

NHS Pensions

Redundancy – Basic overview for employers



Disclaimer

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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.

Contact details

You can contact us by calling:

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Background

As part of the 2015 pay settlement for staff covered by Agenda for Change terms and conditions, new redundancy provisions were introduced with effect from 1 April 2015.

When an employee is made redundant and chooses to claim pension benefits, the employer's responsibility to pay capitalisation costs is limited so that they cannot exceed an employee's redundancy payment.

A lower limit of £23,000 and an upper limit of £80,000 has been set for the whole time equivalent salary used to calculate an employee's redundancy payment that is payable by the employer.

These provisions apply in both the 1995/2008 Scheme and the 2015 Scheme, where a formal redundancy consultation began on or after 1 April 2015. Section 16 of the Agenda for Change handbook provides further guidance in respect of redundancy payments for members subject to Agenda for Change terms and condition.

If there is doubt as to the level of redundancy payment a member is entitled to, you may decide to take your own legal advice as NHS Pensions are unable to assist in such matters.

The revised redundancy provisions impact members who are employed in England and subject to Agenda for Change terms and conditions and, therefore do not apply to:

- staff employed in NHS Wales
- hospital doctors and dentists who are not subject to Agenda for Change or equivalent terms and conditions
- very senior managers who are not subject to Agenda for Change or equivalent terms and conditions.

16.3 of the Agenda for Change handbook highlights that to qualify for a redundancy payment the member of staff must be an employee, working under a contract of employment for an NHS employer. An NHS employer is any of the organisations listed in Annex A of the handbook and any predecessor or successor body.

1. Options available to members

Where a member is retired prematurely because of redundancy or in the interests of the efficiency of the service (IOE), member's pension benefits may be paid immediately where the following conditions have been met:

- a member must have at least two years qualifying membership
- a member must have two years continuity of employment
- a member must have reached their minimum pension age.

Members who are made redundant and meet the qualifying criteria have a choice to make whether they:

- choose to take their redundancy payment and have their pension benefits paid unreduced at normal pension age
- choose to take their redundancy payment and take their pension benefits early with a reduction (early retirement)
- take their pension benefits early without a reduction using the redundancy payment to meet the capitalised cost.

For members working in England who choose to take their pension immediately without any reduction the cost incurred of paying the unreduced pension will be met by the member, the employer, or a combination of both depending on their profession and terms and conditions of the contract.

For members working in Wales, where the redundancy payment is used to meet capitalisation costs, any further cost will be met by the employer.

Pension benefits for members who have transitioned from the 1995 Section to the 2015 Scheme and claim their pension due to either redundancy or IOE before age 55 can be paid from the 1995 Section only provided a member has a minimum pension age of 50 in the 1995 Section. However, members will not be able to build up any further pension benefits in the 2015 Scheme.

Members who have transitioned from the 2008 Section to the 2015 Scheme may claim their pension early due to redundancy or IOE from both the 2015 Scheme and those from earlier membership. They must have however reached the minimum pension age of 55.

2. What are capitalised costs?

Capitalised costs are based on the difference between an unreduced pension and a pension reduced for early payment plus the cost of paying a lump sum early. These two amounts are then multiplied by the appropriate factors provided by the Government Actuary's Department (GAD). These factors are available on our website.

If the capitalisation cost exceeds the redundancy payment any cost remaining after the employee redundancy payment has been used must be covered by the member if they are subject to Agenda for Change terms and conditions or equivalent. The member must commit the whole of the redundancy payment and can then choose to:

- have some of their benefits actuarially reduced to cover the shortfall
- pay an additional contribution to meet all of the remaining costs
- pay a lesser amount to limit the actuarial reduction.

The member can choose to keep the full redundancy payment and receive either immediate payment of benefits with full actuarial reduction or unreduced deferred benefits paid from their normal pension age.

If the capitalisation cost is less than the redundancy payment, the member receives the remainder of the redundancy payment after the full costs have been met.

3. Requesting an estimate

When requesting an estimate, employers are required to provide information that enables us to determine the pension benefit options available to the member. A redundancy calculator is available on our website to assist with your calculations. However, where the working pattern of the member is an exclusion from the calculator, estimates can be requested from NHS Pensions by completing and submitting form AW295 either through Pensions Online or by forwarding a scanned copy to nhsbsa.pensionemployers@nhs.net.

Our estimate will illustrate:

- the unreduced pension and pension commencement lump sum, including the amounts after commutation (£1 to £12)
- the capitalised cost of paying the unreduced benefits early
- the pension and pension commencement lump sum reduced for early payment, including the amounts after commutation (£1 to £12)
- where there is a shortfall between the redundancy payment and the capitalised cost, the reduced pension and pension commencement lump sum after the redundancy payment has been used.

Where the member is subject to the new provisions and there is a shortfall between the redundancy payment and the capitalised cost, the member has an option to make an additional contribution to limit the portion of the pension that is reduced for early payment.

The estimate will be forwarded directly to the employer requesting the information and there is no charge applicable for redundancy estimates.

4. Submitting an award application

If a member wishes to claim their pension due to a redundancy event, they would need to complete the retirement benefits claim form (AW8) and you must submit this through Pensions Online or forward the paper copy of the form to NHS Pensions where Pensions Online is not available.

It is imperative for employers to ensure that when submitting the AW8 they also submit the supplementary checklist to NHS Pensions. This can be found within the 'Employer forms' section of our website.

5. Invoicing for capitalised costs

Where the member's redundancy payment meets the capitalised cost or the member has not made an additional contribution their employer must make payment to NHS Pensions within one month from the date on which the member's pension benefits become payable.

If there is a shortfall in the payment and the member elects to make an additional contribution the member must pay the additional amount to the employer. An invoice will be sent to their employer and payment must be made to NHS Pensions no later than one month before the member's pension becomes payable.

Please ensure that invoices are paid as soon as possible to avoid any delay in the processing and payment of a member's pension benefits.

Members who have more than one employment may decide to retire from all their employments and claim their pension benefits. In these circumstances the employer that is making the member redundant is responsible for meeting the cost of paying pension benefits early.

6. Interests of efficiency (IOE)

Where a member is retiring in the interests of the efficiency of the service, their benefits will be paid without reduction and the employer will meet the costs of paying the pension early.

Members whose employment is terminated in the interests of efficiency of the service are not eligible for a redundancy payment from their employer. If the member meets the

qualifying criteria they are entitled to immediate payment of unreduced pension benefits. In all cases the full capitalised cost must be met by the employer. There is no option for the member to make an additional contribution towards the capitalised cost.

If the reason for claiming their pension is interests of efficiency, the employer must pay the capitalised cost within one month from the date on which the member's pension benefits become payable.

When submitting retirement benefits claim form (AW8) the employer must submit the supplementary checklist.

7. Members who increase their pension benefits

If a member is:

- buying Added Years or a bigger lump sum for Scheme membership before 25 March 1972 by paying extra contributions from their pay, and/or
- buying Additional Pension (AP) by instalments

they cannot have their payments back if they are forced to leave NHS employment early. Members will be credited with the extra benefits that they have already paid for but if they choose to claim their pension, the benefits they get from the additional contributions will be reduced because benefits are being paid before the expected retirement date.

8. Different employers and redundancy

Redundancy is, in the main, an employment event and as such a number of considerations need to be made in respect of redundancy prior to engaging with NHS Pensions. We are unable to comment specifically on employment events and can only confirm whether the member is eligible to access their pension under the redundancy provisions of the NHS Pension Scheme.

Classic APMS, PMS, GMS or Out of Hours employees do not have access to redundancy pension benefits through the NHS Pension Scheme. However, you may wish to consider any obligations as an employer that you may have in respect of redundancy events.

NHS Trusts and Independent Providers normally have access to the redundancy pension provisions of the NHS Pension Scheme. This is providing the member's contract of employment includes redundancy provisions and will also determine who would be responsible for meeting any capitalisation costs.

Direction bodies and Local Authorities can have different types of access to the NHS Pension Scheme. In these circumstances we would advise that they seek their own legal advice in the first instance with regards to their responsibility to meet the redundancy

provisions of a member's contract of employment. NHS Pensions are unable to advise and can only provide details of the member's pension and the capitalised cost, where eligibility is met.

Capitalisation costs for Direction Bodies may be payable by the employer, member or in some circumstances the NHS Pension Scheme. This would need to be referred to your own legal advisors and consideration made against the NHS Pensions Regulation.

Where the member's terms and conditions provide, the redundancy payment must be used to meet any associated capitalised cost.

9. Substitute/Revised awards

Increases in the capitalised cost

Where the revision increases pension benefits it will result in one of the following:

1. The revised capitalised cost continues to be met by the redundancy payment. A new invoice will be raised by NHS Pensions for payment of the extra amount and sent to the employer.
2. The revised capitalised cost is no longer met by the redundancy payment. The employer must discuss with the member whether they would like to make an additional contribution or to receive the extra amount of pension benefits with a reduction for early payment.
3. The member has previously made an additional contribution, however the revision increases the difference between the capitalised cost and the redundancy payment. The employer must ask the member whether they would like to:
 - a) pay a further additional contribution to cover the cost of the increase in pension benefits now due, or
 - b) make no further contribution and have the additional benefits reduced for early payment.

The revision of the additional contribution will be limited to the extra payment payable.

The employer must recover any residue redundancy payment that may have been given to the member to meet the revised capitalised cost. Where the member opts to make or increase their additional contribution the amount must be paid to the employer.

Decreases in the capitalised cost

Where the revision decreases the pension benefits it will result in one of the following:

1. The revised capitalised cost continues to be met by the redundancy payment. Any excess charge can be reclaimed by the employer using form RFT1 and where appropriate the excess amount returned to the member.
2. The member has previously made an additional contribution, however the revision decreases the difference between the capitalised cost and the redundancy payment. Any excess charge can be reclaimed by the employer using form RFT1 and where appropriate the excess amount, including any additional contribution, returned to the member.