



National Insurance Act 1965

1965 CHAPTER 51

PART III

NON-PARTICIPATING EMPLOYMENTS.

Determination of nature of employment.

56 Non-participating employments.

- (1) Subject to the provisions of this Act, an employed contributor's employment shall, in relation to any person employed in it who is over the age of eighteen and under pensionable age, be a non-participating employment for any period during which—
 - (a) his service in it, subject to paragraph 12 of Schedule 11 to this Act, is service qualifying him under a recognised superannuation scheme for retirement benefits by way of pension which are on the whole as favourable as the right to benefit to be derived from graduated contributions (in this Act referred to as "equivalent pension benefits"); and
 - (b) there is in force a certificate issued under this section to the employer that the employment is to be treated as a non-participating employment;and an employment which is a non-participating employment in relation to a person employed in it immediately before he attains pensionable age shall, if the conditions of this Part of this Act other than paragraph (a) of this subsection are satisfied, continue to be a non-participating employment in relation to him so long as he continues to be employed in it and has not retired from regular employment.
- (2) Where a person is in the same contribution week employed both in a non-participating employment and in another employed contributor's employment, then unless provision to the contrary is made by regulations, any contribution payable by or in respect of him for that week under section 3 of this Act shall be payable at the rate appropriate to a non-participating employment.
- (3) Subject to paragraph 13 of Schedule 11 to this Act, where a person is in any income tax year employed both in a non-participating employment and in another employed contributor's employment, then any question as to the amount (if any) by which the

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graduated contributions paid by him in respect of remuneration paid in that year exceed the amount prescribed under section 4(4) of this Act shall be determined as if (in addition to those contributions) on the first day of any contribution week in which he was employed in a non-participating employment he had paid a graduated contribution in respect of a weekly payment of remuneration of eighteen pounds made on that day:

Provided that if he is treated under section 58 of this Act as having on any such day paid a graduated contribution or part of one, this subsection shall treat him as paying on that day only such contribution (if any) as is necessary in order to make up the amount he is treated as having paid to that of such a graduated contribution as aforesaid.

- (4) For the purpose of determining liability to graduated contributions, an employment shall be deemed to be a non-participating employment in relation to a person previously (but no longer) employed in it if—
- (a) it was a non-participating employment in relation to him when he was last employed in it; or
 - (b) he ceased to be employed in it on or before attaining the age of eighteen, and on attaining that age was employed in a non-participating employment under the same employer in place of it.
- (5) Regulations shall provide for the issue to employers of certificates specifying the employments which are to be treated either generally or in relation to any description of persons specified in the certificate as non-participating employments, and for the cancellation, variation or surrender of any certificate or issue of an amended certificate on any change of circumstances affecting the treatment of an employment as a non-participating employment, and (subject to the exclusion by subsection (1) of this section of persons under the age of eighteen or over pensionable age) any such certificate for the time being in force shall be conclusive that the employments included in it are non-participating employments:

Provided that—

- (a) except in such circumstances as may be prescribed, no such certificate or cancellation, surrender or variation of such a certificate shall have effect from a date earlier than the beginning of the contribution week following that in which it is issued or made ; and
- (b) subject to the provisions of this Act, an employment otherwise satisfying the conditions for inclusion in such a certificate shall be so included if and so long as the employer so elects, and not otherwise.

57 Equivalent pension benefits, etc.

- (1) For the purposes of this Part of this Act, but subject to section 63(2) thereof and paragraph 14 of Schedule 11 thereto, equivalent pension benefits, in relation to any period of service in an employment, comprise, and comprise only, retirement benefits by way of pension as respects which the following conditions are satisfied, that is to say—
- (a) the benefits consist of or include a pension which (subject to any condition as to retirement) commences not later than pensionable age, and there is no condition postponing beyond pensionable age the age at which retirement on pension is allowed; and
 - (b) there is no provision for the surrender, commutation or assignment of the pension or, if there is, some part of the pension is excluded from the operation of it; and

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- (c) the pension or the said part of it is payable for life, and is not capable of being terminated or suspended except for such causes, if any, as may be prescribed; and
 - (d) apart from any period before pensionable age, the pension or the said part of it is of an amount not less, when expressed as an annual rate, than, in the case of a man, three pounds nine shillings and sevenpence a year, and, in the case of a woman, two pounds eighteen shillings a year, for each year of the period of service.
- (2) Where service in an employment contingently qualifies a person employed in it for retirement benefits by way of pension, then, in determining whether the employment can be treated as a non-participating employment in relation to the persons from time to time so employed or any of them, a person's service shall be treated as qualifying him for such pension benefits, as, in the existing circumstances, can reasonably be expected to accrue to him from a period of service of appropriate length, on the assumption that he remains in an employment qualifying him for those benefits until pensionable age (or as near to that age as the terms of the employment allow) but no longer.
- (3) In determining whether an employment can be treated as a non-participating employment in a case where a limit on the maximum amount of the benefits payable or any description of them operates to prevent service beyond a given length from qualifying a person for further benefits, the qualification arising from any period of service shall be determined on the assumption that the total service does not exceed that length.
- (4) Any scheme or arrangement having for its object or one of its objects to make provision in respect of persons serving in particular employments for providing them with retirement benefits by way of pension shall be a recognised superannuation scheme for the purposes of this Part of this Act—
- (a) if it is established by Act of Parliament or of the Parliament of Northern Ireland, or other instrument having the force of law ; or
 - (b) if the benefits for which service in those employments qualifies a person, or such part of them as has to be taken into account to constitute them equivalent pension benefits, are secured by irrevocable trust, contract of assurance or annuity contract satisfying such conditions as may be prescribed, or in such other manner as may be prescribed, and the provision made to enable benefits to be paid (taking into account any additional resources which could and would be provided by the employer, or any person connected with the employer, to meet any deficiency) is adequate to ensure payment in full of the benefits or part aforesaid.
- (5) Where the date for a person's retirement on pension under a superannuation scheme is fixed by reference to his attaining pensionable age and so as to fall not later than six months after he does so, but does not depend solely on age, this section shall apply in relation to his benefits under that scheme as if he did not attain pensionable age before that date.

Payments in lieu of contributions.

58 Payments in lieu of contributions in certain circumstances.

Subject to paragraphs 15 and 16 of Schedule 11 to this Act, where an insured person's period of service in a non-participating employment comes to an end otherwise than

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by his death, and at the end of it he is not assured of equivalent pension benefits in respect of it, then subject to the provisions of this Act there shall be due to the National Insurance Fund from his employer in that employment a payment in lieu of contributions equal to the difference between—

- (a) the aggregate amount of the contributions which would have been payable by or in respect of the insured person during that period if on the first day of each contribution week beginning in that period there had been payable by and in respect of him contributions (other than graduated contributions) at the rates applicable on that day to persons employed otherwise than in a non-participating employment and also graduated contributions in respect of a weekly payment of remuneration of eighteen pounds made on that day ; and
- (b) the aggregate amount of the contributions which would have been payable by or in respect of him for that period if for each such contribution week contributions had been payable at the rates applicable to non-participating employments;

and on the making of any payment required by this subsection the insured person shall be treated for the purposes of this Act as having paid such graduated contributions payable by him as are referred to in paragraph (a) of this subsection or, if the payment is less than the full amount required, a proportionate part of such contributions.

59 Further provisions as to payments in lieu of contributions.

- (1) Except as provided by this section, section 58 of this Act shall apply whether a person's period of service in a non-participating employment comes to an end by reason of the termination of his service in that employment or by reason of the employment ceasing to be a non-participating employment, and, subject to any regulations under section 63(1) of this Act, where that period is brought to an end by an employer's death, shall apply as if it had come to an end immediately before the death.
- (2) For the purposes of the said section 58, if an employment becomes or ceases to be a non-participating employment in the course of a person's service in it, his service before and after the time when it does so shall be treated as service in different employments.
- (3) For the purposes of the said section 58, a person having at the end of his service in a non-participating employment equivalent pension benefits in respect of it shall be deemed to be assured of those benefits if, and shall be deemed not to be assured of them unless, either—
 - (a) he is absolutely and indefeasibly entitled to them, and the manner in which they are secured and the provision made for their payment are such as may be prescribed ; or
 - (b) such other conditions as may be prescribed are satisfied ;
 and regulations may provide for treating as having effect from the end of a person's service in a non-participating employment any option exercised or other thing done within the prescribed period thereafter in relation to his retirement benefits in respect of it.
- (4) Where—
 - (a) a payment in lieu of contributions would, but for this subsection, fall to be made in respect of a person on the coming to an end of his service in a non-participating employment; and

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- (b) on the coming to an end of that service, or within the prescribed period thereafter, he enters another non-participating employment; and
- (c) his service in the previous employment is service qualifying him for equivalent pension benefits under the recognised superannuation scheme relating to his new employment (on the like assumptions as are to be made under section 57(2) and (3) of this Act in relation to his service in the new employment); and
- (d) if the scheme is a recognised superannuation scheme by virtue of paragraph (b) of section 57(4) of this Act, the conditions of that paragraph are satisfied in relation to the said benefits,

then for the purpose of any liability to make a payment in lieu of contributions in respect of him the two employments shall be treated as a single continuous employment (any interval being disregarded):

Provided that—

- (i) this subsection shall not apply unless either both employments are under the same employer or such other conditions as may be prescribed are satisfied; and
 - (ii) regulations may direct that paragraph (c) of this subsection shall not apply in any prescribed cases in which provision is made by the recognised superannuation scheme relating to the new employment for taking into account in any manner the service in the previous employment.
- (5) Provision may be made by regulations for excluding or restricting the liability to make payments in lieu of contributions in cases where a person serves at the same time in more than one employment, and for modifying the operation of any provision of this Act in relation to any such payment of which the amount is reduced by virtue of this subsection; and regulations may also modify the operation of subsection (4) of this section in cases where a person serves as aforesaid or would, apart from the regulations, be treated by virtue of that subsection as so serving.
- (6) Where an insured person's period of service in a non-participating employment comes to an end otherwise than by his death, and at the end of it he is over pensionable age, then for the purpose of any liability to make a payment in lieu of contributions in respect of that service he shall be deemed to be assured at the end of it (in lieu of any pension benefits he then has) of the same pension benefits, save as provided by regulations under subsection (3) of this section, as those of which he would have been assured on the coming to an end of the service on his attaining pensionable age by his then retiring from the employment; and any question whether those benefits are equivalent pension benefits, and any question as to the amount of, or as to the graduated contributions attributable to, any payment in lieu of contributions, shall be determined as if the service had come to an end by his so retiring:

Provided that where the date for his retirement on pension under the recognised superannuation scheme relating to the employment is fixed by reference to his attaining that age and so as to fall not later than six months after he does so, but does not depend solely on age, this subsection shall apply as if he did not attain that age before that date.

- (7) A payment in lieu of contributions shall become due at such time as may be prescribed after the end of the period of service to which it relates ; and if any person fails to make at or within the time prescribed for the purpose any such payment for which he

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is liable, he shall be liable to be proceeded against and punished under section 8(2) of this Act as for a failure so to make payment of a contribution.

- (8) Section 14(1) of this Act shall apply to payments in lieu of contributions as it applies to contributions, and for the purposes of paragraph (c) of the said section 14(1) any such payment shall be deemed to be payable by an employer on behalf of the insured person in respect of whom it is payable.

60 Employer's rights against insured person in respect of payment in lieu of contributions.

- (1) Where on the coming to an end of an insured person's service in a non-participating employment—
- (a) he (or, by virtue of a connection with him, any other person) is entitled to a refund of any payments made under the recognised superannuation scheme by or in respect of him towards the provision of benefits under the scheme; and
 - (b) a payment in lieu of contributions falls to be made in respect of him under this Act,

then, subject to the provisions of this section, the person liable for the payment in lieu of contributions shall be entitled on making that payment or any part of it to recover one half of the sum paid by him from the person liable for the refund :

Provided that the amount recoverable shall not exceed the amount of the refund, or so much of it as has not been made.

- (2) Where the period taken into account in fixing the amount of a payment does not coincide with that in respect of which the refund is to be made, then (subject to subsection (3) of this section) the amount recoverable under this section shall be determined by reference to so much of the payment and of the refund as are referable to the same period.
- (3) The amount which may be recovered under this section in respect of any payment in lieu of contributions shall be increased by such amount as may be prescribed where—
- (a) under section 59(4) of this Act the insured person's service in any previous employment is treated in fixing the payment in lieu of contributions as service in the employment in respect of which the refund is made; and
 - (b) the refund includes any amount in respect of a payment made by or in respect of the insured person towards the provision for him of benefits under the scheme in respect of service in the previous employment.
- (4) Where the person liable for the payment in lieu of contributions is himself liable for the refund, he shall be entitled to retain out of the refund the amount which he could recover under this section from another person who was liable for the refund.
- (5) The amount of the refund shall be reduced by any amount recovered or retained under this section; and provision shall be made by regulations for requiring the making of refunds to be delayed for the purpose of enabling any right of recovery conferred by this section to be exercised, and shall have effect notwithstanding anything in any enactment relating to the making of the refund.
- (6) Where on the coming to an end of an insured person's service in a non-participating employment—
- (a) he (or, by virtue of a connection with him, any other person) is entitled to a refund of any payments made by or in respect of him under the

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recognised superannuation scheme relating to a previous employment towards the provision of benefits under that scheme; and

- (b) a payment in lieu of contributions falls to be made in respect of him, and under the said section 59(4) his service in the two employments is treated as service in one employment in fixing that payment,

then in respect of that payment the person liable for it shall have the like right of recovery from that refund (so far as the payment is not recoverable out of a refund in respect of a later employment) as a person has under the foregoing provisions of this section where a payment in lieu of contributions and a refund fall to be made on the coming to an end of service in the employment in respect of which the refund is to be made; and subsection (5) of this section shall apply accordingly.

- (7) Notwithstanding any contract to the contrary, a person shall not be entitled to recover any part of a payment in lieu of contributions made or to be made by him from the person in respect of whom it is payable or, except in accordance with this section, out of any moneys payable to or for the benefit of that person.

61 Recovery of payments in lieu of contributions in event of bankruptcy, etc.

- (1) There shall be included among the debts which—

- (a) under section 33 of the Bankruptcy Act 1914 are to be paid in priority to all other debts in the distribution of the property of a bankrupt or a deceased debtor; or
- (b) under section 118 of the Bankruptcy (Scotland) Act 1913 are to be paid in priority to all other debts in the division of a bankrupt's estate; or
- (c) under section 319 of the Companies Act 1948 are to be paid in priority to all other debts in the winding-up of a company, or under section 94 of that Act are on an appointment of a receiver on behalf of debenture holders or taking of possession by or on behalf of debenture holders to be paid in priority to any claim for principal or interest in respect of the debentures,

any payment in lieu of contributions payable on the termination of a person's employment before or by the effect of the receiving order or death, the award of sequestration, the winding-up order or resolution, or the appointment of the receiver or taking of possession, as the case may be:

Provided that, where any such payment is payable in respect of a period of service of more than a year, the amount to be so paid in priority shall be limited to the amount of the payment in lieu of contributions which would have been payable if the service had been confined to the last year taken into account in fixing the actual amount of the payment.

- (2) Where—

- (a) by or by virtue of the foregoing subsection the whole or part of a payment in lieu of contributions is required to be paid in priority to other debts of the employer or his estate; and
- (b) the person liable for that payment would be entitled to recover the whole or part of any sum paid by him on account of it from another person either under section 60 of this Act or under any provision made by the relevant superannuation scheme,

then that other person shall be liable for any part of the payment in lieu of contributions for the time being unpaid:

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Provided that no person shall be liable by virtue of this subsection for an amount in excess of the sum which might be recovered from him as aforesaid if the payment in lieu of contributions had been paid in full by the employer, after deducting from that sum any amount which has been or may be recovered from him in respect of any part of that payment paid otherwise than under this subsection.

- (3) The payment under subsection (2) of this section of any amount in respect of a payment in lieu of contributions shall have the same effect upon the rights and liabilities of the person making it (other than his liabilities under that subsection) as if it had been a payment of that amount on account of the sum recoverable from him in respect of that payment in lieu of contributions as mentioned in paragraph (b) of that subsection.

Statutory superannuation schemes.

62 Special provisions for certain statutory superannuation schemes.

- (1) In relation to employments of any class to which this section applies, the appropriate Minister may by regulations direct that elections with a view to the issue, variation, cancellation or surrender of certificates under this Part of this Act shall be made and revoked by him instead of by the employer.
- (2) Any such regulations may also make provision for other things which by or under this Part of this Act are required or authorised to be done by or to the employer to be done instead by or to the appropriate Minister, for treating employments of the class in question as employments under a single employer different from the employer in any other employment, and for the recovery from the employer of payments in lieu of contributions made by the appropriate Minister instead of by the employer.
- (3) Before making any regulations under this section the appropriate Minister shall consult with such bodies concerned with employments of the class in question as appear to him fairly to represent the interests of employers and employed persons in those employments.
- (4) Subject to subsections (5) and (6) of this section, the employments in which a person's service qualifies him for retirement benefits by way of pension under the enactments specified in any entry in Schedule 5 to this Act shall constitute a class to which this section applies, and in relation to that class the appropriate Minister shall be the Minister mentioned in the second column in that entry.
- (5) Where service in any employment would qualify a person as aforesaid under the enactments specified in any such entry but for rules having effect under section 2 of the Superannuation (Miscellaneous Provisions) Act 1948 (which relates to persons transferring to or from certain employments), the employment shall be treated as falling within the class to which that entry relates, and as not falling within any other class to which this section applies.
- (6) Where a local Act contains a provision for the payment of retirement benefits by way of pension for service which, but for the provision, would qualify a person for such benefits under the enactments specified in any entry in Schedule 5 to this Act, that provision shall be deemed to be included among the enactments specified in that entry.

Additional powers to make regulations.

63 Regulations for purposes of Part III.

- (1) Provision may for the purposes of this Part of this Act be made by regulations—
- (a) for treating a person's employment, where it begins or ends in the course of a contribution week or of an income tax week, as doing so at the beginning or end of the week;
 - (b) for disregarding changes in a person's employment due to the death of an employer or other causes, and for treating employment under the new employer as a continuation of that under the former employer, and treating any certificate issued to or election made by the former employer as issued to or made by the new employer;
 - (c) for disregarding temporary interruptions in a person's employment, and for treating the employment as continuing during the interruption;
 - (d) generally as to the circumstances in which a person's employment is or is not to be treated as having come to an end.
- (2) Regulations may, in order to facilitate the computations needed to ascertain equivalent pension benefits for the purposes of section 58 or any other provision of this Act, convert the formula in section 57(1)(d) of this Act, as respects service before or service after 5th January 1964, or as respects both kinds of service, into a formula expressed in terms—
- (a) of a minimum annual rate of pension for a period of service expressed in terms of weeks, or
 - (b) of a minimum rate of pension, as a rate for a week or month or other period shorter than a year, for a period of service expressed in terms of weeks,
- adjusting the figures so as to admit of tabulation and so as to avoid fractional amounts or otherwise facilitate computation, and making special provision for a period of service which does not amount to a whole number of weeks and for a week of service which includes 5th January 1964.