STATUTORY INSTRUMENTS

1961 No. 267

NATIONAL INSURANCE

The National Insurance (Modification of Firemen's Pension Scheme) Regulations, 1961

Made - - - -	*15th February*, 1961
Laid before Parliament	*22nd February*, 1961
Coming into Operation	*1st March*, 1961

Whereas the Treasury has determined under subsection (4) of section sixty-nine of the National Insurance Act, 1946(a), that the Secretary of State is the appropriate Minister to make regulations under that subsection modifying the scheme for the provision of pensions and other benefits established under the Fire Services Act, 1947(b):

Now, therefore, in exercise of the powers conferred on me by the said subsection (4), as extended by section fifteen of the National Insurance Act, 1959(c), I hereby make the following Regulations:—

Awards to which Regulations apply

1. These Regulations shall apply to pensions, gratuities and other awards, other than special pensions, granted to or in respect of regular firemen on retirement or dismissal on or after the third day of April, 1961, under the Firemen's Pension Scheme.

Forfeiture and suspension

2.—(1) Except for such causes as may be prescribed by regulations made under paragraph (*c*) of subsection (1) of section eight of the National Insurance Act, 1959, the secured portion of a pension to which these Regulations apply shall not be capable of being forfeited or, save as respects any period before the pensioner attains the age of sixty-five years, suspended.

(2) Without prejudice to the generality of paragraph (1) of this Regulation, as respects a pension to which these Regulations apply—

(*a*) Article 6 of the Firemen's Pension Scheme, 1956, set out in the Appendix to the Firemen's Pension Scheme Order, 1956(d), and as amended by Article 1 of the Firemen's Pension Scheme (No. 2) Order, 1959(e), (which relates to the cancellation of ill-health pensions) shall apply only to the unsecured portion of the pension, but where, but for the provisions of this sub-paragraph, the whole pension would be cancelled, the secured portion of the pension shall not be payable in respect of any period before the pensioner attains the age of sixty-five years and payments on account of the secured portion shall be disregarded for the purposes of Articles 4, 10, 16 and 24 of the said Scheme (which relate respectively to entitlement to a fireman's special pension, a widow's ordinary pension and a child's ordinary allowance and to the payment of overlapping awards);

(*b*) Article 9 of the said Scheme of 1956 (which relates to reductions in pensions at age sixty-five) shall apply only to the unsecured portion of the pension;

(a) 9 & 10 Geo. 6. c. 67. (b) 10 & 11 Geo. 6. c. 41. (c) 7 & 8 Eliz. 2. c. 47.
(d) S.I. 1956/1022 (1956 I, p. 953). (e) S.I. 1959/1495 (1959 I, p. 1289).

(*c*) Article 27 of the said Scheme of 1956 (which relates to the temporary and permanent withdrawal by fire authorities of fire service pensions) shall apply only to the withdrawal, whether temporary or permanent, of the unsecured portion of the pension, and to the temporary withdrawal of the secured portion of the pension for a period before the pensioner attains the age of sixty-five years or during his imprisonment or detention in legal custody ; and a fire authority in determining under the said Article 27 whether withdrawal shall be permanent or temporary and affect the pension in whole or in part, may make different determinations in respect of the secured and unsecured portions of the pension ; and

(*d*) paragraph (1) of Article 42 of the said Scheme of 1956 (which relates to the application of a sum due on account of a pension in satisfaction of certain debts) shall apply only to a sum due on account of the unsecured portion of the pension or due in respect of a period before the pensioner attains the age of sixty-five years on account of the secured portion of the pension.

Certificate of zeal and fidelity and refusal of pension on account of misconduct

3.—(1) In relation to the grant of a pension to which these Regulations apply to a regular fireman in whose case the Firemen's Pension Scheme has effect subject to the modifications set out in subsection (3) of section twenty-seven of the Fire Services Act, 1947—

(*a*) any modification which has the effect that his entitlement to the pension is conditional upon the chief officer of the fire brigade concerned giving a certificate that he has served with zeal and fidelity shall cease to have effect, but if such a certificate is not given no payment shall be made in respect of the unsecured portion of the pension ;

(*b*) any modification which has the effect that the grant of the pension may be refused on account of misconduct or on account of any of the grounds on which the pension, if granted, would be liable to be forfeited and withdrawn shall cease to have effect, but if but for the provisions of this sub-paragraph the grant of the pension would be refused as aforesaid no payment shall be made in respect of the unsecured portion of the pension.

(2) Where by virtue of this Regulation no payment is made on account of the unsecured portion of a pension, the secured portion of the pension shall not be payable in respect of any period before the pensioner attains the age of sixty-five years and payments on account of the secured portion shall be disregarded for the purpose of determining whether any person is entitled to an award on the death of the pensioner.

Reduction of gratuity where payment in lieu of contributions falls to be made

4.—(1) Where a payment in lieu of contributions falls to be made by a fire authority in respect of a regular fireman and—

(*a*) a short service gratuity is payable by that authority on his retirement, or

(*b*) an ill-health gratuity is so payable and the fire authority determines that the provisions of this Regulation shall apply,

the gratuity in question shall be reduced by an amount equal to the amount which could be retained out of the gratuity by the fire authority

under subsection (4) of section ten of the National Insurance Act, 1959, if the gratuity were a refund of payments to which that subsection applies.

(2) Where a payment in lieu of contributions may fall to be made by a fire authority in respect of a regular fireman and such a gratuity as is mentioned in paragraph (1) of this Regulation is payable as mentioned therein, the fire authority may reduce the amount of the gratuity in question by the amount by which it would be reduced under the said paragraph (1) if the payment in lieu of contributions in fact fell to be made, so however that, if the said payment does not fall to be made within the period of seventy-eight weeks from the date when the person concerned ceases to be a regular fireman or within such shorter period as the fire authority may determine, then any reduction in the amount of the gratuity under this paragraph shall cease to have effect and the difference between the full and the reduced amounts thereof shall become payable.

(3) Without prejudice to the generality of paragraphs (1) and (2) of this Regulation, the provisions of paragraph (7) of Article 41 of the Firemen's Pension Scheme, 1956, and of Part III of the First Schedule thereto (which provisions relate to the amount and payment of gratuities) shall have effect subject to the provisions of the said paragraphs (1) and (2).

Delay in payment of award by way of return of contributions

5.—(1) Without prejudice to the provisions of any such regulations as are mentioned in subsection (5) of section ten of the National Insurance Act, 1959, and for the time being in force, where an award to which these Regulations apply, by way of repayment of his aggregate contributions, is payable by a fire authority to a regular fireman, the fire authority shall be under no obligation to make payment before the expiration of one year from the date of his retirement or until he requests payment, whichever event first occurs.

(2) Without prejudice to the generality of paragraph (1) of this Regulation, paragraph (1) of Article 37 of the Firemen's Pension Scheme, 1956 (which relates to an award by way of repayment of aggregate contributions), shall have effect subject to the provisions of paragraph (1) of this Regulation.

Abatement of pension in relation to participating service otherwise than as a regular fireman

6.—(1) Where a person in receipt of a pension to which these Regulations apply has been in service or employment otherwise than as a regular fireman—

(*a*) in respect of which he was subject to superannuation arrangements;

(*b*) by virtue of which he is entitled to reckon pensionable service for the purposes of the pension, and

(*c*) the period of which includes a participating period of relevant employment,

then, for the purpose of abating the pension in relation to that participating period of relevant employment, any provision of the said arrangements in operation when he left the said service or employment the effect of which is that pensions payable thereunder are to be reduced in connection with the operation of the National Insurance Act, 1959, shall apply, subject to the necessary adaptations and modifications, as though the provision were contained in these Regulations and as if—

(i) the pension were payable under the said arrangements, and

(ii) any other period of service or employment by virtue of which he is entitled to reckon pensionable service for the purposes of the pension

were a period of non-participating employment at the end of which no payment in lieu of contributions falls to be made.

(2) A fire authority, in determining any question arising under paragraph (1) of this Regulation and relating to a particular service or employment, shall be entitled to treat as conclusive any relevant certificate issued, with the agreement of the person concerned, by his employer in that service or employment.

(3) Where for the purposes of the superannuation arrangements applicable to such service or employment as is mentioned in paragraph (1) of this Regulation the person concerned was entitled to reckon service by virtue of some previous service or employment, that previous service or employment shall be treated for the purposes of this Regulation as if it were part of the service or employment first mentioned in this paragraph.

(4) Without prejudice to the generality of paragraphs (1), (2) and (3) of this Regulation, the provisions of Parts I and II of the First Schedule to the Firemen's Pension Scheme, 1956 (which relates to the calculation of pensions), shall have effect subject to the provisions of the said paragraphs, but the abatement of a pension in accordance with this Regulation shall be without prejudice to the reduction of the pension in accordance with Part V of the said Schedule.

Abatement of pension in relation to participating service as a regular fireman

7.—(1) Where a person in receipt of a pension to which these Regulations apply is entitled to reckon as pensionable service for the purposes of the pension a period of employment as a regular fireman which is a participating period of relevant employment, then in relation to that period the unsecured portion of the pension shall be reduced in accordance with the provisions of paragraph (2) of this Regulation.

(2) Where the unsecured portion of a pension is reduced in accordance with the provisions of this paragraph, the weekly rate of that portion of the pension shall be reduced in respect of any period after the pensioner has attained the age of sixty-five years by the weekly rate of the graduated retirement benefit which would be payable to the pensioner, on the assumption that he retired from regular employment on attaining that age, in return for a payment in lieu of contributions in respect of the whole of the period referred to in paragraph (1) of this Regulation.

(3) Without prejudice to the generality of paragraphs (1) and (2) of this Regulation, the provisions of Parts I and II of the First Schedule to the Firemen's Pension Scheme, 1956 (which relates to the calculation of pensions), shall have effect subject to the provisions of the said paragraphs, but the abatement of a pension in accordance with this Regulation shall be without prejudice to the reduction of the pension in accordance with Part V of the said Schedule.

Abatement of pension where secured portion of ill-health pension is also payable

8.—(1) Where a person in receipt of the secured portion of an ill-health pension the unsecured portion of which has been cancelled is also in receipt of some other pension to which these Regulations apply, and is entitled to reckon for the purposes of that other pension the period of pensionable service which was reckonable for the purposes of the ill-health pension, then the weekly rate of the unsecured portion of that other pension shall be reduced by the weekly rate of the secured portion of the ill-health pension.

(2) Without prejudice to the generality of paragraph (1) of this Regulation, the provisions of Parts I and II of the First Schedule to the Firemen's Pension Scheme, 1956 (which relates to the calculation of pensions), shall have effect subject to the provisions of the said paragraph.

Short service pension in lieu of award by way of return of contributions

9.—(1) Where on retiring at or over the age of sixty-five years a regular fireman—

(*a*) is entitled to reckon at least ten years' pensionable service, and

(*b*) would, but for the provisions of this Regulation, be entitled under the Firemen's Pension Scheme to an award to which these Regulations apply by way of repayment of his aggregate contributions, being an award payable where a regular fireman retires without a pension or gratuity,

then in lieu of the said award he shall be entitled to the short service pension to which he would be entitled if he were required to retire on account of age.

(2) Without prejudice to the generality of paragraph (1) of this Regulation, Article 2 of the Firemen's Pension Scheme, 1956 (which relates to short service awards), shall have effect subject to the provisions of the said paragraph (1).

Interpretation

10.—(1) In these Regulations the following expressions shall have the meanings respectively which they have for the purposes of the Firemen's Pension Scheme:—

" aggregate contributions " ;
" fire authority " ;
" ill-health gratuity " ;
" ill-health pension " ;
" pensionable service " ;
" regular fireman " ;
" relevant service in the armed forces " ;
" short service gratuity " ;
" short service pension " ;
" special pension " ;

so however that, a reference to a regular fireman shall be construed as including a reference to a person in whose case the Firemen's Pension Scheme applies as if he were a regular fireman and a reference to a fire authority shall be construed as including a reference to the Secretary of State.

(2) In these Regulations the following expressions shall have the meanings respectively which they have for the purposes of the National Insurance Act, 1959:—

" employed contributor's employment " ;
" graduated retirement benefit " ;
" non-participating employment " ;
" payment in lieu of contributions ".

(3) In these Regulations any reference to the Firemen's Pension Scheme is a reference to the scheme for the time being in force under section twenty-six of the Fire Services Act, 1947.

(4) In these Regulations any reference to a participating period of relevant employment is a reference to a period of employed contributor's

employment after the fifth day of April, 1961, and before the age of sixty-five years other than—

(*a*) relevant service in the armed forces, and

(*b*) non-participating employment at the end of which no payment in lieu of contributions falls to be made ;

and for the purposes of this paragraph a period of employed contributor's employment or of non-participating employment shall be treated as continuing during periods of holiday, temporary incapacity for work and similar temporary interruptions.

(5) In these Regulations any reference to the secured portion of a pension is a reference to the portion of the pension which equals the graduated retirement benefit which would be payable to the pensioner, on the assumption that he retired from regular employment on attaining the age of sixty-five years, in return for a payment in lieu of contributions in respect of the whole of any period of non-participating employment by virtue of which he is entitled to reckon pensionable service for the purposes of the pension, being a period of non-participating employment at the end of which no payment in lieu of contributions in fact fell to be made ; and any reference to the unsecured portion of a pension shall be construed accordingly.

For the purposes of this paragraph a period of non-participating employment shall be treated as continuing during periods of holiday, temporary incapacity for work and similar temporary interruptions.

(6) In these Regulations any reference to any enactment is a reference to that enactment as amended by or under any subsequent enactment.

(7) The Interpretation Act, 1889(a), shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Citation and commencement

11. These Regulations may be cited as the National Insurance (Modification of Firemen's Pension Scheme) Regulations, 1961, and shall come into operation on the first day of March, 1961.

R. A. Butler,
One of Her Majesty's Principal Secretaries of State.

Home Office,
Whitehall.
15th February, 1961.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These Regulations modify the Firemen's Pension Scheme in operation under the Fire Services Act, 1947, in connection with the operation of the provisions of the National Insurance Act, 1959 ; by virtue of Regulation 1 the present Regulations apply to awards, other than special pensions, granted under the Scheme on a person ceasing to be a regular fireman on or after 3rd April, 1961.

(a) 52 & 53 Vict. c. 63.

By virtue of section 7 (2) of the Act of 1959 an employment may not be contracted out of the graduated National Insurance scheme unless persons in that employment qualify for equivalent pension benefits. The conditions to be satisfied if a retirement pension under an occupational pensions scheme is to be treated as an equivalent pension benefit are set out in section 8 (1); the pension, or part thereof, must (subject to retirement) start not later than insured pensionable age (paragraph (*a*)), must be payable for life unless terminated or suspended for prescribed causes (paragraphs (*b*) and (*c*)) and must be payable at not less than a specified rate (paragraph (*d*)). Regulations 2 and 3 secure that these conditions shall be satisfied in relation to a fire service pension; Regulation 2 (1) provides that a part of such a pension (being a part payable at not less than the specified rate and referred to, in the Regulations, as the "secured portion") shall not, except for a cause prescribed under section 8 (1) (*c*), be forfeited or, save as respects a period before insured pensionable age, suspended (the expression "secured portion" is defined in Regulation 10 (5)); Regulation 2 (2) makes consequential amendments to the Firemen's Pension Scheme, 1956, and Regulation 3 contains provisions applicable to certain classes of firemen in whose cases the Scheme has effect subject to the modifications set out in section 27 (3) of the Act of 1947.

Regulation 4 provides for the reduction of fire service gratuities where a payment in lieu of contributions under the Act of 1959 is also payable.

Regulation 5 provides for a delay in the payment of an award by way of return of contributions where the person concerned does not request payment.

Regulations 6 and 7 provide that where account is taken of a period of service or employment for the purposes both of a fire service pension and of graduated retirement benefit under the National Insurance scheme the fire service pension shall be abated.

Regulation 8 provides that where account is taken of a period of service or employment for the purposes both of an ill-health pension, being a pension of which the secured portion is payable by virtue of Regulation 2 (2) (*a*), and of some other fire service pension, the latter shall be abated by the secured portion of the former.

Regulation 9 provides that a regular fireman, aged sixty-five years or over, who is entitled to a fire service award by way of repayment of contributions shall in lieu be entitled to a short service pension.