

Ombudsman's Determination

Applicant	Mrs S
Scheme	NHS Pension Scheme (the Scheme)
Respondent	NHS Business Service Authority (NHS BSA)

Outcome

1. Mrs S' complaint against NHS BSA is partly upheld. To put matters right, NHS BSA shall:
 - recalculate the early retirement pension and tax free cash sum available to Mrs S from the Scheme based on her pensionable pay of £48,903.46 per annum and her increased total reckonable membership of 25 years 51 days;
 - pay Mrs S the additional pension and tax free cash, backdated to her early retirement date and also pay her interest for late payment as provided for in the NHS Regulations; and
 - pay Mrs S £500 in recognition of the significant non-financial injustice which she has suffered dealing with this matter.

Complaint summary

2. Mrs S has complained that:-
 - The records held by NHS Pensions* for her membership of the Scheme are incomplete and flawed.
 - NHS Pensions used incorrect lower pensionable pay and reckonable membership to calculate the deferred benefits available to her from the Scheme.
 - NHS Pensions did not inform her that she would lose her Special Class Status (**SCS**) on becoming a deferred member of the Scheme and consequently would no longer be eligible for a lower normal retirement age (**NRA**) of 55.

- She has suffered considerable distress and inconvenience dealing with this matter.

*The Scheme is administered by NHS Pensions which is part of NHS BSA.

Background information, including submissions from the parties

3. The Scheme is governed by the NHS Pension Scheme Regulations 1995 (as amended) (**NHS Regulations**).
4. Mrs S worked for the NHS in various employments between 1 April 1982 and 10 September 2009. All her roles were in nursing that qualified for SCS in the Scheme.
5. Consequently, in accordance with NHS Regulations while Mrs S was an active member of the Scheme, her NRA was 55 (the relevant sections are set out in the Appendix).
6. When Mrs S left NHS employment in September 2009, aged 48, she became a deferred member of the Scheme. Under the NHS Regulations, her NRA reverted to 60 and would remain as such, unless she resumed active SCS membership of the Scheme within five years of leaving.
7. Mrs S did not return to NHS employment after leaving in September 2009.
8. According to the records held by NHS Pensions, Mrs S had eight separate periods of NHS employment as follows:

<u>Period</u>	<u>Whole or Part time (WT/PT)</u>	<u>Calendar length membership</u>	<u>Reckonable membership</u>
1) 01/04/1982 to 21/07/1985	WT	3y 112d	3y 112d
Break 1			
2) 02/09/1985 to 30/06/1991	WT	5y 302d	5y 302d
3) 01/07/1991 to 31/03/1994	PT	2y 274d	1y 024d
4) 01/04/1994 to 28/02/2000	WT	5y 334d	5y 334d
Break 2			
5) 05/04/2000 to 30/09/2000	WT	0y 179d	0y 179d
6) 01/10/2000 to 31/08/2002	PT*	1y 335d	1y 086d
7) 01/10/2000 to 03/06/2001	PT**	n/a	0y 099d
8) 01/09/2002 to 10/09/2009	WT	7y 010d	7y 010d
Totals		27y 086d	25y 051d

Break 1: 22/07/1985 to 01/09/1985 = 42 days = 6 weeks.

Break 2: 29/02/2000 to 04/04/2000 = 36 days = 5 weeks and one day.

*According to Mrs S' former employer, there were no set weekly contracted hours for Mrs S in period 6. Hours were worked by Mrs S as and when required.

** Period 7 was concurrent with Period 6.

In response to the comments made by Mrs S on the Adjudicator's Opinion of her complaint, NHS BSA said that there might be sufficient grounds to reach a different conclusion about Mrs S' reckonable membership for her part time employment from 1 October 2000 to 31 August 2002. Allowing for the possibility that Mrs S' former employer during this period could have made a mistake when reporting the number of hours which Mrs S actually worked, NHS BSA was prepared to accept that she had overall worked whole time hours while her employments for periods 6 and 7 ran concurrently.

NHS BSA therefore offered to increase Mrs S' reckonable membership for period 6 by 74 days from 1 year 12 days to 1 year 86 days. Mrs S accepted this offer and her total reckonable membership in the Scheme has consequently increased from 24 years 342 days to 25 years 51 days.

9. For part-time periods, reckonable membership of the Scheme is accrued as a proportion of whole time which is determined by the number of hours actually worked. The hours worked are converted to their whole time equivalent (**WTE**) for benefit calculation purposes as follows:

- a) hours actually worked / standard weekly hours = number of WTE weeks
- b) WTE weeks x 7 = number of WTE days.

10. NHS Pensions calculated Mrs S' reckonable membership for her part time periods to be:

Period 3: hours actually worked were 391 (1991-2), 845 (1992-3), 845 (1993-4)

Total hours = 2081

Reckonable membership = $(2081/37.5) \times 7 = 389$ days = 1 year 24 days

Period 6: hours actually worked were 585* (2000-1), 1173** (2001-2), 651 (2002-3)

*NHS BSA changed this from 389 to 585 hours after considering Mrs S' comments on the Adjudicator's Opinion. See paragraph 8 above.

**Similarly, NHS BSA changed this figure from 977 to 1173 hours.

Total hours = 2409

Reckonable membership = $(2409/37.5) \times 7 = 451$ days = 1 year 86 days

Period 7: hours actually worked were 389 (2000-1), 137 (2001-2)

Reckonable membership = $(526/37.5) \times 7 = 99$ days

11. The employee contributions and pensionable pay figures which Mrs S' former employers provided NHS Pensions for the five financial years prior to her date of leaving were:

Financial Year	Employee Contributions	Pensionable Pay
01/04/2009-10/09/2009	£1,443.76	£22,211.33
01/04/2008-31/03/2009	£3,060.94	£45,401.86
01/04/2007-31/03/2008	£2,394.19	£46,828.38
01/04/2006-31/03/2007	£2,721.89	£45,364.50
01/04/2005-31/03/2006	£2,392.16	£39,868.70

12. Using the above information, NHS Pensions calculated Mrs S' highest pensionable pay for benefit calculation purposes to be £47,337.84 per annum and it was in respect of her final year of pensionable NHS employment.
13. During 2011, Mrs S asked NHS Pensions about her SCS in the Scheme. NHS Pensions replied in its letter dated 25 March 2011 as follows:

“Female members of the special classes are entitled to retire from age 55, provided that their last 5 years membership prior to retirement is in one of these jobs.

If a member of the special classes leaves the Scheme and has their benefits deferred, their normal retirement age becomes 60. However, if they have been made redundant before age 50 and have not returned to NHS employment, they can claim their deferred benefits at age 55 as long as they completed their last 5 years employment as a member of the special classes.”

14. Mrs S disagreed with the calculations of NHS Pensions for her highest pensionable pay and reckonable membership. She made a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) in 2019 and provided NHS Pensions with copies of her payslips for her final year of NHS employment. These showed that monthly childcare payments of £243.00 (£2,916.00 per annum) had been deducted from her pay by means of salary sacrifice and were not pensionable.
15. In its Stage Two IDRPs decision letter dated 4 September 2019 to Mrs S, NHS Pensions said that:-
- Using the information shown on the payslips, it had recalculated Mrs S' pensionable pay for her final year of service to be in the region of £48,000 to £49,000.

- Its records showed that it asked Shared Business Services (**SBS**), the payroll provider for NHS employers, in 2011 for Mrs S' highest pensionable pay figure. SBS had replied that it was £48,903.46 per annum for the year ended 10 September 2009.
 - It therefore decided to accept £48,903.46 per annum as the correct figure for Mrs S' highest pensionable pay because it was consistent with the pensionable pay figures shown on her payslips and amended its records for her accordingly.
16. NHS Pensions subsequently prepared a benefit statement based on this revised highest pensionable pay figure for Mrs S and sent it to her in September 2019.
17. Mrs S elected early payment of her deferred benefits from 12 December 2019.
18. As a consequence of its decision to increase Mrs S' total reckonable membership to 25 years 51 days, NHS BSA said that it would adjust her early retirement benefits to allow for this increase as follows:

“Based on the above membership and final salary value of £48,903.46, I estimate Mrs S' standard retirement benefit entitlement, at 11 September 2009 to be:

Pension 9176 days x £48,903.46 / (80 x 365) = £15,367

Lump Sum 3 x pension = £46,101

After the addition of cost of living increases from 11 September 2009, actuarial reduction for early payment (age 57) and exchange of pension for the maximum lump sum, I estimate Mrs S' benefits initially payable at age 57 would be:

Pension = £13,394

Lump Sum = £89,287

The increases to her benefits would be backdated to their original payable date. All estimated values above are subject to audit and confirmation.”

Mrs S' position

19. She has calculated the total length of her two employment breaks to be 14 weeks as follows:
- Break 1: 21/07/1985 - 02/09/1985 = 10 weeks.
- Break 2: 28/02/2000 - 05/04/2000 = 4 weeks.
20. For her periods of part time work, she contends that:
- “01/07/1991-31/03/1994 began with working 1 day per week in 1991, then increased to 2.5 days, then to 3 days, I ended up working a full-time role.

Loss of time was 1 year and 6 months as I went from 0.2 WTE to 0.5 WTE and then 0.6 WTE.

01/10/2000-31/08/2002 - During this period of my NHS career I had both a clinical and a managerial role. This resulted in two pay slips each month, this made the equivalent of a full-time role of 37.5 hours per week. I feel that this has not been acknowledged or adequately recorded or recognised...

Having two pay slips per month could be misconstrued as a part time role. Not so. It was a full-time role with the same Trust.

This arrangement continued right through to 01/09/2002 when I then dropped the clinical role and worked only as a full-time manager.

By my calculation, the lost time over the 27 years and 86 days equates to 1 year and 76 days..."

21. In any case, as she ceased to be an active member in 2009, her reckonable membership should be calculated by simply deducting her overall service break of 14 weeks from her calendar length membership of 27 years and 86 days, irrespective of whether she worked full or part time. In her view, NHS Pensions should therefore have used reckonable membership of 27 years and 15 days to calculate the benefits available to her from the Scheme.
22. The pensionable pay figure for the year ended 10 September 2009 of £48,903.46 per annum used to calculate her retirement benefits is also incorrect.
23. She says that:

“...I was already earning £49,394 in August 2008. I remained full time on the same pay banding and received an increment on the 1 December each year. In December 2008 my annual pay was, according to my payslip... £52,007. By April 2009 my annual salary was £53,256...According to my P60, issued for the tax year to 5 April 2009, my annual earnings from the NHS was £52,687.82...

Even with a £243 salary sacrifice per month, which equates to an annual reduction of £2,916, my final total pensionable pay should be, £50,340.”
24. NHS Pensions has not apologised to her for its mistakes or the time it has taken to deal with her complaint.
25. She also says that:

“I will never support the way in which the Scheme works to negatively impact on any member who has been a nurse with SCS, that, if they have no choice to leave the NHS for whatever reason they are then penalised, their SCS is removed, and their retirement age then reverts to 60. It should remain at 55 years of age. Whether a nurse with SCS remains or does not remain in the Scheme until 55 years of age is irrelevant, they have earned their SCS. Their

right to retire at 55 should be preserved with no loss of benefit. This group of staff I surmise are the largest group in the Scheme and are most likely to leave before 55 because of the nature of their job. They burn out. There are precious little rewards for a lifetime of nursing service and this Scheme only uses the black and white measurement.”

The position of NHS BSA

26. The Scheme is administered jointly by NHS Pensions and NHS employers.
27. NHS Pensions does not have access to payroll or employment records for Scheme members and is reliant upon NHS employers to provide accurate information.
28. NHS Pensions originally calculated Mrs S’ highest pensionable pay to be £47,337.84 per annum based upon the information her former employers supplied while she was an active member of the Scheme. It has subsequently transpired that this information did not fully reflect Mrs S’ pensionable pay in her final year of employment.
29. NHS Pensions had no obvious reason to query the information which it received from her former employers. Furthermore, it was not privy to Mrs S’ salary sacrifice arrangement.
30. Mrs S’ former employers did not notify NHS Pensions of any changes which resulted in her highest pensionable pay increasing to £48,903.46 per annum. It did not therefore identify the discrepancy until after asking SBS for Mrs S’ highest pensionable pay in 2011.
31. For comparison purposes only, NHS Pensions estimated Mrs S’ pensionable pay for her final year of NHS employment to be £48,868.12 per annum from her pension contributions to the Scheme as shown on her payslips. It took into account that her childcare payments were non-pensionable in its calculation. The difference between its figure and the one provided by SBS of around £35 is within acceptable tolerance levels.

In response to the comments made by Mrs S on the Adjudicator’s Opinion of her complaint, NHS BSA revised its estimate of Mrs S’ pensionable pay from £48,775.78 per annum to £48,868.12 per annum. Apportioning of Mrs S’ earnings was required to calculate her pensionable pay of £2,546.80 for the initial part month (11 to 30 September 2008) of her final year of employment.

32. The decision of NHS Pensions to accept the final pensionable pay of £48,903.46 per annum for Mrs S provided by SBS as the correct figure is therefore supported by her payslips.
33. Mrs S’ calculation of her pensionable pay figure to be £50,340 per annum, that is £53,256 less £2,916, is incorrect. She has wrongly assumed that her pensionable pay throughout her final year of employment was £53,256 per annum which was not the case.

34. Reckonable membership is used in the calculation of retirement benefits from the Scheme. It is only equal to calendar length membership for whole time employment.
35. For the periods which Mrs S worked part-time, she accrued reckonable membership proportionate to the number of hours she actually worked. This reflected the proportionately lower contributions which she paid for her part-time pensionable earnings.
36. For Mrs S' employment period 3, it has calculated the difference between her calendar length and reckonable memberships to be 1 year 250 days. Mrs S believes that it should be 1 year 182 days but there is no evidence to support her view.
37. Mrs S' calculation that her total reckonable membership in the Scheme should be 27 years 15 days is valid only if she had worked full time throughout her active membership of the Scheme. This did not apply to her.
38. The provisions for SCS are set out in Part R2 (1-3) of the NHS Regulations. Under Part R2 (1)(b) and Regulation E1, a member is eligible to retire from age 55 only if the whole of the last five years pensionable NHS employment up to the date of retirement is in a grade which attracts SCS.
39. If a member with SCS left the Scheme, his/her NRA would automatically revert to age 60 and remain as such, unless he/she resumed active SCS membership within five years of leaving.
40. In accordance with NHS Regulations, as Mrs S incurred a service break of more than five years after leaving NHS employment in 2009, it was not possible for her to resume SCS in any future NHS employment
41. Mrs S did not therefore meet the criteria specified in NHS Regulations for an NRA of 55 via SCS.
42. NHS Pensions does not routinely inform members when their SCS ceases. It notifies them of changes to their NRA on its annual benefit statements. When Mrs S queried her SCS in 2011, NHS Pensions explained to her the position for deferred members in its letter dated 25 March 2011.

Adjudicator's Opinion

43. Mrs S' complaint was considered by one of our Adjudicators who concluded that further action was required by NHS BSA. The Adjudicator's findings are summarised below:-
 - NHS Pensions relied upon Mrs S' former employers to provide accurate details of her pay, service and actual hours worked in order to correctly calculate her highest pensionable pay and reckonable membership. These figures were then used by it to determine the deferred benefits available to Mrs S from the Scheme.

- The available evidence, however, would suggest that during Mrs S' final year of NHS employment, her former employer initially supplied flawed information about Mrs S' pensionable pay which resulted in NHS Pensions calculating an incorrect lower figure of £47,337.84 per annum for her highest pensionable pay.
- NHS Pensions, however, said its records indicated that it asked SBS in 2011 for details of Mrs S' highest pensionable pay and SBS had replied that it was £48,903.46 per annum.
- On receipt of this figure from SBS, it was reasonable to expect that NHS Pensions would have noticed that it was different from the value which it calculated of £47,337.84 per annum and made appropriate enquiries with SBS back in 2011. If NHS Pensions had done this, it would most likely have discovered much earlier than it actually did that its figure was incorrect. Its failure to do so, in the Adjudicator's opinion, represented maladministration on its part.
- NHS Pensions estimated Mrs S' highest pensionable pay to be £48,868.12 per annum based on the information shown on her payslips. It had calculated this value in order to check the soundness of SBS' figure of £48,903.46 per annum. As the difference between the two figures of around £35 was minimal, the Adjudicator agreed with NHS Pensions' view that its decision to accept £48,903.46 per annum as the correct highest pensionable pay figure for Mrs S was within the bounds of reasonableness and supported by her payslips.
- The Adjudicator also concurred with the explanation given by NHS Pensions on why Mrs S' calculation of the highest pensionable pay to be £50,340 per annum could not be correct. For Mrs S' figure to be valid, her pensionable pay throughout her final year of employment would have had to be £53,256 per annum. The pensionable pay information supplied by her former employers clearly demonstrated that this was not the case.
- In the Adjudicator's view, Mrs S' contention that NHS Pensions used an incorrect lower figure of £48,903.46 per annum for her highest pensionable pay to calculate the benefits available to her from the Scheme was therefore not corroborated by the available evidence.
- The Adjudicator was satisfied that the methodology which NHS Pensions used to determine Mrs S' reckonable membership during her periods of part time service was mathematically sound.
- For essentially the reasons given by NHS BSA, as shown in paragraphs 34 to 37 above, in the Adjudicator's view, Mrs S' calculation of her total reckonable membership in the Scheme was not substantiated by the available evidence.

- NHS Regulations govern payment of benefits from the Scheme. In its capacity as the administrator of the Scheme, NHS Pensions must act in accordance with these rules and within the framework of the law.
- Furthermore, it was Parliament and not NHS Pensions which made the NHS Regulations.
- NHS Pensions therefore had to follow any procedure laid down in the provisions of the NHS Regulations, as qualified by overriding pension legislation, when dealing with Mrs S' SCS in the Scheme.
- Although, the decision made by NHS Pensions would appear to be unfair to Mrs S, it does have a duty to pay benefits in accordance with NHS Regulations.
- It would have been helpful to Mrs S if NHS Pensions had informed her at the time when she became a deferred Scheme member why her SCS would cease if she did not return to eligible pensionable employment within five years. However, its decision not to do this, in the Adjudicator's view, did not represent maladministration on the part of NHS Pensions. The position on SCS for deferred members was explained in the Scheme literature and NHS Regulations available to Mrs S on request from NHS Pensions, or its website, if she had been interested.
- In any case, the Adjudicator noted that NHS Pensions provided this information to Mrs S in its letter dated 2011, after she had requested it.
- It was clear that Mrs S has experienced significant distress and inconvenience as a direct consequence of NHS Pensions' maladministration. The Pensions Ombudsman's awards for non-financial injustice are modest though and not intended to punish a respondent. In the Adjudicator's view, the non-financial injustice which Mrs S has suffered was significant enough to warrant a compensation award of £500.

44. Mrs S did not fully accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S and NHS BSA provided the following additional comments.

45. Mrs S says that:

"I have repeatedly provided you with the evidence I have of my pensionable earnings from 20 days in September 2008 until 10 September 2009, via my payslips.

I have applied the same method of calculating the 20 days earnings for September 2008, to calculate my salary in September 2009 up to the 10th day.

I found a discrepancy...which differs from my pensionable earnings payslip total of £1,236.33.

To ignore this fact would devalue my whole month pensionable earnings for the part month up to the 10 September 2009, this would be wrong and punitive.

By applying your method of calculating this value differs from my payslip value by **£142.87**.

Which means the total last 365 days pensionable pay is not £48,868.12, it is in fact £49,010.99.

...Therefore, I do not see how my £1,236.33 earnings for that month can possibly be correct.

We do agree on the following:

My total years of service, although I feel is considerably longer, using your calculation will increase my membership by another 74 days.

The compensation awarded to me of £500 is to be paid without being taxed, straight into my bank account as soon as this complaint is concluded.

The increases to my benefits are backdated to their original payable date, that is, the lump sum correction and annual pension correction.”

“Whilst I understand the loss of my SCS sadly can no longer be rectified, I will never agree with this decision made by the NHS...Regrettably, I will have to leave this part of my complaint as I can go no further with this issue it seems”.

46. NHS BSA says that:

“We have reviewed Mrs S’ assessment of her pensionable earnings for the part-month of September 2009 (10 days). However, we do not agree that the method applied to apportion earnings for September 2008, should also be applied to determine the pensionable earnings for September 2009.

Unlike the initial part-month in the final year (September 2008), no apportioning of earnings is required for September 2009. This is because the actual earnings for the 10 days worked are confirmed in Mrs S’ corresponding pay-slip.

The pensionable earnings and contribution values for September 2009, as shown on the pay-slip, are confirmed by the employer; i.e. pensionable earnings = £1,236.30, contributions = £80.36, after the deduction for childcare.

Account should be taken that although September 2009 was a part-month, the same childcare deduction was taken from her earnings as for the previous full months i.e. £243.00. It appears that the childcare deduction was a fixed monthly amount, as opposed to a percentage of pay.

The effect of the 'full' childcare deduction of £243 from the part-month earnings means that this non-pensionable sum forms a relatively higher proportion of Mrs S' actual earnings in September 2009 (in comparison to the proportion it forms of a whole month's earnings).

Ultimately, the contributions collected from Mrs S in September 2009 correctly reflect her pensionable earnings (£1,236.30) for that month and we believe the values in the pay-slip to be correct.

Our estimated calculations using pay-slip information were purely for comparison purposes. The consistency of our estimate with the value Mrs S' employer provided means that we remain of the conclusion that Mrs S' correct pensionable pay in her final year is £48,903.46."

Ombudsman's decision

47. Mrs S did not fully agree with the Adjudicator's Opinion of her complaint and provided additional evidence which she believed would support a different conclusion.
48. NHS BSA was given the opportunity to examine this evidence and concluded that it was possible Mrs S' former employer for her part time role in period 6 had understated the number of hours that Mrs S actually worked when reporting this to NHS Pensions.
49. NHS BSA therefore decided to accept that Mrs S had worked whole time hours overall across her part time employments for periods 6 and 7 whilst they ran concurrently. It proposed to increase her total reckonable membership shown in its records by 74 days to 25 years 51 days and pay Mrs S the higher pension and tax free cash available to her from the Scheme, backdated to her early retirement date.
50. NHS BSA also agreed to pay Mrs S an award of £500 in recognition of the significant distress and inconvenience which she experienced dealing with this matter, as recommended by the Adjudicator in his Opinion.
51. Mrs S has accepted the above proposals made by NHS BSA. A disagreement over the correct figure to be used for Mrs S' pensionable pay in the calculation of her early retirement benefits has, however, prevented her complaint from being resolved.
52. It therefore remains for me to decide whether the correct highest pensionable pay for Mrs S is the figure held in NHS BSA's records of £48,903.46 per annum or the one which Mrs S now believes it to be of £49,010.99 per annum.
53. NHS BSA asked SBS in 2011 for Mrs S' highest pensionable pay figure and was informed that it was £48,903.46 per annum for the year ended 10 September 2009.
54. In order to check this figure, NHS BSA estimated it to be £48,868.12 per annum based on the information shown on Mrs S' payslips. As the difference between this figure and the one supplied by SBS of around £35 is trivial, I find that the decision of

NHS Pensions to accept £48,903.46 per annum as the correct highest pensionable pay figure for Mrs S is reasonable and supported by her payslips.

55. Mrs S' latest calculation was based on the method derived by NHS BSA to estimate her highest pensionable pay for comparison purposes. She also calculated her pensionable earnings for the period 1 to 10 September 2009 using an apportioning method. This was unnecessary because the actual figure of £1,236.33 was available from one of her payslips. Mrs S says that this figure is incorrect but I have seen no evidence which corroborates her statement.
56. I am therefore satisfied with the explanation given by NHS BSA as to why its figure for Mrs S' highest pensionable pay is the correct one and should be used to calculate the revised early retirement benefits available to her from the Scheme.
57. I also find that there has not been any maladministration on the part of NHS Pensions for not informing Mrs S at the time when she became a deferred member of the Scheme why her SCS ceased for the reasons given by the Adjudicator in his Opinion.
58. I partly uphold Mrs S' complaint and make the appropriate direction below.

Directions

59. Within 28 days of the date of this Determination, NHS BSA shall:
 - recalculate the early retirement pension and tax free cash sum available to Mrs S from the Scheme based on her pensionable pay of £48,903.46 per annum and her increased total reckonable membership of 25 years 51 days;
 - pay Mrs S the additional pension and tax free cash, backdated to her early retirement date and also pay her interest for late payment as provided for in the NHS Regulations; and
 - pay Mrs S £500 in recognition of the significant non-financial injustice which she has suffered dealing with this matter.

Anthony Arter

Pensions Ombudsman
8 March 2022

Appendix

The National Health Service Pension Scheme Regulations 1995

A1 Citation and commencement

(1) These Regulations may be cited as the National Health Service Pension Scheme Regulations 1995.

(2) These Regulations come into force on 6th March 1995.

L1 Preserved pension

(1) Subject to paragraphs (3) and (4), a member who leaves pensionable employment before age 60 without becoming entitled to a pension under any of regulations E1 to E5 shall be entitled to receive a pension and retirement lump sum under this regulation from age 60 if—

(a) the member leaves with at least 2 years' qualifying service

R2 Nurses, physiotherapists, midwives and health visitors

(1) Subject to paragraph (2), this regulation applies to a member-

(a) who, at the coming into force of these Regulations-

(i) is in pensionable employment as a nurse, physiotherapist, midwife or health visitor, or

(ii) has accrued rights to benefits under this Section of the scheme arising out of a previous period in which she was engaged in such employment and at no time since the last occasion on which she was so engaged has she had a break in pensionable employment for any one period of 5 years or more,

and

(b) who spends the whole of the last 5 years of her pensionable employment as a nurse, physiotherapist, midwife or health visitor.

(2) This regulation shall cease to apply if the member has a break in pensionable employment for any one period of 5 years or more ending after the coming into force of these Regulations.

(3) Where this regulation applies—

(a) regulation E1 (normal retirement pension) will apply to the member as if the reference, in paragraph (1) of that regulation to age 60, were a reference to age 55;

E1 Normal retirement pension

(1) A member who retires from pensionable employment on or after attaining age 60 shall be entitled to a pension under this regulation.