

NHS Pensions - Special Class status (1995 Section only) employer factsheet

History of Special Class status

Special Class (SC) status is a historical provision awarded to members employed as nurses, midwives, physiotherapists and health visitors. It enabled members in these occupational groups to retire from age 55 without a reduction to their benefits, subject to certain qualifying criteria being met at retirement.

The status is a continuation of the arrangements which existed before the start of the NHS in 1948.

It was given in recognition of the personal stress and strain encountered by members in these occupational groups and in anticipation that members would be unable to perform their duties beyond age 55.

Under the original provisions, only female members qualified for SC status. As a result of the European Court of Justice (ECJ) decision in the case of *Barber v Guardian Royal Exchange Assurance Group*, known as the 'Barber Judgement', male members became entitled to qualify for the status.

However, SC status can only apply to males for membership from 17 May 1990 (the date of the judgement). Benefits in respect of membership prior to this date are payable from age 60 the normal pension age in the 1995 Section but can be claimed earlier, on an Actuarially Reduced Early Retirement (ARER) basis.

Abolition of Special Class status

On 6 March 1995 the NHS Pension Scheme regulations were amended, and SC status was abolished for all members, however, an exception was made for members who already held SC status on or before this date and who did not have a break in pensionable employment of five years or more.

Which occupational groups make up the special classes?

The following occupational groups may qualify for SC status:

- nurses
- physiotherapists

- midwives
- health visitors

Mental health officers (MHOs) are also often referred to as members of the special classes but are subject to different eligibility criteria which is explained in a separate factsheet available on our website.

Eligibility for nurses, midwives, physiotherapists and health visitors To be eligible for SC status, a member must:

- have been in pensionable NHS employment as a nurse, physiotherapist, midwife or health visitor on or before 6 March 1995.
- not have had a break in pensionable NHS employment of five years or more.

To meet the condition, **nurse, midwife, physiotherapist or health visitor**, current registration with the relevant professional body such as the Nursing and Midwifery Council (NMC) or holding the relevant professional qualification, must be an essential requirement of their role.

The duties and responsibilities of the role must also be relevant to nursing / midwifery / physiotherapy, as applicable.

The types of registered nursing and physiotherapy roles that attract SC status are summarised below, listed in order of their typical pay band:

- Band 5** NMC registered nurses / midwives.
HCPC registered physiotherapists
- Band 6** Senior Nurses / midwives (Staff Nurse, Sister for example), Deputy Ward Managers, health visitors and Specialist Nurses.
Specialist Physiotherapists
- Band 7** Ward Managers, Nurse Practitioners and Clinical Nurse Specialists.
Advanced Physiotherapists / Specialist Physiotherapists / Physiotherapy Team Managers
- Band 8 - 9** Nurse Consultants, Modern Matrons, Deputy Director of Nursing, Director of Nursing, Chief Nurse.
Consultant Physiotherapists, Head of Physiotherapy

This list is not exhaustive but is provided to illustrate the types of roles within a typical nursing / physiotherapy structure that can automatically qualify for SC status.

Professional registration in nursing or physiotherapy does not necessarily mean that a member is automatically eligible for SC status in any role they undertake. Eligibility is also dependent upon whether the duties and responsibilities of the role mean that it meets the

required condition of the member being in pensionable **employment as a nurse, midwife, physiotherapist or health visitor**.

Where, for example, a person holds current nursing registration with the NMC but is employed in a non-nursing role, such as a secretary, they could not be considered for SC status. This is because although their nursing registration enables them to practice as a nurse, they are not in pensionable employment as a nurse.

If an employer is unsure whether a role qualifies for SC status they must contact us for advice (see also the '**Special Class status in managerial roles**' section later in this factsheet).

Clinical support roles

Health Care Assistants (HCAs), Nursery Nurses, Physiotherapy Helpers and other supporting roles, for which professional registration isn't a requirement, do not attract SC status.

However, historically, the role of Nursing Auxiliary attracted SC status. The role was phased out in 1990-91, having been succeeded by the newly created HCA role. It was agreed that existing members with SC status as a Nursing Auxiliary could keep their SC status in the following circumstances:

If the member was:

- initially in employment as a Nursing Auxiliary prior to 1991; **and**:
- their role transitioned to HCA; **and**:
- they are still employed under the same (pre-1991) contract of employment,

Please contact us if these circumstances apply to an employee.

The 2008 Section and the 2015 Scheme

SC status and the provision for an earlier retirement age only applies to benefits earned in the 1995 Section. It does not apply to benefits earned in the 2008 Section or the 2015 Scheme. Members who transition from the 1995 Section to the 2015 Scheme can still maintain their SC status if they continue to be employed in a qualifying role, to enable an earlier retirement age in respect of their 1995 Section benefits.

See the section; **Transition to the 2015 Scheme** later in this factsheet.

Eligibility following a break in membership

In pensionable employment on 6 March 1995

Members in pensionable employment (contributing to the Scheme) on 6 March 1995 as a member of the special classes can resume SC status in an employment that attracts the status, as long as they have not had a break in pensionable employment of any one period of five years or more. This is the case even if the member subsequently received a refund of contributions, transferred benefits out of the Scheme or retired.

Not in pensionable employment on 6 March 1995

Members with deferred benefits as a Special Class member on 6 March 1995 can resume SC status if they re-join the Scheme in an employment that attracts the status, as long as they have not had a break in pensionable membership of any one period of five years or more. If the member transferred benefits out of the Scheme, received a refund or retired as a Special Class member on or before 6 March 1995, they are not eligible for SC status on returning to pensionable employment.

Breaks of five years or more

In all cases, if the member has a single break in pensionable NHS employment of five years or more that ends after 6 March 1995, they are not eligible to resume SC status in any future employment after the break.

Capacity codes

Employers **must** use the correct capacity code when updating scheme membership records for their employees.

Capacity code 01 signifies that the member is employed as a nurse, midwife, physiotherapist or health visitor. Please refer to the occupational groups outlined in the **Eligibility** section of this factsheet.

Only periods of employment in these occupational groups, should be routinely recorded as capacity code 01 on the member's pension record.

Incorrect use of capacity code 01 may cause a member to be incorrectly identified as having SC status, with potential entitlement to retire from age 55. **This may cause significant issues for the member, if they make career or retirement choices based upon incorrect information.**

Managerial roles which do not clearly fall within nursing, midwifery or physiotherapy should be recorded as capacity code 04.

Where a nurse, midwife, physiotherapist or health visitor moves away from work within their profession, the change to the capacity code must be recorded on their pension record (changes to the capacity code are covered in the sections 'Process for applying for Special Class status') later in this factsheet.

Special Class status in managerial roles

Managerial positions don't normally qualify for SC status if they fall outside an employer's nursing / physiotherapy structure, or they do not relate to the professions that attract SC status.

An exception to this may apply if the member can still be regarded as being **in pensionable employment as a nurse, midwife, physiotherapist or health visitor** (as applicable) in the role.

We are also aware there are managerial roles in the wider NHS which may attract SC status in areas such as development, improving quality of nursing services and looking at the totality of the service, sometimes working alongside others. Another area is those involved in commissioning nursing services, services with a large nursing component and the provision of professional advice in nursing matters.

Historically, many senior posts were changed or created to take account of the restructuring of management responsibilities in the NHS. The position for members with SC status meant they would lose the status, upon promotion to a senior or managerial position.

It was agreed that members with SC status, who were appointed to these roles, could apply to keep their SC status. A policy was developed to enable SC status to be considered individually for members in these circumstances.

The policy is known as **retention of SC status** and is still applicable, as follows:

- generally, the duties and responsibilities of the role should demonstrate clear connections to and within the relevant service (nursing, physiotherapy as applicable).
- there should be significant parallels between the duties of the managerial role and those of the previous post in which SC status was held.
- if the role includes duties and responsibilities that fulfil the essential criteria to achieve re-validation of the member's professional registration (NMC for example) this would be supportive to an application for SC status.

For a member to keep their SC status in a managerial role, the following conditions must be met:

- the member must hold a current professional registration in nursing, midwifery, physiotherapy as applicable.
- the relevant professional registration **must** be an **essential** requirement of the role. This must be demonstrated in the formal job description / person specification for the role; and

- it must be a role that the member can only occupy because they are a person who is qualified to practice as a registered nurse / midwife / physiotherapist, as applicable.

Very senior managers

Members in roles above the grades of Director of Nursing / Chief Nurse will not normally be able to keep the status as it is extremely unlikely they will fulfil the eligibility criteria.

We must be consulted in all cases.

Applications for SC status in managerial roles

All requests for SC status for managerial roles **must** be made by the employer using the SMR application form on our website and must include the current job description, person specification and organisational structure chart, wherever possible prior to the appointment of the member to the role and any promise of SC status being kept. Please refer to the **Process for applying for Special Class status for managerial grades** later in this factsheet

The decision about whether a member can keep their SC status will be made by NHS Pensions. Employers are requested to wait for the outcome before informing the member.

Requests should also be made on each occasion where the duties or responsibilities of the role have changed resulting in a revised job description. We would not expect applications to be delayed significantly or to be made just prior to retirement, to avoid a situation where a member finds themselves in a position, they believed held SC status, but in fact doesn't.

If the necessary actions to enable our consideration of SC status are not taken, this may impact the payment level of expected retirement benefits, if they are claimed before age 60 from the 1995 Section.

When considering SC status for a member in a specified role, our decisions are made on an individual basis, according to the specific circumstances of the application.

Where SC status is accepted for one member it does not necessarily mean the status would be accepted for any other member subsequently undertaking the role or for other members in similar roles.

Eligibility criteria for retirement from age 55

Entitlement to retire from age 55 for the Special Classes applies only to benefits earned in the 1995 Section.

This is a potential entitlement which only becomes effective once a member reaches their chosen retirement date, having met all eligibility criteria.

In order to qualify, a member must have spent the whole of their last five years pension scheme membership in a post that qualifies for SC status. Breaks in NHS employment are ignored when assessing this period.

A member must be in a post that qualifies for SC status on the day they retire. If a member leaves pensionable NHS employment or opts-out of membership before age 55 (or before the date entitlement to an earlier retirement age becomes effective, if later), their retirement benefits become deferred and do not become payable until the normal pension age of 60.

An exception to the above is a member with SC status who is made redundant, is not in receipt of their retirement benefits and has not returned to pensionable NHS employment.

In these circumstances, a member with **deferred benefits** in the 1995 Section may still claim these benefits at age 55, if their last five years of pensionable employment before redundancy was as a member of the special classes.

Members should contact NHS Pensions for confirmation if they believe these circumstances apply to them.

Transition to the 2015 Scheme

Although SC status is not applicable in the 2015 Scheme, employers will still need to consider and record SC status for transition members who held the status in the 1995 Section. This is because SC status and an earlier retirement age can continue to apply to benefits earned in the 1995 Section, if the member continues to be employed in a qualifying post.

If the criteria for an earlier retirement age continue to be met, the 1995 Section benefits can be claimed from age 55 once all NHS employment ends. This does not apply to benefits earned in the 2008 Section or the 2015 Scheme, which remain subject to the member's normal pension age. Such 2008 or 2015 benefits can be claimed at the same time as 1995 Section benefits but as they would be paid early, they will be subject to actuarial reduction. Members do not have to claim their 2008 or 2015 benefits at the same time as their 1995 benefits.

Arrangements are being made to remedy age discrimination in respect of reforms of public service pension schemes in 2015, as found by the Court of Appeal.

Under the remedial arrangements, from **1 April 2022** every member of the NHS Pension Scheme will build up their benefits in the same scheme – the 2015 Scheme. This means the 1995 and 2008 Sections of the scheme will close, and members will automatically move into the 2015 Scheme for benefits they build up from 1 April 2022.

For members who transitioned to the 2015 Scheme between 31 March 2015 and 1 April 2022, we'll also give them a choice between 1995 Section or 2015 Scheme benefits for any pensionable service that's affected, between 1 April 2015 and 31 March 2022.

The 2015 Scheme doesn't have an MHO or Special Class provision. But if the member has MHO or Special Class status now, it will be protected for 1995 benefits for as long as they stay within the qualifying regulations set out in the 1995 Section.

For more information, please refer to section [Changes to public service pensions](#) on our website.

Age and membership restrictions for Special Class members

The following restrictions apply only to membership in the 1995 Section.

A member with SC status is restricted to 40 years calendar length membership at age 55 and 45 years overall if membership continues beyond 55.

Calendar length means the length of time a person has been an active member of the Scheme and it is irrelevant whether a member works whole-time or part-time.

When the maximum calendar length membership is reached before age 60, the member must continue to pay pension contributions until age 60 unless they opt out of the Scheme, or they retire and claim their pension benefits.

Where the maximum 45 years calendar length membership is reached after age 60 but before age 65, the member must cease paying contributions when 45 years calendar length membership is achieved.

A SC member **must** cease to pay contributions at age 65 regardless of the amount of calendar length membership they have achieved.

In all cases, pension benefits are not payable until the member leaves NHS employment and retires, or on reaching age 75 (70 on or before 31 March 2008) whichever is earlier.

Where a member transitions to the 2015 Scheme, the above restrictions do not apply to membership in the 2015 Scheme.

Process for applying for Special Class status for the employment groups that qualify automatically

Please refer to the eligibility sections of this factsheet for details of the occupational groups that automatically qualify for the status.

For staff in these roles, employers do not have to apply for SC status when enrolling a member. Eligibility for the status is automatically identified from the capacity code the employer records on the SS10 joiner form or equivalent.

However, if you are unsure of the correct capacity code for your employee, you should contact us for assistance.

Capacity code amendment after submission of a joiner form

Retrospective changes to the capacity code at date of commencement or a change part way through an employment for must be requested by email to the Service Team at: datamanagement@nhsbsa.nhs.uk. If SC status ceases due to a change in duties, or if it is removed due to a correction to employment records, employers must also inform the member.

When requesting an amendment to our records, from capacity '04' to '01' for nurse grade, the reason for your amendment should be made clear. You should provide the job title and reason for the amendment in your e-mail, which will help us identify the correct action to be taken.

Process for applying for Special Class status for managerial roles

On commencement of employment for which SC status requires an application, the employer should:

- record the capacity code as 04 on the joiner form SS10 or equivalent.
- for new joiners, send the New Employee Questionnaire, to help establish whether the member can still be considered for SC status. For example, whether they held the status on or before 6 March 1995 or whether they had a break of more than five years since 6 March 1995.
- download and submit the SMR form in all cases, together with any supporting evidence that may assist our consideration.

NHS Pensions will confirm if SC status is accepted or not. Where it is accepted, we will update the capacity code from 04 to 01. Once we have notified you of our decision, you **must** inform the member immediately as this may affect their retirement plans.

Capacity code amendment after submission of a joiner form

For managerial roles, the SMR form must be used for any change from capacity code 04 to 01 after the submission of the joiner form. This includes changes where SC status is being requested or removed, for example changes from capacity code 04 to 01 or capacity code 01 to 04.

Separate SMR forms will be required for any successive change in job role once retention has been accepted.

Again, NHS Pensions will confirm if SC status is accepted or not. Where it is accepted, we will update the capacity code from 04 to 01. Once we have notified you of our decision, you **must** inform the member immediately as this may affect their retirement plans.

SMR forms received incomplete, missing essential supporting documents or requests received in any other format for a managerial grade will not be accepted.

It may be an offence to knowingly give false information or alter documentation for the purpose of gaining SC/MHO status for a Scheme member.