

1981 No. 1263

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

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

<i>Made</i> - - - - -	1st September 1981
<i>Laid before Parliament</i>	11th September 1981
<i>Coming into Operation</i>	2nd October 1981

The Secretary of State for Social Services, in exercise of the powers conferred upon him by section 24(1), (3) and (4) of, and paragraphs 8, 9 and 13 of Schedule 3 to, the Superannuation Act 1972(a) and of all other powers enabling him in that behalf, with the consent of the Minister for the Civil Service, hereby makes the following regulations:—

Title and commencement

1. These regulations may be cited as the National Health Service (Compensation for Premature Retirement) Regulations 1981 and shall come into operation on 2nd October 1981.

Interpretation

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

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

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

“employing authority” means—

- (a) a Regional Health Authority, an Area Health Authority, or a special health authority;
- (b) a preserved Board within the meaning of section 15 of the National Health Service Reorganisation Act 1973;
- (c) the Dental Estimates Board constituted under section 37 of the National Health Service Act 1977(g);

(a) 1972 c. 11
(d) 1972 c. 70
(g) 1977 c. 49

(b) 1973 c. 32.
(e) 1973 c. 65.

(c) 1972 c. 58.
(f) S.I. 1973/962 (N.I. 13).

(d) any other body constituted under the National Health Service Act 1977 or any other Act relating to the provision of health services as the Secretary of State may approve;

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

“the local government compensation regulations” means any regulations made under section 259 of the Local Government Act 1972, section 60(2) of the Local Government Act 1958(a), section 24 of the Superannuation Act 1972 in relation to local government service, section 85(4) of the London Government Act 1963(b), the corresponding provisions of any previous enactment, and the corresponding provisions in force in Scotland, 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 of those regulations; and
- (b) a person to whom regulation 48 (persons subject to non-statutory superannuation schemes) or regulation 79 (practitioners’ contracts or policies of insurance) 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 those 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) Regulations 1980(c);

“the 1974 regulations” means the National Health Service (Compensation) Regulations 1974(d), the National Health Service (Transfer of Officers and Compensation) Regulations 1948(e), and the compensation provisions of any order made under section 11(9) of the National Health Service Act 1946(f).

(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 29th October 1976 and who is entitled to benefits in accordance with regulation 8(1)(a)(vi) or regulation 8(5) (officer’s pension and retiring allowance) of the superannuation regulations(g).

(a) 1958 c. 55.

(b) 1963 c. 33.

(c) S.I. 1980/362.

(d) S.I. 1974/1748.

(e) S.I. 1948/1475; the relevant amending instrument is S.I. 1960/772. (f) 1946 c. 81.

(g) Regulation 8 was amended by S.I. 1981/1205, regulation 3.

(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).

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 an 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) For the purpose of calculating the amount of the annual compensation and the amount of the lump sum compensation payable under regulation 4 there shall be credited to the entitled officer who becomes entitled to a pension under the superannuation regulations on any date from 29th October 1976 to 3rd November 1980 an 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) For the purpose of calculating the amount of the annual compensation and the amount of the lump sum compensation payable under regulation 4 there shall be credited to the entitled officer who becomes entitled to a pension

under the superannuation regulations on or after 4th November 1980 an additional period of service 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 10 years or more 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 less.

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

“relevant optant service” means—

- (a) service in which the entitled officer was subject to regulation 48 of the superannuation regulations and which terminated within 12 months immediately before the beginning of his reckonable service, and
- (b) any local authority service in which he was, immediately before becoming an officer in the circumstances referred to in regulation 2(2) of the superannuation regulations, subject to such a scheme as is referred to in regulation 48 of the superannuation regulations;

“retirement age” means the 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) Notwithstanding the provisions of paragraph (2) where the reckonable service of such an officer as is referred to in that paragraph includes service in the employment of an employing authority before 4th November 1980 the additional period of service credited to him for the purpose of calculating the amount of the annual compensation and the amount of the lump sum compensation payable under regulation 4 shall be calculated as if paragraph (1) applied to him if the additional period of service to be credited to him in accordance with paragraph (1) would be greater than a period calculated in accordance with paragraph (2).

(5) In determining the period by which the reckonable service would have been increased if the 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 Employment Protection (Consolidation) Act 1978(a) 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

(a) 1978 c. 44.

to in regulation 3(1), and that payment has not been reduced to take account of any additional period of service the entitled officer may have been credited with, notwithstanding paragraphs (1) and (2), 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 in respect of the additional period of service of an entitled officer shall be calculated at the same rates as those which apply to the calculation of his pension and, if he is entitled to receive a retiring allowance, that allowance 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 the superannuation regulations.
- (b) Where regulation 55 of the superannuation regulations (modification in relation to mental health officer) or any corresponding provision of any other scheme to which the entitled officer is subject under regulation 44 of those regulations (benefits of certain officers who have opted to retain certain rights) 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 which 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 deductions in accordance with sub-paragraph (a) of this paragraph of additional years or deemed added years from the additional period of service of that officer would be disproportionately large, the Secretary of State may direct either that no such deduction should be made or that a smaller number of years should be deducted from that officer's additional period of service.
- (9) For the purposes of paragraph (8)—
- (a) "additional years" means the number of years (including where the payment referred to in sub-paragraph (a) of paragraph (10) is relevant, the additional period of service by reference to which that annual allowance was calculated) which had the corresponding effect on the calculation of any payment specified in paragraph (10) that the additional period of service has on the 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, 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" 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.
- (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 Scotland, 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 of the superannuation regulations (modification in connection with the National Insurance Act 1946(a)) or the corresponding provisions which apply to persons subject to regulation 44 of the superannuation regulations (benefits of certain officers who have opted to retain certain rights), the pension or retiring allowance is reduced in respect of each year of reckonable service, the compensation in respect of the additional period of service shall be reduced accordingly.

(12) Where, under regulation 12 of, and Schedule 1 to, the superannuation regulations (allocation of part of pension) an entitled officer may surrender part of his pension in favour of his spouse or any other dependant, 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 if the said annual allowance were a pension to which he had become entitled under the superannuation regulations.

(a) 1946 c. 67.

(13) If the amount of any benefit to which an entitled officer is or may become entitled under the superannuation regulations is or may be supplemented under regulation 49 or 50 of the superannuation regulations (special payments in respect of certain officers) 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 personal representative of the entitled officer.

(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 the superannuation 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 the superannuation 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 such person 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 personal representative of an entitled officer is entitled to receive a death gratuity under the superannuation regulations, she or the 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 the superannuation 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.

Adjustments of compensation

8.—(1) Where an entitled officer has entered employment with an employing authority on or after the material date (in this paragraph and in the Schedule to these regulations referred to as “the further employment”) and the 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 28 of the superannuation regulations (limitation on reckonable service) had the said aggregate of his service been contributing service under the superannuation 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 28.

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 40 (reduction of pension in certain cases) of the superannuation regulations the annual rate of that allowance together with any pension payable under the superannuation 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 40.

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 reasonably be 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 other 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 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.—(1) Any question arising under these regulations shall be determined by the Secretary of State in accordance with these regulations.

(2) At any time before any question referred to in paragraph (1) is determined by the Secretary of State, he may (and if so directed by the High Court shall) state in the form of a special case for determination by the High Court any question of law arising out of the question which falls to be determined by him; and where such a case is so stated, an appeal to the Court of Appeal from the determination by the High Court shall lie only with leave of the High Court or the Court of Appeal.

Amendment of regulation 4 of the National Health Service (Compensation) Regulations 1974

13. In regulation 4 of the National Health Service (Compensation) Regulations 1974—

- (a) in paragraph (a) after the words “under the Act” there shall be inserted the words “on or before 2nd October 1981”; and
- (b) in paragraph (b) after “1972 (a)” there shall be inserted the words “on or before 2nd October 1981”.

Retrospective effect of these regulations

14. Regulations 2 to 4, regulation 5(1) and (5) to (13) and regulations 6 to 11 and the Schedule to these regulations shall have effect from 29th October 1976 and regulation 5(2) to (4) shall have effect from 4th November 1980.

Signed by authority of the Secretary of State for Social Services.

Hugh Rossi,
Minister for Social Security,
Department of Health and Social Security.

28th August 1981.

Consent of the Minister for the Civil Service given under her Official Seal on 1st September 1981.

(L.S.) *T. A. A. Hart,*
Authorised by the Minister for the Civil Service.

SCHEDULE

Regulation 8(1)

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

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 59 of the Social Security Pensions Act 1975(a) 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(b).

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

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 England and Wales and has prematurely retired from that employment by reason of redundancy or in the interests of the efficiency of the service.

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, other compensation payments and remuneration paid out of public funds in respect of subsequent 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) Regulations 1974 so that 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 Reorganisation Act 1973 or the Local Government Act 1972 after 2nd October 1981 (regulation 13).

In accordance with section 24(3) of the Superannuation Act 1972 regulations 2 to 4, 5(1) and (5) to (13), 6 to 11 and the Schedule have retrospective effect as from 29th October 1976 and regulation 5(2) to (4) has retrospective effect as from 4th November 1980.

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