STATUTORY INSTRUMENTS

1974 No. 1748

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Compensation) Regulations 1974

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The Secretary of State for Social Services, in exercise of the powers conferred upon her by section 24 of the Superannuation Act 1972(a) and of all other powers enabling her in that behalf, with the consent of the Minister for the Civil Service, hereby makes the following regulations:—

PART I

PRELIMINARY

Title and commencement

1. These regulations may be cited as the National Health Service (Compensation) Regulations 1974 and shall come into operation on 26th November 1974.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

"the Act" means the National Health Service Reorganisation Act 1973(b);

"the Acts" means the National Health Service Act 1946(c) and the Act;

"accrued pension", in relation to a pensionable officer who has suffered loss of employment, means—

(*a*) if his last relevant pension scheme provided benefits in which he had a right to participate, the pension to which he would have become entitled under that scheme in respect of his pensionable service according to the method of calculation (modified where necessary for the purpose of giving effect to these regulations) prescribed by that scheme if, at the date on which he ceased to be subject to that scheme, he had attained normal retiring age and complied with any requirement of that scheme as to a minimum period of qualifying service or contribution and completed any additional contributory payments or payments in respect of added years which he was in the course of making; and

(*b*) in any other case, such portion of the pension (if any) of which he had reasonable expectations as the Secretary of State considers equitable;

"accrued retiring allowance", in relation to a pensionable officer who has suffered loss of employment, means—

(*a*) if his last relevant pension scheme provided benefits in which he had a right to participate, any lump sum payment to which he would have become entitled under that scheme in respect of his pensionable service according to the method of calculation (modified where necessary for the purpose of giving effect to these regulations) prescribed by that scheme, if at the date on which he ceased to be subject to that scheme, he had attained normal retiring age and complied with any requirement

(a) 1972 c. 11.
(b) 1973 c. 32.
(c) 1946 c. 81.

of that scheme as to a minimum period of qualifying service or contribution and completed any additional contributory payments or payments in respect of added years which he was in the course of making; and

(*b*) in any other case, such portion of the lump sum payment (if any) of which he had reasonable expectations as the Secretary of State considers equitable;

"accrued incapacity pension" and "accrued incapacity retiring allowance" have the same respective meanings as "accrued pension" and "accrued retiring allowance" except that the reference to a person's attaining normal retiring age shall be construed as a reference to his becoming incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body;

"added years", in relation to a person who suffers loss of employment, means any additional years of service reckonable by him under his last relevant pension scheme, being additional years which were being purchased partly at the expense of the employer and partly at the expense of the person under arrangements which were entered into before the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment;

"additional contributory payments" means—

(*a*) additional contributory payments within the meaning of the National Health Service (Superannuation) Regulations 1961**(a)**, as amended**(b)**; or

(*b*) any similar payments made under the last relevant pension scheme as a condition of—

(i) reckoning any period of employment as service or as a period of contribution for the purposes of the scheme; or

(ii) reckoning non-contributing service as contributing service (which expressions have the same meaning as in the scheme) for the purposes of the scheme; or

(iii) increasing the length at which any period of service or of contribution would be reckonable for the purpose of calculating a benefit under the scheme;

"annual rate", in relation to the emoluments of an employment which has been lost or emoluments which have been diminished, means the annual rate of those emoluments immediately before the loss or diminution, as the case may be;

"compensation question" means a question arising under these regulations—

(*a*) as to a person's entitlement to compensation for loss of employment, or for loss or diminution of emoluments; or

(*b*) as to the manner of a person's employment or the comparability of his duties;

"emoluments" means all salary, wages, fees and other payments paid or made to an officer as such for his own use, and also the money value of any accommodation or other allowances in kind appertaining to his employment,

(a) S.I. 1961/1441 (1961 II, p. 2824).
(b) The amending instruments are not relevant to the subject matter of these regulations.

but does not include payments for overtime which are not a usual incident of his employment, or any allowances payable to him to cover the cost of providing office accommodation or clerical or other assistance, or any travelling or subsistence allowance or other moneys to be spent, or to cover expenses incurred, by him for the purposes of his employment; and where fees or other variable payments were paid to an officer as part of his emoluments during any period immediately preceding the loss or diminution, the amount in respect of fees or other variable payments to be included in the annual rate of emoluments shall be the annual average of the fees or other payments paid to him during the period of 3 years immediately preceding the loss or diminution, or such other period as the Secretary of State may think reasonable in the circumstances;

"last relevant pension scheme", in relation to a pensionable officer, means the pension scheme to which he was subject immediately before suffering loss of employment or loss or diminution of emoluments;

"long-term compensation" means compensation payable in accordance with the provisions of Part IV of these regulations for loss of employment or loss or diminution of emoluments;

"material date", in relation to any person who has suffered loss of employment or loss or diminution of emoluments which is attributable to any cause mentioned in regulation 4, means—

(*a*) in the case of loss or diminution which is attributable to any provision of the Act, 1st April 1974;

(*b*) in any other case, the date on which the instrument was made;

or the date on which the loss or diminution occurred, whichever is the earlier;

"minimum pensionable age", in relation to a pensionable officer, means the earliest age at which, under his last relevant pension scheme, he could have become entitled to receive payment of an unreduced pension solely by virtue of his having attained a specified age and completed a specified period of service;

"national service", in relation to any person, means service which is compulsory national service or relevant service within the meaning of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951**(a)** and any similar service immediately following such service entered into with the consent of the authority or person under whom an officer held his last relevant employment;

"normal retiring age" means, in the case of a pensionable officer to whom an age of compulsory retirement applied by virtue of any enactment to which he was subject in the employment which he has lost or the emoluments of which have been diminished or by virtue of the conditions of that employment, that age, and in any other case, the age of 65 if the officer is a male, or 60 if the officer is a female;

"pensionable officer", in relation to a person who has suffered loss of employment or loss or diminution of emoluments, means a person who immediately before such loss or diminution was subject to a pension scheme associated with the employment he has lost, or as the case may be, the employment in which his emoluments have been diminished;

"pensionable service", in relation to a pensionable officer, means service in respect of which he has become entitled to receive (whether immediately or

(a) 1951 c. 65.

prospectively on attaining some greater age) a benefit under his last relevant pension scheme;

"pension scheme", in relation to a pensionable officer, means any form of arrangement associated with his employment for the payment of superannuation benefits, whether subsisting by virtue of any enactment, trust, contract or otherwise;

"reckonable service", in relation to a person, means any period of whole-time or part-time employment in any relevant employment and includes any period of national service or war service undertaken on his ceasing to hold such an employment, but does not include employment in respect of which he has or will become entitled (whether immediately or prospectively on attaining some greater age) to a benefit from a pension scheme other than his last relevant pension scheme;

"relevant employment" means employment—

(*a*) under the Crown or by any person, authority or body for the purposes of the Crown;

(*b*) by any authority or body specified in regulation 3(1) or by any corresponding authority or body in Scotland;

(*c*) in local government service;

(*d*) preceding any of the foregoing employment which was reckonable for the purposes of the last relevant pension scheme; or

(*e*) in such other service as the Secretary of State may, in the case of any named officer, approve;

but, except for national service and war service, does not include service in the armed forces of the Crown;

"resettlement compensation" means compensation payable in accordance with the provisions of Part III of these regulations for loss of employment;

"retirement compensation" means compensation payable in accordance with the provisions of regulation 17, 18 or 19;

"scheme authority", in relation to any person, means the authority administering the pension scheme, fund or account;

"Secretary of State" means Secretary of State for Social Services;

"tribunal" means a tribunal established under section 12 of the Industrial Training Act 1964(**a**);

"war service" means war service within the meaning of the Local Government Staffs (War Service) Act 1939(**b**), the Teachers Superannuation (War Service) Act 1939(**c**), the Education (Scotland) (War Service Superannuation) Act 1939(**d**) or the Police and Firemen (War Service) Act 1939(**e**) or employment for war purposes within the meaning of the Superannuation Schemes (War Service) Act 1940(**f**) if such service or employment immediately followed a period of relevant employment and was undertaken either compulsorily or with the permission of the employer in that employment.

(**a**) 1964 c. 16.
(**b**) 1939 c. 94.
(**c**) 1939 c. 95.
(**d**) 1939 c. 96.
(**e**) 1939 c. 103.
(**f**) 1940 c. 26.

(2) The holder of any office, appointment, place, situation or employment shall, for the purposes of these regulations, be regarded as an officer employed in that office, appointment, place, situation or employment, and the expressions "officer" and "employment" shall be construed accordingly.

(3) In these regulations, unless the context otherwise requires, references to any enactment shall be construed as references thereto as amended, re-enacted, applied or modified by any subsequent enactment.

(4) References in these regulations to a numbered regulation shall, unless the reference is to a regulation of specified regulations, be construed as references to the regulation bearing that number in these regulations.

(5) References in any regulation of these regulations to a numbered paragraph shall, unless the reference is to a paragraph of a specified regulation, be construed as references to the paragraph bearing that number in the first mentioned regulation.

(6) The Interpretation Act 1889**(a)** shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

PART II

ENTITLEMENT TO COMPENSATION

Persons to whom the regulations apply

3.—(1) Subject to the provisions of paragraph (2), these regulations shall apply to any person who was employed on or immediately before the material date for the whole or for part only of his time—

(*a*) as an officer of a regional health authority, an area health authority, an area health authority (teaching) or a special health authority;

(*b*) as an officer of a regional hospital board or a board of governors of a teaching hospital;

(*c*) as an officer of an executive council or a joint committee of executive councils constituted for the purposes of the National Health Service Act 1946;

(*d*) as an officer of a committee recognised under section 32 of that Act;

(*e*) by or under (and for the purpose of the functions of) an officer described in sub-paragraph (*d*);

(*f*) as an officer of the Teaching Hospitals Association, the Association of Hospital Management Committees, the Executive Councils Association or the Welsh Executive Councils Association; or

(*g*) as an officer of the Family Planning Association.

(2) These regulations shall not apply—

(*a*) to a person entitled in respect of the same employment to benefits payable under the National Health Service Reorganisation (Retirement of Senior Officers) Regulations 1974**(b)**, as amended**(c)**;

(*b*) to a person entitled to and receiving compensation in respect of the same employment under the Local Government (Compensation) Regulations 1974**(d)**;

(*c*) in relation to any employment to which a person was transferred by an order made under section 18(4)(*a*) of the Act.

(a) 1889 c. 63.
(b) S.I. 1974/189 (1974 I, p. 677).
(c) S.I. 1974/801 (1974 II, p. 3071).
(d) S.I. 1974/463 (1974 I, p. 1563).

Grounds of entitlement to compensation

4. Subject to the provisions of these regulations, any person to whom these regulations apply and who suffers loss of employment or loss or diminution of emoluments which is attributable to—

(*a*) any provision of the Act or of any instrument made under the Act; or

(*b*) the provisions of any instrument made under the Local Government Act 1972**(a)**;

shall be entitled to have his case considered for the payment of compensation under these regulations, and such compensation shall be determined in accordance with these regulations.

PART III

RESETTLEMENT COMPENSATION

Resettlement compensation for loss of employment

5. The Secretary of State shall, subject to the provisions of these regulations, pay resettlement compensation to any person to whom these regulations apply and who satisfies the conditions set out in regulation 6.

Conditions for payment of resettlement compensation

6.—(1) Without prejudice to any other requirement of these regulations, the conditions for the payment of resettlement compensation to any person are that—

(*a*) he has suffered loss of employment attributable to any provision or instrument mentioned in regulation 4 not later than 10 years after the material date;

(*b*) he had not at the date of the loss attained normal retiring age;

(*c*) he had been for a period of 2 years immediately before the material date continuously engaged (disregarding breaks not exceeding in the aggregate 6 months) for the whole or part of his time in relevant employment;

(*d*) he has made a claim for such compensation in writing to the Secretary of State not later than 13 weeks after the loss of employment which is the cause of his claim, or 13 weeks after the coming into operation of these regulations, whichever is the later, or within any longer period which the Secretary of State may allow in any particular case where he is satisfied that the delay in making the claim was due to ill-health or other circumstances beyond the claimant's control;

(*e*) the loss of employment which is the cause of his claim has occurred for some reason other than misconduct or incapacity to perform the duties that, immediately before the loss, he was performing or might reasonably have been required to perform;

(*f*) he has not, subject to paragraphs (3) and (4), on or after the date on which the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment, been offered in writing—

(a) 1972 c. 70.

(i) any employment which is mentioned in (*a*), (*b*), (*c*) or (*e*) of the definition of "relevant employment" in regulation 2(1) and which is reasonably comparable with the employment which he has lost; or

(ii) any employment specified in paragraph (2) which is suitable for him.

(2) For the purposes of paragraph (1)(*f*)(ii), the employment shall, in the case of—

(*a*) an officer of a body constituted under the Acts, be employment by any such body; or

(*b*) any other person, be employment in the service of any authority or body in which he carries out substantially the same duties as in his employment immediately before the loss;

at the same place or in the same locality as that where he was employed immediately before such loss.

(3) In ascertaining for the purposes of this regulation whether a person has been offered employment which is reasonably comparable with the employment which he has lost, no account shall be taken of the fact that the duties of the employment offered are in relation to a different service from that in connection with which his employment was held or are duties which involve a transfer of his employment from one place to another within England and Wales.

(4) For the purposes of this regulation, where the Secretary of State is satisfied that acceptance of an offer would have involved undue hardship to the person or that he was prevented from accepting the offer by reason of ill-health or other circumstances beyond his control, no account shall be taken of that offer of employment.

Amount of resettlement compensation

7.—(1) The amount of resettlement compensation which may be paid to a person shall, subject to the provisions of paragraph (2), be the amount described in paragraph (*a*) or (*b*) whichever is the greater, namely—

(*a*) an amount equal to 13 weeks' emoluments and, in the case of a person who has attained the age of 45 one additional week's emoluments for every year of his age after attaining the age of 45 and before the loss of employment, subject to a maximum addition of 13 such weeks; or

(*b*) an amount equal to—

(i) one and one half week's emoluments for each completed year of reckonable service in which the person was not below the age of 41;

(ii) one week's emoluments for each completed year of reckonable service (not falling within sub-paragraph (i) above) in which the person was not below the age of 22; and

(iii) one half week's emoluments for each completed year of reckonable service not falling within sub-paragraph (i) or (ii) above.

(2) For the purposes of paragraph (1)(*a*), if the loss of employment takes place within 3 years of the date on which the person would have attained normal retiring age, the amount shall be reduced by the fraction of which—

(*a*) the numerator is the number of complete periods of 6 months in the period beginning on the date 3 years before that on which he would have attained normal retiring age and ending on the date of loss of employment, and

(*b*) the denominator is 6,

but the amount payable to a person who, on the material date, has not been continuously engaged in relevant employment as described in regulation 10(1)(*c*) shall not by this paragraph be reduced to less than the equivalent of 13 weeks' emoluments.

(3) For the purpose of paragraph (1)(*b*), in the case of a person who has completed more than 20 years' reckonable service, only the period of 20 years immediately prior to the loss of employment shall be taken into account.

(4) For the purpose of paragraph (1)(*b*), if the loss of a person's employment takes place within one year of the date on which he would have attained normal retiring age, the amount shall be reduced by the fraction of which the numerator is the number of whole months in the period beginning on the date one year before that on which he would have attained normal retiring age and ending on the date of loss of employment and of which the denominator is 12.

(5) For the purposes of this regulation, the weekly rate of emoluments shall be deemed to be seven 365ths of the annual rate of emoluments.

Adjustment of resettlement compensation

8. A person who is entitled to—

(*a*) a redundancy payment under the Redundancy Payments Act 1965**(a)**, or

(*b*) any similar payment in consequence of the loss of his employment under any other enactment or under any contract or arrangement with the authority by whom he was employed (other than payments by way of a return of contributions under a pension scheme), or

(*c*) any payment under or by virtue of the provisions of any enactment relating to the reinstatement in civil employment of persons who have been in the service of the Crown,

shall—

(i) if the amount of any resettlement compensation that would be payable, apart from this regulation, exceeds the payment or payments specified in (*a*), (*b*) and (*c*) above, be entitled to resettlement compensation equal to that excess; or

(ii) if the amount of any resettlement compensation that would be payable, apart from this regulation, is equal to or less than the payment or payments specified in (*a*), (*b*) and (*c*) above, not be entitled to resettlement compensation.

PART IV

LONG-TERM COMPENSATION

Long-term compensation for loss of employment or loss or diminution of emoluments

9. The Secretary of State shall, subject to the provisions of these regulations, pay long-term compensation to any person to whom these regulations apply and who satisfies the conditions set out in regulation 10.

(a) 1965 c. 62.

Conditions for payment of long-term compensation

10.—(1) Without prejudice to any other requirement of these regulations, the conditions for the payment of long-term compensation to any person are that—

(*a*) he has suffered loss of employment or loss or diminution of emoluments attributable to any provision or instrument mentioned in regulation 4 not later than 10 years after the material date;

(*b*) he had not, save as is provided in regulation 25, at the date of the loss or diminution attained normal retiring age;

(*c*) he had been, for a period of not less than 5 years immediately before the material date, continuously engaged (without a break of more than 12 months at any one time) for the whole or part of his time in relevant employment;

(*d*) he has made a claim for such compensation in writing to the Secretary of State not later than 2 years after the loss or diminution which is the cause of the claim or 2 years after the coming into operation of these regulations whichever is the later; and

(*e*) if the cause of the claim for compensation is loss of employment—

(i) the loss has occurred for some reason other than misconduct or incapacity to perform the duties that, immediately before the loss, he was performing or might reasonably have been required to perform; and

(ii) he has not, subject to paragraph (2), on or after the date on which the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment, been offered in writing any employment which is mentioned in (*a*), (*b*), (*c*) or (*e*) of the definition of "relevant employment" in regulation 2(1) and which is reasonably comparable with the employment which he has lost.

(2) Regulation 6(3) and (4) (which relate to offers of employment) shall apply for the purposes of this regulation in ascertaining whether a person has been offered reasonably comparable employment.

(3) Claims for long-term compensation for loss of employment shall in all respects be treated as claims for such compensation for the loss of emoluments occasioned thereby and the provisions of these regulations shall apply to all such claims accordingly.

Factors to be considered in determining payment of long-term compensation

11.—(1) For the purpose of determining whether long-term compensation for loss or diminution of emoluments is payable to any person and, if so, the amount of the compensation the Secretary of State shall, subject to the provisions of paragraphs (2) and (3), have regard to such of the following factors as may be relevant, that is to say—

(*a*) the conditions upon which the person held the employment which he has lost, including in particular its security of tenure, whether by law or practice;

(*b*) the emoluments and other conditions, including security of tenure, whether by law or practice, of any work or employment undertaken by the person subsequent to the loss of employment;

(*c*) the extent to which he has sought suitable employment and the emoluments which he might have acquired by accepting other suitable employment which, on or after the date on which the employer either informed him in writing that his employment was to be terminated or was likely to be terminated or gave him written notice of termination of his employment, has been offered to him in writing; and

(*d*) all the other circumstances of his case;

but, subject to the provisions of regulation 39, no account shall be taken of the fact that he entered the employment which he has lost or of the emoluments of which have been diminished after—

(i) 5th July 1973, where the loss or diminution was attributable to any provision of the Act, or

(ii) the making of any instrument, where the loss or diminution was attributable to any provision of that instrument.

(2) In ascertaining for the purposes of paragraphs (1)(*b*) and (1)(*c*) the emoluments in respect of any work or employment that gives the employee or his widow, child or other dependant the right to benefit under a pension scheme under which the employee is not under an obligation to pay contributions, the amount of emoluments shall be increased by the amount of contributions which the employee would have to pay to secure equivalent benefits under a pension scheme in respect of which both the employer and the employee are under an obligation to pay contributions in the same proportion as they would have paid had the last relevant pension scheme been the scheme provided in regulations made under section 10 of the Superannuation Act 1972.

(3) Regulation 6(4) shall apply for the purposes of this regulation in ascertaining whether a person has been offered suitable employment.

Amount of long-term compensation payable for loss of emoluments

12.—(1) Long-term compensation for loss of emoluments shall, subject to the provisions of these regulations, consist of an annual sum not exceeding a maximum calculated in accordance with the provisions of paragraphs (2), (3) and (4).

(2) The said maximum annual sum shall, subject as hereinafter provided, be the aggregate of the following sums, namely—

(*a*) for every year of the person's reckonable service, one sixtieth of the annual rate of the emoluments which he has lost; and

(*b*) in the case of a person who has attained the age of 40 at the date of the loss, a sum calculated in accordance with the provisions of paragraph (3) appropriate to his age at that date;

but the said maximum annual sum shall in no case exceed two-thirds of the annual rate of the emoluments which the person has lost.

(3) The sum referred to in paragraph (2)(*b*) shall be—

(*a*) in the case of a person who has attained the age of 40 but has not attained the age of 50 at the date of the loss, the following fraction of the annual rate of the emoluments which he has lost—

(i) where his reckonable service is less than 10 years, one sixtieth for each year of that service after attaining the age of 40; or

(ii) where his reckonable service amounts to 10 years but is less than 15 years, one sixtieth for each year of that service after attaining the age of 40 and one additional sixtieth; or

(iii) where his reckonable service amounts to 15 years but is less than 20 years, one sixtieth for each year of that service after attaining the age of 40 and 2 additional sixtieths; or

(iv) where his reckonable service amounts to 20 years or more, one sixtieth for each year of that service after attaining the age of 40 and 3 additional sixtieths;

but the sum so calculated shall not in any case exceed one sixth of the annual rate of the said emoluments;

(*b*) in the case of a person who has attained the age of 50 but has not attained the age of 60 at the date of the loss, one sixtieth of the annual rate of the said emoluments for each year of his reckonable service after attaining the age of 40, up to a maximum of 15 years; and

(*c*) in the case of a person who has attained the age of 60 at the date of the loss, one sixtieth of the annual rate of the said emoluments for each year of his reckonable service after attaining the age of 45.

(4) The amount of long-term compensation calculated in accordance with paragraphs (2) and (3), shall be reduced by the amount by which the aggregate of the annual rates of—

(*a*) the emoluments of any work or employment undertaken by him as a result of the loss of employment, and

(*b*) the long-term compensation which apart from this paragraph and any reduction under regulation 29(3) would be payable to him,

exceeds the annual rate of the emoluments of the employment which has been lost.

(5) Long-term compensation for loss of employment shall be payable to a person at intervals equivalent to those at which the emoluments of his employment were previously paid or at such other intervals as may be agreed between the person and the Secretary of State.

Long-term compensation for diminution of emoluments

13.—(1) Long-term compensation for diminution of emoluments in respect of any employment shall, subject to the provisions of these regulations, consist of an annual sum calculated in accordance with the provisions of paragraph (2).

(2) The said annual sum shall not exceed the sum which would be the annual sum under the provisions of regulation 12(1) to (4) calculated on the assumptions—

(*a*) that there was a loss of employment, and

(*b*) that emoluments after diminution were emoluments of any work or employment undertaken as a result of a loss of employment.

(3) Long-term compensation for diminution of emoluments shall be payable to a person at intervals equivalent to those at which the emoluments of his employment are or were previously paid or at such other intervals as may be agreed between the person and the Secretary of State.

Period during which long-term compensation is to be payable

14.—(1) Long-term compensation shall be payable with effect from the date of the claim or from any earlier date permitted by the succeeding provisions of this regulation.

(2) Where a claim for long-term compensation is duly made within 13 weeks of the commencement of these regulations or the occurrence of the loss or diminution which is the cause of the claim (whichever is the later), the award shall be made effective from the date on which the loss or diminution occurred.

(3) Where a claim for long-term compensation is made after the expiry of the period mentioned in paragraph (2), the Secretary of State may—

(*a*) in his discretion make the award effective from a date not earlier than 13 weeks prior to the date on which the claim was made, or

(*b*) if he is satisfied that the failure to make the claim within the period mentioned in paragraph (2) was due to ill-health or other circumstances beyond the claimant's control, make the award effective from a date not earlier than that on which the loss or diminution occurred.

(4) Long-term compensation shall be payable until the normal retiring age or death, whichever first occurs, of the person to whom it is payable, but shall not be payable to a person for any period in respect of which compensation under Part V of these regulations is payable to him.

PART V

RETIREMENT COMPENSATION AND PAYMENTS ON DEATH

Entitlement to retirement compensation and other payments

15.—(1) The Secretary of State shall, subject to the provisions of these regulations, pay retirement compensation to any person to whom this part of these regulations applies and shall make the other payments for which provision is made in regulations 22 to 26.

(2) Save as is provided in regulation 25, this part of these regulations applies to a pensionable officer who satisfies the conditions set out in regulation 10.

(3) Regulation 11 shall apply in relation to compensation under this part of these regulations as it applies in relation to compensation under Part IV of these regulations.

Additional factors governing payment of retirement compensation

16.—(1) Where retirement compensation is payable under any one of regulations 17, 18 and 19, compensation shall not be payable under any other of those regulations.

(2) If a person has attained the age of 40 at the date on which he lost his employment or suffered a diminution of his emoluments, the Secretary of State, in calculating the amount of the retirement compensation payable to that person, shall credit him with an additional period of service on the following basis, namely—

(*a*) 2 years, whether or not he has completed any years of service after attaining the age of 40,

(*b*) 2 years for each of the first 4 years of his reckonable service between the date when he attained the age of 40 and the date of the loss or diminution, and

(*c*) one year for each such year of that reckonable service after the fourth,

but the additional period so credited shall not exceed the shortest of the following periods, namely—

(i) a period beginning on the day immediately following the date of the loss or diminution and ending on the date on which he would attain normal retiring age; or

(ii) a period equivalent to his reckonable service; or

(iii) fifteen years;

and the retirement compensation shall not exceed any maximum pension and retiring allowance prescribed by the last relevant pension scheme.

(3) In calculating the amount of any retirement compensation payable to him, any period so added shall be aggregated with any period entailing reduction of the relevant pension or retiring allowance as a consequence of the provisions of section 30 of the National Insurance Act 1965**(a)**.

(4) The benefit in respect of the additional period described in paragraph (2) shall be calculated at the same rate as is applicable for the day immediately preceding the loss or diminution, except that where the last relevant pension scheme provides benefits at an enhanced rate in consequence of the nature of an officer's duties, the additional period of service shall be treated as if it were a period during which he was not engaged on such duties.

(5) When retirement compensation is awarded, or when an award is reviewed under regulation 31, the additional compensation payable in consequence of any period credited to a person under paragraph (2) may be reduced or withheld to the extent that the Secretary of State may think reasonable having regard to the pension scheme (if any) associated with any further employment obtained by that person.

(6) If the amount of any benefit to which a person might have become entitled under his last relevant pension scheme could have been supplemented at the discretion of the authority administering the pension scheme or of any other body, the Secretary of State may supplement, to an extent not exceeding that to which the person's accrued pension, accrued retiring allowance, accrued incapacity pension or accrued incapacity retiring allowance might have been supplemented, the corresponding component of any retirement compensation payable to him.

(7) If under his last relevant pension scheme a person would have been entitled to surrender a proportion of any pension which might have become payable to him in favour of his spouse or any dependant, then, if he so desires and informs the Secretary of State by notice in writing accordingly within one month after becoming entitled to retirement compensation under these regulations, he may surrender a proportion of so much of the said compensation as is payable by way of an annual sum on the like terms and conditions and in consideration of the like payments by the Secretary of State as if the said annual sum were a pension to which that person had become entitled under the said pension scheme.

(8) In calculating for the purposes of regulation 17 or 18 the amount of the annual sum which is equal to a person's accrued pension, no account shall be taken of any reduction falling to be made in that pension as a consequence of the provisions of any enactment relating to national insurance until the person reaches the age at which under his last relevant pension scheme the pension would have been so reduced.

(a) 1965 c. 51.

Retirement compensation for loss of emoluments payable to a pensionable officer on attainment of normal retiring age

17.—(1) Subject to the provisions of these regulations, when a person to whom this part of these regulations applies reaches normal retiring age, the retirement compensation payable to him for loss of emoluments shall be—

(*a*) an annual sum equal to the amount of his accrued pension, and

(*b*) a lump sum equal to the amount of his accrued retiring allowance (if any).

(2) No compensation shall be payable under this regulation if the person has continued to pay superannuation contributions as if he had suffered no loss of emoluments.

Retirement compensation payable to a pensionable officer on his becoming incapacitated or reaching minimum pensionable age

18.—(1) Where a person to whom this part of these regulations applies and who has suffered loss of employment before attaining what would have been his normal retiring age—

(*a*) becomes incapacitated in circumstances in which, if he had continued in the employment which he has lost, he would have become entitled to a pension under his last relevant pension scheme; or

(*b*) attains the age which, had he continued to serve in the employment which he has lost, would have been his minimum pensionable age;

he shall be entitled on the happening of either event to claim—

(i) in the case mentioned in sub-paragraph (*a*) above, an annual sum equal to the amount of his accrued incapacity pension and a lump sum equal to the amount of his accrued incapacity retiring allowance (if any), and

(ii) in the case mentioned in sub-paragraph (*b*) above, an annual sum equal to the amount of his accrued pension and a lump sum equal to the amount of his accured retiring allowance (if any),

subject however to the conditions specified in paragraph (4).

(2) The Secretary of State may require any person who makes a claim under paragraph (1)(*a*) to submit himself to a medical examination by a registered medical practitioner selected by the Secretary of State, and in that event the Secretary of State shall also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him, and the Secretary of State shall take that report into consideration together with the report of the medical practitioner selected by him.

(3) Compensation under this regulation shall be payable as from the date on which the Secretary of State received the claim in respect of it.

(4) The calculation of compensation under this regulation shall be subject to the following conditions—

(*a*) where the Secretary of State, by virtue of regulation 16, has credited the person with an additional period of service, no account shall be taken of any additional period beyond the period which he could have served, had he not lost his employment, before the date on which the claim was received by the Secretary of State;

(*b*) if, by reason of any provision of the relevant pension scheme for a minimum benefit, the amount of any such pension or retiring allowance is in excess of that attributable to the person's actual service, no account shall be taken of any such additional period of service except to the extent (if any) by which it exceeds the period represented by the difference between his actual service and the period by reference to which the minimum benefit has been calculated; and

(*c*) if the period by reference to which an accrued incapacity pension or accrued incapacity retiring allowance is to be calculated is less than any minimum number of years of qualifying service prescribed by the relevant pension scheme, the amount of the pension or retiring allowance shall, notwithstanding any minimum benefit prescribed by the pension scheme, not exceed the proportion of the minimum benefit which the period of pensionable service bears to the minimum number of years of qualifying service.

Retirement compensation for diminution of emoluments

19.—(1) A person to whom this part of these regulations applies and who has suffered a diminution of his pensionable emoluments shall be entitled to receive retirement compensation in accordance with the provisions of this regulation.

(2) The provisions of regulations 17 and 18 shall apply to any such person as if he had suffered loss of employment immediately before the diminution occurred; but the amount of retirement compensation payable shall be the amount which would have been payable in respect of loss of employment multiplied by a fraction of which—

(*a*) the numerator is the amount by which his pensionable emoluments have been diminished, and

(*b*) the denominator is the amount of his pensionable emoluments immediately before they were diminished;

and for the purposes of this calculation no account shall be taken of any reduction which might otherwise fall to be made in the accrued pension or accrued incapacity pension as a consequence of the provisions of section 30 of the National Insurance Act 1965.

(3) No compensation shall be payable under this regulation if the person has continued to pay superannuation contributions as if his emoluments had not been diminished.

Superannuation contributions

20.—(1) A person entitled to retirement compensation under regulation 17 or 18 shall pay an amount equal to any sum which was paid to him by way of return of superannuation contributions (including any interest) after ceasing to be employed—

(*a*) if the provisions of his last relevant pension scheme enable him to be credited with benefits attributable to that sum, to the scheme authority; and

(*b*) in any other case, to the Secretary of State.

(2) If the person does not pay as specified in paragraph (1), his retirement compensation shall be reduced by an annual amount the capital value of which is equal to the amount of the said superannuation contributions.

(3) For the purposes of this regulation the expression "superannuation contributions" shall include payments made by the person in respect of added years and any additional contributory payments made by him and any other payments made by him for the purpose of increasing the benefits to which he would have become entitled under his last relevant pension scheme.

Retirement compensation of a person who obtains further pensionable employment

21.—(1) Where a person to whom this part of these regulations applies, after suffering loss of employment or diminution of emoluments, enters employment in which he is subject to a pension scheme and thereafter becomes entitled to reckon for the purposes of that scheme any service or period of contribution which falls to be taken into account for the purpose of assesssing the amount of any retirement compensation payable to him, his entitlement to retirement compensation shall be reviewed, and, subject to the provisions of this regulation, no retirement compensation shall be payable in respect of that service or period unless the annual rate of the pensionable emoluments to which he was entitled immediately before the loss or diminution exceeds the annual rate on entry of the pensionable emoluments of the new employment, and any retirement compensation so payable to him shall, in so far as it is calculated by reference to remuneration, be calculated by reference to the difference between the said annual rates.

(2) The provisions of this regulation shall not operate to increase the amount of any retirement compensation payable in respect of diminution of emoluments beyond the amount which would have been payable if the person had attained normal retiring age immediately before he ceased to hold the employment in which he suffered the diminution of emoluments.

(3) No retirement compensation shall be payable in the circumstances mentioned in this regulation if the person has continued to pay superannuation contributions as if his emoluments had not been diminished.

Compensation payable to widow or dependants of a pensionable officer

22.—(1) Where a person to whom this part of these regulations applies dies, payments in accordance with this regulation and regulations 23 and 24 shall be made to or for the benefit of his widow, child or other dependant or to his personal representatives or, as the case may be, to trustees empowered by him to stand possessed of any benefit under his last relevant pension scheme.

(2) Where the widow, child or other dependant has become, or but for the person's loss of employment would have become, entitled to benefits under his last relevant pension scheme, the widow, child or other dependant, as the case may be, shall (subject to the provisions of this regulation) be entitled to compensation calculated from time to time in accordance with the method prescribed by the last relevant pension scheme for the calculation of such benefits modified as follows—

(*a*) where the person dies before becoming entitled to receive retirement compensation and the last relevant pension scheme provides that when he dies in service his widow, child or other dependant shall be entitled for any period to a benefit equal to his pensionable remuneration, the annual rate of compensation for that period shall be equal to the annual amount of his long-term compensation calculated in accordance with regulation 12 (1) to (3);

(*b*) where the person dies before becoming entitled to receive retirement compensation and the last relevant pension scheme provides that when he dies in service his widow, child or other dependant shall be entitled for any period to a benefit calculated by reference to the pension or incapacity pension which would have been payable to him had he retired immediately before his death, the compensation for that period shall be calculated by reference to the retirement compensation to which he would have been entitled under regulation 18 if that regulation had been applied to him immediately before his death;

(*c*) where a person dies after becoming entitled to receive retirement compensation and the last relevant pension scheme provides that when he dies after having retired his widow, child or other dependant shall be entitled for any period to a benefit equal to his pension, the annual rate of compensation for that period shall be equal to the annual amount of retirement compensation;

(*d*) where a person dies after he has become entitled to receive retirement compensation and the last relevant pension scheme provides that when he dies after having retired his widow, child or other dependant shall be entitled for any period to a benefit calculated by reference to his pension, the annual rate of compensation for that period shall be calculated by reference to the annual amount of retirement compensation that would have been payable to him but for any reduction or suspension under regulation 29(1);

(*e*) for the purposes of calculating compensation in accordance with the foregoing provisions, each year added to a person's reckonable service under regulation 16 (or which would have been added if retirement compensation under regulation 18 were assumed) shall be deemed to have been service rendered immediately before the loss of employment.

(3) Calculation of the amounts described in paragraph (2) shall be subject to the following adjustments—

(*a*) where any retirement compensation has been surrendered under regulation 16(7) or compounded under regulation 32, any sum payable under paragraph (2)(*b*) or (*d*) shall be calculated as if such surrender or compounding had not taken place;

(*b*) it shall be assumed the retirement compensation payable, or which would have been payable, had been such sum as would have been payable if the accrued pension or accrued incapacity pension had not been reduced as a consequence of the provisions of any enactment relating to national insurance; and

(*c*) if immediately before his death the person's long-term compensation was reduced under regulation 12(4) or 31(7) or his retirement compensation was reduced or suspended under regulation 29(1) by reason of employment in which he was subject to a pension scheme and the widow, child or other dependant is entitled under that scheme for any period to a benefit equal to his pensionable remuneration, regard shall be had to any such reduction or suspension for the purposes of paragraph (2)(*a*) and (*c*).

(4) Where the widow, child or other dependant has become, or but for the person's loss of employment would have become, entitled to a benefit other than a benefit mentioned in paragraph (2)(*a*) to (*d*), the widow, child or other dependant, as the case may be, shall be entitled (subject to the provisions of paragraph (5)) to an annual sum equal to the annual amount of the pension which would have been payable if he had died immediately before the date on which he

suffered the loss of employment, having then complied with any requirements of the last relevant pension scheme as to a minimum period of qualifying service or contribution and completed any additional contributory payments or payments in respect of added years which he was then in the course of making.

(5) The calculation referred to in paragraph (4) shall be made on the basis of the method prescribed by the last relevant pension scheme of the person in question for the calculation of benefits for a widow, child or other dependant and in so far as the age at which he died is relevant for the purposes of the said calculation, the calculation shall be made by reference to his age at the date of death.

(6) Any sums payable to or for the benefit of a widow, child or other dependant under this regulation shall cease to be payable when a corresponding pension under the last relevant pension scheme would have ceased to be payable; and where that scheme provides for payment of the pension to any person on behalf of a child or other dependant, any sum payable under this regulation to a child or other dependant shall be paid to that person on behalf of the child or dependant in the like manner and for the like period as is provided in the pension scheme.

(7) Except where the compensation has been reduced under regulation 20, compensation payable under this regulation and regulation 23 shall in the aggregate be reduced by an amount the capital value whereof is equal to the amount of any superannuation contributions as defined in regulation 20(3) returned to the person in respect of whom the compensation is payable and not paid to the scheme authority or the Secretary of State, the compensation under each of those regulations being reduced in proportion to the capital value of each amount.

(8) If the person in question suffered a diminution of emoluments, then—

(*a*) where his last relevant pension scheme provides benefits of a kind described in paragraph (2), the provisions of that paragraph shall apply with the substitution of references to diminution of emoluments for references to loss of employment, and the compensation payable to his widow, child or other dependant shall be calculated as if he had suffered loss of employment and as if the loss of emoluments occasioned thereby had been equivalent to the amount of the diminution; but no compensation shall be payable under this sub-paragraph if the person has continued to pay superannuation contributions as if his emoluments had not been diminished; and

(*b*) where his last relevant pension scheme provides benefits of a kind described in paragraph (4), the provisions of that paragraph and of regulation 29(3)(*a*) shall apply with the substitution of references to diminution of emoluments for the references to loss of employment and of a reference to employment in which he has suffered such a diminution for the reference to employment which he has lost.

Compensation where death gratuity would have been payable

23.—(1) If the widow, the personal representatives of a person to whom this part of these regulations applies or trustees empowered by that person to stand possessed of any benefit under his last relevant pension scheme might have become entitled to a death gratuity under that scheme, she or they, as the case may be, shall be entitled to receive a sum calculated in accordance with the provisions of regulation 22(7) and paragraph (2) of this regulation.

(2) The amount of the sum referred to in paragraph (1) shall be ascertained in accordance with the method of calculation prescribed by the last relevant pension scheme for the ascertainment of death gratuity as if the person had died immediately before losing his employment, subject to the following modifications—

(*a*) account shall be taken of any additional period of service credited to him under regulation 16(2)—

(i) in the case of a person who had been in receipt of retirement compensation under regulation 18, to the extent of the period between the loss of employment and the date of the claim made under that regulation; and

(ii) in any other case, to the extent of the period between the loss of employment and the person's death;

(*b*) if the aggregate of the person's pensionable service and the additional period under regulation 16(2) is less than any minimum period of qualifying service prescribed by the pension scheme for the receipt of a death gratuity, the said sum shall not exceed that proportion of the death gratuity calculated as aforesaid which is equal to the proportion which the aggregate service bears to the minimum period of qualifying service prescribed by the pension scheme; and

(*c*) there shall be deducted from the sum described above the amount of any retirement compensation paid to the person under regulation 17 or 18, or where any part of the compensation has been surrendered under regulation 16(7), the amount which would have been so paid but for such a surrender.

(3) In calculating a death gratuity under this regulation, any sum payable under regulation 22(2) or (8)(*a*) to or for the benefit of the widow, child or other dependant shall be deemed to be a pension payable to or for the benefit of the widow, child or dependant, as the case may be.

(4) This regulation shall apply in the case of a person who has suffered a diminution of emoluments with the substitution of references to diminution of emoluments for references to loss of employment, and the sum payable to the widow, personal representatives or trustees of such a person shall be calculated as if he had lost emoluments equivalent to the amount of the diminution; but no sum shall be payable under this paragraph if the person has continued to pay superannuation contributions as if his emoluments had not been diminished.

Balance payable to pensionable officer's widow or personal representatives

24.—(1) If a person to whom this part of these regulations applies dies before he has received in the aggregate by way of retirement compensation a sum equivalent to the aggregate of—

(*a*) any superannuation contributions as defined in regulation 20(3) paid by him which have not been returned to him, and

(*b*) any amount paid by him in accordance with regulation 20(1),

together with compound interest thereon calculated—

(i) at the rate of 2½ per cent per annum with yearly rests up to the date of his death as from 1st April following the year in which the amount was paid, or

(ii) in such other manner as may be provided by the last relevant pension scheme

(whichever calculation gives the greater amount) and no compensation or sum is payable under regulation 22(2) or (8)(*a*) or 23, there shall be paid to his personal representatives the difference between the aggregate amount received by way of retirement compensation as aforesaid and the said equivalent sum.

(2) If any annual sum which became payable to a widow under regulation 22(2) or (8)(*a*) has ceased to be payable on her remarriage or death, and any sum payable to a child or other dependant under either of those paragraphs has ceased to be payable, and if the aggregate amount of the payments which were made as aforesaid to her husband by way of retirement compensation and to the widow or personal representatives or trustees under regulation 23 is less than a sum equivalent to the amount which would have been payable to the personal representatives under that regulation if no sum had been payable under either of the said paragraphs (2) or (8)(*a*), there shall be paid to or among such persons as the Secretary of State may determine the difference between such aggregate amount and the said equivalent sum.

(3) For the purpose of this regulation a person who has surrendered any part of his retirement compensation under regulation 16(7), or whose retirement compensation has been reduced under regulation 29(3), shall be deemed to have received during any period the amount of compensation for that period which he would have received but for such a surrender or such a reduction.

Compensation payable to non-pensionable officer on reaching normal retiring age

25.—(1) Where a person who is not a pensionable officer is receiving long-term compensation for loss of employment and attains normal retiring age, the Secretary of State shall if satisfied that the person would, but for the loss, have continued in the employment he has lost for a substantial period beyond that age, continue to pay compensation to him for the remainder of his life at half its former rate.

(2) Where a person who is not a pensionable officer suffers loss of employment on or after attaining normal retiring age, the Secretary of State may, if satisfied that the person would in the normal course have continued in the employment he has lost for a further substantial period, pay compensation to him for the remainder of his life at half the rate to which he would have been entitled under regulation 12 had he not attained normal retiring age at the date on which he lost his employment.

Persons subject to policy schemes

26.—(1) Regulations 17, 18, 19 and 23 shall not apply to a person (in this regulation referred to as a "policy scheme participant") who had been participating in a scheme associated with his employment for providing superannuation benefits by means of contracts or policies of insurance, and who, after the loss of his employment or the diminution of his emoluments, continued to participate in that scheme, or became entitled to a benefit or prospective benefit thereunder other than a return of contributions.

(2) If a policy scheme participant has lost his employment, the Secretary of State may, if the relevant scheme so permits, make such payments to or in respect of him, whether by way of the payment of premiums or otherwise, as are actuarially equivalent to the amounts by which his retirement compensation might have been increased under regulation 16(2) or (6) had he been a person to whom regulation 17 or 18 applied.

(3) If a policy scheme participant has suffered a diminution of his emoluments, the Secretary of State may, if the relevant scheme so permits, make such payments to or in respect of him, whether by way of the payment of premiums or otherwise, as will secure to him the like benefits as if his emoluments had not been diminished.

(4) If a policy scheme participant becomes entitled to a benefit under such a scheme as is mentioned in paragraph (1) before reaching normal retiring age, the Secretary of State may reduce any long-term compensation payable to him by the amount of such benefit.

Intervals for payment of compensation under Part V

27. Any compensation awarded under this part of these regulations to or in respect of any person, shall be payable at intervals equivalent to those at which the corresponding benefit would have been payable under the person's last relevant pension scheme or at such other intervals as may be agreed between the person entitled to receive the compensation and the Secretary of State.

PART VI

ADJUSTMENT, REVIEW AND COMPOUNDING OF COMPENSATION

Adjustment of compensation where superannuation benefit is also payable

28.—(1) Where any period of service of which account was taken in calculating the amount of any compensation payable under Part IV or V of these regulations is taken into account for the purpose of calculating the amount of any superannuation benefit payable to or in respect of any person in accordance with a pension scheme associated with any employment undertaken subsequent to the loss of employment or diminution of emoluments which was the subject of the claim for compensation, the Secretary of State may in accordance with this regulation withhold or reduce the compensation payable.

(2) If the part of any superannuation benefit which is attributable to a period of service mentioned in paragraph (1) equals or exceeds the part of any compensation which is attributable to the same period, that part of the compensation may be withheld, or if the part of the superannuation benefit is less than the part of the compensation, the compensation may be reduced by an amount not exceeding that part of the superannuation benefit.

(3) In the case of a death gratuity payable in respect of any person, the sum payable under regulation 23 may be reduced by an amount not greater than the proportion of the death gratuity which the period of service mentioned in paragraph (1) bears to the total period of service of which account was taken in the calculation of the death gratuity.

(4) In addition to any reduction authorised by paragraph (2) or (3), if, in the circumstances mentioned in paragraph (1), compensation is attributable in part to any provision of the last relevant pension scheme for a minimum benefit, the compensation may be reduced by an amount not exceeding that part.

(5) Where any additional period of service has been credited to a person under regulation 16(2), and that period is equal to or less than the period spent in the subsequent employment mentioned in paragraph (1), the compensation may be reduced (in addition to any other reduction authorised by this regulation) by an

amount not exceeding that attributable to the additional period of service so credited or, if the period is greater than the period spent in the subsequent employment, by the proportion of that amount which the period spent in the subsequent employments bears to the additional period so credited.

(6) In making any reduction under paragraphs (2) to (5), the amount of pension or, as the case may be, lump sum to be taken into account relating to the subsequent employment shall be the amount of such pension or lump sum reduced by a fraction of that pension or lump sum, where—

(*a*) the numerator is equivalent to the aggregate of the amount of increases which would have been awarded under the provisions of the Pensions (Increase) Act 1971(**a**), during the period beginning with the day following loss of the employment for which compensation is payable and ending on the day the subsequent employment terminated, on an official pension (within the meaning of that Act) of £100 a year which commenced from the first mentioned day, and

(*b*) the denominator is equivalent to the aggregate of an official pension of £100 a year and the amount of the increases so determined.

(7) Where compensation has been calculated in accordance with regulation 21, the provisions of this regulation shall apply only in relation to the part (if any) of the superannuation benefit which is attributable to annual emoluments in excess of those to which the person was entitled on entering the new employment referred to in regulation 21.

(8) Where compensation is payable in respect of diminution of emoluments, the provisions of this regulation shall apply only in relation to the part (if any) of the superannuation benefit which is attributable to annual emoluments in excess of those to which the person was entitled immediately prior to the diminution.

Reduction of compensation in certain cases

29.—(1) If under a person's last relevant pension scheme any benefit for which the scheme provided would have been liable to reduction or suspension on his taking up other specified employment, any retirement compensation to which he is entitled shall, where such an employment is taken up, be reduced or suspended in the like manner and to the like extent; but in calculating the amount of the reduction there shall be aggregated with the emoluments of the employment taken up the amount of any superannuation benefit by way of annual amounts payable to the person under the last relevant pension scheme.

(2) There shall be deducted from the retirement compensation payable to any person any additional contributory payments remaining unpaid at the date when he suffered loss of employment that are not recovered in accordance with the provisions of the last relevant pension scheme; and any additional contributory payments not recovered at the date of a person's death shall be deducted from any compensation payable in respect of him under regulation 22, 23 or 24(2).

(3) Where compensation under these regulations is payable to or in respect of any person, and that person or his widow, child or other dependant or his personal representatives or trustees as are mentioned in regulation 23(1) is or are

(**a**) 1971 c. 56.

also entitled (whether immediately or on the person's attaining some greater age) to a superannuation benefit under his last relevant pension scheme in respect of any service of which account was taken in calculating the compensation—

(*a*) any instalment of that compensation which is payable in respect of any period shall be reduced by the amount of the instalment of such superannuation benefit which is payable in respect of the same period, and

(*b*) any of that compensation which is payable under Part IV or Part V of these regulations and which is payable as a lump sum, shall be reduced by the amount of any lump sum superannuation benefit.

(4) For the purposes of paragraph (3), no account shall be taken of any sum payable in consequence of the surrender by any person of part of his superannuation benefit under any provision in that behalf in the relevant pension scheme with a view to obtaining or increasing allowances for his widow, child or other dependant; and the person shall be deemed to have received during any period the amount of superannuation benefit which he would have received but for such a surrender.

(5) Where in any week a person entitled to long-term compensation is also entitled to a national insurance benefit, there shall be deducted from the long-term compensation payable in respect of that week a sum equal to the amount by which the aggregate of—

(*a*) the national insurance benefit that would be payable in respect of that week if calculated at the rate applicable at the date of loss or diminution, and

(*b*) the weekly rate at which the long-term compensation would be payable but for this regulation,

exceeds two thirds of the weekly rate of the emoluments of the employment which he has lost or in which the emoluments have been diminished.

(6) No deduction shall be made under paragraph (5) in so far as—

(*a*) an equivalent sum is deducted from the emoluments of his current employment, and

(*b*) that deduction from these emoluments has not occasioned an increase in his long-term compensation.

(7) In paragraph (5) the expression "weekly rate" means seven 365ths of the relevant annual rate, and the expression "national insurance benefit" means any unemployment, sickness, invalidity or injury benefit or retirement pension payable under any enactment whether passed before or after these regulations come into force relating to national insurance, other than a benefit claimable by him in respect of a dependant.

Notification of change of circumstances

30. Where—

(*a*) a pensionable officer after suffering loss of employment or diminution of emoluments enters any employment referred to in regulation 21 or becomes entitled to any superannuation benefit on ceasing to hold such an employment; or

(*b*) a person entitled to long-term compensation, whilst that compensation is liable to review in accordance with the provisions of regulation 31, enters any employment, or ceases to hold an employment, or receives any increase in his emoluments in an employment; or

(*c*) a person entitled to retirement compensation enters employment in which the compensation is subject to reduction or suspension under regulation 29 or ceases to hold such an employment; or

(*d*) a person entitled to long-term compensation starts to receive any benefit, any increase in benefit or any further benefit, under any enactment relating to national insurance;

he shall forthwith in writing inform the Secretary of State of that fact.

Review of awards of long-term or retirement compensation

31.—(1) In relation to a decision on a claim for long-term or retirement compensation for loss of employment, the Secretary of State shall—

(*a*) on the expiry of 6 months from the decision date, or

(*b*) on the occurrence of any material change in the circumstances of the case,

whichever shall first occur, and thereafter within a period of 2 years after the decision date, or within any longer period specified in the subsequent provisions of this regulation, and at intervals of not more than 6 months, review his decision or, where the claim has been the subject of an appeal, the decision of the tribunal, and (subject to paragraph (7)) these regulations shall apply in relation to such a review as they apply in relation to the initial determination of the claim; and on such a review, in the light of any material change in the circumstances of the case, compensation may be awarded, or compensation previously awarded may be increased, reduced or discontinued, subject to the limits set out in these regulations.

(2) The person to whom the decision relates may by notice in writing, require the Secretary of State to carry out a review in accordance with paragraph (1) at any time within the period of 2 years mentioned in that paragraph if the person considers that there has been a change in the circumstances of his case which is material for the purposes of these regulations.

(3) The Secretary of State shall carry out a review in accordance with paragraph (1), notwithstanding the expiration of the period of 2 years mentioned in that paragraph, if—

(*a*) the emoluments of employment or work undertaken as a result of the loss of employment had been taken into account in determining the amount of any compensation awarded,

(*b*) that employment or work has been lost or the emoluments thereof reduced, otherwise than by reason of misconduct or incapacity to perform the duties which the person might reasonably have been required to perform, and

(*c*) the Secretary of State is satisfied that the loss or reduction is causing the person hardship,

and where any decision is so reviewed, the decision shall be subject to further review in accordance with paragraph (1) as if the review carried out under this paragraph had been the initial determination of the claim.

(4) Paragraphs (1) and (2) shall apply in relation to any decision on a claim for long-term or retirement compensation for diminution of emoluments as they apply in relation to any decision mentioned in paragraph (1), but—

(*a*) where the person to whom the decision relates ceases to hold the employment in which his emoluments were diminished, a review shall be held within 3 months after that date, but no further review shall be held after the expiry of that period; and

(*b*) while that person continues to hold that employment, there shall be no limit to the period within which a review may take place.

(5) Notwithstanding anything contained in the foregoing provisions of this regulation, the Secretary of State shall review a decision, whether given by him or the tribunal, on a claim for long-term compensation after the expiration of any period within which a review is required to be made if at any time—

(*a*) the person to whom the decision relates is engaged in any employment (hereinafter referred to as "his current employment") the emoluments of which are payable out of public funds and which he has undertaken subsequent to the loss or diminution, and

(*b*) the aggregate of the emoluments of his current employment and the long-term compensation which apart from any reduction under regulation 29(3) would be payable to him exceeds the emoluments of the employment which he has lost or, as the case may be, in which the emoluments have been diminished.

(6) The Secretary of State shall further review any decision reviewed under paragraph (5) whenever the emoluments of the person's current employment are increased.

(7) On any review under this regulation, the amount of long-term compensation which, apart from this paragraph and any reduction under regulation 29(3), would be payable to the person may be reduced by an amount not exceeding the amount by which the aggregate of the compensation and the annual rate of emoluments of his current employment exceeds the annual rate of emoluments of the employment which he has lost or in which the emoluments have been diminished, as the case may be.

(8) The Secretary of State shall give to a person to whom a decision relates not less than 14 days' notice of any review of that decision to be carried out under this regulation unless the review is carried out at the person's request.

(9) In this regulation the expression "decision date" means the date on which any decision on a claim for long-term or retirement compensation is notified to a claimant under regulation 33.

(10) For the purposes of regulations 12(4), 21(1) and 28(7) and (8) and on any review under this regulation, no account shall be taken of any increase in the emoluments of any work or employment undertaken as a result of the loss of employment or diminution of emoluments, or of any superannuation benefit attributable to such an increase, if any such increase is effective from any date after the date of the loss or diminution and is attributable to a rise in the cost of living.

(11) Nothing in this regulation shall preclude the making of any adjustment of compensation required by regulation 28 or 29.

Compounding of awards

32.—(1) In the case where an annual sum which has been or might be awarded under these regulations does not exceed £35, the Secretary of State may, at his discretion, compound his liability in respect thereof by paying a lump sum

equivalent to the capital value of the annual sum and, if any lump sum payment has been awarded or might be awarded in addition to such sum under regulation 17, 18 or 19, the Secretary of State may likewise discharge his liability in respect thereof by an immediate payment.

(2) In any other case, if the person who has been awarded long-term or retirement compensation requests him to do so, the Secretary of State may, after having regard to the state of health of that person and the other circumstances of the case, compound up to one quarter of his liability to make payments under the award (other than payments to a widow, child or other dependant under regulation 22) by the payment of an equivalent amount as a lump sum or, where any compensation has been awarded as a lump sum, by increasing that compensation to such equivalent amount; and in calculating for this purpose the liability of the Secretary of State to make such payments, account shall be taken of the annual value of lump sum payments of compensation other than payments of compensation under Part III of these regulations.

(3) The making of a composition under paragraph (2) in relation to an award of long-term or retirement compensation shall not prevent the subsequent making of a composition under paragraph (1) in relation to that award but, subject as aforesaid, not more than one composition may be made in relation to any award.

PART VII

PROCEDURE AND MISCELLANEOUS

Notification of decision on claim

33.—(1) The Secretary of State shall consider every claim for compensation under these regulations and every request for a review of an award of long-term or retirement compensation in accordance with the relevant provisions of these regulations and shall notify the claimant in writing of his decision—

(*a*) in the case of a claim for resettlement compensation, not later than one month after the receipt of the claim;

(*b*) in the case of a claim for, or request for the review of an award of, compensation under Part IV or V of these regulations, not later than one month after the receipt of the claim or request; and

(*c*) in any other case, as soon as possible after the decision;

but the decision of the Secretary of State shall not be invalidated by reason of the fact that notice of the decision is given after the expiry of the period mentioned in this paragraph.

(2) Every notification of a decision by the Secretary of State (whether granting or refusing compensation or reviewing an award, or otherwise affecting any compensation under these regulations) shall contain a statement—

(*a*) giving reasons for the decision;

(*b*) showing how any compensation has been calculated and, in particular, if the amount is less than the maximum which could have been awarded under these regulations, showing the factors taken into account in awarding that amount; and

(*c*) directing the attention of the claimant to his right under regulation 41, if he is aggrieved by the decision, to institute proceedings before a tribunal and giving him the address to which any application instituting such proceedings should be sent.

Claimant to furnish information

34.—(1) Any person claiming or receiving compensation or whose award of compensation is being reviewed shall furnish all such information that the Secretary of State may at any time reasonably require; and he shall verify that information in such manner, including the production of documents in his possession or control, as may be reasonably so required.

(2) Such a person shall, on receipt of reasonable notice, present himself for interview at any place that the Secretary of State may reasonably require; and any person who attends for interview may, if he so desires be represented by his adviser.

Claim after death of claimant

35. The Secretary of State may, in any case where a person who has died could have been a claimant if he had survived, extend the period within which a claim under regulation 6 or 10 is to be made by his personal representatives.

Payments without proof of title

36. Where on the death of any person any sum not exceeding £500 is due to or in respect of that person under these regulations the Secretary of State may dispense with proof of the title of the personal representatives of that person and pay that sum to the person, or to or among any one or more of any persons, appearing to the Secretary of State on such evidence as he deems satisfactory to be entitled by law to a beneficial interest therein, or in the case of the illegitimacy of the deceased person or his children to or among such persons as the Secretary of State may think fit, and any person to whom such a payment is made, and not the Secretary of State, shall thereafter be liable to account for any amount so paid.

Calculation of service

37.—(1) For the purpose of determining the amount of any compensation payable in respect of the loss of an employment to which, or of any two or more employments to which in the aggregate, a person devoted substantially the whole of his time, any previous period of part-time employment shall be treated as though it were whole-time employment for a proportionately reduced period.

(2) For the purpose of making any calculation under these regulations in respect of a person's reckonable service, all periods of that service shall be aggregated by reference to completed years and completed days; and any provision in these regulations requiring compensation to be calculated by reference to a year of reckonable service shall (unless that provision specifically states that compensation is payable in respect of completed years) be construed as including completed days, each completed day over and above a completed year being expressed as one 365th of a year.

Emoluments of part-time employments

38. In ascertaining for the purposes of these reglations whether, and how far, the emoluments of alternative employment fall short of emoluments which have been lost where those emoluments were payable in respect of two or more part-time employments, the emoluments of the alternative employment or of the aggregate of two or more alternative employments shall be apportioned in the proportion which the emoluments of the part-time employments bore to each other.

Temporary variation of emoluments

39. In calculating for the purposes of these regulations the amount of any emoluments lost, or the amount by which any emoluments have been diminished and in determining the compensation of any person who has suffered such a loss or diminution—

(*a*) no account shall be taken of any temporary increase or decrease in the amount of the person's emoluments which is attributable to the passing or making of any provision mentioned in regulation 4 and otherwise than in the ordinary course of his employment; and

(*b*) in any case where a person held an office because the last holder thereof became entitled to benefits payable under the National Health Service Reorganisation (Retirement of Senior Officers) Regulations 1974**(a)**, as amended**(b)**, or entered employment to which article 7(2) of the National Health Service (Staff Transfer Schemes) Order 1974**(c)** as amended by the National Health Service (Staff Transfer Appeals and Schemes Order Amendment) Order 1974**(d)** applies, any increase in the amount of that person's emoluments which is attributable to—

(i) his holding that office in any acting or temporary capacity; or

(ii) his performance of, or responsibility for, the duties of that office,

shall be disregarded.

Compensation not assignable

40.—(1) Subject to the provisions of any enactment in that behalf, any compensation to which a person becomes entitled under these regulations shall be paid by the Secretary of State and shall be payable to, or in trust for, the person who is entitled to receive it, and shall not be assignable.

(2) Without prejudice to any other right of recovery, any compensation paid in error may be recovered by the Secretary of State by deduction from any compensation payable under these regulations.

Right of appeal from decision of the Secretary of State

41.—(1) Every person who is aggrieved by any decision of the Secretary of State with respect to a compensation question or by any failure on the part of the Secretary of State to notify him of any such decision within the appropriate time prescribed by these regulations, may within 13 weeks of the notification to him of the decision or the expiry of the prescribed time, as the case may be, institute proceedings for the determination of the question by a tribunal in accordance with the Industrial Tribunals (Labour Relations) Regulations 1974**(e)** and these regulations; and the tribunal shall determine the question accordingly.

(a) S.I. 1974/189 (1974 I, p. 677).
(b) S.I. 1974/801 (1974 II, p. 3071).
(c) S.I. 1974/35 (1974 I, p. 109).
(d) S.I. 1974/378 (1974 I, p. 1204).
(e) S.I. 1974/1386 (1974 II, p. 5330).

(2) For the purpose of any proceedings instituted in pursuance of this regulation a person or persons may be appointed to sit with the tribunal as assessor or assessors.

(3) The Secretary of State shall give effect to the decision of a tribunal subject to any modifications that may be required in consequence of any appeal from that decision on a point of law.

Revocation and transitional

42.—(1) The National Health Service (Compensation) Regulations 1971**(a)** are hereby revoked.

(2) Any person mentioned in regulation 3(1)(*b*) to (*d*) who, after the commencement of these regulations, suffers loss of employment or loss or diminution of emoluments which is attributable to the making or occurrence before the commencement of these regulations of any provision, event or order mentioned in regulation 4 of the National Health Service (Compensation) Regulations 1971 shall be entitled to have his case considered for the payment of compensation under these regulations as if such loss or diminution had been attributable to a provision or instrument mentioned in regulation 4 and as if "material date" had the same meaning as in those regulations.

Barbara Castle,
Secretary of State for Social Services.

23rd October 1974.

Consent of the Minister for the Civil Service given under his Official Seal on 24th October 1974.

(L.S.)

K. H. McNeill,
Authorised by the Minister for the Civil Service.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

1. These Regulations provide for the payment of compensation to or in respect of persons who suffer loss of employment or loss or diminution of emoluments in consequence of the provisions of the National Health Service Reorganisation Act 1973 or any instrument made thereunder. They are retrospective in regard to any loss or diminution occurring after 5th July 1973.

2. Part I of the Regulations contains definitions. Part II specifies the persons to whom the regulations apply and the grounds of entitlement to compensation.

3. The compensation payable is:

(*a*) resettlement compensation for loss of employment (Part III);

(*b*) long-term compensation for loss of employment or loss or diminution of emoluments (Part IV);

(a) S.I. 1971/52 (1971 I, p. 38).

(*c*) retirement compensation for loss of employment or loss or diminution of emoluments (Part V);

(*d*) compensation to the widow, child or other dependant or to the personal representatives of a claimant who was a pensionable officer (Part V).

4. Resettlement compensation is payable in a lump sum to officers with at least 2 years' service in relevant employment. The qualifying conditions and factors to be considered are set out in regulation 6, and the methods of calculation are set out in regulations 7 and 8.

5. Long-term and retirement compensation is payable to officers with at least five years' service in relevant employment. The qualifying conditions and factors to be considered are set out in regulations 10 and 11.

6. The method of calculating the amount of long-term compensation is laid down in regulations 12 (loss of emoluments) and 13 (diminution of emoluments). The compensation is payable from the date determined under regulation 14, but is not payable for any period in respect of which retirement compensation is payable. In the case of a non-pensionable officer, compensation not exceeding one half of the rate of long-term compensation may be paid beyond normal retiring age (regulation 25).

7. Retirement compensation payable to a pensionable officer is based upon his accrued pension rights (regulations 17 and 19) supplemented in the case of persons aged 40 or over at the date of the loss or diminution by the addition of notional years of service (regulation 16). Special provision is made for any persons whose pension arrangements are by way of policies of insurance (regulation 26). Retirement compensation is ordinarily payable from normal retiring age, but in certain circumstances is payable earlier (regulation 18).

8. Compensation is payable to the widow, child or other dependant or to the personal representatives or trustees of a claimant who dies where such persons would have benefited under the relevant pension scheme (regulations 22 to 24).

9. Part VI provides for long-term and retirement compensation to be reviewed and for awards to be varied in the light of changing circumstances (regulation 31). It also contains provisions for the adjustment, suspension and compounding of compensation in certain circumstances.

10. Part VII contains provisions relating to the procedure for notifying decisions. A right is given to a claimant who is aggrieved by a decision on a compensation question or the failure of the Secretary of State to notify his decision to refer the question for determination by a tribunal in accordance with the Industrial Tribunals (Labour Relations) Regulations 1974.

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