1961 No. 138

NATIONAL INSURANCE

The National Insurance (Non-participation—Continuity of Employment) Regulations, 1961

Made - - - -	*24th January*, 1961
Laid before Parliament	*27th January*, 1961
Coming into Operation	*30th January*, 1961

The Minister of Pensions and National Insurance, in exercise of powers conferred by section 52 of the National Insurance Act, 1946(a), and sections 7 and 13 of the National Insurance Act, 1959(b), and of all other powers enabling him in that behalf, after considering the report of the National Insurance Advisory Committee on the preliminary draft submitted to them, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations, which may be cited as the National Insurance (Non-participation—Continuity of Employment) Regulations, 1961, shall come into operation on the 30th January, 1961.

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

"the Act" means the National Insurance Act, 1946;

"the Act of 1959" means the National Insurance Act, 1959;

"the Minister" means the Minister of Pensions and National Insurance;

"the Registrar" means an officer appointed by the Minister for the purposes of Part II of the Act of 1959, and includes a deputy Registrar so appointed;

"certificate" means a certificate issued in accordance with the provisions of the National Insurance (Non-participation—Certificates) Regulations, 1959(c), that any employment is to be treated for the purposes of the Act of 1959, either generally or in relation to any description of persons specified in the certificate, as a non-participating employment;

"election" means an election made by an employer with a view to the issue or variation of a certificate;

and other expressions have the same meanings as in the Act.

(3) References in these regulations to any enactment or regulations shall include references to such enactment or regulations as amended by any subsequent enactment, order or regulations.

(4) The Interpretation Act, 1889(d), applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Conditions for disregard of change in employment

2.—(1) Where on the transfer of the whole or part of any business from one employer to another (which whole or part so transferred is hereafter

(a) 9 & 10 Geo. 6. c. 67.
(b) 7 & 8 Eliz. 2. c. 47.
(c) S.I. 1959/1860 (1959 II, p. 1867).
(d) 52 & 53 Vict. c. 63.

in this regulation called "the transferred business") a person, who immediately before the transfer is in any employment in the transferred business which is a non-participating employment, continues to be employed in the transferred business after the transfer in such circumstances that—

(*a*) were the certificate issued to and election made by the former employer relating to the person's employment treated respectively as issued to and made by the new employer, his employment would continue to be a non-participating employment; and

(*b*) the person's service with the new employer continues to be service qualifying him for retirement benefits under the recognised superannuation scheme relating to his employment in the transferred business before the transfer;

then, for the purposes of Part II of the Act of 1959, the change in his employment shall be disregarded and the employment under the new employer shall be treated as a continuation of that under the former employer, and the said certificate issued to and election made by the former employer shall be treated respectively as issued to and made by the new employer in relation to any person employed by him in the transferred business to whom they would apply were they so treated.

(2) Where under the provisions of paragraph (1) of this regulation a change in a person's employment is to be disregarded and the employment under the new employer treated as a continuation of that under the former employer, the new employer shall, within one month after the date of the change, give notice to the Registrar, and shall furnish such particulars of the employment and of the superannuation scheme relating thereto as the Registrar may reasonably require for the purposes of the said paragraph (1); and the Registrar may endorse the certificate issued to and election made by the former employer, to show that they are to be treated respectively as issued to and made by the new employer in relation to any employment in the transferred business to which they apply by virtue of the said paragraph (1).

(3) For the purposes of this regulation—

(*a*) the expression "transfer" means a transfer of any kind, by operation of law or otherwise;

(*b*) a transfer from one employer to another shall be deemed to have occurred on a transfer from an employer to himself jointly with one or more other employers, or from two or more joint employers to any one or more of themselves (and whether or not jointly with one or more other persons); and

(*c*) in any case where a receiver or manager of a company is appointed by order of the Court in accordance with the provisions of the Companies Act, 1948(a), the business of that company shall be deemed to have been transferred from the company to him in so far as relates to persons employed by him in that business.

Form of notice and penalty

3.—(1) Notice required to be given to the Registrar by regulation 2 of these regulations shall be given on a form approved by him for the purpose, or in such manner (being in writing) as he may accept as sufficient in the circumstances of the case.

(a) 11 & 12 Geo. 6. c. 38.

(2) If any person fails without reasonable cause to give notice in accordance with the requirement of regulation 2, he shall for such offence be liable on summary conviction to a penalty not exceeding £10, or where the offence consists of continuing any such failure after conviction thereof, £10 together with a further £10 for each day on which it is so continued.

Dated this twenty-fourth day of January, 1961.

John Boyd-Carpenter,
Minister of Pensions and National Insurance.

EXPLANATORY NOTE

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

These Regulations prescribe the conditions for treating a non-participating employment as continuing notwithstanding a change of employer and for treating a certificate of non-participation issued to and an election made by the former employer as issued to and made by the new employer.

The report of the National Insurance Advisory Committee on the preliminary draft of these Regulations (described on its publication as the preliminary draft of the National Insurance (Non-participation—Continuity of Employment) Regulations, 1960), dated the 5th January, 1961, is contained in the House of Commons Paper No. 45 (Session 1960-61) published by Her Majesty's Stationery Office.