

## Special Class Status in the 1995 section of the NHS Pension Scheme

### Background.

Special Class Status (SCS) is a pension provision for certain groups<sup>1</sup> of scheme members who were in the NHS pension scheme on or prior to March 6 1995 and who meet other eligibility criteria laid out in the scheme regulations for the 1995 section of the 1995/2008 (“old”) pension scheme. It is not available to those who only joined the NHS pension scheme after March 6 1995 or who are in the 2008 section of the old scheme or the 2015 scheme. Some people may have membership in the 1995 section with special class status and in the 2015 scheme where it is not available – see note below for further information.

The normal pension age (NPA)<sup>2</sup> in the 1995 section of the old NHS pension scheme (from here on referred to as the 1995 section) is 60 but scheme members who meet the SCS criteria *at the time of retiring* (see below for full details but includes that they have spent the whole of their last five years of pensionable employment as a Special Class Member) can retire and receive their pension benefits at or from age 55 without the usual penalty for early retirement being applied.

As an example, a nurse that does not qualify for SCS would lose 21% of their pension benefits and 14.4% of their lump sum if they retired early at age 55. But if they have SCS their benefits and lump sum are paid in full.

Nurses do not pay any higher contributions for this benefit – the costs of allowing some scheme members to leave at or after age 55 instead of 60 are met by the scheme as a whole and are factored in to scheme valuations that are conducted every four years.

### Eligibility issues

In recent years we have seen an increase in cases where nurses believe they have SCS but find out, sometimes from their employer when they change jobs or when they apply to retire, that they don’t.

This briefing has been written to help you if you are a nurse and believe that you do or may have SCS. It does not cover Mental Health Officer status issues, although they are similar and the advice below may be relevant.

### Eligibility criteria for Special Class Status

To be eligible to receive full pension benefits at or from age 55 under the SCS regulations a nurse must meet the following criteria:

- Was in the NHS Pension Scheme on or before 6/3/1995 in pensionable employment as a nurse
- Have spent their last 5 years of pensionable employment as a nurse
- Not have had a break in pensionable service of any one period of 5 years or more

Eligibility for SCS and the possibility of retiring at or from age 55 is determined by a nurse’s position when they retire, yet many refer to themselves as “having special class status” throughout their working lives. However, SCS can be “lost” if any of the above criteria are not met at the time of retirement. If you do not

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<sup>1</sup> The benefit relates to nurses, midwives and health visitors as well as some other occupational groups, however, for the purpose of this note they are referred to collectively as ‘nurses’

<sup>2</sup> Normal pension age – NPA – is the age at which a scheme member can access their full pension benefits without financial penalty for claiming it early

meet these criteria your pension age will revert to the normal pension age in the 1995 scheme – 60. SCS for nurses is covered by the Regulations to the 1995 scheme (R2). It is also supported by some formal briefing / advice sheets published by the pension administrators.

#### “Pensionable employment as a nurse”

As stated above, SCS is not carried with the individual nurse. It is the duties that the nurse does in their pensionable employment that establishes whether or not the role meets the SCS criteria. It is often this aspect of SCS that causes nurses difficulty as they advance in their careers, especially those who move to more managerial or strategic roles (see below).

For many nursing roles the definition will be clear; a nursing post on a ward or in a clinic in daily contact with patients would usually meet the SCS criteria without issue. As a minimum the post would need to have an essential requirement to hold a nursing qualification, but in reality the Job Description and the person specification should also reflect the fact that it is a nursing role. The issue is less clear cut with more senior nursing roles that are partly clinical and partly managerial, and where there may be less direct contact with patients or the needs of patients. When this is the case the essential SCS test has to be met – the role must meet the requirement that it is ‘pensionable employment as a nurse’ and a nursing qualification must be an essential requirement

#### Who decides?

It is the employer who makes the first consideration of whether a role meets SCS criteria or not. They can take advice from the pension administrator if they are unsure. If they believe it does they will ensure that the nurse has a marker on the payroll/pension system to show that the role is in the required ‘Capacity Code’ for the pension scheme (at the time of writing Capacity Code 1 is used to specify that SCS applies). If any other Code is ‘ticked’ it will indicate to the NHS Pensions administrator that the role is not eligible for SCS and the pension system will then record them as having a normal pension age of 60.

It is important to note that employers do not have the authority to guarantee or confirm SCS to any nurse. Only the pension administrator can do this.

At the time of retirement, the pension administrator will check SCS eligibility and they can also investigate an individual member on their employer’s behalf to determine whether a job attracts the status or not.

#### Where difficulties commonly arise.

SCS eligibility is a commonly occurring issue for many members at present – as nurses who are still in the 1995 section are approaching retirement age. Many seek to establish their eligibility to retire at 55 before they make plans, others apply in the belief that they can claim their pension benefits early only to be told, once the pension administrator looks into their claim, that they can’t.

Our advice is to check eligibility before you make any plans to retire so that problems can be addressed before you decide to resign/retire. This is true even if you have documentation, for example a letter from your employer or your total reward statement that would seem to confirm SCS.

Where SCS is disputed it is often for one of the following commonly occurring reasons:

1. The Job Description / Person Specification only states that a nursing qualification would be an advantage (as opposed to being essential);
2. The Person Specification says that the role can be undertaken by a ‘health professional’ or ‘registered health professional’, not specifically a registered nurse;
3. The Person Specification does not require any clinical qualification / experience required for the role at all;

4. The Person Specification says that a registered nurse qualification is essential but nothing in the Job Description indicates that the role is 'employment as a nurse' and in effect there is nothing to show to the NHS pension administrator that it is a nursing role / job;
5. The job description does not have sufficient detail on nursing care or line management of frontline nurses;
6. There has been a break in pensionable employment of more than five years;
7. Where someone moves to a non-SCS role and continues membership of the pension scheme and then later moves back to a nursing role to secure SCS with less than five years of pensionable employment left;
8. If members do not hold the status in the post directly before the management post in which they wish to retain the status;
9. Where a nurse is employed in a sector / area that does not appear to have any clear link with the delivery of nursing services or patient care.

In all of the above areas the NHS Pensions administrators will want to ensure that the criteria laid out in the Regulations are fully met such that the individual is entitled to claim their pension benefits at age 55 without any reduction. They are not able to exercise discretion in this area.

#### Sequential entitlement for management roles

Guidance from the pension administrator states that, when considering whether SCS is retained in a management role, the member in question must hold a nursing qualification and that nursing qualification must be an essential requirement for the role. This must be demonstrated in the job specification/person specification AND the member must have held the status in the role directly prior to the one under consideration. This means that for these members, unlike those undertaking "hands-on nursing" there cannot be any break in SCS entitlement, whereas other members only have to have their last 5 years of pensionable employment in a relevant job. In this scenario the only way to regain SCS is to take a "hands-on" nursing job for the 5 years prior to retirement or before a move back into a qualifying management role. This requirement is not specified in the regulations and is operational guidance only but it is being increasingly relied upon by the NHS Pension administrators. The RCN is challenging this guidance through the Pensions Ombudsman and other relevant channels and will amend this guidance when necessary – but not final outcome has yet been reached.

For example - A nurse manager who takes a job in, for example, quality or audit for 2 years, where it is not essential to be a nurse only a registered healthcare practitioner but then moves to a post where it is essential to be a nurse, for example a deputy director of nursing, will find that their SCS for the DDN post is challenged as their previous job was deemed not to qualify. This is different to a band 5 ward based nurse who takes a job in, for example, finance for 2 years, but then returns to a ward based nursing job. In this scenario they would be eligible for SCS regardless of their finance role.

#### What to do if SCS eligibility is in doubt?

Employers are being advised to confirm the SCS eligibility of posts with the pension administrator on appointment. So if you move to a new job, you should check the eligibility of that post and not assume that, because your last role was an eligible role that your new one will be automatically. If it is the employer that is questioning SCS eligibility it may be necessary to revisit relevant job information e.g. job descriptions and person specifications, to ensure that the nursing demands of the role are adequately described and the post coded appropriately. Employers can ask for support from the pension administrator to do this.

### How to establish SCS eligibility

As described above, while it is important that a nursing qualification is required it is also important to show that the whole role meets the criteria in the Regulations.

Even if a role does not specify that a nursing qualification is essential it may be possible to argue that in reality the full requirements of the role are 'nursing' and that the role is 'pensionable employment as a nurse';

1. Track down relevant documents, e.g. Job Description, Person Specification, letter of appointment and any related documentation related to being appointed in this post. If you had a conversation with the appointing officer or line manager at the time where SCS eligibility was discussed then a note should also be made of the content of that conversation.
2. Establish through the paperwork that it is a nursing role. Look at each item in the Job Description and identify and note how it relates to 'nursing' as it will be necessary to show the depth of nursing in a role.
3. 'Direct patient care' or 'hands on patient care' is not a requirement in the Regulation. This means that those in senior clinical and managerial roles can still retain SCS but the nursing component needs to be clear. Is the management role responsible for standards of nursing care (not just "patient care")? Is it responsible for ensuring all nurses meet NMC revalidation requirements? Does it give professional nursing advice to a Board (or similar)? All these issues are important in showing that the role is a 'nursing' one.

The above three steps need to be undertaken for each nursing role held to ensure that continuity of eligible SCS employment can be demonstrated.

Sometimes members approach us before they have had a formal decision from the pension administrator. There can be an advantage to informal correspondence, dealing with issues as they are raised, however, only formal decisions can be challenged through the IDR/appeal process and lead to a binding conclusion.

In drafting an initial appeal to the Pension Administrator you must have at the forefront of your mind the need to show that the role is 'pensionable employment as a nurse' as everything hinges on this point. It will not be enough to state; "it's obvious I have to be a nurse", "I've always done this job", "I've not left nursing I only slightly changed my job", "they've taken my SCS away and they shouldn't have" or "people they work with in similar roles have SCS and therefore I must have it as well".

There are no easy answers or set phrases that turn cases such as these and appeals will not succeed if they are not backed up by robust evidence (a letter from an old line manager is unlikely to suffice anymore) and do not relate closely to the regulations. This can be a very distressing time especially if eligibility is only questioned after someone has submitted their retirement claim forms, especially where their post has been filled before they learn of the problem.

### Tips for dealing with the pension administrator

Members who have been through this process all agree that you need a fair amount of resilience to deal with the pension administrator. The following tips and advice from these members may be of help –

- ✓ "You'll need to maintain constant contact with the pensions agency and should set aside about 1 hour each time you contact them – they can be difficult to get through to and they don't always have up to date information."
- ✓ "Each time you contact the agency have your National Insurance number, address, mobile phone number and e-mail address to hand."
- ✓ "You will probably deal with a different person each time you contact them and there is not always continuity in the information recorded so keep really detailed notes of what you discuss."

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- ✓ “Be vigilant about making contact within the timescales the administrator sets down but don’t expect them to contact you – it’s in your interests to initiate and maintain contact.”
- ✓ “If the administrator says they have contacted your employer then you should also chase the employer to make sure that the information has been received and acted on promptly.”

### How can the RCN help?

If you would like support from the RCN with your case, contact RCN Direct in the first instance to be referred to your local office. It would be helpful if you are able to gather the evidence suggested above before you make contact.

Nationally we are currently supporting numerous appeals and are awaiting a determination from the Pension Ombudsman, due later this year. We also are raising concerns with the pension administrators directly and with the scheme boards that oversee their work.

### Members with benefits in the 1995 section and 2015 scheme – “preserved rights”

Preserved Rights are the pension benefits that members who are not entitled to Full Protection have built up in the 1995 or 2008 Sections of the old NHS Pension Scheme before they move to the 2015 Scheme. At retirement, these benefits will be treated separately and calculated in accordance with the rules governing the relevant scheme as appropriate.

For example – A nurse with 20 years in the 1995 section that attracted SCS but who also has 5 years in the 2015 scheme and who wishes to retire at age 55 can retire from work and claim their 1995 benefits under SCS rules AND their 2015 benefits (which will be reduced for early payment under 2015 scheme rules) or chose not to claim their 2015 benefits until they reach the NPA for that scheme (set equal to their state pension age).

Provided they have not had a break in Scheme membership of five or more years that ended on or after 1 April 2015, their 1995 benefits will be calculated on their final salary at or near retirement in the usual way.

This is a complex area and members in this situation should be advised to speak to their pension officer if there is one in their organisation or the pension administrator directly.

### Further information

Full details on SCS and any other aspect of the NHS Pension Scheme can be found on the websites of the pension scheme administrators

England and Wales - <https://www.nhsbsa.nhs.uk/nhs-pensions>

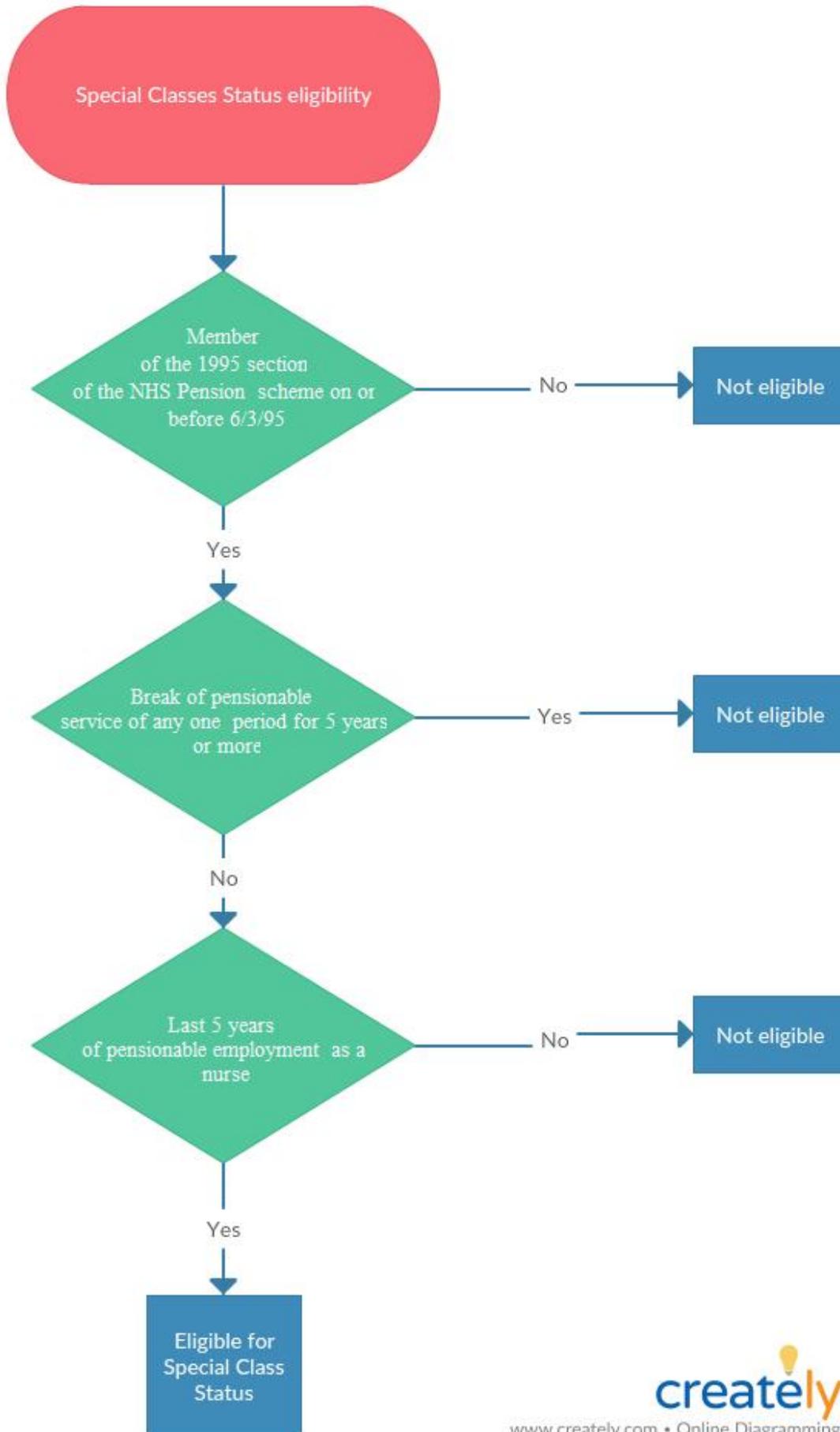
Scotland - <http://www.sppa.gov.uk/>

Northern Ireland - <http://www.hscpensions.hscni.net/>

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# NHS Pension Scheme – appeals process

