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Consultation outcome

# NHS Pension Scheme: proposed amendments to continue the suspension of restrictions on return to work: response to consultation

Updated 6 October 2022

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# Introduction and summary of proposals

A key component of the government's response to the coronavirus (COVID-19) pandemic has been measures to boost the available NHS workforce. Accordingly, rules in the NHS Pension Scheme have been suspended since March 2020 to allow retired and partially retired staff to return to work or increase their working commitments without having their pension benefits suspended or abated. From 25 March 2020 to 25 March 2022 these easements were provided by section 45 of the Coronavirus Act 2020, one of the pieces of emergency legislation introduced to provide the government and the NHS with the tools required to deal with the COVID-19 pandemic.

From 25 March 2022 to 31 October 2022 the easements have been continued via temporary modifications to NHS Pension Scheme regulations made by Part 3 of the National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 ('the 2022 Regulations').

The continued need for NHS staff who contract COVID-19 to isolate and miss work means that staff sickness absence rates are currently higher than pre-pandemic levels. This has a negative impact on NHS capacity at a time when demand for services is high. It is possible that sickness absence rates due to COVID-19 will increase further in the coming winter months, due to the respiratory nature of the virus. On this basis, the Department of Health and Social Care (DHSC) is of the view that the suspension of the restrictions on return to work should continue.

DHSC considers that it is appropriate to continue the temporary modifications to the NHS Pension Schemes to ensure the NHS can continue to benefit from the capacity boost provided by retired and partially retired staff when responding to the pandemic. On this basis, DHSC consulted on proposals to continue the easement of the restrictions via temporary modifications to NHS Pension Scheme regulations. These proposed changes would amend the existing expiry date of the easements in the 2022 Regulations from 31 October 2022 to 31 March 2023.

For most staff, the NHS Pension Scheme does not place any limits on the amount that staff can work should they return after claiming their benefits. However, there are 3 rules across the schemes which limit the amount that some retired staff can work in specific circumstances:

- the 16-hour rule – this rule requires staff who retire and return from the 1995 section to work 16 hours per week (2 days) or less in the first month after retirement. Where staff work more than this limit, their pension benefits are temporarily suspended until their working commitments are reduced

- abatement of Special Class Status (SCS) members, including mental health officers (MHO) who are eligible to retire from the 1995 section at age 55 instead of 60, without an actuarial reduction in their pension. Abatement applies where staff return to work before age 60 and their pension plus salary exceeds their pre-retirement income. Where this occurs, the payment of a member's pension is reduced so that their pension plus salary does not exceed their pre-retirement income
- abatement of 2008 section and 2015 scheme members who draw down a portion of their benefits and continue working. Abatement requires them to reduce their pensionable pay by 10% upon each election to draw down benefits. Payment of pension is reduced or suspended if members do not reduce their pensionable pay by at least 10% when electing to draw down benefits

It was anticipated that the pandemic would place increased pressure on the healthcare system, so it was important that the Coronavirus Act 2020 contained provisions to boost NHS workforce capacity. At the point section 45 of the Coronavirus Act 2020 expired, DHSC listened to concerns from staff and employers that a continuation of the easements was required to help the NHS deal with the ongoing Omicron variant. In light of these concerns, DHSC continued the retire and return easements via temporary modifications to NHS Pension Scheme regulations made by Part 3 of the 2022 Regulations which run to 31 October 2022.

While DHSC has listened to concerns from stakeholders, including NHS staff and employers, that a further extension of the easements is required, it retains the belief that there remains a strong rationale for the abatement of pension benefits for SCS members in receipt of an unreduced pension who return to work between age 55 and 60 to continue in normal circumstances. The suspension of SCS abatement due to the demands of the pandemic is kept under strict review and there are no plans for it to be permanently removed.

## Consultation process

The consultation ran from 28 August to 12 September 2022. A short consultation was considered to be appropriate given the nature of the proposals, which had already been in effect for over 2 years. It also ensured that the proposed changes to regulations can be made in time to take effect before the planned expiry of the existing easements on 31 October 2022, subject to the consultation outcome.

## Consultation questions

Respondents were invited to consider the following questions:

1. Do you agree or disagree that the temporary pension easements should continue beyond the planned expiry on 31 October 2022?
2. Do you agree or disagree that the continuation of the easements until 31 March 2023 is a reasonable length of time?

## Summary of responses

DHSC is grateful for all consultation responses, which were received from individuals and on behalf of organisations. Respondents had the option of responding to the consultation via an online survey, post or email.

1,249 responses were received via the online survey platform, and a further 50 were received from individuals via email.

Six responses were received from the following organisations:

- The British Dental Association
- The British Medical Association
- NHS Employers
- The NHS Pension Scheme Advisory Board
- The Royal College of Midwives
- The Royal College of Nursing

## Consultation responses

In summary, consultation respondents were almost universally supportive of continuing the easements. However, some respondents argued that the easements should be suspended for longer than a 6-month period, or that the relevant rule in the NHS Pension Schemes should be removed entirely.

## Continuing the easements

98% of respondents to the online survey agreed that the easements should continue beyond 31 October 2022 (2% disagreed). This view was also shared by each of the organisations who responded to the consultation.

Some respondents who disagreed with the proposals to extend the easements cited that SCS members can already work a significant amount without being subject to abatement. A small number of respondents argued that the easements should be allowed to expire, but that employers should develop retire and return policies to support staff working up to and beyond retirement age.

NHS Employers cited that the vast majority of employers in the NHS supported an extension of the easements. The small number who did not support a further extension believed that the timing of the proposed extension may not provide sufficient notice to staff and employers and could therefore create confusion. They also argued that an extension could set a precedent that the easements could remain indefinitely and raised concerns around the fairness to other staff members of continuing to suspend SCS abatement when such members already qualify for an enhanced benefit that is not available to other staff.

DHSC is pleased to note the overwhelmingly positive support for the proposals to continue the easements beyond 31 October 2022 and will proceed with proposals to implement a further extension.

## **Duration of the continued easements**

A smaller number of consultation respondents agreed that 31 March 2023 is a suitable date for the continuation of the easements.

32% of respondents to the online survey agreed with the proposed duration of the continuation and 68% disagreed.

The organisations who responded to the consultation represented a mixture of staff and employer interests. The NHS Pension Scheme Advisory Board (SAB) agreed that the easements should be extended beyond 31 October 2022 on the basis that rates of staff sickness absence are high, which puts pressure on NHS services and workforce capacity.

However, the SAB disagreed with the proposed length of the extension to 31 March 2023. SAB argued that the 16-hour rule should be permanently removed on the basis that it serves little practical purpose for staff, employers, or the pension scheme. Furthermore, SAB believe that the remaining easements should be extended for a duration of longer than 6 months to provide greater certainty for employers in workforce planning and for staff in making decisions regarding their retirement work-life balance. The need to provide longer-term certainty to staff and employers was supported by a large number of respondents to the online survey.

NHS Employers also agreed that the 16-hour rule should be permanently removed and argued that it should remain suspended until it can be removed on the basis that removing the rule would promote continuity of care and remove administrative burdens for employers. NHS Employers noted that there are no plans for the permanent removal of abatement, as the government set out at consultation that

there are good policy reasons for abatement applying to SCS members in business-as-usual circumstances. However, they argued that it should remain suspended beyond 31 March 2023 in order to give employers additional time to create more attractive options for staff who retire and return, address backlogs and work on reducing staff sickness absence.

The Royal College of Nursing (RCN) supported an extension of the easements in response to the current recruitment and retention pressures in the NHS, but also argued that a longer extension is required. The RCN expressed similar concerns to the SAB that a longer extension will provide greater notice and certainty to employers regarding working patterns.

## **Government response to consultation**

### **Continuing the easements beyond 31 October 2022**

DHSC is pleased to note that consultation respondents were overwhelmingly supportive of retaining the temporary easements beyond 31 October 2022. As set out in the initial consultation document, the ongoing pandemic response presents a clear rationale for continuing the easements over the winter period, when staff sickness absence rates and pressure on the NHS workforce are likely to increase.

Therefore, DHSC intends to proceed with the proposals to continue the easements beyond 31 October 2022, via an extension to the existing temporary modifications to NHS Pension Scheme regulations.

### **Duration of the continued easements**

DHSC notes the concerns expressed by respondents that 31 March 2023 may not be a sufficient length of time to retain the easements, and that a longer extension may be required. Respondents argued for a longer extension to provide certainty regarding working patterns for staff and employers, and also allow the NHS additional time to address backlogs and reduce rates of staff sickness absence.

As set out in the consultation document, the government keeps the impact of these easements under review and has listened to the concerns of stakeholders regarding the planned extension to 31 March 2023, particularly regarding the expiry of the suspension of SCS abatement. While these easements were initially introduced to help the NHS respond to the demands of the coronavirus pandemic, there is now unprecedented pressure on the NHS during the period of elective recovery. In addition to this, the government is committed to support the NHS to have the staff it needs to deal with treatment backlogs, and recognises the vital



increased capacity provided by SCS members since March 2020. On that basis, the government intends to extend the suspension of SCS abatement to 31 March 2025.

However, in the longer term there are good policy reasons for abatement applying to SCS members who return to work before age 60. SCS is a preserved right awarded to certain professions in the 1995 section which, subject to qualifying criteria being met, allows a member to retire at 55 instead of 60 without an actuarial reduction in benefits that would normally apply when claiming benefits early. This is a generous benefit that is no longer available to new starters, as it was withdrawn for new entrants from 6 March 1995 as part of the NHS Pension Scheme restructuring at that time.

SCS allows members to retire at 55 instead of 60, without the actuarial reduction to their pension which would apply to other members who claim their benefits early. However, under normal arrangements, SCS members who return to work between age 55 and 60 are subject to abatement. This means their pension plus salary cannot exceed their pre-retirement income, and their pension is reduced if it does. Abatement ceases to apply at age 60. For members with long careers, the abatement ceiling typically prevents them from working more than half-time in the week should they return to work before age 60.

However, where abatement applies even staff with long careers can perform substantial amounts of work. The following analysis was included in the initial consultation document but is presented again here as it evidences the amount that example SCS members can work before abatement applies. Many consultation respondents said that it would be helpful to see this type of analysis in order to allow them to plan for the eventual reintroduction of abatement.

**Table 1: approximate abatement ceiling for 3 example SCS nurses**

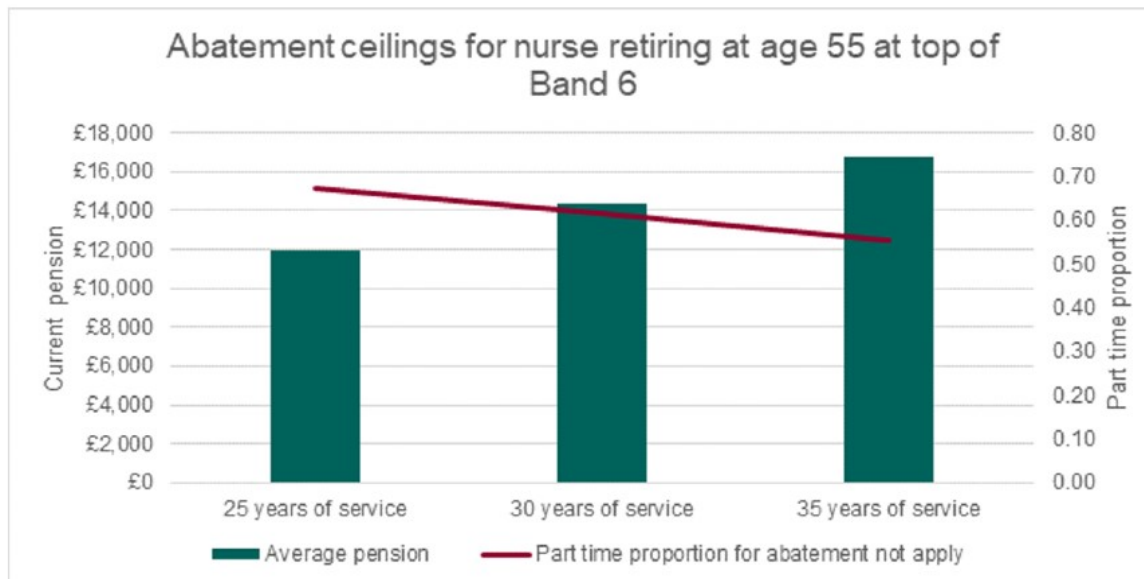
<b>Years of service</b>	<b>Average Current pension in payment</b>	<b>Full-time equivalent (FTE) salary upon re-employment</b>	<b>Previous FTE pensionable pay uplifted with consumer prices index (CPI)</b>	<b>Abatement ceiling</b>
<b>25</b>	£11,965	£39,027	£38,287	£26,322
<b>30</b>	£14,391	£39,027	£38,376	£23,985
<b>35</b>	£16,789	£39,027	£38,376	£21,586

Source: Government Actuary's Department.

The abatement ceiling limits the amount that returning SCS members can work between 55 and 60 when in receipt of pension benefits. There have been concerns from stakeholders that the eventual reintroduction of abatement would force returning SCS members to retire. This is not the case, as it is still possible for SCS members to perform significant amounts of work without exceeding their abatement ceiling, even for members with long careers.

The below graph sets out the proportion of FTE that the 3 example SCS members could work after claiming their benefits without exceeding their respective abatement ceilings.

**Figure 1: abatement ceilings for 3 example SCS nurses as a proportion of FTE**



Source: Government Actuary's Department.

The graph shows the average pension size for 3 example SCS nurses with 25, 30 and 35 years of pension membership at retirement. These members will, on average, accrue annual pensions of £12,000, £14,400 and £16,800 respectively, payable at age 55. The graph also shows the proportion of FTE that each example member could work if they returned to work after retirement while in receipt of pension benefits. All members can work at least half-time when in receipt of benefits before abatement applies.

In the interests of fairness to all scheme members, it is right that abatement applies to SCS members under normal circumstances. Members who qualify for SCS are a closed cohort who are eligible for a valuable benefit that has not been available to new staff since 6 March 1995, even for those in the same professions. SCS allows members to retire 5 years earlier than the normal pension age, without an actuarial reduction. SCS members do not pay additional contributions for this benefit.

Therefore, abatement limits the ability of SCS members to retire early on an unreduced pension and return to work on a full salary. This ensures fairness to all scheme members and protects the public purse from the impact of staff continuing to work full time while in receipt of generous pension benefits.

The government is grateful for the contributions of retired and partially retired staff during the pandemic response period. The additional capacity they have provided has been vital in tackling the pandemic and assisting the vaccine rollout.

An extension of the temporary easements was previously provided to 31 October 2022 in response to the emergence of the Omicron variant. A further extension was proposed to 31 March 2023 in response to concerns about increased staff sickness absence. However, DHSC has listened to concerns from consultation respondents and stakeholders that a longer extension is needed in respect of the suspension of SCS abatement. The government intends to go a step further than what was proposed in the initial consultation and extend the suspension of SCS abatement to 31 March 2025.

## Supporting retire and return in the NHS

NHS England is working with the NHS Staff Council, a partnership of NHS trade unions and NHS Employers, to create a range of tools and support for organisations to embed flexible working. This includes toolkits aimed at line managers and individuals to support flexible working requests. New guidance for HR managers is being developed on retire and return.

In addition, following a national collective agreement to include the right to flexible working from day one within the [NHS Terms and Conditions of Service Handbook](https://www.nhsemployers.org/publications/tchandbook) (<https://www.nhsemployers.org/publications/tchandbook>), a programme is also underway to support organisations to understand the benefits for staff and patients of flexible working.

Building on the work carried out at the start of the pandemic to bring back former healthcare professionals, a new NHS Reserve programme is being rolled out across England. Reservists are fully trained supplementary NHS staff who are committed to a number of days of service each year. Hospitals will be able to draw on the reserve programme to mobilise a broad range of staff, from doctors to IT

experts, at times of high demand such as the upcoming winter period or for specific programmes like vaccination drives, ensuring the NHS has additional capacity when it needs it most.

DHSC recognises that work-life balance and flexibility around retirement options are key concerns for older staff. NHS England has launched an initiative focused on employers making flexible employment offers to late career staff.

While DHSC keeps the ways in which pension scheme design can support this under review, a major element of the campaign is leveraging the scheme to support retention by promoting to:

- staff the value of continuing to build pension
- employers the value of using existing flexibility around working patterns and retirement

These include existing options for partial retirement and pensionable re-employment in the 2008 section and 2015 scheme.

The government intends to launch a public consultation in autumn 2022 on a package of new retirement flexibilities, including proposed amendments to the regulations to allow members of the 1995 section to partially retire but continue working and building up further pension, and provision for pensionable re-employment for those who have already retired and then returned to work. The consultation will also propose the permanent removal of the 16-hour rule from the 1995 section from 1 April 2023. On that basis, the government intends to continue with the proposal as consulted on and extend the suspension of the 16-hour rule to 31 March 2023, ahead of its proposed permanent removal the following day.

As the government is proposing to introduce partial retirement to the 1995 section, it is proportionate to introduce draw-down abatement, for those whose pensionable pay does not decrease by at least 10% after partially retiring, to the 1995 section from 1 April 2023 (this will be set out in the autumn consultation). This means that draw-down abatement in the 2008 section and 2015 scheme, which has been suspended since March 2020, will be re-introduced from 1 April 2023 to align all schemes in this respect. Allowing members of the 1995 section to claim a portion of their benefits and continue working will provide a vital capacity boost to the NHS workforce.

DHSC therefore intends to extend the temporary retire and return easements as follows:

- the 16-hour rule will be suspended to 31 March 2023, with further proposals for its permanent removal from 1 April 2023
- abatement of SCS members will be suspended to 31 March 2025

- abatement of draw-down members of the 2008 section and 2015 scheme will be suspended to 31 March 2023

These measures were first introduced to help the NHS deal with peak periods of the pandemic response. However, we recognise that the elective recovery period, which is not directly linked to the immediate pandemic response, is placing continued pressure on NHS services and workforce capacity. It is therefore reasonable and proportionate to continue the suspension of SCS abatement for a longer period to help the NHS deliver elective recovery and address backlogs.

DHSC is keeping the impact of the NHS Pension Scheme on NHS workforce needs under review.

## Public Sector Equality Duty

The proposed amendments to NHS Pension Scheme regulations seek to continue easements which were previously provided by section 45 of the Coronavirus Act 2020. Therefore, DHSC's equality analysis remains consistent with the initial analysis performed at the introduction of the Coronavirus Act.

View the [government's equality analysis for the Coronavirus Act 2020](https://www.gov.uk/government/publications/coronavirus-act-2020-equality-impact-assessment) (<https://www.gov.uk/government/publications/coronavirus-act-2020-equality-impact-assessment>).

## Conclusion and next steps

DHSC is grateful for the responses received at consultation stage, which have helped test the proposals and provided valuable insight from a wide cross-section of the NHS Pension Scheme membership and interested stakeholders.

We intend to proceed with the proposals to amend Part 3 of the 2022 Regulations (expiry of the modifications of restrictions on return to work) to extend the application of the easements to NHS Pension Scheme regulations. As a result of consultation feedback, the suspension of abatement for SCS members will be extended for a longer period than originally planned. The extension will be made by way of an amendment to Part 3 of the 2022 Regulations to extend the expiry dates of the temporary modifications to NHS Pension Scheme regulations.

The amendment to Part 3 of the 2022 Regulations will continue the temporary suspension of:

- the 16-hour rule in the 1995 section until 31 March 2023

- abatement of SCS members who retire and return to work between age 55 and 60 in the 1995 section until 31 March 2025
- abatement of draw-down members who claim a portion of their benefits and continue working in the 2008 section and 2015 scheme until 31 March 2023

A further suspension of these easements ensures that the NHS workforce continues to benefit from increased capacity from retired and partially retired staff during a period when staff sickness absence rates are likely to increase. It also recognises the exceptional pressures faced by the NHS in dealing with backlogs and elective recovery.

DHSC intends to proceed with the proposals as set out in this consultation response. DHSC will lay the final regulations before Parliament such that the proposed changes are in place for 31 October 2022. These reforms will extend the existing temporary modifications to NHS Pension Scheme regulations to ensure a further continuation of the temporary easements. The government will keep the impact of this continuation under review.

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