



## Guidance on partial retirement for consultants and speciality and associate specialist (SAS) doctors in England

Taking partial retirement ought to be just that: **a decrease in working commitments**. The mechanism that the NHS Pension Scheme has in place to safeguard this when members partially retire is twofold: a) a change in contract terms leading to b) a reduction in pensionable pay of at least 10%. The reduction in pensionable pay must be maintained for at least 12 months following partial retirement.

We understand that most of the 30,000+ NHS staff who have accessed partial retirement since 1 October 2023 have done so via a change of contract terms and a reduction in hours and therefore pensionable pay, (i.e., going from full-time to part-time). This is the standard way of accessing partial retirement and will be appropriate for the vast majority of staff and employers.

Members who do not wish to change their contract terms or reduce their pensionable pay - but do wish to claim their pension - can do so via '**retire and return**'. The NHS Pension Scheme only requires a 24-hour break to claim pension benefits, and we are supportive of employers who do not insist on longer breaks. We expect employers to offer their staff the same terms, for example in relation to annual leave and sick pay, on their return.

Where doctors on closed grades (e.g. Associate Specialist 2008) retire and return, employers may choose to offer the doctor local terms which mirror the contract they have left. This should be discussed with the doctor, and the organisation's decision should be applied consistently across all closed contract staff who wish to retire and return, to avoid inequality and ensure fairness.

Employers must deal with both partial retirement and retire and return requests fairly. Where a request for a contractual variation necessary for partial retirement is presented as a request for flexible working, it must be considered in accordance with the relevant statutory requirements.

Employers have asked whether consultants and SAS doctors can take partial retirement whilst maintaining their existing level of working commitment, by

temporarily reducing their (pensionable) programmed activities (PAs) and increasing their (non-pensionable) additional programmed activities (APAs).

To be clear, the NHS Pension Scheme has no view on how doctors' contracts should be set up and what is permissible under the contracting rules. That is entirely a matter for employees, employers and the relevant oversight bodies. Generally, we understand that an agreement to provide and perform a certain number of APAs over a limited time frame may be incorporated into a doctor's job plan, or could remain contracted through a 'side letter' to their contract.

PAs and APAs are not specially recognised by the NHS Pension Scheme regulations. It seems clear though that historically APAs have almost always been treated by employers as non-pensionable overtime. This is logical in circumstances where these APAs are done over and above the member's 'job plan' core hours, as a supplement to full-time work (10 PAs). It is also of course possible for part-time consultants and SAS doctors (who work fewer than 10 PAs) to work APAs that are beyond their core hours. Under the NHS Pension Scheme rules, these APAs would be pensionable for part-time consultants and SAS doctors up to the whole time equivalent (10 PAs), **except in the 12 months after partial retirement**.

What constitutes 'overtime' for a member who is partially retired is that the work is in excess of their employment contract. That implies that overtime must be discretionary – on both sides – and therefore distinct from their permanent contractual arrangements. This suggests that overtime is to some extent, temporary, although that is not laid down precisely by the pensions regulations and should be determined with sensitivity to individual circumstances by employers. As a minimum, to qualify as 'overtime' the work must be at the genuine supplementary discretion of the individual, and recognisably distinct from the commitments in the underlying or 'core' employment contract.

In Schedule 15 of the 2015 Regulations, 'overtime' is defined for those in the 12 months after partial retirement as: 'any period of time worked in excess of the terms of the member's contract'. This definition was introduced on 1 April 2024 and was intended to be as helpful as possible to members taking on extra work after partially retiring. As per the consultation:

'We do recognise the demands of NHS service provision. The vast majority of the NHS workforce perform shifts or sessions, and an employer may ask willing staff to do occasional extra ones to address temporary pressures - for example covering rota gaps where staff are unwell or have left. We would not want the potential suspension of their pension to rule out the possibility of partially retired staff from responding to help out their employer with short-term, temporary swings in work. It is for this reason that we proposed making additional hours worked above their core contract by partial retirees non-pensionable for the 12-month period'.

Therefore, the view of the NHS Pension Scheme remains that hours done in excess of the member's core contract are non-pensionable overtime for the 12 month period following partial retirement. It remains for employers to determine what hours fall within this definition of non-pensionable overtime in each specific case. After this 12 month period, those additional hours become pensionable in the same way as they are for all other members – up to their whole-time equivalent.

When considering applications for partial retirement, employers must also be aware that the NHS Pension Scheme requires a change in contract terms and a reduction in pensionable pay. Where members and employers are unable to agree on a change of terms, and do not determine that a member's post-partial retirement APAs are overtime, the most appropriate course of action will usually be a 'retire and return' arrangement. The NHS Pension Scheme regulations only require a break of 24 hours in order to retire and return. We would expect employers to offer their staff the same terms on their return.