STATUTORY INSTRUMENTS

1971 No. 254 (S.41)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Compensation) (Scotland) Regulations 1971

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ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY

1. Citation and commencement.
2. Interpretation.

PART II

ENTITLEMENT TO COMPENSATION

3. Persons to whom the regulations apply.
4. Grounds of entitlement to compensation.
5. National service.

PART III

RESETTLEMENT COMPENSATION

6. Resettlement compensation for loss of employment.
7. Conditions for payment of resettlement compensation.
8. Amount of resettlement compensation.
9. Period for payment of resettlement compensation.
10. Additional provisions relating to resettlement compensation.
11. Claimant for resettlement compensation to furnish particulars of employment.

PART IV

LONG-TERM COMPENSATION

12. Long-term compensation for loss of employment or loss or diminution of emoluments.
13. Conditions for payment of long-term compensation.

14. Factors to be considered in determining payment of long-term compensation.
15. Amount of long-term compensation payable for loss of emoluments.
16. Long-term compensation for diminution of emoluments.
17. Date from which long-term compensation is to be payable.

PART V

RETIREMENT COMPENSATION AND PAYMENTS ON DEATH

18. Entitlement to retirement compensation and other payments.
19. Additional factors governing payment of retirement compensation.
20. Retirement compensation for loss of emoluments payable to pensionable officer on attainment of normal retiring age.
21. Retirement compensation payable to pensionable officer on his becoming incapacitated or reaching minimum pensionable age.
22. Option to take retirement compensation prematurely.
23. Retirement compensation for diminution of emoluments.
24. Superannuation contributions.
25. Retirement compensation of a person who obtains further pensionable employment.
26. Compensation payable to a widow or dependants of a pensionable officer.
27. Compensation where death gratuity would have been payable.
28. Balances payable to pensionable officer's widow or personal representatives.
29. Compensation payable to non-pensionable officer on reaching retiring age.
30. Persons subject to policy schemes.
31. Intervals for payment of compensation under Part V.

PART VI

ADJUSTMENT, REVIEW AND COMPOUNDING OF COMPENSATION

32. Adjustment of compensation where superannuation benefit is also payable.
33. Reduction of compensation in certain cases.
34. Notification of change of circumstances.
35. Review of awards of long-term or retirement compensation.
36. Compounding of awards.

PART VII

PROCEDURE AND MISCELLANEOUS

37. Procedure on making claims.
38. Claimants to furnish information.
39. Procedure on death of claimant.
40. Calculation of service.
41. Compensation not assignable.
42. Right of appeal from decision of the Secretary of State.

In exercise of the powers conferred on me by section 35 of the Health Services and Public Health Act 1968(a) and of all other powers enabling me in that behalf, I hereby make the following regulations:—

PART I

PRELIMINARY

Citation and commencement

1. These regulations may be cited as the National Health Service (Compensation) (Scotland) Regulations 1971, and shall come into operation on 1st March 1971.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"accrued pension", in relation to a pensionable officer who has suffered loss of employment, means the pension to which he would have become entitled under his last relevant pension 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;

"accrued retiring allowance", in relation to a pensionable officer who has suffered loss of employment, means any lump sum payment to which he would have become entitled under his last relevant pension 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;

"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;

"the Act of 1946" means the National Health Service Act 1946(b);

"the Act of 1947" means the National Health Service (Scotland) Act 1947(c);

"additional contributory payment" has the same meaning as in the National Health Service (Superannuation) (Scotland) Regulations 1961(d);

"compensation question" means a question—

(*a*) as to a person's entitlement to compensation for loss of office or 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;

(a) 1968 c. 46.
(b) 1946 c. 81.
(c) 1947 c. 27.
(d) S.I. 1961/1398 (1961 II, p. 2697).

"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 apartments, rations or other allowances in kind appertaining to his employment, but does not include payments for overtime, other than payments which are a usual incident of his employment, or any allowance 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 "net emoluments", in relation to any employment, means the annual rate of the emoluments of that employment less such part of those emoluments as the officer was or is liable to contribute under a pension scheme except any periodical sum payable in respect of additional contributory payments, and in relation to any employment which has been lost or the emoluments of which have been diminished, the expression means the annual rate of emoluments as aforesaid immediately before the loss or diminution as the case may be:

Provided that 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 shorter period as the Secretary of State may deem reasonable in the circumstances;

"enactment" means any Act or any instrument made under an Act;

"local authority" means—

(*a*) in Scotland, any county council, town council or district council and includes any joint committee or joint board of such authorities appointed under any enactment, order or scheme; and

(*b*) in England and Wales, the council of a county, county borough, metropolitan borough, London borough, county district, rural parish or borough included in a rural district, the Greater London Council, the Common Council of the City of London and the council of the Isles of Scilly, any two or more of those authorities acting jointly, any joint committee, combined authority or joint board and a police authority for a county, a borough or a combined police area;

"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 an event mentioned in paragraphs (*a*) and (*b*) of section 11(10) of the Act of 1947, the date of operation of the order or scheme related to that event; and

(*b*) in any other case, the date of operation of the order to which the loss or diminution is attributable:

Provided that if the loss or diminution occurred before either of the said dates the expression shall mean the actual date of the loss or diminution;

"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 a pension, other than a pension payable in consequence of his redundancy or his incapacity to discharge efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body or his retirement in the interests of the efficiency of the service;

"national service" means service which is relevant service within the meaning of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(a), and includes service immediately following such service as aforesaid, being service in any of Her Majesty's naval, military or air forces pursuant to a voluntary engagement entered into with the consent of the authority or person under whom an officer held his last relevant employment;

"normal retiring age" means the age of 65 years if the officer is a male, or 60 years if the officer is a female;

"officer" includes the holder of any place, situation or employment;

"payment in respect of added years", in relation to a pensionable officer, means any payment made under regulation 33 of the National Health Service (Superannuation) (Scotland) Regulations 1961;

"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;

"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 Act of Parliament, trust, contract or otherwise; and "last relevant pension scheme", in relation to a pensionable officer means the pension scheme to which he was last subject before suffering loss of employment or loss or diminution of emoluments;

"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 war service or national service undertaken on his ceasing to hold any such employment but does not include employment of which account has been taken, or is required to be taken, in calculating the amount of any superannuation benefit to which he has become entitled;

"relevant employment" means employment—

(*a*) under the Crown or in the service of a local authority or in the service of an employing authority within the meaning of the regulations for the time being in force under section 66(1) of the Act of 1947 or section 67(1) of the Act of 1946, or

(*b*) preceding any of the foregoing employments which was reckonable for the purpose of any pension scheme associated with the employment which has been lost, or in which a loss or diminution of emoluments has been suffered, or

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

but, except as provided in regulations 7(1)(*c*) and 13(1)(*c*), does not include service in the armed forces of the Crown;

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

(a) 1951 c. 65.

"retirement compensation" means compensation payable in accordance with the provisions of regulation 20, 21, 22 or 23;

"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), 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) and includes any period of service in the first world war in the armed forces of the Crown or in the forces of the Allied or Associated Powers if such service immediately followed a period of relevant employment and was undertaken either compulsorily or with the permission of the employer in that employment.

(2) Unless the context otherwise requires, references in these regulations to the provisions of any enactment shall be construed as references to those provisions as amended, re-enacted or modified by any subsequent enactment.

(3) 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.

(4) 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.

(5) The Interpretation Act 1889(g) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

PART II

ENTITLEMENT TO COMPENSATION

Persons to whom the regulations apply

3. These regulations shall apply to any person who—

(*a*) was employed immediately before the material date for the whole or for part only of his time as an officer of—

(i) a Regional Hospital Board, or

(ii) an Executive Council or a joint committee of Executive Councils constituted for the purposes of Part IV of the Act of 1947, or

(iii) a Local Medical Committee, Local Pharmaceutical Committee, Local Dental Committee or Local Optical Committee recognised by the Secretary of State under section 33 of that Act, or

(*b*) would have been so employed at that date but for any national service on which he was or had been engaged.

(a) 1964 c. 16.
(b) 1939 c. 94.
(c) 1939 c. 95.
(d) 1939 c. 96.
(e) 1939 c. 103.
(f) 1940 c. 26.
(g) 1889 c. 63.

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*) the occurrence on or after 9th September 1968 of any of the events mentioned in paragraphs (*a*) and (*b*) of section 11(10) of the Act of 1947, or

(*b*) the making on or after 9th September 1968 of an order under subsection (2), (3) or (4) of section 32 of the Act of 1947, or an order revoking an order made under any of those subsections,

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.

National Service

5.—(1) Where any person to whom these regulations apply would have been employed immediately before the material date as such an officer as is mentioned in regulation 3(*a*) but for any national service on which he was or had been engaged, then if before the expiry of 2 months after ceasing to be so engaged, or if prevented by sickness or other reasonable cause, as soon as practicable thereafter, he gives notice to the Secretary of State that he is available for employment, that person shall be entitled to have his case considered for the payment of compensation—

(*a*) if he is not given or offered re-employment in his former office or in any reasonably comparable office (whether in the same or in a different service), on the ground of loss of employment; or

(*b*) if he is so re-employed with diminished emoluments as compared with the emoluments which he would have enjoyed had he continued in his former employment, on the ground of diminution of emoluments.

(2) The loss of employment which is the cause of a claim for compensation under paragraph (1)(*a*) shall be treated as having occurred on the earlier of the 2 following dates, that is to say, the date of his being refused re-employment or a date one month after the date on which the person gave notice that he was available for employment; and the person shall be deemed to have been entitled to the emoluments which he would have enjoyed at such earlier date had he continued in his former employment.

PART III

RESETTLEMENT COMPENSATION

Resettlement compensation for loss of employment

6. 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 7.

Conditions for payment of resettlement compensation

7.—(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 such event or order as is 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 3 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; and for this purpose the expression "relevant employment" includes any period of national service immediately following such employment;

(*d*) he has made a claim for such compensation in accordance with the provisions of Part VII of these regulations 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 such longer period as 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 such duties as, immediately before the loss, he was performing or might reasonably have been required to perform; and

(*f*) he has not, subject to paragraph (3), been offered any reasonably comparable employment under any body constituted under the Act of 1947.

(2) 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 Scotland.

(3) No account shall be taken for the purposes of this regulation of an offer of employment where the Secretary of State is satisfied—

(*a*) that acceptance would have involved undue hardship to the person, or

(*b*) that he was prevented from accepting the offer by reason of ill-health or other circumstances beyond his control.

Amount of resettlement compensation

8.—(1) The amount of resettlement compensation which may be paid to a person shall, for each week for which such compensation is payable, be a sum ascertained by taking two-thirds of the weekly rate of the net emoluments which that person has lost and deducting therefrom, in addition to the items mentioned in regulation 33(3) and (4), such of the following items as may be applicable—

(*a*) unemployment, sickness or injury benefit under any Act relating to National Insurance claimable by him in respect of such week (excluding any amount claimable by him in respect of a dependant); and

(*b*) two-thirds of the net emoluments received by him in respect of such week from work or employment undertaken as a result of the loss of employment.

(2) For the purposes of this regulation the weekly rate of a person's net emoluments shall be deemed to be seven three hundred and sixty-fifths of those emoluments.

Period for payment of resettlement compensation

9. Subject to the provisions of these regulations, resettlement compensation shall be payable to a person only in respect of the period of 13 weeks next succeeding the week in which he lost the employment in respect of which his claim has been made or, in the case of a person who has attained the age of 45 years, the said 13 weeks and one additional week for every year of his age after attaining the age of 45 years and before the date of the loss of employment, subject to a maximum addition of 13 such weeks.

Additional provisions relating to resettlement compensation

10.—(1) Resettlement compensation 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.

(2) Resettlement compensation shall be terminated by the Secretary of State—

(*a*) if without reasonable cause the recipient fails to comply with any of the provisions of regulation 11, or

(*b*) if on being requested to do so, he fails to satisfy the Secretary of State that, so far as he is able, he is seeking suitable employment.

Claimant for resettlement compensation to furnish particulars of employment

11. Every person claiming or in receipt of resettlement compensation shall (after as well as before the compensation begins to be paid)—

(*a*) forthwith supply the Secretary of State in writing with particulars of any employment which the person obtains or of any change in his earnings from any such employment, and

(*b*) if the Secretary of State so requires, so long as the person is out of employment and is not receiving sickness or injury benefit, register with the Department of Employment.

PART IV

LONG-TERM COMPENSATION

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

12. 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 13.

Conditions for payment of long-term compensation

13.—(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 such event or order as is mentioned in regulation 4 not later than 10 years after the material date;

(*b*) he had not, save as is provided in regulation 29, at the date of the loss or diminution attained normal retiring age;

(*c*) he had been, for a period of not less than 8 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; and for this purpose the expression "relevant employment" includes any period of national service immediately following such employment;

(*d*) he has made a claim for such compensation in accordance with the provisions of Part VII of these regulations 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 such duties as, immediately before the loss, he was performing or might reasonably have been required to perform; and

(ii) he has not been offered any reasonably comparable employment under any body constituted under the Act of 1947.

(2) Paragraphs (2) and (3) of regulation 7 (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

14.—(1) For the purpose of determining whether long-term compensation is payable to any person and, if so, the amount of the compensation (subject to the limits set out in these regulations), the Secretary of State shall 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 as a result of 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 offered to him;

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

(2) In ascertaining for the purposes of paragraph (1)(*c*) whether a person has been offered suitable employment, paragraphs (2) and (3) of regulation 7 shall apply in like manner as they apply for the purpose of ascertaining whether employment is reasonably comparable with employment which has been lost.

Amount of long-term compensation payable for loss of emoluments

15.—(1) Long-term compensation for loss of emoluments shall, subject to the provisions of these regulations, be payable until the normal retiring age or death of a person to whom it is payable, whichever first occurs, and shall not exceed a

maximum annual sum calculated in accordance with the provisions of paragraphs (2) to (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 net emoluments which he has lost; and

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

Provided that the said maximum annual sum shall in no case exceed two-thirds of the net 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 years but has not attained the age of 50 years at the date of the loss, the following fraction of the net emoluments which he has lost—

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

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

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

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

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

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

(4) Where a person has become entitled (whether immediately or prospectively on attaining some greater age) to a superannuation benefit by way of annual amounts under his last relevant pension scheme, the maximum annual sum referred to in paragraph (1) shall be the maximum sum calculated under paragraphs (2) and (3) as if he had not become so entitled.

(5) Where long-term compensation is payable in respect of any period and resettlement compensation is also payable in respect of that period, the long-term compensation shall be limited to the amount (if any) by which it exceeds the resettlement compensation payable as aforesaid.

(6) Long-term compensation 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

16. Long-term compensation for diminution of emoluments in respect of any employment shall, subject to the provisions of these regulations, be awarded and paid in accordance with the following provisions:—

(*a*) the compensation shall consist of an annual sum which 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, and shall, subject to the provisions of these regulations, be payable until normal retiring age or death, whichever first occurs; and

(*b*) the said annual sum shall not exceed the maximum annual sum which could have been awarded under regulation 15 if the person had suffered loss of emoluments equivalent to the amount of the diminution:

Provided that no compensation shall be payable if the emoluments have been diminished by less than 2½ per cent.

Date from which long-term compensation is to be payable

17.—(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 occurrence of the loss or diminution which is the cause of the claim, the award shall be made retrospective to 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 award may, at the discretion of the Secretary of State, be made retrospective to a date not earlier than 13 weeks prior to the date on which the claim was made:

Provided that if the Secretary of State 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, the award may be made retrospective to a date not earlier than that on which the loss or diminution occurred.

PART V

RETIREMENT COMPENSATION AND PAYMENTS ON DEATH

Entitlement to retirement compensation and other payments

18.—(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 26 to 30.

(2) Save as is provided in regulation 29, this Part of these regulations applies to a pensionable officer who satisfies the conditions set out in regulation 13.

(3) Regulation 14 shall apply in relation to retirement compensation as it applies in relation to long-term compensation.

Additional factors governing payment of retirement compensation

19.—(1) Where retirement compensation is payable under any one of regulations 20, 21, 22 and 23, such compensation shall not be payable under any other of those regulations.

(2) If a person has attained the age of 40 years 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 additional years of service or an additional period of contribution on the following basis, namely—

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

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

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

(i) such number of years as, when added to his pensionable service, would amount to the maximum period of such service which would have been reckonable by him had he continued in his employment until attaining normal retiring age, or

(ii) the number of years of his reckonable service, or

(iii) 15 years;

and in calculating the amount of any retirement compensation payable to him any period so added shall be aggregated with any years of service or period of contribution entailing reduction of the relevant pension because of a retirement pension payable under section 30 of the National Insurance Act 1965(**a**).

(3) When retirement compensation is awarded, or when an award is reviewed under regulation 35, the additional compensation payable in consequence of any years of service or period of contribution credited to a person under paragraph (2) may be reduced or withheld to such extent as the Secretary of State may think reasonable having regard to the pension scheme (if any) associated with any further employment obtained by him.

(4) If under his last relevant pension scheme the amount of any benefit to which a person might have become entitled could have been increased or supplemented at the discretion of the authority administering the pension scheme or of any other body, the Secretary of State may increase, 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 increased or supplemented, the corresponding component of any retirement compensation payable to him.

(5) If under his last relevant pension scheme provision existed to enable a person to elect not to receive a lump sum payment on retirement or his widow to elect to receive a widow's pension at a higher rate, then—

(*a*) if on becoming entitled to such a payment in respect of the employment which he has lost or the employment in which his emoluments were diminished or any subsequent employment he, or on his death his widow, so elects under the pension scheme; or

(**a**) 1965 c. 51.

(*b*) if at the date on which compensation becomes payable to or in respect of the person under regulation 20, 21, 22, 23, 26 or 27 he, or as the case may be his widow, has not become entitled to so elect under the pension scheme, he or she may make the like election under this regulation in relation to his accrued retiring allowance or the annual sum payable to her under regulation 26 and, if he or she does so, any retirement compensation shall be calculated by reference to the benefits that would have been payable under his last relevant pension scheme if such an election had been made and for the purpose of regulation 26 the "prescribed proportion" shall be determined accordingly.

(6) 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 he had become entitled under the said pension scheme.

(7) In calculating for the purposes of regulation 20, 21 or 22 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 by reason of the provisions of any Act 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.

(8) In paragraph (2) the expression "reckonable service" includes any period of employment of which account has been taken or is required to be taken in calculating the amount of any superannuation benefit to which a person has become entitled under his last relevant pension scheme.

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

20.—(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) Where an annual sum is payable under this regulation in respect of any period and resettlement compensation is also payable in respect of that period, the said annual sum shall be limited to the amount (if any) by which it exceeds the resettlement compensation payable as aforesaid.

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

21.—(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, in lieu of any compensation to which he would otherwise be entitled under these regulations—

(i) in the case mentioned in head (*a*) of this paragraph, 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 head (*b*) of this paragraph, an annual sum equal to the amount of his accrued pension and a lump sum equal to the amount of his accrued retiring allowance (if any),

subject however to the conditions specified in paragraph (5).

(2) On receipt of a claim under paragraph (1) the Secretary of State shall consider whether the claimant is a person to whom that paragraph applies, and within 13 weeks after the date of the receipt of the claim—

(*a*) if satisfied that he is not such a person, shall notify him in writing accordingly; or

(*b*) if satisfied that he is such a person, shall assess the amount of compensation payable to him and notify him in writing accordingly,

and any such notification shall, for the purposes of these regulations, be deemed to be a notification by the Secretary of State of a decision on a claim for compensation.

(3) The Secretary of State may require any person who makes a claim under head (*a*) of paragraph (1) 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.

(4) If a person wishes to receive compensation under this regulation, he shall so inform the Secretary of State in writing within one month from the date of the receipt of a notification under paragraph (2) or, where the claim has been the subject of an appeal, from the date of the decision of the tribunal thereon; and the compensation shall be payable as from the date on which the Secretary of State received the claim.

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

(*a*) where the Secretary of State, by virtue of regulation 19, has credited the person with additional years of service or an additional period of contribution, no account shall be taken of any additional years or period beyond the number of years 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; and

(*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 years or period except to the extent (if any) by which they exceed the number of years 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 number of years 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 such pension or retiring allowance shall, notwithstanding any minimum benefit prescribed by the pension scheme, not exceed such proportion of such minimum benefit as the number of years of pensionable service bears to the minimum number of years of qualifying service.

Option to take retirement compensation prematurely

22.—(1) If a person to whom this Part of these regulations applies has suffered loss of employment after attaining the age of 50 years and so requests the Secretary of State by notice in writing, he shall be entitled, as from the date on which the Secretary of State receives such notice, to an annual sum equal to the amount of his accrued pension and a lump sum equal to the amount of his accrued retiring allowance (if any), and in that event he shall not be entitled to receive any further payment of long-term compensation after that date:

Provided that—

(i) in calculating the amount of the compensation payable to a person who has given such notice as aforesaid no account shall be taken of any additional years of service or period of contribution credited to him under regulation 19; and

(ii) where the person has claimed long-term compensation the said notice shall be given not later than 2 years after the decision on the claim has been notified or, where the decision has been reviewed under regulation 35(3), not later than 2 years after the review.

(2) Regulation 21(2) shall apply in relation to a notice given under paragraph (1) as it applies to a claim made under paragraph (1) of that regulation.

(3) Where an annual sum is payable under this regulation in respect of any period and resettlement compensation is also payable in respect of that period, the said annual sum shall be limited to the amount (if any) by which it exceeds the resettlement compensation payable as aforesaid.

Retirement compensation for diminution of emoluments

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

(2) The provisions of regulations 20 and 21 shall apply to any such person as if he had suffered loss of employment immediately before the diminution occurred; but the amount of the 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 emoluments have been diminished, and

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

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 because of a retirement pension payable under section 30 of the National Insurance Act 1965.

(3) No compensation shall be payable under this regulation—

(*a*) if the person's emoluments have been diminished by less than 2½ per cent.; or

(*b*) if the person had continued to pay superannuation contributions as if his emoluments had not been diminished.

Superannuation contributions

24.—(1) A person entitled to retirement compensation under regulation 20, 21 or 22 shall pay to the Secretary of State 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, and the Secretary of State may at the person's request repay that amount to him at any time before he becomes entitled as aforesaid, but if that amount is not paid to the Secretary of State, or is repaid by him to the person, the compensation shall be reduced by an annual amount the capital value of which is equal to the amount of the said superannuation contributions.

(2) For the purposes of this regulation the expression "superannuation contributions" shall include payments in respect of added years made by the person and any additional contributory payments made by him.

Retirement compensation of a person who obtains further pensionable employment

25.—(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 assessing the amount of any retirement compensation payable to him, his entitlement to retirement compensation shall be reviewed and no retirement compensation shall be payable in respect of such service or period unless the annual rate of the emoluments to which he was entitled immediately before such loss or diminution exceeds the annual rate on entry of the emoluments of the new employment by more than 2½ per cent. of such first mentioned emoluments, 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:

Provided that this paragraph 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.

(2) No retirement compensation shall be payable in the circumstances mentioned in paragraph (1) 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

26.—(1) Payments in accordance with this regulation and regulations 27 and 28 shall be made to or for the benefit of the widow, child or other dependant or to the personal representatives of a person to whom this Part of these regulations applies.

(2) If the widow, child or other dependant of that person might have become entitled to a pension under his last relevant pension scheme, the widow, child or other dependant, as the case may be, shall be entitled to receive an annual sum equal to the prescribed proportion of any retirement compensation by way of annual amounts payable to the person under regulation 20, 21, 22 or 23 immediately before his death or, if he dies before becoming entitled to receive compensation under any of those regulations, the prescribed proportion of the compensation by way of annual amounts which he would have received under regulation 21 or 23 had he become entitled thereto in the circumstances mentioned in regulation 21(1) (*a*) immediately before his death:

Provided that—

(i) where any retirement compensation has been surrendered under regulation 19(6) or compounded under regulation 36, any sum payable under this regulation shall be calculated as if such surrender or compounding had not taken place;

(ii) where the pension scheme provides for payment of the pension to any person on behalf of a child or other dependant, any annual sum payable as aforesaid 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;

(iii) in calculating the sum payable as aforesaid, it shall be assumed that the retirement compensation payable, or which would have been payable, to a person under regulation 20, 21, 22 or 23 had been such sum as would have been payable if the accrued pension or accrued incapacity pension had not been reduced by reason of the provisions of any Act relating to National Insurance.

(3) Any annual sum payable to or for the benefit of a widow, child or other dependant under this regulation shall cease to be payable in any circumstances in which a corresponding pension under the pension scheme referred to in paragraph (2) would have ceased to be payable.

(4) Except where the compensation has been reduced under regulation 24, compensation payable under this regulation and regulation 27 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 24(2) returned to the person in respect of whom the compensation is payable and either not paid to the Secretary of State or repaid by the Secretary of State to the person, the compensation under each such regulation being reduced in proportion to the capital value of each amount.

(5) In this regulation and regulation 19(5) "prescribed proportion" means the proportion which, under the last relevant pension scheme, the pension payable to the widow, child or other dependant of any person, as the case may be, bears to the person's pension.

Compensation where death gratuity would have been payable

27.—(1) If the widow or the personal representatives of a person to whom this Part of these regulations applies might have become entitled to a death gratuity under his last relevant pension scheme, she or they, as the case may be, shall be entitled to receive a sum calculated in accordance with the provisions of regulation 26(4) 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*) except where the person had been in receipt of retirement compensation under regulation 22, account shall be taken of any additional years of service or period of contribution credited to him under regulation 19(2)—

(i) in the case of a person who had been in receipt of retirement compensation under regulation 21, 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 number of years of the person's service or period of contribution is less than the minimum number of years of qualifying service or period prescribed by the pension scheme for the receipt of a death gratuity, the said sum shall not exceed such proportion of the death gratuity calculated as aforesaid as the number of years of the person's pensionable service or period of contribution bears to the minimum number of years of qualifying service or period prescribed by the pension scheme; and

(*c*) there shall be deducted from such sum the amount of any retirement compensation paid to the person under regulation 20, 21 or 22, or where any part of the compensation has been surrendered under regulation 19(6), the amount which would have been so paid but for any such surrender.

(3) In calculating such death gratuity for the purposes of these regulations, an annual sum payable to or for the benefit of a widow, child or other dependant under regulation 26 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) In the case of a person who has suffered diminution of emoluments, the sum payable under this regulation to his widow or personal representatives shall be the sum which would have been payable if he had suffered loss of employment, multiplied by the fraction specified in regulation 23(2); but no sum shall be payable under this paragraph in the circumstances described in regulation 23(3) (*a*) or (*b*).

Balances payable to pensionable officer's widow or personal representatives

28.—(1) If no annual sum is payable to the widow, child or other dependant of any person under regulation 26 and no sum is payable under regulation 27 and the person dies before he has received in the aggregate by way of retirement compensation a sum equivalent to the amount of any contributions paid by him

under regulation 24 and not repaid to him, together with compound interest thereon up to the date of his death calculated in accordance with the method prescribed by his last relevant pension scheme for the calculation of interest, 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 was payable to a widow under regulation 26 has ceased to be payable on her re-marriage or death, and any sum payable to a child or other dependant under that regulation 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 under regulation 27 is less than a sum equivalent to the amount which would have been payable to the personal representatives under that regulation if no annual sum had been payable under regulation 26, 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 purposes of this regulation a person who has surrendered any part of his retirement compensation under regulation 19(6) shall be deemed to have received during any period the amount of compensation for that period which he would have received but for any such surrender.

Compensation payable to non-pensionable officer on reaching retiring age

29.—(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 may, if satisfied that the person would, but for the loss, have continued in the employment which 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 which 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 15 had he not attained normal retiring age at the date on which he lost his employment.

Persons subject to policy schemes

30.—(1) Regulations 20, 21, 22, 23 and 27 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 19(2) or (4) had he been a person to whom regulation 20, 21 or 22 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

31. Any compensation awarded as an annual sum 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

32.—(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 subsequently 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 in respect of any period for which such superannuation benefit is being received.

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

(3) Where a death gratuity is payable in respect of any person, the sum payable under regulation 27 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 by way of annual amounts is attributable in part to any provision of the relevant pension scheme for a minimum benefit, the compensation may be reduced by an amount not exceeding that part.

(5) Where any additional years of service or period of contribution have been credited to a person under regulation 19(2), if the number of such years or such

period is equal to or less than the period spent in the subsequent employment mentioned in paragraph (1), the compensation by way of annual amounts may be reduced (in addition to any other reduction authorised by this regulation) by an amount not exceeding that attributable to the additional years or period so credited or, if the number of such years or such period is greater than the period spent in the subsequent employment, by such proportion of that amount as the period spent in the subsequent employment bears to the number of additional years or the period so credited.

(6) Where compensation has been calculated in accordance with regulation 25, the provisions of this regulation shall apply only in relation to such part (if any) of the superannuation benefit as is attributable to annual emoluments in excess of those to which the person was entitled on entering the new employment referred to in regulation 25.

(7) Where compensation is payable in respect of diminution of emoluments, the provisions of this regulation shall apply only in relation to such part (if any) of the superannuation benefit as 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

33.—(1) If under a person's last relevant pension scheme any benefit for which the scheme provided would have been subject to reduction or suspension on his taking up other specified employment, any retirement compensation to which he is entitled shall, where such employment is taken up, be reduced or suspended in the like manner and to the like extent:

Provided that 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 payable to the person by way of annual amounts which is attributable to any period of service of which account was taken in calculating the retirement compensation and to so much of the emoluments as were so taken into account.

(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; and any such payments not recovered at the date of his death shall be deducted from any compensation payable in respect of that person under regulation 26, 27 or 28(2).

(3) Where a person is entitled to compensation under these regulations and the circumstances are such that he is also 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 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,

the compensation which would, apart from this paragraph, become due to the person, whether by instalments or lump sum or both, shall in the aggregate be reduced by the amount of the payments referred to in this paragraph.

(**a**) 1965 c. 62.

(4) 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 or her personal representatives or any other person is or are also entitled (whether immediately or on the person's attaining some greater age) to a superannuation benefit under his last relevant pension scheme—

(*a*) any instalment of such compensation which is payable in respect of any period shall be reduced by so much of such superannuation benefit payable in respect of the same period as is attributable to any period of service of which account was taken in calculating the compensation and to so much of the emoluments as were so taken into account; and

(*b*) any such compensation which is payable as a lump sum shall be reduced by the amount of any lump sum superannuation benefit which is so attributable.

(5) For the purposes of paragraph (4) no account shall be taken of any sum payable in consequence of the surrender by any person of part of his superannuation benefit by way of annual amounts 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 any such surrender.

(6) Where in any week a person is entitled to long-term compensation and is also entitled to unemployment, sickness or injury benefit under any Act relating to National Insurance, other than a benefit claimable by him in respect of a dependant, there shall be deducted from the long-term compensation payable for that week a sum equal to the amount by which the aggregate of such National Insurance benefit claimable in respect of that week and 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 net emoluments of the employment which he has lost or in which the emoluments have been diminished:

Provided that this paragraph shall not apply in relation to any such sickness or injury benefit in so far as an equivalent sum is deducted from the emoluments of his current employment and such deduction from those emoluments has not occasioned an increase in his long-term compensation.

(7) In paragraph (6) the expression "weekly rate" means seven three hundred and sixty-fifths of the relevant annual rate.

Notification of change of circumstances

34. Where—

(*a*) a pensionable officer after suffering loss of employment or diminution of emoluments enters any employment referred to in regulation 25 or becomes entitled to any superannuation benefit on ceasing to hold such employment, or

(*b*) a person entitled to long-term compensation enters employment the remuneration whereof is payable out of public funds, or ceases to hold such employment, or receives any increase in his remuneration in such employment, or

(*c*) a person entitled to retirement compensation enters employment in which the compensation is subject to reduction or suspension under regulation 33, or ceases to hold such employment, or receives any increase in his remuneration in such 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 Act relating to National Insurance,

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

Review of awards of long-term or retirement compensation

35.—(1) The Secretary of State shall, at intervals of not more than six months within a period of two years after the date on which any decision on a claim for long-term or retirement compensation for loss of employment (other than compensation payable under regulation 22) is notified to a claimant under regulation 37, or within such longer period as is specified in the subsequent provisions of this regulation, review his decision or, where the claim has been the subject of an appeal, the decision of the tribunal, and these regulations shall apply in relation to any such review as they apply in relation to the initial determination of the claim; and on such 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 require the Secretary of State to carry out the review mentioned in paragraph (1) at any time within the period of two years mentioned in that paragraph if he 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 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, and

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

(*c*) the Secretary of State is satisfied that such 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 in respect of diminution of emoluments as they apply in relation to any decision mentioned in the said paragraph (1):

Provided that—

(i) 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 three months after that date, but no further review shall be held after the expiry of that period, and

(ii) 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 becomes engaged in employment (hereinafter referred to as his "current employment") the remuneration whereof is payable out of public funds and which he has undertaken subsequent to the loss of employment or diminution of emoluments, and

(*b*) the aggregate of the net emoluments of his current employment, any superannuation benefit payable to the person by way of annual amounts which is attributable to any period of service of which account was taken in calculating the long-term compensation and to so much of the emoluments as were so taken into account and the long-term compensation payable to him exceeds the net emoluments of the employment which he has lost or, as the case may be, in which the emoluments were diminished.

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

(7) If on any review under paragraph (5) or (6) the compensation is reduced, it shall not be reduced below the amount by which the net emoluments of the person's current employment, together with any superannuation benefit payable to him by way of annual amounts which is attributable to any period of service of which account was taken in calculating the long-term compensation and to so much of the emoluments as were so taken into account, falls short of the net emoluments of the employment which he has lost or, as the case may be, in which the emoluments were diminished.

(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) Nothing in this regulation shall preclude the making of any adjustment of compensation required by regulation 32 or 33.

Compounding of awards

36.—(1) In a case where an annual sum which has been or might be awarded under these regulations does not exceed £26, 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 or might be awarded in addition to such annual sum under regulation 20, 21, 22 or 23, 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 26) 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.

(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

Procedure on making claims

37.—(1) Every claim for compensation under these regulations and every request for a review of an award of long-term or retirement compensation shall be made in accordance with this regulation.

(2) Every such claim and request shall be made to the Secretary of State in a form approved by him.

(3) Resettlement compensation shall be claimed separately from any other form of compensation claimable under these regulations.

(4) The Secretary of State shall consider any such claim or request in accordance with the relevant provisions of these regulations and shall notify the person making the claim or request 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, and

(*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 13 weeks 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.

(5) 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 42, if he is aggrieved by the decision, to institute proceedings before a tribunal and giving him the address to which an application instituting such proceedings should be sent.

Claimants to furnish information

38.—(1) Any person claiming or receiving compensation or whose award of compensation is being reviewed shall furnish all such information as the Secretary of State may at any time reasonably require, and shall verify the same

in such manner, including the production of books or of original documents in his possession or control, as may be reasonably so required.

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

Procedure on death of claimant

39.—(1) In the event of the death of a claimant or of a person who, if he had survived, could have been a claimant, a claim for compensation under these regulations may be continued or made, as the case may be, by his personal representatives.

(2) Where any such claim is continued or made as aforesaid, the personal representatives shall, as respects any steps to be taken or things to be done by them in order to continue or make the claim, be deemed for the purposes of these regulations to be the person entitled to claim, but, save as aforesaid, the person in whose right they continue or make the claim shall be deemed for the purposes of these regulations to be such person, and the relevant provisions of these regulations shall be construed accordingly:

Provided that the Secretary of State may in any such case extend the period within which, under regulation 7 or 13, a claim is required to be made.

Calculation of service

40.—(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 such service shall be aggregated and, except where reference is made to completed years of service, if the aggregated service includes a fraction of a year, that fraction shall, if it exceeds 6 months, be treated as a year, and shall in any other case be disregarded.

Compensation not assignable

41. Subject to any statutory provision 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:

Provided that, 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

42.—(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 (Employment and Compensation) (Scotland) Regulations 1967(a) and these regulations; and the tribunal shall determine the question accordingly.

(2) For the purpose of any such proceedings 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.

Gordon Campbell,
One of Her Majesty's Principal
Secretaries of State.

St. Andrew's House,
Edinburgh.
8th February 1971.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

1. These Regulations are made under section 35 of the Health Services and Public Health Act 1968. They provide for the payment of compensation to or in respect of persons who suffer loss of employment or loss or diminution of emoluments which is attributable to a reorganisation in the National Health Service in Scotland brought about by:—

(*a*) the occurrence on or after 9th September 1968 of any event mentioned in paragraphs (*a*) and (*b*) of section 11(10) of the National Health Service (Scotland) Act 1947; or

(*b*) the making on or after 9th September 1968 of an order under subsection (2), (3) or (4) of section 32 of the Act of 1947, or an order revoking an order made under any of those subsections.

2. Part I of the Regulations contains definitions. Part II specifies the persons, both whole-time and part-time, to whom the Regulations apply and the grounds of entitlement to compensation.

3. The compensation is payable by the Secretary of State and is:—

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

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

(*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).

(a) S.I. 1967/362 (1967 I, p. 1220).

4. Resettlement compensation is payable for a period not exceeding 26 weeks to officers with at least 3 years' service in relevant employment. The qualifying conditions and factors to be considered are set out in Regulation 7 and the method of calculating the amount of compensation is contained in Regulation 8.

5. Long-term compensation is payable to officers with at least 8 years' service in relevant employment. The qualifying and other conditions are set out in Regulations 13 and 14. The method of calculating the maximum amount of long-term compensation is laid down in Regulations 15 (loss of employment) and 16 (diminution of emoluments). It is a proportion, not exceeding two-thirds, of the net emoluments lost or of the amount by which emoluments have been diminished, as the case may be. This compensation is payable from a date determined under Regulation 17 and can be payable up to normal retiring age.

6. Retirement compensation payable to a pensionable officer for loss of employment is based upon his accrued pension rights (Regulation 20) supplemented in the case of persons aged 40 or over at the date of loss by the addition of notional years of service (Regulation 19). Retirement compensation for diminution of emoluments is an appropriate proportion of that for loss of employment (Regulation 23). In the case of a non-pensionable officer compensation not exceeding one half of the rate of long-term compensation may be paid (Regulation 29) and special provision is made for any persons whose pension arrangements are by way of policies of insurance (Regulation 30). Retirement compensation is ordinarily payable from normal retiring age but in certain circumstances may be put into payment earlier (Regulations 21 and 22). The qualifying and other conditions for the payment of retirement compensation are the same as those for long-term compensation (Regulation 18).

7. Compensation is payable to the widow, child or other dependant or to the personal representatives of a claimant who dies, where such persons would have benefited under the relevant pension scheme (Regulations 26 to 28).

8. Part VI of the Regulations provides for long-term and retirement compensation to be reviewed and for awards to be varied in the light of changes in circumstances (Regulation 35). It also contains provisions for the adjustment, suspension and compounding of compensation in certain circumstances.

9. Part VII contains provisions relating to the procedure for making claims and notifying decisions, and confers upon a claimant who is aggrieved by a decision on a compensation question or the failure of the Secretary of State to notify his decision a right to refer the question for determination by a tribunal established under section 12 of the Industrial Training Act 1964.