

SECOND SCHEDULE

Rules 7 and 10

ACCRUED RIGHTS

1. The following provisions of this Schedule shall apply to the ascertainment of accrued rights upon the happening of a contingency in the case of a person who, on the 1st January, 1946, or at any time thereafter, had pension rights in a pension scheme associated with his former employment, and for this purpose the expression “contingency” shall be construed as meaning retirement from his former employment or any other contingency upon the happening of which any payment by way of pension is due under that pension scheme, so, however, that, subject to the said provisions—

- (a) in the case of a person to whom Rule 7 applies, any contingency occurring during, after or in relation to his employment as a civil servant which, had it occurred during, after or in relation to his former employment, would have been a contingency upon the happening of which any payment by way of pension would have been due under that pension scheme shall be treated as being such a contingency;
- (b) in the case of a person to whom Rule 10 applies, the contingencies of incapacity, disablement, marriage or death shall, subject to their being proved to the satisfaction of the Minister, be treated as occurring when they arise, and the contingency of retirement shall be deemed to occur when the person attains the age at which he was, under the pension scheme, entitled, without the consent of his employer in his former employment or of any other person, to retire with a pension other than a return of contributions:

Provided that—

- (i) if the pension scheme contained an option for him to retire at any earlier age with a reduced pension, the contingency of retirement at such earlier age shall be deemed to occur at that age if the person gives notice in writing to the Minister (not later than three months after attaining that age) that he elects to be treated as having retired at that age; and
- (ii) where a person to whom Rule 7 applies retires from the Civil Service before Civil Service retiring age otherwise than upon such medical certificate as is mentioned in Section 10 of the Superannuation Act, 1859 (which section relates to evidence of incapacity), he shall, unless he gives notice in writing of his desire to the contrary to the Minister within six months of such retirement, be treated as though subparagraph (b) of this paragraph were applicable to his case, and, in particular, the contingency of retirement shall not be deemed to occur in his case except in accordance with that paragraph.

2. The accrued rights upon the happening of a contingency in the case of a person who, on the 1st January, 1946, or at any time thereafter, had pension rights in a pension scheme associated with his former employment shall, subject to the following provisions of this Schedule, be deemed to be equal to such payments as would have been payable under that scheme to or in respect of the person in relation to that contingency if he had remained in his former employment without increase of emoluments until the age at which he was under that scheme entitled to retire with a pension other than a return of contributions or until the happening of the contingency, whichever is the earlier:

Provided that—

- (a) any provision in that scheme whereby any payments thereunder are calculated by reference to average emoluments over any period shall be construed as referring to the rate of emoluments at the end of that period; and
- (b) where a person to whom Rule 5 applies either retires from the Civil Service at or after Civil Service retiring age or retires from the Civil Service upon such medical certificate as is mentioned in Section 10 of the Superannuation Act, 1859, his accrued rights on such retirement shall be deemed to be equal to such payments as would have been payable

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

to him under that scheme (as modified where it applies, by the foregoing provision of this proviso) on retirement from his former employment if he had remained in his former employment until the age at which he retired from the Civil Service at the same salary (or on the same salary scale) as was applicable to him when his former employment ceased, and, in the case of retirement upon medical certificate, had been compelled then to retire from his former employment by reason of ill-health.

3. Where such part of the period of a person's former employment as was pensionable employment for the purpose of the pension scheme associated with it was shorter than the period of pensionable employment required by him under that pension scheme to secure the maximum payment for which he could qualify under that scheme in relation to any contingency, the accrued rights in relation to that contingency shall (except in a case to which paragraph (b) of the proviso to paragraph 2 applies) be reduced by a proportion corresponding to the degree by which the former period falls short of the latter.

4. Where the amount of the pension rights was ascertainable by reference to the pension value of the contributions paid by or in respect of a person, the accrued rights shall be limited to those accrued by virtue of the contributions paid by or in respect of him up to the date of termination of his former employment.

5. Where the pension rights were secured under a policy of insurance, the accrued rights shall (except in a case to which the preceding paragraph applies) be limited to those accrued by virtue of the premiums paid by or in respect of him up to the date of termination of his former employment.

6. Where the contingency is one giving a right to the return of contributions, the accrued rights shall be calculated as though the contingency had occurred at the date of termination of his former employment:

Provided that, where the right is to a return of contributions with interest, the interest shall be calculated, in the case of a person to whom Rule 10 applies, as though the date of the contingency were ascertained in accordance with the provisions of sub-paragraph (b) of paragraph 1 of this Schedule.

7. In determining the accrued rights in the case of any person in respect of whom the following conditions are fulfilled:—

- (a) that on the appointed day no person had pension rights under the pension scheme associated with his former employment, other than persons employed or formerly employed by an Approved Society (including any branch thereof) transacting only health insurance business, or any separate section established for the purposes of the Health Insurance Act;
- (b) that his former emoluments included a bonus or other additional payment paid on account of war-time conditions and not then consolidated with his emoluments (hereafter in this paragraph called "war payments"), and no part of his pension rights under the pension scheme was in respect of war payments;
- (c) that, if the Society or body employing him had, on the 1st August, 1946, consolidated war payments with the emoluments of persons then in their employment, he would under the pension scheme have had pension rights in respect of war payments; and
- (d) that it is proved to the satisfaction of the Minister that the said Society refrained from so consolidating war payments in such circumstances that their failure to do so is directly attributable to the passing of the National Insurance Act;

that person shall be treated as if the Society had so consolidated war payments.

8. In the calculation of accrued rights any sums paid by way of compensation in respect of the same rights or in respect of the same period under Section 67 of the National Insurance Act shall be taken into account.

9. In any case in which either—

- (a) in connection with any provision made by the Act or by the National Insurance Act, or in anticipation of the making of any such provision, pension rights have been created otherwise than in the ordinary course; or
- (b) there has been default in making any transfer, in whole or part of any pension fund or of the assets held for the purposes of a pension scheme in accordance with Part IV of these Rules;

such adjustment shall be made in the calculation of accrued rights which result from such creation or which are a liability of such fund or under such scheme as may appear to the Minister to be appropriate.