
 S T A T U T O R Y I N S T R U M E N T S

1981 No. 1785 (S. 185)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981

Made - - - - - 4th December 1981

Laid before Parliament 21st December 1981

Coming into Operation 11th January 1982

In exercise of powers conferred on me by section 24 of the Superannuation Act 1972(a) and of all other powers enabling me in that behalf, and with the consent of the Minister for the Civil Service, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981 and shall come into operation on 11th January 1982 and shall take effect—

- (a) for the purposes of regulations 5(2) to 5(4) as from 4th November 1980;
- (b) for the purposes of regulation 13 as from 11th January 1982; and
- (c) for the purposes of all other regulations as from 2nd December 1976.

Interpretation

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

“additional period of service” means a period of service calculated in accordance with regulation 5;

“early retirement regulations” means any regulations made under section 34A of the National Health Service (Scotland) Act 1972(b), section 44 of the National Health Service Reorganisation Act 1973(c), section 220 of the Local Government (Scotland) Act 1973(d), section 260 of the Local Government Act 1972(e), and Article 3 of the Superannuation (Northern Ireland) Order 1973(f);

“employing authority” means a Health Board, the Common Services Agency for the Scottish Health Service and any such other body constituted under the National Health Service (Scotland) Act 1978(g) or any other Act relating to the provision of health services as the Secretary of State may allow;

(a) 1972 c. 11.
(d) 1973 c. 65.
(g) 1978 c. 29.

(b) 1972 c. 58.
(e) 1972 c. 70.

(c) 1973 c. 32.
(f) S.I. 1973/962 (N.I. 13).

“entitled officer” means a person to whom these regulations apply in accordance with regulation 3;

“further employment” means such employment as is referred to in regulation 8(1);

“the local government compensation regulations” means any regulations made under section 219 of the Local Government (Scotland) Act 1973, section 24 of the Superannuation Act 1972 in relation to local government service, the corresponding provisions of any previous enactment and the corresponding provisions in force in England and Wales, Northern Ireland and the Isle of Man;

“the material date”, in relation to an entitled officer, means the date on which a person became an entitled officer;

“officer” has the same meaning as in the superannuation regulations except that it shall not include—

- (a) a practitioner as defined in regulation 3 (definitions) of those regulations; and
- (b) a person to whom regulation 50 (persons subject to non-statutory superannuation schemes and arrangements) or regulation 78 (continuation of contracts or policies of insurance in certain cases) of those regulations applied immediately before the material date if that person is not entitled to benefits payable by the Secretary of State under the provisions of the said regulations in respect of the employment referred to in regulation 3(1);

“reckonable service”, in relation to an entitled officer, means his service in respect of which benefits are payable under the superannuation regulations;

“the superannuation regulations” means the National Health Service (Superannuation) (Scotland) Regulations 1980(a).

“the 1974 regulations” means the National Health Service (Compensation) (Scotland) Regulations 1974(b); the National Health Service (Transfer of Officers and Compensation) (Scotland) Regulations 1948(c) and the compensation provisions of any order made under section 11(10) of the National Health Service (Scotland) Act 1947(d);

(2) Unless the context otherwise requires, any reference in these regulations to a numbered regulation is a reference to the regulation in these regulations which bears that number, and any reference in a regulation or the schedule to these regulations to a numbered paragraph is a reference to the paragraph bearing that number in that regulation, or as the case may be, that schedule.

Persons to whom the regulations apply

3.—(1) Subject to paragraph (2) these regulations shall apply to a person who ceases to hold an employment with an employing authority on or after 2nd December 1976 and who is entitled to benefits in accordance with regulation 10(1)(a)(iii) or 10(6)(a) (officer’s pension and retiring allowance) of the superannuation regulations.

(2) These regulations shall not apply to an officer to whom the 1974 regulations apply in respect of the cessation of employment referred to in paragraph (1).

(a) S.I. 1980/1177.

(b) S.I. 1974/1869.

(c) S.I. 1948/1465.

(d) 1947 c. 27 (repealed).

Payment of compensation

4.—(1) Subject to the provisions of these regulations an entitled officer shall be entitled with effect from the material date to receive from the Secretary of State compensation in accordance with paragraphs (2) and (3).

(2) Where an entitled officer becomes entitled under the superannuation regulations to receive a retiring allowance in relation to the cessation of such employment as is referred to in regulation 3(1) he shall be entitled to receive lump sum compensation equal to the amount by which that allowance would be increased in accordance with those regulations if a period equal to the period with which he is credited under regulation 5 were added to his reckonable service.

(3) An entitled officer shall be entitled to receive compensation consisting of an annual allowance at a rate equal to the rate by which his pension under the superannuation regulations would be increased in accordance with those regulations if a period equal to the period with which he is credited under regulation 5 were added to his reckonable service.

Crediting of additional period of service

5.—(1) This paragraph applies to an officer who becomes entitled to a pension under regulation 10(1)(a)(iii) or 10(6)(a) of the superannuation regulations—

(a) between 2nd December 1976 and 3rd November 1980; or

(b) after 3rd November 1980 where paragraph (4) applies to him.

Subject to paragraphs (5) to (8), for the purpose of calculating the amount of the annual allowance and the amount of the lump sum compensation payable under regulation 4 there shall be credited to an entitled officer to whom this paragraph applies a period of service (hereafter in these regulations referred to as “additional period of service”) calculated as follows—

(a) if his reckonable service does not exceed 10 years, either a period equal to such service or a period by which such service would have been increased if the entitled officer had continued to be employed until he had attained the age of 65 years, whichever is the shorter;

(b) if his reckonable service exceeds 10 years, a period equal to whichever is the longer of the following—

(i) the period by which such service is less than 20 years or the period by which such service would have been increased if the entitled officer had continued to be employed until he had attained the age of 65 years, whichever is the shorter, or

(ii) 6 years and 243 days or the period by which such service would have been increased if the entitled officer had continued to be employed until he had attained the age of 60 years, whichever is the shorter.

(2) This paragraph applies to an officer who becomes entitled to a pension under regulation 10(1)(a)(iii) or 10(6)(a) of the superannuation regulations on or after 4th November 1980 but to whom paragraph (4) does not apply. Subject to paragraphs (5) to (8) the additional period of service credited to an entitled officer to whom this paragraph applies shall be calculated as follows—

(a) where the entitled officer's reckonable service together with any relevant optant service is not less than 5 years and not more than 10 years there shall be credited to him an additional period of service equal to the aggregate of his reckonable service and his relevant optant service;

- (b) where the entitled officer's reckonable service together with any relevant optant service is more than 10 years there shall be credited to him an additional period of 10 years:

Provided that the total of an entitled officer's reckonable service and any additional period of service credited to him shall not exceed 40 years or the amount of service which he would have been able to reckon had he remained in employment until retirement age whichever period is the shorter.

- (3) For the purposes of paragraph (2)—

“relevant optant service” means—

- (i) service in which the entitled officer was subject to regulation 50 (persons subject to non-statutory superannuation schemes and arrangements) of the superannuation regulations and at the end of which service the provisions of the said regulation 50 ceased to apply to him within 12 months immediately before the beginning of his reckonable service; and
- (ii) any local authority service in which he was, immediately before becoming an officer in the circumstances referred to in regulation 2(2) of those regulations subject to such a scheme as is referred to in the said regulation 50;

“retirement age” means any age at which, under any written condition of employment, an employee may be required to retire, or if there is no such condition, age 65.

(4) This paragraph shall apply to an officer to whom paragraph (2) applies but whose reckonable service includes service in the employment of an employing authority before 4th November 1980. The additional period of service credited to an officer to whom this paragraph applies shall be calculated as if paragraph (1) applies to him. This paragraph shall not apply where the method of calculation of the additional period of service set out in paragraph (2) produces an additional period of service in excess of that produced by the method of calculation of the additional period of service set out in paragraph (1).

(5) In determining the period by which his reckonable service would have been increased if the entitled officer had continued to be employed no account shall be taken of any provision in the superannuation regulations for reckoning any period of service at more than its actual length.

(6) Where an entitled officer has received a redundancy payment under the Redundancy Payments Act 1965(a), the Employment Protection (Consolidation) Act 1978(b) or a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain in respect of the cessation of his employment referred to in regulation 3(1) and that payment has not been reduced to take account of any additional period of service with which the entitled officer may have been credited, notwithstanding paragraphs (1) to (4), any additional period of service shall not exceed 6 years and 243 days.

- (7) (a) Subject to sub-paragraph (b) of this paragraph, the compensation payable to an entitled officer in respect of an additional period of service shall be calculated at the same rates as those which apply to the calculation of the pension and, if he is entitled to receive a

(a) 1965 c. 62.

(b) 1978 c. 44.

retiring allowance, that allowance payable under the superannuation regulations or which would have been payable but for his superannuation benefits having been transferred to another scheme by means of a transfer payment made under regulation 80 (rights on transfer to other employment) of those regulations.

- (b) Where regulation 8 (mental health officers) of the superannuation regulations or any corresponding provision of any other scheme to which the entitled officer is subject under regulation 46 (benefits of officers who have exercised option to retain rights corresponding to those previously enjoyed) of those regulations applies to an entitled officer, the compensation in respect of his additional period of service shall be calculated as if that regulation or corresponding provision did not apply to him.
- (8) (a) Subject to sub-paragraph (b) of this paragraph and paragraph (9), where an entitled officer is in receipt of any payment specified in paragraph (10) there shall be deducted from the additional period of service which, but for this paragraph, would have been reckonable by virtue of paragraphs (1) to (7) any additional years or deemed added years which were taken into account for the purposes of the calculation of that payment.
- (b) Where there are differences in the amount of remuneration, the whole-time or part-time nature, or other terms and conditions, of the employment of an entitled officer to whom regulation 3(1) relates and those of any employment to which any payment specified in paragraph (10) relates, and by reason of those differences the deduction in accordance with sub-paragraph (a) of this paragraph would make him worse off on application of regulation 4 than he would have been had the uprated payments in respect of the additional or deemed added years made under paragraph (10) been substituted for the lump sum compensation and annual allowance for the number of additional years deducted, the Secretary of State may direct on application from the officer that the deduction in the said sub-paragraph (a) may be reduced so that the officer is not worse off.
- (9) For the purpose of paragraph (8)—
- (a) “additional years” means the number of years (including any part of a year) which had the corresponding effect on the calculation of any payment specified in paragraph (10) that the additional period of service has on the calculation of any annual allowance in accordance with these regulations;
 - (b) any additional years or deemed added years shall not be taken into account if such additional years or deemed added years have been taken into account in accordance with any provision of any of the regulations or a scheme referred to in paragraph (10) for the purpose of reducing any payment specified in that paragraph;
 - (c) where a payment specified in paragraph (10) has been enhanced by a sum, being a fraction of the annual rate of remuneration, calculated in sixtieths, then each one sixtieth shall be deemed to be an added year for the purposes of this paragraph and paragraph (8), and the expression “deemed added years” wherever it occurs in this paragraph and paragraph (8) shall be construed accordingly;
 - (d) the additional period of service shall be deemed to commence on the material date;

- (e) the additional years or deemed added years shall be deemed to commence on the day after the happening of the event in respect of which the payment specified in paragraph (10) became payable;
 - (f) any additional years or deemed added years which relate to a period before the material date shall not be taken into account;
 - (g) "uprated payments" means any payments specified in paragraph (10) uprated to the material date under the Pensions (Increase) Act 1971(a).
- (10) The payments referred to in paragraph (8) are—
- (a) an annual allowance payable under these regulations;
 - (b) any annual compensation payable immediately or prospectively under the 1974 regulations, the corresponding provisions in force in England and Wales, Northern Ireland or the Isle of Man, the local government compensation regulations or any other regulations made under section 24 of the Superannuation Act 1972;
 - (c) any annual compensation payable under a scheme made under section 1 of the Superannuation Act 1972;
 - (d) any annual benefit payable under the early retirement regulations; or
 - (e) any other payment provided for by regulations which have like effect to the regulations referred to in sub-paragraphs (a), (b) or (d).

(11) Where, by virtue of regulation 56 (modification of benefits and obligations in connection with the National Insurance Act 1946(b)) of the superannuation regulations or the corresponding provisions which apply to persons subject to regulation 46 (benefits of officers who have exercised option to retain rights corresponding to those previously enjoyed) of those regulations, the pension payable under those regulations is reduced in respect of each year of reckonable service, the annual allowance in respect of the additional period of service shall be reduced accordingly so however that where the employment ceases after 31st March 1980 the said regulation 56 or corresponding provisions shall not apply in respect of any additional period of service.

(12) If, under regulation 14 (allocation of part of pension to spouse or dependant) of, and schedule 1 to, the superannuation regulations, an entitled officer surrenders part of his pension in favour of his spouse or any other dependant, then he may surrender part of the annual allowance which is payable to him under these regulations after any reduction under regulation 8(1) on the like terms and conditions and in consideration of the like payments by the Secretary of State as applied to the pension to which he had become entitled under those regulations.

(13) If the amount of any benefit to which an entitled officer is or may become entitled to under the superannuation regulations is or may be supplemented under regulation 51 (supplementary payments in the case of certain officers) or 52 (discretionary payments in respect of certain officers) of those regulations at the discretion of the Secretary of State, he may in like manner make such payments to such extent as he considers appropriate in addition to any compensation payable to the entitled officer under these regulations.

Compensation payable to widow or dependants

6.—(1) Where an entitled officer dies on or after the material date, payments in accordance with this regulation shall be made by the Secretary of State to or for the benefit of the widow, child or other dependant or to the legal personal representative of the entitled officer.

(a) 1971 c. 56.

(b) 1946 c. 67.

(2) If the widow, child or other dependant of an entitled officer is entitled to a benefit under the superannuation regulations, or would have been so entitled if the entitled officer's benefits had not been transferred to another scheme, the widow, child or other dependant, as the case may be, shall be entitled to receive compensation equal to the benefits she would have received if the compensation payable to an entitled officer under regulation 4 immediately before his death had been a pension to which he was entitled under those regulations.

(3) Any compensation payable to or for the benefit of a widow, child or other dependant under this regulation shall cease to be payable on the date on which the benefit under the superannuation regulations ceases, or would have ceased, to be payable.

(4) Where—

- (a) any benefit under the superannuation regulations is payable to any person on behalf of a child or other dependant in accordance with those regulations, or
- (b) the entitled officer's benefits have been transferred to another scheme and any benefits under the superannuation regulations would have been payable to any person on behalf of a child or other dependant in accordance with those regulations if those regulations had continued to apply in relation to him,

any compensation payable under this regulation 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 superannuation regulations.

Compensation where death gratuity becomes payable

7. Where the widow or the legal personal representative of an entitled officer is entitled to receive a death gratuity under the superannuation regulations or would have been so entitled if the entitled officer's benefits had not been transferred to another scheme, she or the legal personal representative shall be entitled under these regulations to a sum equal to the sum by which such a death gratuity would have been increased if for the purpose of calculating the death gratuity—

- (a) there were also taken into account the additional period of service credited to the entitled officer as if it were reckonable service;
- (b) the annual allowance or lump sum payable under regulation 4 were treated as if it were a pension or retiring allowance payable under those regulations; and
- (c) where any proportion of an annual allowance has been surrendered under regulation 5(12), there were taken into account the amount which would have been paid but for such a surrender.

Adjustment of compensation

8.—(1) Where an entitled officer has entered employment with an employing authority on or after the material date (referred to in this paragraph and in the schedule to these regulations as “the further employment”) and this further employment has ceased any compensation payable under these regulations based on the additional period of service shall be reduced in accordance with that schedule to take account of any benefit payable under the superannuation regulations in respect of the further employment.

- (2) Where, in respect of an entitled officer, the aggregate of—
- (a) his reckonable service on the material date;
 - (b) any additional period of service credited to him under these regulations; and
 - (c) any further service reckonable by him under the superannuation regulations on or after the material date,

exceeds the number of years of service that would have been reckonable under regulation 30 (limitation on reckonable service) of the superannuation regulations had the said aggregate of his service been contributing service under those regulations, the annual allowance which he is entitled to receive under these regulations shall be reduced by an amount equal to the compensation payable under regulation 4 in respect of a period of reckonable service equal to the period in excess of that prescribed in the said regulation 30.

Reduction of compensation in certain cases

9. Where an entitled officer, who is in receipt of an annual allowance under regulation 4, enters such employment as is referred to in regulation 42 (reduction of pension in certain cases) of the superannuation regulations the annual rate of that allowance together with any pension payable under those regulations shall not exceed the rate at which the compensation would have been paid if the aggregate of the allowance and pension had been a pension liable to reduction under the said regulation 42.

Supply of information

10. Any person to whom compensation is payable under these regulations shall furnish all such information as the Secretary of State may at any time require for the purposes of these regulations; and he shall verify the same in such manner, including the production of documents in his possession or control, as he may be reasonably so required.

Miscellaneous provisions relating to payment of compensation

11.—(1) Subject to any statutory provision in that behalf, any compensation payable under these regulations shall be payable to, or in trust for, any person who is entitled to compensation under these regulations and shall not be assignable or chargeable with his debts or liabilities.

(2) Where, on the death of a person to whom compensation is payable under these regulations, any sum, including any sum payable under the superannuation regulations in respect of that person, not exceeding £1,500, is due to or in respect of that person, the Secretary of State may dispense with proof of the title of the legal personal representative of that person and pay that sum to the person, or to or among one or more of any persons, appearing to the Secretary of State on such evidence as he deems satisfactory to be entitled by law to a beneficial interest therein, or, in the case of the illegitimacy of the deceased person or his children, to or among such persons as the Secretary of State may think fit, and any person to whom such a payment is made, and not the Secretary of State, shall thereafter be liable to account for any amount so paid.

Determination of questions

12. Any question arising under these regulations shall be determined by the Secretary of State in accordance with these regulations.

Amendment

13. In regulation 4 (grounds of entitlement to compensation) of the National Health Service (Compensation) (Scotland) Regulations 1974 there shall be substituted for paragraphs (a) and (b)—

- “(a) any provision of the Act, or any provision of an instrument made under the Act, in force on 10th January 1982; or
- (b) any provision of an instrument made under the Local Government (Scotland) Act 1973 in force on 10th January 1982;”.

Retrospective effect of these regulations

14. These regulations shall not have effect in the case of any entitled officer where that officer is, by virtue of the retrospective effect of these regulations as provided for in regulation 1, placed in a worse position than he would have been in if the regulations had been framed as to have effect from the date they came into operation.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.
2nd December 1981.

Consent of the Minister for the Civil Service given under her official seal on
4th December 1981.

(L.S.)

T. A. A. Hart,
Authorised by the Minister
for the Civil Service.

SCHEDULE

CALCULATION OF REDUCTIONS TO TAKE ACCOUNT OF SUPERANNUATION BENEFITS OR PAYMENTS SPECIFIED IN REGULATION 5(10) IN RESPECT OF FURTHER EMPLOYMENT UNDER REGULATION 8(1)

1. (a) There shall be deducted from the amount of the annual allowance payable at the material date to the entitled officer an amount calculated in accordance with the formula:—

$A \times B \times D$ or E (whichever is the lesser); and

- (b) Where a lump sum has been paid in respect of the further employment, there shall be deducted from the annual allowance an additional amount calculated in accordance with the formula:—

$A \times C \times D$ or E (whichever is the lesser).

2. For the purposes of paragraph 1—

A is the period of the additional period of service expressed in years which overlaps the period of reckonable service on which was based the calculation of the benefit or payment referred to in regulation 8(1) where the additional period of service is deemed to commence on the material date;

B is the fraction that was used in the calculation of the annual allowance for each year of the additional period of service;

C is the fraction that was used in calculating the lump sum referred to in regulation 4(2);

D is the remuneration at the material date in respect of which the compensation payable under regulation 4 was calculated;

E is the remuneration in respect of the further employment by reference to which the benefit or payment referred to in regulation 8(1) was calculated less an amount calculated in accordance with paragraph 3.

3. The amount of the deduction from the remuneration in respect of the further employment referred to in paragraph 2 shall be calculated by multiplying the amount of that remuneration by a fraction of which—

(a) the numerator is equivalent to the aggregate of the amount of increases which would have been provided for under the provisions of section 2 of the Pensions (Increase) Act 1971(a) or section 59 of the Social Security Pensions Act 1975(b) during the period beginning on the material date and ending on the day the further employment terminated, on an official pension of £100 a year which commenced from the material date,

(b) the denominator is equivalent to the aggregate of an official pension of £100 per year and the amount of the increases so determined.

For the purposes of this paragraph "official pension" shall have the meaning assigned to it by section 5(1) of the Pensions (Increase) Act 1971.

4. The deduction in accordance with paragraph 1(b) shall be made in such instalments over such a period of time as the Secretary of State may allow.

(a) 1971 c. 56; section 2 was amended by section 25 of the Superannuation Act 1972 (c. 11).
 (b) 1975 c. 60; section 59 was amended by section 11 of the Social Security Act 1979 (c. 18).

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations provide for the payment of compensation to or in respect of a person who was employed in the National Health Service in Scotland and has prematurely retired from that employment in the interests of the efficiency of the service or as a result of being made redundant.

The regulations specify the conditions necessary to qualify for, and the method of calculation of, the compensation (regulations 3, 4 and 5). They also provide for the payment of compensation to the widow and certain dependants of the entitled officer if he dies after becoming entitled to receive compensation (regulations 6 and 7). They further make provision for the adjustment and reduction in certain cases of the compensation so as to take into account superannuation benefits and remuneration in respect of subsequent health service employment (regulations 8 and 9).

The regulations contain miscellaneous provisions relating to the supply of information and documents (regulation 10), the procedure for the payment of compensation (regulation 11) and for the determination of questions arising under the regulations (regulation 12). They also amend the National Health Service (Compensation) (Scotland) Regulations 1974 so that the compensation terms provided by those regulations shall not apply to any person who suffers loss of employment or loss or diminution of emoluments which is attributable to an instrument made under the National Health Service (Scotland) Act 1972 or the Local Government (Scotland) Act 1973 after 10th January 1982 (regulation 13).

As authorised by section 24(3) of the Superannuation Act 1972 these regulations except regulation 5(2) to 5(4) and 13 have retrospective effect as from 2nd December 1976 (regulation 1) and regulations 5(2) to 5(4) have retrospective effect as from 4th November 1980.

No person shall be worse off because of the retrospective effect of any regulation than he would have been if that regulation had not had such effect (regulation 14).

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