EXPLANATORY NOTE

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

These Regulations contain conditions for treating occupational pension benefits as equivalent to State graduated benefits under Part II of the National Insurance Act, 1959, and for the recognition of pension schemes or arrangements for the purposes of that Act.

The preliminary draft of these Regulations was submitted to the National Insurance Advisory Committee in accordance with section 77 of the National Insurance Act, 1946, and their report thereon, dated the 27th October, 1959, is contained in the House of Commons Paper No. 19 (Session 1959–60) published by Her Majesty's Stationery Office.

1959 No. 1860

The National Insurance (Non-participation—Certificates) Regulations, 1959

Made - - - -	*4th November,* 1959
Laid before Parliament	*12th November,* 1959
Coming into Operation	*13th November,* 1959

The Minister of Pensions and National Insurance, in exercise of powers conferred by sections 43 and 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, hereby makes the following regulations:—

PART I

GENERAL

Citation, interpretation and commencement

1.—(1) These regulations, which may be cited as the National Insurance (Non-participation—Certificates) Regulations, 1959, shall come into operation on the 13th November, 1959.

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

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

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

"the Adjudicator" means the adjudicator appointed in accordance with sub-section (3) of section 13 of the National Insurance Act, 1959, for the purposes of Part II thereof;

"certificate" means a certificate that any employment is to be treated for the purposes of the said 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.

(a) 9 & 10 Geo. 6. c. 67. (b) 7 & 8 Eliz. 2. c. 47.

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

Appointment of the Registrar

2.—(1) The Minister shall appoint an officer for the purposes of Part II of the said Act of 1959 (therein and in these regulations referred to as "the Registrar") and such other officers as may be necessary to act as deputy Registrars; and any reference to the Registrar in these regulations shall include reference to a deputy Registrar.

(2) Any person so appointed shall hold and vacate office in accordance with the terms of his letter of appointment.

PART II

NOTICES AND ELECTIONS

Notices by employers of election or revocation of election

3.—(1) For the purpose of informing persons employed by him who are included in any superannuation scheme affected thereby, of his intention to make or revoke an election, an employer shall at least one month before such election is made or revoked take such steps as are reasonable, by:—

(*a*) notifying them individually in writing; or

(*b*) posting up written notice in some conspicuous place or places at their place of work or employment so that it may be conveniently read by them; or

(*c*) making such other provision for giving notice to them as may be appropriate in the circumstances of the case.

(2) An employer shall give at least one month's notice in writing of his intention to make or revoke an election, delivered or sent by registered post to the trustees of any trust and to any persons with whom there is any contract of assurance or annuity contract under which benefits are liable to be paid in connection with any superannuation scheme or schemes relating to the employment in respect of which the election is to be made or revoked, and to the committee of management (if any) of any such scheme.

(3) Any notice given under this regulation shall:—

(*a*) specify the superannuation scheme or schemes concerned and the employments and, if the election or revocation is not intended to be general in relation to any employment, the description of persons to be affected by the issue, variation, cancellation or surrender of any certificate; and

(*b*) contain the date of expiry of the notice and particulars of the Registrar's power to defer the issue or variation of a certificate under paragraph (5) of regulation 14 of these regulations.

Form of election and revocation of election and particulars to be given to the Registrar

4.—(1) Every election made by an employer with a view to the issue of a certificate shall be made in writing to the Registrar and shall include the following particulars—

(*a*) the name and address of the employer;

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

(*b*) if different from the particulars supplied under sub-paragraph (*a*) of this paragraph, the name under which and the address of the principal place at which any employment in respect of which the election is made, is carried on, unless dispensed with by the Registrar;

(*c*) a description of the employments to which the certificate is intended to relate and, if the certificate is not to be general in relation to any employment, a description of the persons in that employment to be included in the certificate or excluded therefrom;

(*d*) if not already supplied, a copy of the rules of any superannuation scheme and a copy of any trust deed, contract of assurance or annuity contract securing the equivalent pension benefits for which persons in the employments in respect of which the election is made, qualify;

(*e*) the names and addresses of trustees of any trust under which such benefits are liable to be paid.

(2) Every election made by an employer with a view to the variation of an existing certificate shall be made in writing to the Registrar and shall include particulars of the certificate and the nature of the variation.

(3) Every revocation of an election made by an employer with a view to the cancellation or surrender of a certificate shall be made in writing to the Registrar and shall include particulars of the certificate.

(4) Every employer making or revoking an election shall supply such further information, reports and accounts as to any superannuation scheme or other relevant matters as may reasonably be required by the Registrar for the purpose of the issue, variation, cancellation or surrender of a certificate.

Amendment of election

5. An employer may amend his election at any time before the issue of a certificate:

Provided that the Registrar may require the employer to give notice of the amendment in such manner and to such persons as the Registrar may consider necessary in the circumstances of any particular case.

Questions to be determined by the Registrar

6. The receipt of any election, revocation of an election or amended election made by an employer in accordance with the provisions of this Part of these regulations shall be treated by the Registrar as the submission to him of any question arising thereon as to whether any employment in respect of which the election or revocation is made, is to be treated as a non-participating employment, or as to the description of persons in relation to whom or the period for which it is to be so treated; and the Registrar shall, as soon as may be practicable, proceed to dispose of such question in accordance with the provisions of Part IV of these regulations but without prejudice to the power to require further information under regulation 4.

PART III

REFERENCE OF QUESTIONS BY THE MINISTER

Questions to be referred

7. Where, in relation to a person's contributions under the Act, it appears to the Minister that a question arises whether an employment, being an employed contributor's employment, is, under any certificate, to be treated as a non-participating employment in relation to any person or as to the period for which it it is to be so treated, he shall refer it to the Registrar

for determination and, subject to the provisions of regulation 10 of these regulations, the Registrar shall, as soon as may be practicable, dispose of the question in accordance with Part IV thereof.

Notice of questions referred by the Minister

8. Where any question is referred to him in accordance with the provisions of the foregoing regulation, the Registrar shall forthwith before the question is determined notify the person to whom the question relates, the employer of that person during any period in question and any other persons appearing to him to be interested.

Information and documents to be supplied

9. For the purpose of determining any question referred to him under this Part of these regulations (hereinafter referred to as "a Part III question") the Registrar may require any person to give such information or to produce such documents as the Registrar may reasonably consider to be necessary.

Procedure on an inquiry

10.—(1) The Registrar may, if he thinks fit, before proceeding to dispose of a Part III question, appoint a person to hold an inquiry into any question of fact or any matter arising in connection therewith and to report to him thereon, and any person so appointed may require persons to attend at any such inquiry to give evidence or to produce documents reasonably required for the purpose of the inquiry and may take evidence on oath and for that purpose administer oaths.

(2) Reasonable notice of the date and place of the holding of such inquiry shall be given to the Minister and to any persons to whom notice was given under regulation 8 of these regulations.

(3) Any person to whom notice of an inquiry has been given shall be entitled to be heard at the inquiry and to be represented thereat by any other person whether legally qualified or not and, subject to the provisions of this part of these regulations, the procedure at the hearing shall be such as the person appointed to hold the inquiry shall determine.

PART IV

DETERMINATION OF QUESTIONS BY THE REGISTRAR

Decisions of the Registrar

11.—(1) The Registrar shall dispose of any question submitted to him in accordance with the provisions of these regulations, by determining the question himself or by referring it to the Adjudicator.

(2) The decision of the Registrar on any question determined by him shall be in writing and shall be sent as soon as may be practicable to the Minister and to the employer or, in the case of a Part III question, to the Minister and to any person to whom notice of the reference was given under regulation 8 of these regulations; and the employer (unless the decision is in accordance with his election or revocation of an election) or any such person, as the case may be, shall at the same time be informed of the reasons for the decision and of his right of appeal to the Adjudicator.

(3) A decision of the Registrar on any question relating to an election or the revocation of an election shall not have effect until the time has expired for lodging an appeal to the Adjudicator against the decision or, if an appeal is pending, until the Adjudicator has determined the question, unless the employer agrees.

Review of decisions by the Registrar

12.—(1) Any decision on a Part III question may be reviewed at any time by the Registrar if—

(*a*) he is satisfied that the decision was given in ignorance of or was based on a mistake as to some material fact; or

(*b*) new facts are brought to his notice;

or it may be referred by him to the Adjudicator for review.

(2) Any decision given on a review under this regulation, and any refusal to review a decision under this regulation, shall be subject to appeal in like manner as any original decision, and the provisions of this Part of these regulations shall, subject to the necessary modifications, apply in relation to the review of a decision as they apply to the original determination of a question.

Appeal from decisions of the Registrar

13. An appeal shall lie to the Adjudicator from a decision of the Registrar at the instance of the employer or, in the case of a Part III question, at the instance of any person to whom notice was given under regulation 8 of these regulations.

PART V

CERTIFICATES

Issue, variation, cancellation and surrender of certificates

14.—(1) Subject to the provisions of this regulation, on a decision that any employment should be treated, either generally or in relation to any description of persons, as a non-participating employment, becoming effective, the Registrar shall issue to the employer concerned a certificate to that effect.

(2) The certificate shall specify the employments which are to be treated, generally or in relation to any description of persons specified in the certificate, as non-participating employments and the date from which the certificate is to have effect in relation to each such employment; and the certificate shall be sent to the employer and shall be retained by him so long as it remains effective.

(3) Any such certificate may be cancelled or varied by the Registrar where he has reason to suppose that any employment to which it relates ought not to be treated as a non-participating employment in accordance with the certificate:

Provided that—

(*a*) no such cancellation or variation shall have effect, except with the employer's consent, unless the Registrar has served written notice on the employer requiring him to show cause to the satisfaction of the Registrar why the certificate ought not to be so varied or cancelled, and he has not done so within one month of service of the notice, or such further period as the Registrar may allow;

(*b*) any question arising in relation to the cancellation or variation of a certificate under this paragraph shall be disposed of in accordance with Part IV of these regulations as if it had arisen on an election or revocation of an election made by the employer.

(4) The Registrar shall not issue, vary, cancel or accept the surrender of any certificate in accordance with an election or the revocation of an election made by an employer unless he is satisfied that the steps taken by the employer to comply with the provisions of regulation 3 of these regulations are reasonable in the circumstances of the case.

(5) The Registrar, if he thinks fit, may defer the issue or variation of a certificate to enable the election to be further considered in the light of any representations made by persons to whom notice of the election is required by regulation 3 of these regulations to be given or by organisations representing any such persons.

(6) A certificate or the variation, cancellation or surrender of a certificate shall have effect from the date specified by the Registrar after consultation with the employer, being the first day of any contribution week not earlier than the contribution week following that in which it is issued or made, and in any case, not earlier than the week appointed for the purposes of paragraph (*a*) of subsection (1) of section 1 of the National Insurance Act, 1959:

Provided that consultation with the employer shall not be required where the certificate is cancelled or varied under paragraph (3) of this regulation.

(7) On receipt of a notice to show cause why a certificate should not be cancelled or varied, served on him by the Registrar under paragraph (3) of this regulation, or on the issue, variation, cancellation or surrender of any certificate becoming effective, the employer shall forthwith give notice containing particulars of any superannuation scheme or schemes concerned and the employments and, where appropriate, description of persons affected thereby to the persons to whom and in the manner in which notice of an intention to elect or revoke an election is required to be given under the provisions of regulation 3 of these regulations.

(8) Where, by reason of variation, cancellation or surrender, a certificate has ceased to have effect, the employer, if he has not already done so, shall at the request of the Registrar return the certificate to him; and, in the case of variation, a fresh certificate shall be issued to the employer in accordance with the terms of the variation.

(9) Any certificate or notice required by this regulation to be sent to or served on an employer shall be treated as duly sent or served if sent to him by registered post at his usual or last-known address or at the address of the principal place at which any employment to which the certificate or notice relates is last known to have been carried on.

Further information and change of circumstances

15.—(1) An employer to whom a certificate has been issued shall, in such manner and at such times as the Registrar may determine, furnish to the Registrar such reports, accounts and other documents relating to any superannuation scheme in respect of the employment to which the certificate relates and such information affecting or which may affect the validity of the certificate as the Registrar may reasonably require and, in particular, shall notify the Registrar of any such change of circumstances affecting the scheme as may have been required by him to be notified, as soon as practicable after its occurrence, and shall give to the Registrar one month's notice in writing of any change proposed in the rules relating to the scheme or in the administration of any trust under which benefits are liable to be paid.

(2) If any employer to whom a certificate has been issued fails without reasonable cause to notify the Registrar of any change of circumstances or to give notice of any change proposed in any rules, in accordance with the requirements of the foregoing paragraph, 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 Fourth day of November, 1959.

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 provide in Part I for the appointment of a Registrar and deputy Registrars for the purpose of the issue to employers of certificates specifying employments which are to be treated as non-participating employments for the purposes of Part II of the National Insurance Act, 1959, and the variation, cancellation and surrender of such certificates and for the purpose of determining questions arising thereon as to whether any employment is to be treated as a non-participating employment. Part II of the Regulations prescribes the manner in which elections and revocations of elections are to be made by employers seeking the issue, cancellation or variation of a certificate. Part III provides for questions as to whether or for what period an employment is, under any certificate, to be treated as non-participating in relation to any person, to be referred to the Registrar by the Minister and empowers the Registrar to appoint a person to hold an inquiry before determining such a question. Part IV prescribes the manner in which questions are to be determined by the Registrar and provides for appeals from his decisions to lie to the Adjudicator to whom the Registrar may also refer a question instead of determining it himself. This Part also provides for review by the Registrar of decisions on questions referred to him by the Minister under Part III. The procedure for the issue, variation and cancellation of certificates by the Registrar is prescribed in Part V which also includes matters connected therewith.

The preliminary draft of these Regulations was submitted to the National Insurance Advisory Committee in accordance with section 77 of the National Insurance Act, 1946, and their report thereon, dated the 27th October, 1959, is contained in the House of Commons Paper No. 20 (Session 1959-60) published by Her Majesty's Stationery Office.