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# NHS Pensions

# Protection of pay and voluntary protection of pay – Guide for employers

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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: stakeholderengagement@nhsbsa.nhs.uk.

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### Background

Protecting pensionable pay is a provision in the 1995/2008 NHS Pension Scheme which enables eligible members who experience a reduction in pay during their employment, to apply to have the higher rate of pay protected for pension benefits purposes.

To qualify for consideration to protect pensionable pay, a 1995/2008 Scheme member must have accrued the minimum 2 years qualifying membership for entitlement to deferred pension benefits in this Scheme.

Important note: a request to protect pensionable pay is not relevant once pension benefits have become deferred. This is because deferment occurs automatically to protected 1995/2008 Scheme members after a break in pensionable membership of 12 months, or after a period of five years where a salary link exists between the 2015 Scheme and 1995/2008 Scheme membership.

As the 2015 Scheme is a career average revalued earnings (CARE) scheme, where the benefits earned are calculated yearly based on pensionable earnings across the member’s career, a request for pensionable pay to be protected for membership accrued in the 2015 Scheme would not be applicable.

### 2015 Scheme members and protecting pensionable pay

A request to protect pensionable pay is not applicable for membership accrued in the 2015 Scheme. However, those who are members of both the 1995/2008 Scheme and the 2015 Scheme and retain a ‘final salary link’ for the calculation of their 1995/2008 Scheme benefits may still request for pensionable pay to be protected in respect of their 1995/2008 Scheme benefits, whilst maintaining the final salary link. This is subject to meeting the eligibility criteria.

The final salary link enables the 1995/2008 Scheme benefits to be based upon their final pensionable salary up to their retirement date in the 2015 Scheme, provided the link continues to apply. If the final salary link is lost (after a break of 5 years in pensionable employment) before retirement, the 1995/2008 Scheme benefits will be based upon their pensionable salary earned up to the date the link ceased to apply.

### Available options for protecting pensionable pay

There are 2 options available, which eligible members of the 1995/2008 Scheme may be able to utilise to have their pensionable pay protected. These are:

* protection of pay (PP) – for 1995 and/or 2008 Sections membership
* voluntary protection of pay (VPP) – for 1995 Section membership only

### Protection of pay due to a reduction in pay through no fault of a member

When a member undergoes a reduction in pay through no fault of their own, they can apply to the Scheme for consideration to have the higher rate of pay protected for pension benefits purposes.

### Eligibility criteria for protection of pay

To be eligible for protection of pay (PP), a member must satisfy the following criteria:

* have at least 2 years qualifying membership
* have suffered a reduction in pensionable pay through no fault of their own, certified by the employer
* applied for protection of pay within 3 months of going onto reduced pay or mark time
* be a member of the 2015 Scheme with a salary link to their preserved pension rights in the 1995/2008 Scheme.

Accepted examples of reasons for PP are:

* a change in the nature of the duties performed (for example, due to ill health)
* a move to a lower paid post because of pending or actual redundancy
* being transferred to other employment due to reorganisation

### Mark time pay and protection of pay

There are instances when members may be re-graded through no fault of their own. However, their pay remains at the former higher level for an agreed period, referred commonly to as ‘mark time’. Where pay is to ‘mark time’ for a specified period, protection of pay can be requested at the beginning and at the end of the mark time.

There is no age restriction or minimum level of pay reduction requirement, and there is no limit to the number of requests you can make if your pay reduces on more than one occasion.

### Redundancy and protection of pay

If a protected 1995/2008 Scheme member is made redundant, protection of pay (PP) can be considered to protect pension benefits when you return to NHS employment on a lower rate of pensionable pay (leading to a reduction in pay through no fault of yours), within 12 months of being made redundant.

A member would not need to apply for PP if returning to NHS pensionable employment 12 months or more after being made redundant, as pension benefits are automatically deferred after a break of 12 months in the 1995/2008 Scheme.

If a 2015 Scheme member with a final salary link to 1995/2008 Scheme pension benefits is then made redundant, we can consider protecting the pension benefits if they return to a lower rate of pensionable pay within 5 years.

As pension benefits are automatically deferred after a break of 5 years where the salary link would be broken, there would be no need for a member who rejoins the 2015 Scheme after 5 years to apply for PP in such an instance.

### Voluntary protection of pay

The voluntary protection of pay (VPP) sometimes referred to as the ‘step down’, is a provision intended to allow an employer to maintain valuable knowledge and skills of a member who may otherwise have left NHS employment. VPP identifies that prior to retirement a member may, if possible, prefer to remain in NHS employment in a lesser capacity, whilst protecting their pension benefits.

If a member has reached minimum pension age and chooses to step down to a role where their new or remaining duties are less demanding - and carry less responsibility than their previous duties, which is mutually agreed by their employer - then the member may be able to voluntarily apply for their previous higher rate of pay to be protected for pension benefits purposes. This is depending on if their pay reduces by 10% or more because of the step down.

Normally, it would be expected that a step down to a less demanding role prior to retirement would occur with the same employer. However, if a suitable role to step down to cannot be provided by one employer, but can be arranged with another, this would be acceptable. In such a situation, both employers will have to provide information that confirms that a step down has been agreed.

**Important note:** The VPP provision is not for situations where a member leaves one employer and joins another on a reduced rate of pay. It is intended for lasting, rather than trivial or short-term, reduction in pay.

### Eligibility criteria for voluntary protection of pay

To be eligible for voluntary protection of pay (VPP), the following criteria must be satisfied. A member:

* must be in the 1995 Section of the 1995/2008 Scheme
* must have stepped down to a less demanding role where the new or remaining duties are less demanding and carry less responsibility than the previous duties
* must have had their pensionable pay reduced by at least 10% for a period of at least one year, beginning with the first pay day on which the reduced pensionable pay was paid as verified by the employer(s)
* must not have had their pensionable pay subjected to any other reductions in the 12-month period before the step down, as verified by their employer(s)
* must have submitted their application within 15 months of the date the pensionable pay was reduced
* must have attained their minimum pension age
* must have attained at least 2 years qualifying membership within the NHS Pension Scheme at the time of the step down
* must not have previously protected their pensionable pay under the VPP provision

A member must not apply for VPP where a change in duties after a period of ill health has resulted in a reduction of pay. Instead, they should apply to protect their higher rate of pay using the protection of pay (PP) provision. This is because the reduction in pay has occurred through no fault of theirs.

**Important note:** a 1995 Section member can have only one accepted request for VPP during their entire Scheme membership. However, VPP is still an available option for a 1995 Section member, even if PP has already been accepted for an earlier period of membership.

### How to apply for protection of pay and voluntary protection of pay

The common practice is for the scheme member to complete the request to protect pensionable pay form (SM R9 Application) from our website and send it directly to their employer (not to NHS Pensions). On receipt of a completed request form (SM R9 Application) from a member, the employer mustcomplete the request to protect pensionable pay form (SM R9 EA), ensuring that all relevant information is provided before forwarding both forms to us, for processing.

The above notwithstanding, an employer can only submit a request for protection of pay (PP) directly to us on behalf of a member, using the completed request to protect pensionable pay form (SM R9 EA), ensuring that all relevant information is provided but without a completed form SMR9 App from the member.

We must have a signed member application in all requests for voluntary protection of pay (VPP). In all instances of an application to request PP or VPP, we will always provide a decision in a letter to the member sent via an employer notification after the application has been processed.

Where, due to redundancy, a member has suffered a reduction in pay between employers or where a member has voluntarily stepped down between employers, it is recommended that the member sends their completed form SM R9 Application to the earlier employer. Once the earlier employer has completed the relevant form SM R9 EA to request protection of pensionable pay and submitted together with all other relevant information to us, the current employer will then be contacted to verify that PP/VPP applies.

All applications to protect pensionable pay for pension benefits purposes must be made within the respective strict time limits.

### Circumstances where protection of pay/voluntary protection of pay will not apply

We will not consider any protection of pay (PP)/voluntary protection of pay (VPP) application where the reduction in pensionable pay is only because of a reduction in the hours a member works and not the hourly rate of pay. This is because the whole-time equivalent pay is always used when calculating retirement benefits for part time members in the 1995/2008 Scheme.

PP/VPP is not relevant and therefore not applicable for a 1995/2008 Scheme member who is in employment as a practitioner or a non-GP provider. This is because their earnings are variable and because their pension benefits are based on revalued earnings throughout their career, which is very similar to the career average revalued earnings (CARE) pension in the 2015 Scheme.

### How pension benefits are calculated for a member with protection of pay

Two pensions will be calculated for a member retiring with one period of pay protection. The first is a pension based on the protected rate of pay\* plus cost of living increases for membership up to the date of retirement, and a second pension for membership after that date which will be calculated on their pay\* at retirement.

If by retirement the protected pay plus cost-of-living increases is not more beneficial, then the whole of their 1995/2008 Scheme pension benefits will be calculated using pay at retirement.

For 1995 Section membership - the pay at retirement is best of the last three years of pensionable pay.

For 2008 Section membership, this is reckonable pay, which is an average of the best 3 consecutive years’ pensionable pay in the last 10 years.

### Estimated benefit statements for members of the 1995/2008 Scheme with protection of pay

The annual benefit statements we provide free of charge do not routinely account for periods with protected pay, where an application has been successful. Members with protected pay periods can request an estimated statement that accounts for the protection. However, this may be subject to an administrative charge.

A member will qualify for a protection of pay estimate (for example, a ‘most beneficial’ age estimate, including protection of pay/multiple breaks) free of charge if they satisfy both criteria listed below:

* they are over minimum pension age
* they intend to retire within the next 12 months

The estimate request form AW295 still remains as the relevant form for an employer to complete and submit to request an estimate of benefits including a member’s protection of pay.

### Useful guidance from historic bulk protection of pay requests

Although the process for submitting bulk protection of pay request has been stopped and all protection of pay requests must now be submitted on an individual basis using the SM R9 EA form, the guidance that was previously provided may be useful for rare individual cases.

### On call payments

#### Commitment or availability payment

Regular payments made in recognition of being available for on call work, where there is a specific rota commitment, are pensionable for both whole-time and part-time members. It is recognised that there must be some degree of flexibility within an on-call rota, but in order to pension this payment a member must have a definite commitment to the rota for which they are paid on a regular basis (for example, weekly, monthly or annually).

#### Payments for work done

For whole-time members, payments for work done whilst on call are non-pensionable as they are classed as overtime. For part-time members, payments for work done whilst on call are pensionable at plain time rates, up to the whole-time weekly hours. Hours up to whole time should be credited for pension purposes.

#### Sleeping in

The availability payment is pensionable. The payment for work done is pensionable up to the whole-time weekly hours only. When a member already works whole-time, the hours worked during a sleep in would be classed as overtime and non-pensionable. Where an individual undertakes no other work for the trust other than performing the sleep in, the payment made for sleeping in is non pensionable. No actual work is performed, so the payment cannot be attached to hours worked.

#### Previous arrangements

We are aware that some employers operating combined on call payment arrangements (commitment/availability and payments for work done) may have incorrectly pensioned the whole amount for both part-time and whole time staff under previous arrangements.

Where employers had previously pensioned the whole amount of the payment under this type of arrangement, it has been exceptionally agreed, in consultation with the Department of Health and Social Care and NHS Employers, that pensions may be protected up to 31 March 2011.

From 1 April 2011 employers must pension on call correctly as described above and no further protection of pay (PP) will be granted for any non-pensionable on call (work done) payments.

PP will continue to apply after 31 March 2011 where employers review their on-call arrangements, resulting in a reduction in pensionable pay due to the reduction or removal of the commitment/availability payment.

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| **Important note:** if you submit a request for PP due to on call with a date after 31 March 2011, you must provide clear confirmation that only the pensionable elements detailed above have been included. In summary, this would be the commitment/availability and or payments for work done only if paid at plain rate and relating to total worked hours not exceeding whole-time. |

#### Out Of Hours (OOH) and Premium time

(Specialty and Associate Specialists (SAS) doctors and Consultants)

It was previously agreed that the enhancement paid to SAS doctors and Consultants working four hours or more during an Out of Hours/Premium time Programmed Activity (PA) is non pensionable. The guidance provided at the time also confirmed that where the enhancement had previously been pensioned it had been exceptionally agreed, in conjunction with the Department of Health and Social Care and NHS Employers, that pay could be protected up to 31 March 2011 only. No date of protection after 31 March 2011 will be accepted in these cases.

#### Unsocial hours payments

Certain grades of staff had their enhancement for unsocial hours reduced. This was phased in from 1 April 2008. From 1 April 2011, the enhancement should be the same as for other staff. Arrangements agreed at the time confirmed that PP could apply up to 31 March 2011.

Where these members were already marking time from 1 April 2006 because of being assimilated to Agenda for Change pay grades with pay reducing from 1 April 2011, notification should have been provided via POL.

If a request for PP is submitted due to the cessation of unsocial hours payments with a date after 31 March 2011, provide full details on the SM R9 EA form of the reason for the revised date.

#### Long term National Recruitment and Retention Premia (NRRP)

Under Agenda for Change, Recruitment and Retention Premia could be awarded nationally or locally and be either long term or short term premia.

**Short term premia** are not pensionable and do not count for purposes of overtime, unsocial hours’ payments or any other payments linked to basic pay, and so PP would not be relevant.

**Long term premia** are pensionable and count for the purposes of any payments linked to the basic pay, and therefore PP could be possible.

A review of all existing National Recruitment and Retention Premia (NRRP) found that all existing NRRP should cease after 31 March 2011 or be converted to a local RRP where appropriate. Annex R of the Agenda for Change terms and conditions of service handbook refers.

Transitional arrangements were historically agreed so that NRRP currently in payment are protected for a transitional period of 2 years as follows:

* year one - 100% of the payment at current value
* year two - 50% of the payment at current value

All payments ceased on 1 April 2013, subject to the outcome of a Staff Council review demonstrating evidence to support continuation of NRRP.

Where pensionable pay reduces because of the cessation of NRRP, PP can apply up to 31 March 2013 for these members.

As pension benefits, including benefits preserved on a higher rate of pensionable pay, are based on the best of the last three years’ pensionable pay in the 1995 Section and the reckonable pay (the annual average of the best 3 consecutive years in the last 10 years of employment) in the 2008 Section, protection was not required until 31 March 2013.

The best of the last 3 years’ pensionable pay up to 31 March 2013 in the 1995 Section would therefore have been quoted when providing pensionable pay details.

We would have checked the reckonable pay figure for 2008 Section members.

Requests for pension protection due to withdrawal of NRRP should not have been received until after 31 March 2013 and should now have all been received.

If different protection arrangements have been implemented to those described above regarding NRRP, provide a full explanation for the difference in dates on the SM R9 EA form.

#### Clinical excellence and distinction awards

Until 30 September 2014 there was a system of salary protection for Distinction Awards (DA) and Clinical Excellence Awards (CEA) that were not renewed or were allowed to expire. The financial value of the former award is frozen until basic pay catches up with mark time earnings.

From 1 October 2014, salary protection is no longer applicable to any award that is, or has previously been, withdrawn or not successfully renewed. Consultants who were due to submit a renewal application in 2014 will not continue to receive the financial value of the award if it is not renewed, or if a renewal application is not submitted.

National CEAs and DAs are also currently subject to application for renewal every 5 years. Where a current consultant’s award is not renewed following their reapplication, or because a consultant’s award is due for renewal, but they choose not to apply for continuation/improvement, it has also been agreed that protection of pay can also be considered.

**How we use your information**

For more information about how the NHSBSA processes your personal data, please see our Privacy Notice - [www.nhsbsa.nhs.uk/our-policies/privacy/nhs-pensions-privacy-notice](http://www.nhsbsa.nhs.uk/our-policies/privacy/nhs-pensions-privacy-notice)

**NHS Pensions**

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