain elements of the employee's pay as non-pensionable**

- 3.24 Employers must comply with the NHS Pension Scheme (Scotland) 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.
- 3.25 The scheme regulations are being retrospectively amended to provide a definition of "overtime" which confirms that any overtime or additional hours worked by employees within their first 12 months of taking partial retirement is non-pensionable. This includes all additional work above their contracted hours. This facility allows members, with the agreement of their employer, to take partial retirement without reducing their overall working commitments or take-home pay. This is done by reducing their contracted hours by at least

10 per cent following a partial retirement election and continuing to work additional sessions up to 100 per cent as non-pensionable overtime.

- 3.26 Employers may also use flexibility in the scheme regulations to determine some payments as non-pensionable so that the member's pensionable pay is reduced:

**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.

**One off payments**

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

**Overtime**

- All overtime payments are non-pensionable. For members who have taken partial retirement in the last 12 months, overtime is defined as any period of time worked in excess of an individual's standard contracted hours.

**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 whole-time or if the payment is made as a one-off bonus.

**Weekend and on-call payments**

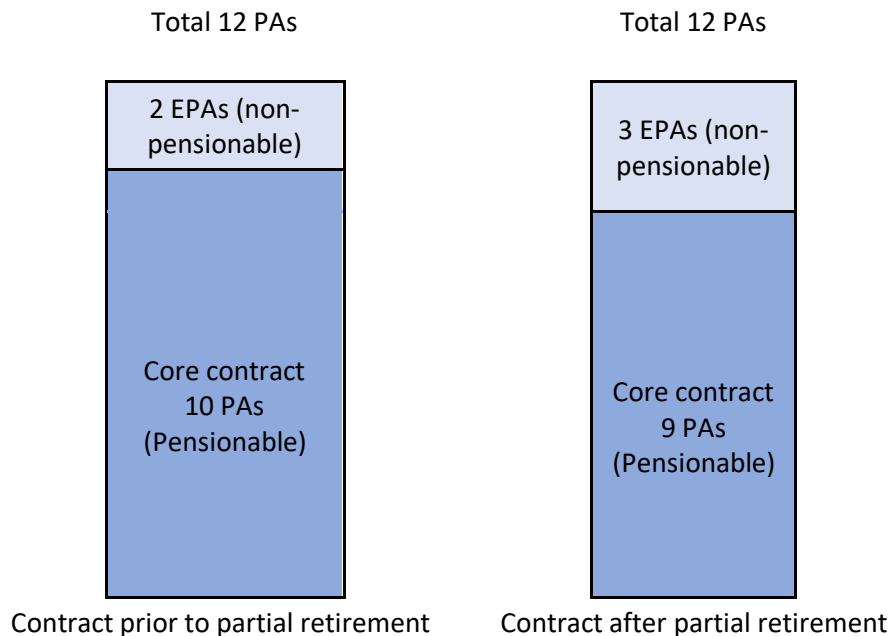
- Availability allowance for on-call work is only pensionable if there is a specific rota commitment that an individual is paid for on a regular basis.

**Determining programmed activities (PAs) and extra programmed activities (EPAs) as non-pensionable**

- 3.27 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 non-pensionable Extra Programmed Activities (EPAs).

3.28 Below are two examples of how the contract might be adjusted in order to take partial retirement and reduce pensionable pay by 10 per cent. Example 1 is a simple illustration while Example 2 provides details of a calculation where a consultant is also in receipt of discretionary points.

### Example 1



### Example 2

A consultant at the top of the pay scale working 10 PAs, with 8 discretionary points, who wishes to achieve the 10 per cent reduction would be required to reduce their pensionable pay by more than 1 PA.

Salary for 10 PAs =	£128,841
8 Discretionary Points =	£25,632
Total Pensionable Pay =	£154,473
10% of Pensionable Pay =	£15,447

Where 1 PA equals £12,884 then the doctor would need to reduce their core contract by 1.20 PAs ( $£15,447 / £12,884 = 1.20$ ).



## **Reducing hours in a substantive contract and using bank contracts to work additional capacity**

3.29 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 staff who taken partial retirement in the previous 12 months is non-pensionable according to the scheme regulations. Payroll teams should ensure that any additional hours worked above core contract are not pensioned.

## **Achieving the 10 per cent reduction in pensionable pay with concurrent employments**

3.30 Where a member has more than one employment, they must reduce their combined pay across all pensionable employments by at least 10 per cent. Pensionable pay is up to the maximum of whole time only. For example:

- Employment one = £50,000
- Employment two = £30,000
- Total pensionable pay = £80,000

3.31 A reduction is required so that the overall pensionable pay is no more than £72,000. This can be achieved by varying one employment or both.

3.32 Employers may not be aware of all the employments their staff hold. During partial retirement discussions, employers should make members aware of the need to reduce their combined pensionable pay by 10 per cent, and of the abatement consequences should their pensionable pay exceed 90 per cent in the 12 months following partial retirement.

3.33 If an employee chose to leave one of their employments to achieve the 10 per cent reduction, this action would fulfil the contractual change to their employment terms required to access partial retirement.

## **Achieving the 10 per cent reduction for staff who work sporadically as a locum or bank worker**

3.34 The 10 per cent reduction in pensionable pay should be calculated in the same way for all employees. The reduction will be calculated based on the member's



previous level of pensionable pay for the 12 months before they take partial retirement, ending on the day they take partial retirement. Where a member has more than one employment, they must reduce their combined pay across all pensionable employments by at least 10 per cent.

- 3.35 Given the sporadic nature of their work and the likelihood of having multiple employments, staff who work exclusively as locum and bank should be made aware of the consequences of breaching the 10 per cent reduction across all their pensionable work. The employee will no longer be eligible if the reduction is breached, and their pension payments will be stopped until their pensionable pay reduces again.

**Abatement for members accessing Partial Retirement (monitoring the 10 per cent reduction in pensionable pay)**

- 3.36 Employers should be confident that the agreed contractual change to working arrangements will lead to a reduction in pensionable pay of at least 10 per cent, which can be maintained for the 12-month period following the chosen partial retirement date.
- 3.37 During this time, if the member's pensionable pay increases to more than 90 per cent of their pensionable pay before they took partial retirement, abatement will apply in full and the member's pension benefits in payment will be stopped. If a member's pay does increase to more than is allowed and abatement occurs, their pension will only start to be paid again, once their pensionable pay is reduced by a minimum of 10 per cent of the pay that their original decision to take partial retirement was based on.
- 3.38 At the end of the 12-month period, the employee and employer may wish to revert back to the original working arrangement, if appropriate.
- 3.39 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 per cent 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 per cent 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.

- 3.40 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.
- 3.41 Employers should inform SPPA if contractual changes increase a member's pay to more than 90 per cent of their pensionable pay in the 12 months after taking partial retirement. Members should also inform SPPA of any increases to their level of pay or changes to their conditions of employment.
- 3.42 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.

### **McCloud Remedy and Partial Retirement**

- 3.43 McCloud remedy is the process of removing the age discrimination that was judged to have arisen in public service pension schemes, including the NHS Pension Scheme (Scotland). Employees who joined the NHS Pension Scheme (Scotland) on or before 31 March 2012 and who were still members of the scheme on 1 April 2015 are eligible for the McCloud remedy.
- 3.44 The regulations for the McCloud remedy came into force on 1 October 2023, and SPPA are working to offer eligible active members their choice at the point they retire from April 2024.
- 3.45 If a member who is eligible for the McCloud remedy chooses to retire before April 2024, they will be contacted within 12 months of their partial retirement date and asked to choose between keeping their benefits in respect of the remedy period (that is, 1 April 2015 – 31 March 2022) in the 1995/2008 Scheme or the 2015 Scheme.
- 3.46 Their upcoming McCloud choice means there are other factors for them to take into account when deciding how much of their pension they wish to take. Their McCloud choice could affect their personal tax position, or their final salary link, if they have one. If the member chooses to move their benefits for the remedy period into the 2015 Scheme, they may have effectively been overpaid and may be required to pay this back to the scheme.
- 3.47 Further information about the McCloud Remedy, including the NHS Remedy calculator is available on the [NHS Remedy Hub | SPPA \(pensions.gov.scot\)](https://www.pensions.gov.scot/nhs-remedy).

## Processing applications for partial retirement

- 3.48 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 per cent reduction in pensionable pay.
- 3.49 The member and employer must then complete and send the retirement application form NHS:RET or PRAC:RET [available on the SPPA website](#) to SPPA. Section 1 of the form allows members to indicate what percentage of pension they would like to take between 20 per cent and 100 per cent.
- 3.50 Section 3 must be completed by the employer to certify that the member's pensionable earnings will reduce by 10 per cent (or commitment reduced by 10 per cent for GPs, dental practitioners, ophthalmic practitioners, or non-GP providers), and that the reduction in pensionable pay is expected to be in place for 12 months starting from their chosen partial retirement date.
- 3.51 Applications for Partial Retirement which are submitted without a completed Partial Retirement Certificate will be returned to the employer and the member's retirement may be delayed.

## 4. Flexible Working

- 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 time-limited 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, which 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.

## **5. Frequently Asked Questions (FAQs)**

### **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 significant 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 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 per cent and 100 per cent of all their pension benefits in one or two drawdown payments, without having to leave their current job. Could a member take 20 per cent at age 58 (with an approximate 10 per cent reduction for taking early) and the other 80 per cent at age 60 while working on to age 63?**

**A2.** Yes, that is correct the member could take 20 per cent before age 60 at the first draw down which would attract an early retirement reduction. They could then take the remaining 80 per cent 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, when calculating the pension payable, 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 affected 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 (Scotland), 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.

**Q7. Why do employees need to be an active member of the NHS Pension Scheme (Scotland) to access partial retirement?**

**A7.** The required 10 per cent reduction in pensionable pay, as a result of a change in terms of employment, can only be assessed where there is active membership.

This is consistent with partial retirement policies across other public sector pension schemes. NHS Scotland employees who have chosen to opt-out of the NHS Pension Scheme (Scotland) and do not wish to resume active membership can instead access all their pension benefits via retire and return.

**Q8. Why are staff required to reduce their pensionable pay for partial retirement?**

**A8.** For staff to partially retire, some reduction in pensionable workload is required, and as the NHSPS(S) records members' pensionable pay, this is a reasonable way of assessing if members are taking steps towards retirement.

This is also how partial retirement operates for members of the 2008 Section and 2015 Section and similarly for members of other public sector pension schemes.

**Q9. Will employees retain their existing terms and conditions of employment after taking partial retirement?**

**A9.** Members may take all or part of their pension while continuing to work for the NHS. As there is no break in service, their terms and conditions of employment will remain mostly unchanged (including annual leave entitlements etc.) A change or

amendment to the existing terms and conditions of employment is required in order to reflect the 10 per cent reduction in their pensionable pay.

Employers may wish to discuss and agree new flexible working arrangements alongside partial retirement, such as part time working. 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.

**Q10. Will the 16-hour rule apply to members taking partial retirement?**

A10. No. The 16-hour rule was permanently removed from 1 April 2023. Previously, pension payments would be suspended under the 16- hour rule if a member of the 1995 Section worked more than 16 hours per week in the first month after taking retirement benefits. The permanent removal of the 16-hour rule will make it easier for retired staff to continue to work in the NHS.

**Q11. Can employers turn down an application for partial retirement?**

A11. The employer and the employee must come to an agreement on how to reduce the member's pensionable pay before the member's application for partial retirement can proceed. How to do this will differ depending on the individual's situation and the organisation's service needs.

Employers should support applications in the majority of cases, given that partial retirement has benefits for employers as well as staff. However, there may be situations where employers feel they are unable to accommodate the application. If the employee and employer are unable to identify and agree on a way of reducing pensionable pay by 10 percent and maintaining that position for 12 months, the member will not be able to take partial retirement at that time. In these circumstances, the member may consider other [Flexible Work Pattern Policies](#) or choose to appeal the decision.

**Q12. Can the 10 per cent reduction in pensionable pay be averaged out over the 12 months following partial retirement?**

A12. No, the 10 per cent reduction must be met each month. If a member breaches the pensionable pay limit of 90 per cent at any point, it should be reported to SPPA by either the employer or the employee. Any breach would result in pension payments stopping until pensionable pay reduces below 90 per cent again.

**Q13. How can employers calculate the 10 per cent reduction in pensionable pay for staff who have been with their organisation for less than 12 months?**

A13. The same calculation principle applies, an individual's pensionable pay over the 12 months before taking partial retirement will determine what their 10 per cent reduction needs to be. If an employee has been with the employer for less than 12 months, their pensionable pay received to date should be pro-rated, or grossed up,



to work out what their 10 per cent reduction will need to be for the 12 months following their partial retirement date.

**Q14. Can employees of direction employers apply for partial retirement?**

A14. Yes. The NHS Pension Scheme (Scotland) regulations apply to all scheme members, including employees of direction employers. A direction employer is an organisation that is not an NHS employing authority but has legal access to the NHS pension scheme for some of its employees.