

(ii) Pensions of Employees losing Employment

**THE TRANSFERRED UNDERTAKINGS (PENSIONS OF EMPLOYEES
LOSING EMPLOYMENT) REGULATIONS, 1948.**

<i>Made</i>	- - - -	<i>7th July, 1948</i>
<i>Laid before Parliament</i>		<i>8th July, 1948</i>
<i>Coming into Operation</i>		<i>31st July, 1948</i>

1948 No. 1585

10 & 11 Geo. 6. c. 49. The Minister of Transport, in exercise of the powers conferred upon him by Section 98 of the Transport Act, 1947, and of all other powers him enabling, hereby makes the following Regulations :—

1.—(1) These Regulations shall come into operation on the 31st day of July, 1948, and shall have effect from the 31st December, 1947.

(2) These Regulations may be cited as “The Transferred Undertakings (Pensions of Employees losing Employment) Regulations, 1948”.

(3) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“the Act” means the Transport Act, 1947 ;

“accrued pension rights” has the meaning assigned to it by Regulation 2 of these Regulations ;

“the Commission” means the British Transport Commission ;

“an Executive” means an Executive established by or under Section 5 of the Act ;

“existing scheme” has the meaning assigned to it by Regulation 2 of these Regulations ;

“the Minister” means the Minister of Transport ;

“normal maximum retiring age” means 65 years for males and 60 years for females ;

“officer or servant” means a person—

(a) employed as an officer or servant by any of the bodies specified in the Third Schedule to the Act or by or in connection with the Railway Clearing House, or

(b) employed as a member of the Commission or of an Executive or as an officer or servant by the Commission (whether or not the employment is by virtue of the Act to be treated as employment by an Executive) who became so employed immediately upon ceasing to be employed as an officer or servant by any of the bodies specified in the Third Schedule to the Act or by or in connection with the Railway Clearing House ;

“pensionable officer or servant” means an officer or servant who has pension rights under an existing scheme ;

“pensionable service” in relation to a pensionable officer or servant includes any period ranking for benefit under his existing scheme ;

“relevant event” means—

(a) in relation to an officer or servant employed as an officer or servant by any of the bodies specified in the Third Schedule to the Act, not being a person employed in connection with the Railway Clearing House, the transfer effected by Part II of the Act ;

(b) in relation to an officer or servant employed as an officer or servant by or in connection with the Railway Clearing House, the transfer effected by Part II of the Act or the coming into operation of any provisions of a scheme under the Act relating to the Railway Clearing House ;

(c) in relation to any other officer or servant, such one of the events mentioned in paragraphs (a) and (b) as would have

been applicable if he had not ceased to be employed as an officer or servant by the body specified in the Third Schedule to the Act by whom he was employed or by or in connection with the Railway Clearing House, as the case may be, immediately before becoming a member of the Commission or of an Executive or a person employed as an officer or servant of the Commission (whether or not the employment is by virtue of the Act to be treated as employment by an Executive).

52 & 53 Vict.
c. 63. (4) The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2.—(1) Every existing pension scheme relating in whole or in part to providing pensions to or in respect of any officer or servant which is associated with his employment as an officer or servant and every statutory provision relating thereto and all trust deeds, rules and other instruments made for the purposes thereof, shall continue subject to the modifications thereof provided for in these Regulations. Any pension scheme so continued is in these Regulations referred to as an "existing scheme".

(2) It shall be a term of every existing scheme that an officer or servant whose emoluments are diminished in consequence of the relevant event, the cause of such diminution having arisen not later than ten years after the relevant event, may (without prejudice to any other power he may have in that behalf) with the consent of the Commission and the persons administering the scheme continue his contributions under the scheme and to have contributions paid in respect of him thereunder by reference to the amount of his emoluments before they were first so diminished; and notwithstanding anything to the contrary therein contained, the said scheme and any statutory provisions relating thereto and all trust deeds, rules and other instruments made for the purposes thereof, shall be construed accordingly.

(3) These Regulations apply to every officer or servant who loses his employment as an officer or servant in consequence of the relevant event, the cause of such loss of employment having arisen not later than ten years after the relevant event, and is a pensionable officer or servant at the date of such loss of employment.

(4) In the subsequent provisions of these Regulations, the expression "accrued pension rights" in relation to an officer or servant to whom these Regulations apply means (subject to the provisions of paragraph (5) of this Regulation) any right or expectation under customary practice to the payment on or after his reaching normal maximum retiring age or on or after the happening of any other contingency (which expression includes the exercise of any right to receive a pension on retirement before reaching normal maximum retiring age) carrying entitlement to pension under his existing scheme—

(a) if the existing scheme is such a scheme as is referred to in paragraph (1) of Regulation 3 of these Regulations, of the pension which would have been payable to or in respect of him by virtue of any premiums paid by or in respect of him under

the scheme up to the date on which he loses his employment as an officer or servant ; or

- (b) if the existing scheme is such a scheme as is referred to in paragraph (2) of Regulation 3 or Regulation 4 of these Regulations, being a scheme in which the pension rights are related by some specific proportion to pensionable service and pensionable emoluments, of a pension payable to or in respect of him calculated at such fraction or fractions of his pensionable emoluments in respect of each year or part of a year of his pensionable service under the scheme as would have been applicable in that scheme in the calculation of the pension, if he had at the date when he loses his employment as an officer or servant reached normal maximum retiring age, or as the case may be, had the other contingency then happened, and there had been no requirement of the scheme as to a minimum qualifying period of service ; or
- (c) if the existing scheme is such a scheme as is referred to in paragraph (2) of Regulation 3 or Regulation 4 of these Regulations, being a scheme in which the pension rights are not related by some specific proportion to pensionable service and pensionable emoluments, of a pension payable to or in respect of him calculated on reaching normal maximum retiring age, or as the case may be, on the happening of the other contingency, as follows :—
 - (i) on reaching normal maximum retiring age, the pension which would have been payable under the scheme had he continued to be a participant in the scheme until that age without increase of emoluments, but reduced in the proportion which the number of years of pensionable service under the scheme before he loses his employment as an officer or servant bears to the number of years of pensionable service which he would have rendered had he continued to be a participant in the scheme until normal maximum retiring age ; or
 - (ii) on the happening of the other contingency, the pension which would have been payable under the scheme if the contingency had happened at the time when he loses his employment as an officer or servant with the corresponding emoluments and length of service and there had been no requirement of the scheme as to a minimum qualifying period of service ;

Provided that for the purpose of ascertaining the amount of any pension which would have been payable to or in respect of any officer or servant under a scheme, no regard shall be had to any increase of pension rights given in connection with any provision made by the Act or in anticipation of the making of any such provision otherwise than in the ordinary course and nothing in sub-paragraphs (b) and (c) of this paragraph shall be taken to confer any right to payments of pension on account of temporary periods of incapacity which exceed in total amount or total period of payment the maximum amount or period laid down in the relevant scheme.

(5) In relation to an officer or servant to whom these Regulations apply, being an officer or servant who immediately before the date of the relevant event was employed as an officer or servant by any of the bodies specified in the Third Schedule to the Act or by or in connection with the Railway Clearing House and had the right or the expectation under customary practice of continuing in that employment beyond the normal maximum retiring age, these Regulations shall have effect as though the references therein to "normal maximum retiring age" were references to the minimum age at which the officer or servant could have been required to retire if he had not lost his employment as an officer or servant in consequence of the relevant event, or, if there is no such age, his actual age at the time when he could have been required to retire if he had not lost his employment as aforesaid.

9 Edw. 7. c.
49.

3.—(1) In respect of any officer or servant to whom these Regulations apply, whose existing scheme provides for pensions by means of contracts or policies made or effected with an assurance company carrying on life assurance business within the meaning of the Assurance Companies Act, 1909 (including contracts or policies made or effected with such a company for the purpose of implementing any form of private superannuation fund), the Commission shall make such arrangements with the persons administering the said scheme as shall ensure to the officer or servant his accrued pension rights.

(2) In respect of any officer or servant to whom these Regulations apply, whose existing scheme provides for pensions by means other than those specified in the preceding provisions of this Regulation, the Commission may, not later than three months after the date upon which the officer or servant loses his employment as an officer or servant, make such arrangements with the persons administering the said scheme as shall ensure to the officer or servant, subject to the provisions of Regulation 8 of these Regulations, his accrued pension rights. Any arrangements made under this paragraph may be determined by the Commission at any time upon giving to the persons administering the scheme three months previous notice in writing.

(3) Notwithstanding anything to the contrary in any such scheme as is referred to in the preceding provisions of this Regulation or any statutory provisions relating thereto or trust deeds, rules or other instruments made for the purposes thereof, the persons administering the said scheme shall be authorised to make such arrangements (including the disposal of any funds held for the purposes of the scheme) as are referred to in the said provisions and the said scheme, statutory provisions, trust deeds, rules and other instruments shall be construed accordingly and as though provision was duly made in the scheme for any arrangements so made.

4. Without prejudice to any other provisions of these Regulations, this Regulation and the three next succeeding Regulations shall apply in relation to and only in relation to any officer or servant to whom these regulations apply, whose existing scheme provides for pensions by means other than those specified in paragraph (1) of the last preceding Regulation and in respect of whom no such arrangements have

been made as are referred to in paragraph (2) of that Regulation or if such arrangements have been made, the arrangements have been duly determined : and notwithstanding anything to the contrary in the said scheme or any statutory provisions relating thereto or trust deeds, rules or other instruments made for the purposes thereof, the persons administering the said scheme and the persons in whom any pension funds held for the purpose thereof are vested, shall be required and authorised to comply with the provisions of the said Regulations, and the said scheme, statutory provisions, trust deeds, rules and other instruments shall be construed accordingly and as though the provisions of the said Regulations which affect the said scheme or fund were included in the scheme.

5.—(1) Where any pension payable under an existing scheme to or in respect of an officer or servant in relation to whom the last preceding Regulation applies is payable out of a pension fund held for the purposes of that scheme, then not later than three months after the date upon which the officer or servant loses his employment as an officer or servant or where any such arrangement has been made in respect of the officer or servant as is referred to in paragraph (2) of Regulation 3 of these Regulations, as soon as may be after the arrangement has been determined, there shall be transferred to the Commission by the persons in whom the said fund is then vested, a sum which, subject to the provisions of Regulation 8 of these Regulations, equals in amount either—

- (a) the transfer value at the date when he so loses his employment or the date on which the arrangement is determined, as the case may be, of his pension rights as defined for the purposes of the scheme ; or
- (b) in the absence of such a definition, the estimated capital value at that date of his pension rights, being such proportion of all prospective benefits payable to or in respect of him as is attributable to service rendered before that date in respect of which there was a contingent liability on the fund immediately before that date, regard being had to the liability to pay any minimum pension in accordance with the provisions of the scheme and to the degree of solvency of the fund ;

and upon such sum being transferred, the Commission shall indemnify the persons in whom the said fund is vested against any liability for the payment of income tax in respect of the sum so transferred to the Commission and the persons administering the scheme, and the persons in whom the said fund is vested, shall be discharged from all liability under the scheme to or in respect of the officer or servant concerned or to any other person by reason of the transfer.

(2) The sum referred to in sub-paragraph (b) of paragraph (1) of this Regulation shall be determined by agreement between an actuary appointed by the Commission and an actuary appointed by the persons administering the scheme, or in default of such agreement, by an actuary appointed by the President of the Institute of Actuaries or the President of the Faculty of Actuaries in Scotland. In this paragraph

the expression "actuary" means a Fellow of the Institute of Actuaries or the Faculty of Actuaries in Scotland. The fees of any actuary appointed for the purposes of this paragraph shall be defrayed by the Commission.

6.—(1) Subject to the provisions of Regulation 8 of these Regulations, the Commission shall pay to or in respect of every officer or servant in relation to whom Regulation 4 of these Regulations applies—

- (a) as from his reaching normal maximum retiring age, or as from the happening of any other contingency carrying entitlement to pension under his existing scheme, the payment or payments comprised in his accrued pension rights ; or
- (b) at the option of the Commission in any case where the sum is less than £250, or at the option of the officer or servant in any case where his period of service, prior to his losing his employment as an officer or servant, did not extend back beyond the 1st January, 1940, a lump sum equal in amount to the estimated capital value of his accrued pension rights at the date when the option is exercised, as determined by an actuary as defined in paragraph (2) of Regulation 5 of these Regulations appointed by the Commission, or twice the total contributions and interest paid by him to his existing scheme, whichever is the greater, reduced by an amount equal to any sum which the persons in whom the fund held for the purposes of that scheme is vested may become liable to pay by way of income tax in respect of the amount transferred by way of transfer value or estimated capital value ;

Provided that—

- (i) the provisions of sub-paragraph (b) of this paragraph shall not apply in any case where the option is not exercised before the expiration of a period of six months after the date upon which the officer or servant loses his employment as an officer or servant ;
- (ii) if in any case a payment required to be made by the Commission under the foregoing provisions of this Regulation (being such a payment as is referred to in sub-paragraph (b) of paragraph 4 of Regulation 2 of these Regulations) is less than the minimum amount which would be payable in like circumstances under the relevant existing scheme, the Commission may, if they think fit so to do, increase the payment up to any amount not exceeding that minimum ; and
- (iii) for the purposes of this paragraph, the expression "accrued pension rights" excludes any pension payable during the period that any such arrangement as is referred to in paragraph (2) of Regulation 3 of these Regulations is in force.

(2) Except as aforesaid, the Commission shall be under no liability to or in respect of the officer or servant concerned by reason of any rights under or arising out of his participation in the scheme.

(3) Without prejudice to the obligations of the Commission under the preceding provisions of this Regulation, the Commission shall be authorised to establish and administer a pension fund for the purposes of providing for the payments which they are required or authorised to make under these provisions. The said fund shall consist of monies provided by the Commission whether out of the sums transferred to them under the provisions of Regulation 5 of these Regulations or otherwise and shall be applied solely for the purposes of making those payments and discharging the costs of administration.

7. Where provision was made in such a scheme as is referred to in the last preceding Regulation for the payment or transfer of benefits to some person other than the officer or servant concerned, the Commission shall, subject to the same conditions, if any, as govern such payment or transfer in that scheme, afford to the officer or servant facilities as near as may be to those contained in the scheme for the similar payment or transfer of the benefits comprised in his accrued pension rights.

8. Where an officer or servant to whom these Regulations apply has received after the date from which these Regulations have effect and before the date on which these Regulations come into operation, any payment under an existing scheme by way of a return of contributions and interest paid by him, with or without interest thereon—

- (a) the sum to be transferred in accordance with Regulation 5 of these Regulations shall be reduced by the amount of that payment ;
- (b) the accrued pension rights payable to him by the Commission in accordance with sub-paragraph (a) of paragraph (1) of Regulation 6 of these Regulations shall be reduced throughout in the proportion which the payment bears to the transfer value or estimated capital value referred to in Regulation 5 of these Regulations ;
- (c) any lump sum to be paid to him by the Commission in accordance with sub-paragraph (b) of paragraph (1) of Regulation 6 of these Regulations shall be reduced by the amount of that payment ;
- (d) the accrued pension rights to be ensured to an officer or servant in accordance with paragraph (2) of Regulation 3 of these Regulations shall be reduced by reason of that payment in such manner as may be provided by the arrangement made under that paragraph ;

Provided that if an officer or servant shall within three months after the last mentioned date pay to the Commission the aggregate amount of all such payments received by him, this Regulation shall not apply.

Given under the Official Seal of the Minister of Transport this seventh day of July, 1948.

(L.S.)

Alfred Barnes,
The Minister of Transport.

EXPLANATORY NOTE

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

These Regulations provide for the continuation, subject to certain modifications, of pension schemes affecting persons who were officers or servants of railway and canal undertakings, or are officers or servants of the Railway Clearing House. They provide for the preservation of the accrued pension rights of any such officer or servant who suffers loss of employment in consequence of any transfer made by or under the Transport Act, 1947, of any such undertaking or of the Railway Clearing House, where the cause of such loss arises not later than ten years after the transfer.

By Regulation 2 (4) the accrued pension rights follow the same pattern as existed before the loss of employment (including a right to the payment of a lump sum or an annual payment on reaching retiring age or becoming disabled, a death benefit, or a widow's pension, where there was such a right in the existing scheme—see definition of "pension" in the Transport Act, 1947). Regulations 3, 4 and 5 contain the machinery for ensuring the payment or payments comprised in the accrued pension rights being made by the British Transport Commission or by the persons administering the pension scheme as the case may be. Where the payments are to be made by the Commission and the amount involved does not exceed £250, or the service of the officer or servant commenced after 1st January, 1940, provision is made for commutation (Regulation 6).
