

NHS Pensions

Retire and return – Guide for employers



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It represents the relevant NHS Pension Scheme Regulations and should not be treated as a complete and authoritative statement of the law.

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Whilst every attempt is made to ensure the accuracy of the guide, it would be helpful if employers could bring to our attention any perceived errors or omissions using the Stakeholder Engagement email address at: nhsbsa.stakeholderengagement@nhs.net.

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Background

This guide has been written to assist employers with regards to re-employment following retirement. It looks at members of the 1995 Section, 2008 Section and 2015 Scheme who are eligible to claim retirement pension benefits or on deferment from the NHS Pension Scheme.

Members who transition to the 2015 Scheme from the 1995/2008 Scheme on 1 April 2015, or later and have pensionable membership in both schemes, are referred to as transitional members in this guide.

This guide covers:

- eligibility to re-join the NHS Pension Scheme for members following retirement
- the 24 hour break requirement
- the general rules around suspension
- the general rules around abatement.

If you have a query about any of the information provided in this guide, would like us to consider any amendments or providing additional guidance, you should email the Stakeholder Engagement Team at: nhsbsa.stakeholderengagement@nhs.net.

1 - Eligibility to re-join the NHS Pension Scheme following retirement

Members in receipt of 1995 Section pension benefits and eligibility



1995 Section pensioners who are eligible to re-join the 1995 Section:

- A person in receipt of 1995 Section ill health benefits who returned to the NHS **before** 1 April 2015 and before age 50.
- A fully protected 1995 Section member in receipt of 1995 Section ill health benefits, who returned to NHS employment with effect from 1 April 2015, following a break of less than five years, and before age 50.
- A member with tapered protection in receipt of 1995 Section ill health benefits who returned to NHS employment with effect from 1 April 2015 following a break of less than five years, before age 50, and before their transition date*.

**They join the 2015 Scheme when tapered protection expires.*



1995 Section pensioners who are eligible to join the 2015 Scheme:

- A 1995 Section transitional member in receipt of 1995 Section ill health benefits returning to NHS employment with effect from 1 April 2015 and before age 50.
- A fully protected 1995 Section ill health pensioner who returns to NHS employment before age 50, with effect from 1 April 2015, and following a break of five years or more.
- A member with tapered protection in receipt of 1995 Section ill health benefits who returns (before age 50) to NHS employment with effect from 1 April 2015 following a break of five years or more.
- A member with tapered protection in receipt of 1995 Section ill health benefits who returns (before age 50) to NHS employment with effect from 1 April 2015 on or after their transition date.



1995 Section pensioners who are not eligible to re-join the Scheme:

Members who have remained in the 1995 Section until retirement and retired either before 1 April 2008 or after 30 September 2009 are not eligible to re-join the NHS Pension Scheme.

If they retired on or after 1 April 2008 and before 1 October 2009, they may be eligible to join the 2015 Scheme after a waiting period which is the longer of either two years from their date of retirement, or the length of any extra membership they may have received as part of a retirement on redundancy grounds.

Some additional exceptions / restrictions apply if they retired on ill health grounds from any NHS pension or if they had already re-joined the pension scheme before claiming deferred benefits.

Members returning to work after ill health retirement

The following information relates to members who have retired from active membership with an ill health pension. It does not apply to members who have accessed their deferred benefits early due to ill health. The rules for re-joining the Scheme are different depending on which Section the member was last a member of, the date they retired, the type of ill health pension they are receiving and their age at the date of returning to employment. Please refer to the chart below.

1995 Section

Last day of membership	Type of ill health pension	Eligibility
Prior to 1 April 2008	All	Member can join the 2015 Scheme if they are under age 50 on the date they return to employment. They cannot re-join if they are age 50 or over on the date they return
Between 1 April 2008 and 30 September 2009	Old style ill health arrangements (retirement application form submitted before 1 April 2008)	<p>Member can join the 2015 Scheme straightaway if they are under age 50 on the date they return to employment.</p> <p>If the member is 50 or over on returning they will either join the 2008 Section or the 2015 Scheme depending on their eligibility** after a waiting period. The waiting period will be two years from the date the member's retirement or the calendar length of the extra membership they received towards their pension added to their retirement date, whichever is the longer.</p> <p>Examples</p> <p>If the member retired with a last day of membership of 2 April 2008, returned to employment on 5 June 2009 and received three years extra calendar length membership towards their pension they could join the 2008 Section on 3 April 2011.</p> <p>If a member retired with a last day of membership of 2 April 2008, returned to employment on 5 June 2009 and received one year extra calendar length membership towards their pension they could join the 2008 Section on 3 April 2010.</p>
	Tier 1	<p>Member can re-join the 2015 Scheme provided that on the date they return to employment they are under age 50.</p> <p>If the member is age 50 or over on the date they return, they will either join the 2008 Section or the 2015 Scheme depending on their eligibility** after a waiting period of two calendar years from the date of their retirement.</p>
	Tier 2	The member can join the 2015 Scheme after a period of one year beginning with the first day they entered further employment providing they are under age 50 at the time they are eligible to re-join.

		<p>If the member is aged 50 or over on the date they return they will either join the 2008 Section or the 2015 Scheme depending upon their eligibility** after a waiting period of either two calendar years from their date of retirement or after a period of one year beginning with the first day they return to employment, whichever is the longer.</p> <p>Examples</p> <p>If the member retired with a last day of membership of 31 March 2009 and returned to employment on 1 August 2009 they could join the 2008 Section on 2 August 2012. If the member retired with a last day of membership of 31 March 2009 and returned to employment on 1 August 2011 they could join the 2008 Section on 2 August 2012.</p>
1 October 2009 or later	Tier 1 ill health pension	<p>The member can join the 2015 Scheme provided that on the date they returned to employment they are under age 50.</p> <p>If the member is age 50 or over on the date of return they cannot re-join the Scheme.</p>
	Tier 2 ill health pension	<p>The member can join the 2015 Scheme after a period of one year has elapsed beginning with the first day they enter further employment provided they will be under age 50 at the time they are eligible to re-join.</p> <p>If they are age 50 or over on the date of return to employment they cannot re-join the Scheme.</p>

2008 Section

Type of ill health pension	Eligibility
Tier 1 pension	Member will either join the 2008 Section or the 2015 Scheme depending upon eligibility**
Tier 2 pension	Member will either join the 2008 Section or the 2015 Scheme depending upon eligibility** after a period of one year beginning with the first day they return to work.

2015 Scheme

Type of ill health pension	Eligibility
Tier 1 pension	Member can re-join the 2015 Scheme straightaway.
Tier 2 pension	Member can re-join the 2015 Scheme after a period of one year beginning with the first day they return to work.

A member would not be eligible to re-join either Section if they have built up more than 45 years pensionable membership in total or are age 75 or over.

Members in receipt of 2008 Section pension benefits and eligibility



The following 2008 Section pensioners are eligible to rejoin the 2008 Section:

- A 2008 Section pensioner who returned to the NHS **before** 1 April 2015.
- A fully protected 2008 Section member in receipt of benefits returning to the NHS on or after 1 April 2015 and following a break of less than five years.
- A 2008 Section pensioner who had tapered protection returning to the NHS on, or after, 1 April 2015 following a break of less than five years and before their transition date*.

**They join the 2015 Scheme when tapered protection expires.*

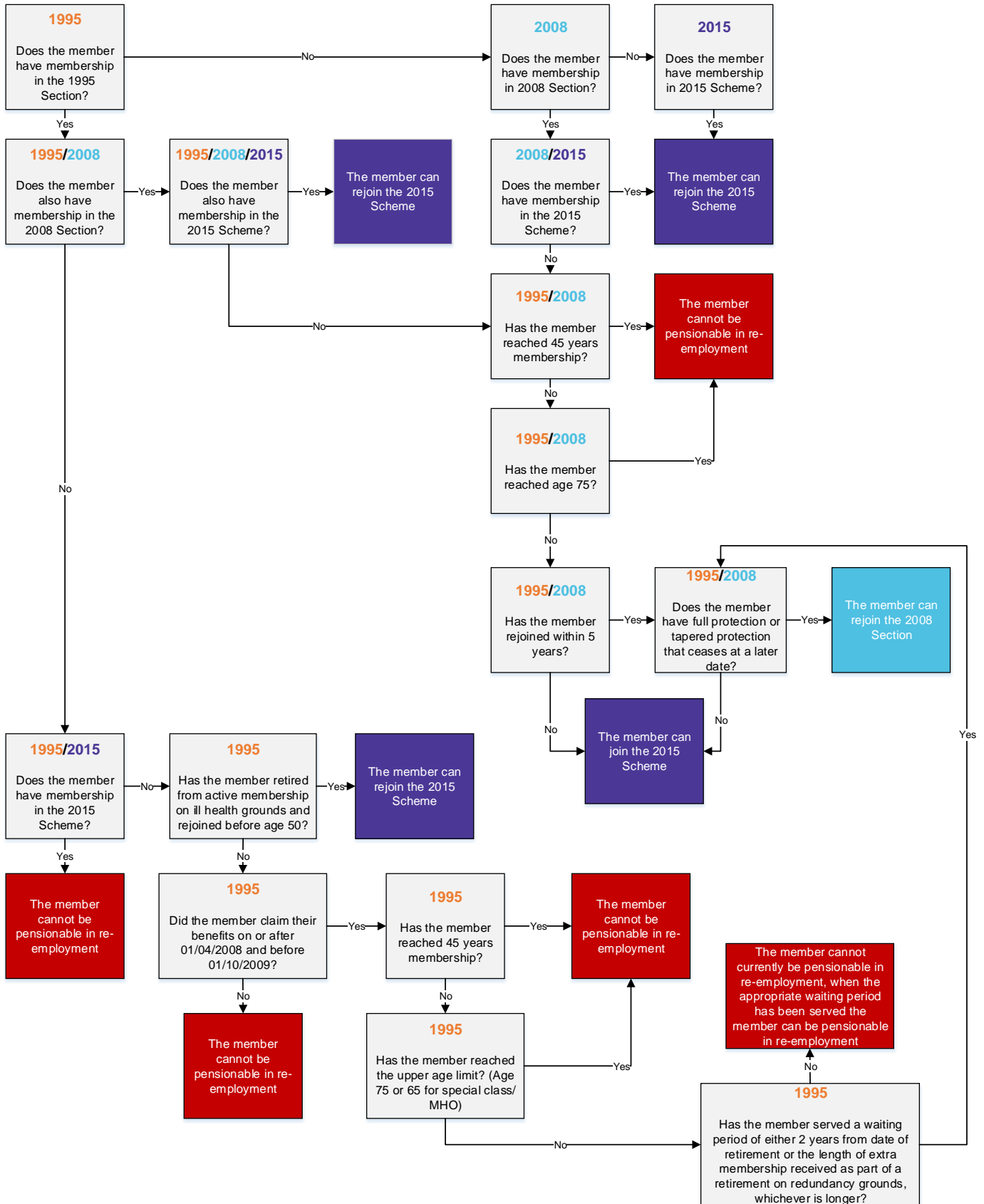


The following 2008 Section pensioners are eligible to join the 2015 Scheme:

- A transitional 2008 Section pensioner returning to the NHS with effect from 1 April 2015.
- A fully protected 2008 Section member in receipt of benefits who returns to the NHS with effect from 1 April 2015 following a break of five years or more.
- A 2008 Section member with tapered protection in receipt of benefits returning to the NHS with effect from 1 April 2015 on or after their transition date.
- A 2008 Section member with tapered protection in receipt of benefits returning to the NHS with effect from 1 April 2015 following a break of five years or more.

Can a member be pensionable in re-employment?

This flowchart should only 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 - 24 hour break rule

The 24 hour break rule should be considered and may be applicable for members of the 1995/2008 Section and 2015 Scheme.

Most members retiring on 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. The 24 hour break normally follows a member's last day of NHS employment.

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.

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.

Some employers may require members following their retirement date to take more than a 24 hour break dependent upon the terms & conditions of their contract. However, NHS Pension regulations only require a 24 hour break following the members retirement date.

Members requiring a 24 hour break

- The majority of active and deferred members who are under maximum pensionable age are required to take a 24 hour break.
- Members in the 2008 Section must stop working in all NHS employments* for at least 24 hours to qualify for retirement benefits.
- Members in the 1995 Section who have two or more concurrent NHS employments* must take a 24 hour break in at least one of the posts and the remaining post(s) must not total more than 16 hours per week for the first month. However, members must cease to be pensionable in all other posts following retirement. There is no requirement for members to opt out.
- Members with membership in the 2008 Section and the 2015 Scheme who retain their final salary link can continue paying into the 2015 Scheme after claiming benefits from the 2008 Section. They must however have a 24 hour break before returning to NHS employment.

*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.

Practitioners

Practitioner must also take a 24 hour break on retirement. To do this they must:

- give the contract back to NHS England (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).

When does a 24 hour break apply if there is entitlement in more than one Section or Scheme?

Members with separate entitlement (no final salary link) in the 1995 Section and 2008 Section can claim the 1995 Section benefits and continue to pay into the 2008 Section of the Scheme. In these circumstances the member does not need to take a 24 hour break from their current NHS employment or restrict their working hours. Members must satisfy the minimum pension age to claim benefits now age 55 from 2006.

Members with separate entitlement (no final salary link) in the 1995 Section and 2015 Scheme can no longer contribute to the 2015 Scheme once they have claimed their 1995 Section benefits, so the 24 hour break rule does not apply.

Members with separate entitlement (no final salary link) in the 1995/2008 Sections and the 2015 Scheme, can continue paying into the 2015 Scheme after claiming benefits from both sections and do not need a 24 hour break.

Members who do not require a 24 hour break if they have entitlement from one section or Scheme only

- Members who have already reached maximum pensionable age 75 (applies to both Schemes)
- 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.
- A 24 hour break is not required if a member partially retires through Draw Down from the 2008 Section and 2015 Scheme.
- A 24 hour break is not required for members retiring through redundancy or IOE from one post only.

Note

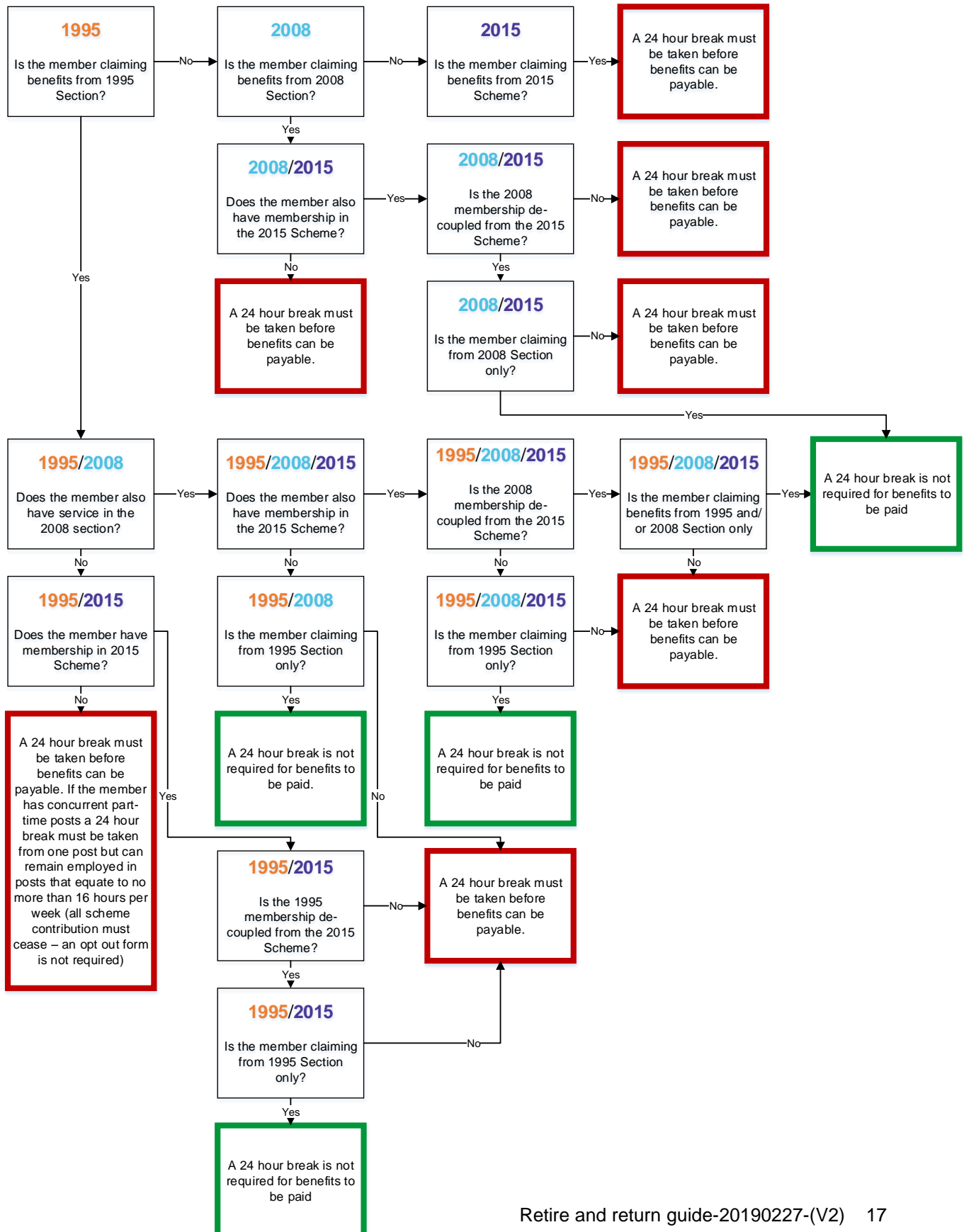
For members with membership in more than one Section or Scheme, where a final salary link remains the 24 hour break rule would depend upon the Section or Scheme the member is retiring from. Check the individual circumstances carefully when assessing whether a 24 hour break applies.

Refer to the flowchart on the next page to determine whether a 24 hour break applies.

Is a 24 hour break required to claim pension benefits?

A 24 hour break is not required to claim benefits if any of the following conditions are met:

- The member is age 55 or over and claiming redundancy pension benefits from one post only
- The member has reached age 75 (or, for 1995 Section members, age 70 before 01/04/2008)
- The member is drawing down part of their pension (2008 Section and 2015 Scheme only)
- If the member has concurrent part time posts a 24 hour break must be taken from one post but the member can remain employed in posts that equate to no more than 16 hours per week (all scheme contribution must cease – an opt out form is not required)



3 - Suspension

Suspension of NHS pension benefits applies to 1995 Section membership **only**. There is no suspension in the 2008 Section or 2015 Scheme.

What is suspension?

Suspension means payment of a member's pension is suspended temporarily or stopped for a period following re-employment after retirement.

Following a 24 hour break on retirement, a member who is retiring on age or voluntary early retirement before maximum pensionable age 75 (or age 70 if they retired before 01/04/2008) will have their pension suspended on returning to NHS employment if they work more than 16 hours per week in the first calendar month following a 24 hour break. This includes working for certain approved organisations or in a self-employed capacity.

A calendar month is defined as an ordinary month which runs from the day the suspension period begins to the day before in the following month. For example 25 September – 24 October would be classed as a calendar month.

The suspension rule also applies to deferred members who claim their pension before age 60 and return to NHS employment in the first calendar month working more than 16 hours.

Members who hold two or more concurrent NHS pensionable employments at retirement are only required to take a 24 hour break in one of them, providing the remaining post(s) do not exceed 16 hours per week. The member must however cease to be pensionable in the remaining posts.

Members returning to the NHS in Scotland, Northern Ireland or the Isle of Man

A member in receipt of an age, voluntary early retirement or deferred pension who returns to the NHS in:

- Scotland
- Northern Ireland
- the Isle of Man and the employment commenced on or before 31/03/2012

will have their NHS pension suspended if, in the first calendar month, they work more than 16 hours a week. This rule does not apply in the Channel Islands.

Members returning to the NHS who trade as a limited company or as a sole trader

Members of the 1995 Section retiring on age or voluntary early retirement who return to the NHS in the first calendar month, and who trade as a limited company or as a sole trader (instead of being formally employed) is regarded as being in NHS employment and are subject to suspension rules.

Members who are subject to the suspension rules must inform their employer or NHS Pensions that they are in receipt of NHS pension benefits and are working or have worked more than 16 hours a week in the first month.

NHS pension benefits that are not subject to suspension

- Redundancy or interest of the efficiency of the service
- An ill health NHS pension from active pensionable employment (normal, commuted))
- Death benefits
- Any pension benefits drawn from the 2008 Section or 2015 Scheme.

Examples

The following examples cover most suspension of pension benefits scenarios for members in the 1995 Section.



Example 9

Members who are awarded age, voluntary early retirement or deferred pension and do not return to the NHS in the first calendar month.

Last day of membership 31/10/15 Dec15 (return to NHS)
 _____ | ---BREAK--- |.....
 NOT SUSPENDED

The member retired on 31 October 2015. Their age pension was payable from 1 November 2015. They satisfied the 24 hour rule by not working in the NHS on 1 November 2015. Their pension was not suspended as they did not return to the NHS in the month of November 2015. Although they returned to the NHS in December 2015 and worked more than 16 hours a week in any given month, their pension was not suspended.



Example 10

Members who are awarded age, voluntary early retirement or deferred pension and have returned to the NHS in the first calendar month working no more than 16 hours a week.

Last day of membership 31/10/15 02/11/15 (returned to NHS <= 16 hours)
 _____ | --BREAK-- |.....
 NOT SUSPENDED

The member retired on 31 October 2015. They satisfied the 24 hour retirement rule and their pension was payable from 1 November 2015. They returned to the NHS on 2 November 2015. From 2 November 2015 to 30 November 2015 inclusive they worked no more than 16 hours a week. Their pension was not suspended even if, after November, they worked more than 16 hours a week in any given month.



Example 11

Members who are awarded age, voluntary early retirement or deferred pension and returned to the NHS in the first calendar month and have worked more than 16 hours a week.

Last day of membership 31/10/15 02/11/15 (return to NHS > 16 hours)

_____ | -BREAK- |.....

SUSPENDED

The member retired on 31 October 2015 and satisfied the 24 hour retirement rule with the pension payable from 1 November 2015. They returned to the NHS on 2 November 2015 and worked more than 16 hours a week. Their pension was suspended until they worked no more than 16 hours a week for a full month. The suspension was not restricted to November. It continued thereafter until they worked no more than 16 hours a week for a full calendar month.



... **Example 12**

Members who are awarded age, voluntary early retirement or deferred pension and then returned to the NHS two weeks after retiring who work more than 16 hours a week upon their return.

Last day of membership 31/10/15 14/11/15 (return to NHS >16 hours)

_____ | ----BREAK---|.....

NOT SUSPENDED

SUSPENDED

The member retired on 31 October 2015 and satisfied the 24 hour retirement rule with the pension payable from 1 November 2015. They returned to the NHS on 14 November 2015. From 14 November 2015 they worked more than 16 hours a week. The pension was not suspended from 1 November 2015 to 13 November 2015. However it was suspended with effect from 14 November 2015. The suspension remained in place until the member worked no more than 16 hour a week for a full calendar month.



... **Example 13**

Members who are awarded age, voluntary early retirement or deferred pension and returned to the NHS immediately after the 24 hour break on a short term three week contract who work more than 16 hours a week during this period.

31/10/15 02/11/15 20/11/15

_____ | -BREAK- |.....|.....

SUSPENDED
>16 hours

NOT SUSPENDED

The member retired on 31 October 2015 and satisfied the 24 hour retirement rule. Their pension was payable from 1 November 2015. They returned to the NHS from 2 November 2015 until 20 November 2015 inclusive and worked more than 16 hours a week. Their pension was suspended from 2 November 2015 until 20 November 2015. It was put into payment from 21 November 2015 as they had stopped working.




Example 14

Members who are awarded age, voluntary early retirement or deferred pension and then return to NHS in the first calendar month under a contract for services, trading as a limited company or sole trader and worked more than 16 hours a week.

```

Last day of membership      31/10/15     02/11/15 (return to NHS as a ltd co>16 hours)
|-----|-----|-----|-----|-----|-----|-----|-----|-----|
                           | -BREAK- |-----|-----|-----|-----|
                           SUSPENDED
    
```

The member retired on 31 October 2015 and as they satisfied the 24 hour retirement rule their pension was payable from 1 November 2015. They returned to the NHS on 2 November 2015 under a contract for services arrangement (i.e. in a self-employed capacity working as a limited company or as sole trader) working more than 16 hours a week. Their pension was suspended until they worked no more than 16 hours a week for a calendar month and was not restricted to November.


 **Example 15**

Members who are awarded age, voluntary early retirement or deferred pension and returned to the NHS in the first calendar month under a contract for services, trading as a limited company or sole trader and worked no more than 16 hours a week.

```

Last day of membership      31/10/15     02/11/15     (return to NHS as a Ltd co<=16 hours)
|-----|-----|-----|-----|-----|-----|-----|-----|-----|
                           | -BREAK- |-----|-----|-----|-----|
                           NOT SUSPENDED
    
```

The member retired on 31 October 2015 and their pension was payable from 1 November 2015 as they satisfied the 24 hour retirement rule. They returned to the NHS on 2 November 2015 under a contract for services arrangement (i.e. in a self-employed capacity working as a limited company or as sole trader). From 2 November 2015 they worked no more than 16 hours a week under the contract for services arrangement. Their pension was not suspended.

 **Example 16**

Members who are awarded age, voluntary early retirement or deferred pension and returned to the NHS in Scotland in the first calendar month and worked more than 16 hours a week.

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31/10/15  01/11/15  02/11/15  30/11/15
|-----|-----|-----|-----|-----|-----|-----|-----|-----|
      BREAK                    SUSPENDED
    
```

The member retired on 31 October 2015. As they satisfied the 24 hour retirement rule their pension was payable from 1 November 2015. They returned to the NHS in Scotland on 2 November 2015. From 2 November 2015 to 30 November 2015 (inclusive) they worked more than 16 hours a week. Their pension was suspended until they worked no more than 16 hours a week for a full calendar month.

4 - Abatement and ill health pensions

What is abatement?

Abatement means a potential reduction to a member's pension following re-employment after retirement.

Ill health pensions

Where a member returns to NHS employment before their normal pension age and their earnings are above a certain level, some of their ill health pension may be reduced. This is called abatement.

Abatement applies where earnings from re-employment plus the 'unearned' portion of the ill health pension exceeds a member's earnings before retirement.

Abatement is applied up to a maximum of the value of the 'unearned' portion of the pre-commuted pension.

For Tier 1 benefits the 'unearned' portion of the ill health pension is the difference between the amount of pre-commutation pension in payment and the amount of pre-commutation pension that would have been payable after actuarial reduction for early retirement, before their normal pension age.

For Tier 2 benefits the 'unearned' portion of the ill health pension is the extra pension arising from the membership enhancement received, plus the difference between the amount of pre-commutation pension in payment for actual membership and the amount of pre-commutation pension that would have been payable for that membership after actuarial reduction for early retirement, before the member's normal pension age.

Abatement no longer applies when a member reaches their normal pension age or their earnings fall below the required level, whichever is the earlier.

Returning to work with a Tier 2 pension

If a member wants to retain their Tier 2 ill health pension there are restrictions based on the kind of work they do and the amount of money they earn. These restrictions differ primarily on whether they return to work in the NHS or not. There are two restrictions for those who return to work in the NHS and one for those outside NHS work.

Members should also be aware that under the rules governing the continued receipt of a tier 2 ill health pension, they will be subject to an annual review. The details of this follow.

How much time can a member spend working in the NHS?

Only applies to those working in the NHS

Members cannot work for more than 12 months in the NHS and keep their tier 2 ill health pension. The start of the 12 month period in which a member can do work in the NHS starts on the day they first restart work in the NHS after their retirement.

If they do any work in the NHS after this 12 month period has ended, their tier 2 ill health pension will be substituted with a tier 1 ill health pension. They will not be able to regain their tier 2 ill health pension under any circumstances if they break this restriction.

For example, if they decided to restart working in the NHS on 9 August 2012, they could only do work in the NHS from 9 August 2012 to 8 August 2013. Any work done in the NHS after 8 August 2013 would result in their tier 2 ill health pension being substituted with a tier 1 ill health pension.

The member would not be able to get their tier 2 ill health pension back.

If they break this restriction, their tier 2 ill health pension will be substituted for a tier 1 ill health pension from the first pension payment date.

If a member decides to restart work in the NHS, they must tell NHS Pensions immediately of the date they started work.

Restricting earnings while working

Applies to both NHS and non NHS work

There is a restriction where a member's gross earnings in any given tax year must not exceed the lower earnings limit (LEL) for primary class 1 National Insurance contributions for that tax year. The gross earnings are what the member is paid before any deductions such as income tax and National Insurance contributions.

The lower earnings limit is set by HM Revenue & Customs and the value for any given tax year is available on the HM Revenue & Customs website: <http://www.hmrc.gov.uk/rates/nic.htm>.

The lower earnings limit is published as weekly amounts. The annual amount is calculated by multiplying the weekly amount by 52. For example, the weekly amount of the lower earnings limit for tax year 2012-13 is £107. Therefore, the annual amount of the lower earnings limit for that tax year is £5,564 (£107 × 52 weeks).

If, while working, the member's earnings exceed the annual lower earnings limit in any given tax year, their tier 2 ill health pension will be substituted with a tier 1 ill health pension. However, they may have an opportunity to regain their tier 2 ill health pension.

If a member breaks this restriction, their tier 2 ill health pension will be substituted on the first pension payment date after the day their earnings exceeded the annual lower earnings limit.

The day their earnings exceeded the annual lower earnings limit is the date they received the pay that caused their earnings to exceed the annual lower earnings limit.

Example of abatement

The member restarts work in tax year 2012-13 and earns £1,200 a month gross. After five months their gross earnings will be £6,000. These earnings are in excess of the £5,564 annual lower earnings limit for that tax year. At the end of the fourth month their gross earnings will have amounted to £4,800, which is under the annual lower earnings limit. Therefore, the date they were paid their salary for the fifth month's work is the day their earnings exceeded the annual lower earnings limit.

If the member decides to restart work they must keep their payslips and tell NHS Pensions immediately when their earnings are about to exceed the annual lower earnings limit.

NHS Pensions will ask the member to provide the payslip that took their earnings over the annual lower earnings limit in order to determine the date their earnings exceeded the limit.

Regaining a tier 2 ill health pension after exceeding the lower earnings limit

A member may have the opportunity to regain their tier 2 ill health pension if they exceed the lower earnings limit. NHS workers cannot regain their tier 2 ill health pension if they have broken, or will break, the restriction described in this guide.

To regain tier 2 the member must:

- be under normal pension age*
- stop working altogether
- submit new medical evidence for their condition now to NHS Pensions. The medical evidence must be submitted before the submission deadline which is 12 months after the day they first restarted work after their retirement.

The member **must** satisfy **all three** of these conditions to have the opportunity to regain their tier 2 ill health pension.

Evidence will be assessed by NHS Pensions' medical advisors. If the medical advisors determine that the member's condition still satisfies the criteria necessary for a tier 2 ill health pension, it will be reinstated from the date the medical advisor makes their determination.

If the member starts working again after their tier 2 pension has been reinstated and their earnings exceed the annual lower earnings limit again, their tier 2 ill health pension will be substituted with a tier 1 ill health pension. The member will **not** be allowed a second opportunity to regain their tier 2 ill health pension.

Annual review of tier 2 ill health pensioners

After the end of each tax year, NHS Pensions will review the earnings and employments of all pensioners in receipt of tier 2 ill health pensions. This will include those pensioners who have been awarded tier 2 ill health pensions having originally been awarded a tier 1 ill health pension with a right of review.

As the review will look back over the previous tax year, members are advised not to wait for this review before telling NHS Pensions about any earnings or work they may have done. This may result in an overpayment of benefit that members must repay. Members who wait for the review may limit or, at worst, eliminate the time available to regain their tier 2 ill health pension and may be left permanently with a tier 1 ill health pension.

1995 Section members

In 2008 the abatement rules changed for most members who were in active membership on or after 1 April 2008. However, some Special Class members remained subject to the old (pre April 2008) rules even if they were active on or after 1 April 2008.

Under the new arrangements the abatement of the NHS pension could only be up to the unearned element of the pension. The unearned element is the difference between the actuarial reduced pension and what the member actually received prior to exchanging any pension for an increased lump sum. Under the old rules, all of the pension may be potentially abated.

Under the new arrangements both the pre-retirement earnings and the unearned element of the NHS pension must be provided so that abatement can be considered.

The old (pre April 2008) rules

On 6 March 1995, abatement ceased for members who had reached age 60. Before 6th March 1995 abatement continued after age 60. Where a member's pension is already being abated on 6 March 1995, abatement will continue until NHS re-employment ends.

Under the arrangements with effect from 6 March 1995, the following NHS pensions could be subject to abatement until age 60:

- ill health
- redundancy – with a payable date up to 30/09/2011, only where enhanced benefits (i.e. additional membership) are paid
- early retirement in the interest of efficiency
- Special Class age awards from age 55 up to the day before their 60th birthday
- actuarially reduced early retirement (ARER) pensions.

Pensioners who were re-employed in the NHS before age 60 would have their pension abated if their new earnings (earnings in the pensioners re-employment) and their pension exceeded their earnings prior to their retirement, otherwise their pension would be abated £1 for £1 until age 60. The pre-retirement earnings (earnings prior to the members retirement) are subject to cost of living increases where applicable each year.



Example 17

NHS earnings: (earnings prior to retirement) £20,000

New earnings (earnings in the pensioners re-employment after retirement: £15,000 + £6,000 pension = £21,000

Member exceeded earnings prior to their retirement therefore the pension is subject to abatement. From 1 April 2000 abatement changed for new and existing members who retired on actuarially reduced early retirement (ARER). Any post-retirement NHS earnings now had no bearing on the ARER pension.

All other types of retirement pensions remain subject to the abatement rules as described earlier.

For whole time members, employers should still provide the best of the last three years pensionable pay or the annual rate whichever is the highest at termination of employment. For part time members the best of the last three years actual part time pensionable pay or the annual rate, whichever is the highest at termination of employment.

Employers should also ensure pre-retirement earnings are provided on the pension benefit claim form (AW8), along with the annual rate of pay at the last day of membership where the member has indicated that they will be re-employed.

Some current and former members of the 1995 Section are still subject to the old abatement (pre 1 April 2008) rules where potentially all of the member's pension may be abated up to age 60. These include:

- Special Class members between age 55 and 60, irrespective of the date their pensionable employment ended

- Deferred members who left or opted out before 1 April 2008.

The new abatement (post 1 April 2008) rules

Abatement applies if the unearned element of the annual pension, plus the NHS re-employed earnings are more than the pre-retirement earnings.

What is the unearned element?

The unearned element is the difference between the pension the member receives at retirement and an actuarially reduced pension at the same date.

Under the new rules, abatement is restricted to the unearned element of the annual pension and applies to members who have left pensionable employment on or after 1 April 2008 and return to work or continue working in the NHS before age 60. This applies to:

- Special Class members*
- Ill health pensions either under the old ill health regulations or new (tier 1 or Tier 2) arrangements
- Early retirement of deferred pension benefits due to ill health where the last day of membership is on or after 1 April 2008
- Redundancy pensions with a payable date up to 30 September 2011 where the member has chosen enhanced benefits under transitional protection (option B on the AW8)
- Early retirement in the interests of efficiency (irrespective of whether benefits are enhanced). This is because there is no severance pay and the employer pays the cost of paying benefits early.

* The April 2008 abatement rules applied to Special Classes in receipt of ill health or redundancy pension benefits because they are not retiring under the Special Classes early retirement provisions. If the last day of NHS Pension Scheme membership was prior to 1 April 2008 then the old abatement rules apply.

1995 Section pre-retirement earnings

The pre-retirement earnings and the unearned element of the pension must be provided because the NHS pension can only be abated up to the unearned element amount. The pre-retirement earnings must be provided on the pension benefit claim form (AW8) along with the member's annual rate of pay at last day of membership. For part timers the highest actual pay may be in a different year to the whole time equivalent.

Where there is a revised (substitute) award you must provide any revised pensionable pay details, both actual and whole time equivalent, and any changes to the member's annual rate of pay.

Annual rate of pay

The figure required is the pay that the member would receive if they worked for 365 days on the salary which is current at the date of retirement. This would normally be more than the actual pensionable pay.

For example, a member working part time for half the standard hours, retiring on 31 May 2015:

Pay period	Actual pensionable pay	Annual rate of pay	Whole time pensionable pay
1 June 2014 to 31 March 2015	£10,000	£14,000	£28,000
1 April 2015 to 31 May 2015	£3,000	£15,000	£30,000

Although the actual pensionable pay is £13,000 (£10,000 + £3,000), the annual rate that should be provided is £15,000.

Calculating the pre-retirement earnings 1995 Section

The assessment of the pre-retirement earnings is separate from that used to determine the pensionable pay for pension benefits. For example, where a member is part time, the first year notional whole time total pensionable pay may be the highest for pension benefits, but the final year actual total pensionable pay or annual rate the highest for the pre-retirement figure. The deemed date for the pre-retirement figure is the day after the last day of the pensionable pay being referenced.



Example 18

- 1995 Section part time member (working half the standard hours) retiring 31/05/2011

Pay period	Actual annual pensionable pay	Annual rate	Whole time pensionable pay
1 June 2008 to 31 May 2009	£17,000		£29,500
1 June 2009 to 31 May 2010	£17,000		£28,000
1 June 2010 to 31 May 2011	£18,000	£17,500	£29,000

The member's pension benefits are calculated using a whole time equivalent pay figure from year one of £29,500, with a deemed date of 1 June 2009 and a payable date of 1 June 2011. However, the pre-retirement earnings are taken from the final year (£18,000.00) using a deemed date of 1 June 2011. In this example the actual pensionable pay is higher than the annual rate.

Concurrent posts

Where there are concurrent pensionable posts the annual/actual rate of pay from each are added together to determine the pre-retirement earnings.



Example 19

- 1995 Section - concurrent Officer part time posts

02/09/2011 01/09/2012
 Employment 1|-----|
 31/05/2012
 Employment 2-----

The annual and actual rate of pay is calculated as the total pensionable pay for the period 02/09/2011 to 01/09/2012 (employment 1) plus the proportion of the pay for the period 02/09/2011 to 31/05/2012 in employment 2.

- redundancy retirement (payable dates on or before 30 September 2011) where enhanced benefits are paid under Transitional Protection arrangements in the 1995 Section.
- early retirement in the Interests of the efficiency of the service irrespective of whether benefits are enhanced. This is because there is no severance pay so the employer funds the early payment of benefits.
- the pre-retirement earnings figure is taken from all the pensionable posts, not solely from the NHS post where benefits are being awarded.

Male nurses

Where a male nurse has taken their benefits on the grounds of age retirement, any benefits for membership built up to 16 May 1990 will be reduced for early payment if claimed before age 60. Only the age element of the member's pension is subject to abatement up to age 60, not the actuarially reduced early retirement element.

2008 Section members

2008 Section pensions that are subject to abatement up to age 65 are:

- ill health (tier 1 and tier 2)
- early payment of deferred benefits due to ill health
- early retirement in the interests of the efficiency of the service. Although benefits are unenhanced there is no severance pay so the early payment of benefits is funded by the employer.

2008 Section redundancy pensions are not abated because the employer redundancy/severance payment is used to fund the full pension.

Both the unearned element of the annual pension and the pre-retirement figure must be established.

Calculating the pre-retirement earnings

The approach to abatement in the 2008 Section is similar to the 1995 Section. However, the pre-retirement pay is the greater of the reckonable pay (i.e. the average of the best three consecutive years in the last 10 years) or the annual rate of pay.

For Officer/Practice Staff members who work whole time, the pre-retirement earnings are the higher of reckonable pay (i.e. average of the best three consecutive years in the last 10) or the annual rate of pay at termination.

For Officer/Practice Staff members who work part time, the pre-retirement earnings are the higher of their actual (part time) reckonable pay or the part time annual rate of pay at termination.

Where the member is a Practitioner, the pre-retirement figure is the uprated average Practitioner earnings up to the payable date of the pension. As most Practitioners and non-GP Providers are self-employed, they may not have an annual rate.

Any missing details that are required to determine the pre-retirement earnings figure must be provided on request.

Revised award details submitted by employers must include any revision to the pensionable pay that has previously been provided, including any changes to the member's annual rate of pay. If the

annual rate of pay information has not been provided we will request this from you along with any additional details required to determine the member's pre-retirement earnings.

Note: For members who work part time, the highest actual reckonable pay may be in a different consecutive year to the whole time equivalent. For abatement purposes, it is not necessary to use the same year as that used to calculate the award.

Pre-retirement earnings where there are breaks in membership

Where there are breaks in membership or disallowed days the 10 year 'count back' excludes the breaks.

2008 Section Optants

There are some differences to the abatement calculation when the member moved to the 2008 Section after exercising their 'Choice' option.

The 2008 Section does not normally provide a lump sum but those who elected to move must receive the lump sum they would have built up in the 1995 Section up to 31 March 2008 based on their 2008 Section reckonable pay. This is the mandatory lump sum.

A reduction is applied to the 2008 Section pension to pay for the mandatory lump. Because the lump sum is mandatory, this annual pension reduction is not subject to abatement and is excluded from the calculation of the unearned pension.

If the member chooses to increase the mandatory lump sum under commutation (£1 for £12 provision), it is the annual pension before commutation that is subject to abatement and included in the calculation of the unearned pension. The pension assessed for abatement is that after the deduction for the mandatory lump sum but before any commutation.

2015 Scheme members

2015 Scheme pensions that are subject to abatement are:

- ill health tier 1 and tier 2 pension
- early payment of deferred pension benefits due to ill health
- early retirement in the interests of the efficiency of the service pension. Although benefits are unenhanced there is no severance pay so the early payment of benefits is funded by the employer.

The abatement rules for 2015 Scheme members are broadly the same as for 2008 Section members. Individuals who return to work either in an employed or self-employed capacity (including as a limited company) are subject to abatement if their post retirement NHS income plus the unearned element exceeds their pre-retirement income. They must declare if they are in receipt of an NHS pension. However, abatement is limited to the unearned element.

Both the unearned element of the 2015 Scheme pension benefits and the pre-retirement figure are required. For an Officer/Practice Staff member the pre-retirement earnings figure is the higher of the best year's pensionable pay in the last 10 years after Treasury Order revaluation or the annual rate of pensionable pay at termination.

For a self-employed Practitioner or non-GP Provider the pre-retirement earnings are the best year's revalued pensionable earnings; there is no annual rate.

Abatement continues until the pensioner reaches their normal pension age in the 2015 Scheme. If the member has entered into an early retirement reduction buy out (ERRBO) agreement, the factors applied to the member's pension are referenced against their reduced pension age.

Calculating the 2015 Scheme Officer/Practice Staff pre-retirement earnings

The pre-retirement earnings are or the higher of the annual rate of pay at termination or the best year's revalued earnings in the last full 10 Scheme years.

Calculating the 2015 Scheme Practitioner or non-GP Provider pre-retirement earnings

The pre-retirement earnings are the best revalued earnings in the last full 10 Scheme years. There is no annual rate of pay to compare with.

The revalued earnings figure must be reviewed if the pensionable income in any of the reference years is provisional; i.e. the Practitioner/non-GP Provider has not yet completed their Certificates.

Transitional/Tapered Protection and members of the 1995/2008 Scheme

If the member has a 1995 or 2008 Section pension and also a 2015 Scheme pension that are both subject to abatement, the abatement of each pension is limited to its own unique unearned element. The abatement of each pension must be applied separately because abatement ends at different dates.

Member type	Abatement end date
1995/2015 Transition	1995 pension - age 60 / 2015 pension- Normal Pension Age
1995/2015 Tapered	1995 pension - age 60 / 2015 pension – Normal Pension Age
2008/2015 Transition	2008 pension - age 65 / 2015 pension – Normal Pension Age
2008/2015 Tapered	2008 pension - age 65/ 2015 pension – Normal Pension Age
1995/2008	1995 pension - age 60 / 2008 pension – 65

Miscellaneous Information

Re-employment forms

A system generated re-employment form is sent to the member once the pension benefits have been processed. Employers can also access the re-employment form via our website.

Where members have indicated they are going to be re-employed, the re-employment form must be completed and signed by the employer before the pension can be paid.

Where more than one pension is payable

It is possible for a member of the 2008 Section or 2015 Scheme to have more than one pension in payment upon returning to NHS employment. In these circumstances it is the best pre-retirement earnings that are tested against the member's post-retirement earnings.

Where the post-retirement earnings exceed the pre-retirement earnings plus the unearned amount, the pensions in payment will be abated up to the unearned element value. The amount of reduction applied to the pensions in payment must be apportioned. For example, if the first pension

represented 60% of the total pension and the second pension 40%, abatement must also be on a 60/40 ratio.

Additional Pension

The cost of buying Additional Pension (AP) is based on the age the purchase commences and the chosen date from which the benefit is due to be paid. This is age 60 or 65 in the 1995 Section, 65 in the 2008 Section and age 65 or the member's State Pension age (whichever is later) in the 2015 Scheme.

Irrespective of whether the Additional Pension is purchased by lump sum or instalments, if the benefits are paid before the contract end date (appropriate to the Additional Pension contract, not the normal pension age of the member), it is usually subject to a reduction for early payment. When it is subject to a reduction for early payment, the Additional Pension is not then affected by abatement.

The sole exception is where a member retires on ill health and signed the application to be considered for ill health retirement (AW33E) more than 12 months after making the Additional Pension application. In this case the Additional Pension is not subject to any reduction. However, because the Additional Pension is paid without reduction, some of it is unearned. The unearned part of the Additional Pension is subject to abatement.

Additional Pension and redundancy choice B/Interests of Efficiency

Members who retired on redundancy choice B or on interests of efficiency grounds before 1 April 2011 will have their Additional Pension reduced using the respective early retirement factor tables. The Additional Pension is also reduced for the abatement calculation.

Compulsory early retirement with continuing Officer or Practitioner

Abatement may also apply if a member elects to continue to build up pension rights in respect of a continuing pensionable employment when becoming entitled to early retirement in the interests of the efficiency of the service. This is because under Interests of the efficiency there is no severance pay so the employer funds the early payment of benefits.

The pre-retirement earnings figure is taken from all the pensionable posts, not solely from the NHS post where benefits are being awarded.

Allocation

Pension benefits given up by the member to provide a pension for another do not form part of the unearned pension element. Therefore the amount to be allocated must be deducted from the member's pension before calculating the unearned element of the pension.

Lifetime Allowance and Scheme Pays deductions

Where the member's pension is subject to an adjustment for a Lifetime Allowance or Annual Allowance (Scheme Pays) tax charge it should be the original (unadjusted) pension that is used in calculating the unearned element.

Direction body members

Although not directly employed by the NHS, pensioners who return to employment or start work for the first time with certain Direction employers may be subject to abatement. Those affected are pensioners who would otherwise satisfy the normal conditions to be a member of the NHS Pension

Scheme with the Direction employer, but who are not eligible to join because they are already in receipt of their pension.

In summary, where a pensioner returns to or joins a Direction body their NHS pension benefits may be abated if any of the following occur:

- the employee would have potentially been eligible for NHS Pension Scheme membership under the terms of the Direction had they not been in receipt of their pension benefits
- the re-employment (new employment) is in respect of the provision of NHS services or NHS funded services.

Pension debit

Any pension debit is deducted and must not be included in the calculation for abatement purposes.

Pension credit

Any pension credit that a 1995/2008 Section or 2015 Scheme member is entitled to is ignored for abatement purposes.

Added Years

Pension benefits bought from an Added Years contract must be reduced when calculating the earnings margin by:

- calculating an actual Added Years credit using the formula
$$\frac{\text{Intended Added Years credit} \times \text{actual period of payment (scaled)}}{\text{Intended period of purchase}}$$
- calculate the annual pension and lump sum (if applicable) from the actual Added Years credit.
- apply the appropriate Added Years factor to the annual pension and lump sum.