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STATUTORY INSTRUMENTS

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**1965 No. 620**

**The Probation (Compensation) Regulations 1965**

**PART V**

**RETIREMENT COMPENSATION AND PAYMENTS ON DEATH**

**Retirement compensation payable to pensionable officer on his becoming incapacitated or reaching minimum pensionable age**

**18.**—(1) Where a pensionable officer to whom this Part of these Regulations applies, before attaining what would have been his normal retiring age—

- (a) becomes incapacitated in circumstances in which if he had continued in the employment he has lost he would have become entitled to a pension under the pension scheme to which he was subject in that employment; or
- (b) attains the age which, had he continued to serve in the employment he has lost, would have been his minimum pensionable age,

he shall be entitled on the happening of either event to claim in lieu of any compensation to which he would otherwise be entitled under these Regulations—

- (i) in the case mentioned in head (a) of this paragraph, an annual sum equal to the amount of his accrued incapacity pension and a lump sum equal to the amount of his accrued incapacity retiring allowance (if any); and
- (ii) in the case mentioned in head (b) of this paragraph, an annual sum equal to the amount of his accrued pension and a lump sum equal to the amount of his accrued retiring allowance (if any):

Provided that—

- (i) if in calculating the amount of compensation payable to a person who has made such claim as aforesaid, the compensating authority, by virtue of Regulation 23(2) of these Regulations, have credited him with additional years of service or an additional period of contribution, no account shall be taken for the purpose of the foregoing provision of any additional years or period beyond the number of years which he could have served, had he not lost his employment, before the date on which the claim was received by the compensating authority; and
- (ii) if by reason of any provision of the relevant pension scheme for a minimum benefit the amount of any such pension or retiring allowance is in excess of that attributable to the claimant's actual service, no account shall be taken for the purpose of the foregoing provision of any such additional years or period except to the extent (if any) by which they exceed the number of years represented by the difference between the claimant's actual service and the period by reference to which the minimum benefit has been calculated; and
- (iii) if the number of years by reference to which an accrued incapacity pension or an accrued incapacity retiring allowance is to be calculated is less than any minimum number of years of qualifying service prescribed by the relevant pension scheme, the amount of such pension or retiring allowance shall, notwithstanding any minimum

benefit prescribed by the pension scheme, not exceed such proportion of such minimum benefit as the number of years of of pensionable service bears to the minimum number of years of qualifying service.

(2) On receipt of a claim under the last preceding paragraph, the compensating authority shall consider forthwith whether the claimant is a person to whom that paragraph applies, and within thirteen weeks after the date of the receipt of the claim—

- (a) if they are satisfied that he is not such a person, they shall notify him in writing accordingly, and
- (b) if they are satisfied that he is such a person, they shall assess the amount of compensation payable to the person, and notify him in writing accordingly,

and any such notification shall, for the purposes of these Regulations, be deemed to be a notification by the authority of a decision on a claim to compensation.

(3) If a claimant wishes to receive compensation under this Regulation, he shall so inform the compensating authority in writing within one month from the receipt of a notification under the last preceding paragraph or, where the claim has been the subject of an appeal, from the decision of the tribunal thereon; and the compensation shall be payable as from the date on which the compensating authority received the claim.

(4) A compensating authority may require any such person as is mentioned in paragraph (1) (a) of this Regulation, who makes a claim under that paragraph, to submit himself to a medical examination by a registered medical practitioner selected by that authority, and, if they do so, they shall also offer the person an opportunity of submitting a report from his own medical adviser as a result of an examination by him, and the authority shall take that report into consideration, together with the report of the medical practitioner selected by them.

### **Option to take retirement compensation prematurely in certain cases**

**19.**—(1) If a pensionable officer to whom this Part of these Regulations applies has suffered loss of employment after attaining the age of fifty years and so requests the compensating authority by notice in writing, he shall be entitled as from the date on which the compensating authority receive such notice, in lieu of any compensation, other than resettlement compensation, to which he would otherwise be entitled under these Regulations, to an annual sum equal to the amount of his accrued pension and a lump sum equal to the amount of his accrued retiring allowance (if any):

Provided that—

- (i) in calculating the amount of the compensation payable to a person who has given such notice as aforesaid no account shall be taken of any additional years of service or period of contribution credited to the person under Regulation 23(2) of these Regulations, and
- (ii) where the officer has claimed long-term compensation, the said notice shall be given not later than two years after the determination of the claim or, where the determination is reviewed under Regulation 35(3) of these Regulations, not later than two years after any such review.

(2) Regulation 18(2) of these Regulations shall apply in relation to a notice given under the last foregoing paragraph as it applies to a claim made under paragraph (1) of that Regulation.

(3) Where an annual sum is payable under this Regulation in respect of any period and resettlement compensation is also payable in respect of that period, the said annual sum shall be limited to the amount (if any) by which it exceeds the resettlement compensation payable as aforesaid.

### **Retirement compensation for loss of emoluments payable to pensionable officer on attainment of normal retiring age**

**20.**—(1) Subject to the provisions of these Regulations, when a pensionable officer to whom this Part of these Regulations applies reaches normal retiring age, the retirement compensation payable to him for loss of emoluments shall be—

- (a) an annual sum equal to the amount of his accrued pension; and
- (b) a lump sum equal to the amount of his accrued retiring allowance (if any).

(2) Compensation shall not be payable under this Regulation to a claimant who is entitled to compensation under Regulation 18 or 19 of these Regulations.

### **Retirement compensation for diminution of emoluments**

**21.** The provisions of Regulations 18 and 20 of these Regulations shall apply to a pensionable officer to whom this Part of these Regulations applies and who has suffered a diminution of his emoluments, but the sums payable to such an officer in the circumstances mentioned in those Regulations shall be sums which bear to the sums which would have been payable thereunder had the claim been in respect of loss of employment the same ratio as the amount by which the claimant's net emoluments have been diminished (calculated as an annual rate) bears to the amount of his net emoluments:

Provided that no compensation shall be payable if this ratio is less than 2½ per cent.

### **Compensation of claimant who obtains further pensionable employment**

**22.** Where a pensionable officer after suffering loss of employment or diminution of emoluments, enters employment in which he is subject to a pension scheme and thereafter becomes entitled to reckon for the purposes of that scheme any service or period of contribution which falls to be taken into account for the purpose of assessing the amount of any retirement compensation payable to him, no retirement compensation shall be payable unless the annual rate of the emoluments to which he was entitled immediately before such loss or diminution exceeds the annual rate on entry of the emoluments of the new employment by more than 2½ per cent. of such first mentioned emoluments, and any retirement compensation payable to him shall, in so far as it is calculated by reference to remuneration, be calculated by reference to the difference between the said annual rates:

Provided that this Regulation shall not operate to increase the amount of any retirement compensation payable in respect of diminution of emoluments beyond the amount which would have been payable if the officer had attained normal retiring age immediately before he ceased to hold the employment in which he suffered the diminution of emoluments.

### **Factors governing the payment of retirement compensation**

**23.**—(1) An officer entitled to retirement compensation under Regulation 18, 19 or 20 of these Regulations shall pay to the compensating authority an amount equal to any sum which was paid to him by way of return of superannuation contributions, whether with or without interest, after ceasing to be employed and the compensating authority may at the request of the officer repay that amount to him at any time before he becomes entitled as aforesaid, but if that amount is not paid to the compensating authority, or is repaid by them to the officer, the compensation shall be reduced by an annual amount the capital value of which is equal to the amount of the said superannuation contributions.

(2) If the claimant had attained the age of forty years at the date on which he lost his employment or suffered a diminution of his emoluments, the compensating authority in calculating the amount

of the retirement compensation payable to him shall credit him with additional years of service or an additional period of contribution on the following basis, namely—

- (a) two years, whether or not the claimant has completed any years of service after attaining the age of forty years, and
- (b) two years for each of the first four completed years of the claimant's reckonable service between the date when he attained the age of forty years and the date of the loss or diminution, and
- (c) one year for each such year of service after the fourth,

but the additional years of service or period of contribution so credited shall not exceed the shortest of the following periods, namely—

- (i) such number of years as, when added to his pensionable service, would amount to the maximum period of such service which would have been reckonable by him had he continued in his employment until attaining normal retiring age, or
- (ii) the number of years of the claimant's reckonable service, or
- (iii) fifteen years;

and in calculating the amount of any retirement compensation payable to the claimant any period so added shall be aggregated with any years of service or period of contribution entailing reduction of the relevant pension or retiring allowance in connection with the passing of the National Insurance Act 1946.

(3) When retirement compensation is awarded or when an award is reviewed under Regulation 35 of these Regulations the additional compensation payable in consequence of any years of service or period of contribution credited to a claimant under the last foregoing paragraph may be reduced or withheld as the compensating authority may think reasonable having regard to the pension scheme (if any) attaching to any further employment obtained by the claimant.

(4) If under the pension scheme to which the claimant was last subject before suffering loss of employment or diminution of emoluments the amount of any benefit to which he might have become entitled might have been increased at the discretion of the authority administering the pension scheme or of any other body, the compensating authority may increase, to an extent not exceeding that to which his accrued pension, accrued retiring allowance, accrued incapacity pension or accrued incapacity retiring allowance might have been increased or supplemented, the corresponding component of any retirement compensation payable to him; and in this connection the compensating authority shall have regard to the provisions of any order or scheme made under the Act of 1933 or the Act of 1958 or any instrument made under the Act of 1964 protecting the interests of the claimant.

(5) If under the pension scheme to which he was last subject before suffering loss of employment or diminution of emoluments, the claimant would have been entitled to surrender a proportion of any pension which might have become payable to him in favour of his spouse or any dependant, then, if he so desires and informs the compensating authority by notice in writing accordingly within one month after becoming entitled to retirement compensation under these Regulations, he may surrender a proportion of so much of the said compensation as is payable by way of an annual sum on the like terms and conditions and in consideration of the like payments by the compensating authority as if the said annual sum were a pension to which he had become entitled under the said pension scheme.

(6) In calculating for the purposes of Regulation 18, 19 or 20 of these Regulations the amount of the annual sum which is equal to a claimant's accrued pension no account shall be taken of any reduction falling to be made in that pension in connection with the passing of the National Insurance Act 1946 or the National Insurance Act 1959 until the claimant reaches the age at which under the pension scheme to which he was subject before losing his employment the pension would have been so reduced.

(7) In paragraph (2) of this Regulation the expression “reckonable service” includes any period of employment of which account has been taken or is required to be taken in calculating the amount of any superannuation benefit to which a claimant has become entitled.

#### **Compensation payable to dependants, etc. on the death of a claimant**

**24.**—(1) Payments in accordance with this and the next two succeeding Regulations shall be made to or for the benefit of the widow, child or other dependant or to the personal representative of an officer to whom this Part of these Regulations applies.

(2) If the widow, child or other dependant of the officer might have become entitled to a pension under the pension scheme to which the officer was last subject before losing his employment if such loss of employment had not occurred, the widow, child or other dependant, as the case may be, shall be entitled to receive an annual sum equal to the prescribed proportion of any retirement compensation by way of annual amounts payable to the officer under Regulation 18, 19 or 20 of these Regulations immediately prior to his death or, if he dies before becoming entitled to receive compensation under any of those Regulations, the prescribed proportion of the compensation by way of annual amounts which he would have received under Regulation 18 of these Regulations had he become entitled thereto immediately prior to his death:

Provided that—

- (i) where any retirement compensation has been surrendered or compounded under Regulation 23(5) or Regulation 36 of these Regulations, any sum payable under this Regulation shall be calculated as if such surrender or compounding had not taken place;
- (ii) where the pension scheme provides for payment of the pension to any person on behalf of the child or other dependant, any annual sum payable as aforesaid 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 pension scheme;
- (iii) in calculating the sum payable as aforesaid, it shall be assumed that the retirement compensation payable, or which would have been payable, to an officer under Regulation 18, 19 or 20 of these Regulations had been such sum as would have been payable if the accrued pension or accrued incapacity pension had not been reduced in connection with the passing of the National Insurance Act 1946 or the National Insurance Act 1959.

(3) Any annual sum payable to or for the benefit of a widow, child or other dependant under this Regulation shall cease to be payable in any circumstances in which a corresponding pension under the said pension scheme would have ceased to be payable.

(4) Except where any compensation payable to the officer concerned has been reduced under Regulation 23(1) of these Regulations, compensation payable under this and the next following Regulation shall in the aggregate be reduced by an amount the capital value whereof is equal to the amount of any superannuation contributions returned to the officer and either not paid to the compensating authority or repaid by the compensating authority to the officer, the compensation under each such Regulation being reduced in proportion to the capital value of each amount.

(5) This Regulation shall apply in the case of an officer who has suffered a diminution of emoluments with the substitution of references to diminution of emoluments for references to loss of employment, but the annual sum payable to a widow, child or other dependant of such an officer shall be a sum which bears to the sum which would have been payable under paragraph (2) of this Regulation had the claim been in respect of loss of employment, the same ratio as the amount by which the officer's net emoluments have been diminished (calculated as an annual rate) bears to the amount of his net emoluments:

Provided that no sum shall be payable under this paragraph if this ratio is less than 2½ per cent.

(6) In this Regulation “prescribed proportion” means the proportion which, under the pension scheme to which the officer was subject immediately prior to the loss of employment of diminution

of emoluments, the pension payable to a widow, child or other dependant, as the case may be, bears to an officer's pension.

### **Compensation payable to a personal representative on the death of a claimant**

**25.**—(1) If the personal representative of the officer might have become entitled to a death grant under the pension scheme to which the officer was last subject before losing his employment had such loss not occurred, they shall be entitled to receive a sum calculated in accordance with the provisions of the next succeeding paragraph, and paragraph (4) of the last preceding Regulation.

(2) The amount of such sum shall be ascertained in accordance with the method of calculation prescribed by the pension scheme for the ascertainment of death grant as if the officer had died immediately before losing his employment, subject to the following modifications—

- (a) except where the officer had been in receipt of retirement compensation under Regulation 19 of these Regulations, account shall be taken of any additional years of service or period of contribution credited to the officer under Regulation 23(2) of these Regulations—
  - (i) in the case of an officer who had been in receipt of retirement compensation under Regulation 18 of these Regulations, to the extent of the period between the loss of employment and the date of the claim made under that Regulation, and
  - (ii) in any other case, to the extent of the period between the loss of employment and the officer's death;
- (b) if the number of years of the officer's service or period of contribution is less than the minimum number of years of qualifying service or period prescribed by the pension scheme for the receipt of a death grant, the said sum shall not exceed such proportion of the death grant calculated as aforesaid as the number of years of the claimant's qualifying service or period of contribution bears to the minimum number of years of qualifying service or period required by the pension scheme; and
- (c) there shall be deducted from such sum the amount of any retirement compensation paid to the officer under Regulation 18, 19 or 20 of these Regulations, or where any part of the compensation has been surrendered under Regulation 23(5) of these Regulations, the amount which would have been so paid but for any such surrender.

(3) For the purpose of calculating such death grant an annual sum payable to or for the benefit of a widow, child or other dependant under the last preceding Regulation shall be deemed to be a pension payable to or for the benefit of the widow, child or dependant, as the case may be.

(4) This Regulation shall apply in the case of an officer who has suffered a diminution of emoluments with the substitution of references to diminution of emoluments for references to loss of employment, but the sum payable to the personal representatives of such an officer shall be a sum which bears to the sum which would have been payable under paragraph (1) of this Regulation had the claim been in respect of loss of employment the same ratio as the amount by which the officer's net emoluments have been diminished (calculated as an annual rate) bears to the amount of his net emoluments:

Provided that no sum shall be payable to a personal representative under this paragraph if this ratio is less than 2½ per cent.

### **Balances payable to a deceased claimant's widow and personal representative**

**26.**—(1) If no annual sum is payable to the widow, child or other dependant under Regulation 24 of these Regulations and no sum is payable under the last preceding Regulation and the officer dies before he has received in the aggregate by way of retirement compensation a sum equivalent to the amount of any contributions repaid by him under Regulation 23(1) of these Regulations, together with compound interest thereon calculated at the rate of 3 per cent. per annum with half-yearly rests

up to the date of his death as from the 1st April or the 1st October following the half year in which the amount was paid, there shall be paid to his personal representative the difference between the aggregate amount received by way of retirement compensation as aforesaid and the said equivalent sum.

(2) If an annual sum becomes payable to a widow under Regulation 24 of these Regulations and on her re-marriage or death the sum ceases to be payable, and the aggregate amount of the payments which were made to her as aforesaid, to her husband by way of retirement compensation and to his personal representative under Regulation 25 of these Regulations is less than a sum equivalent to the amount which would have been payable to the personal representative under that Regulation if no annual sum had been payable to the widow under the said Regulation 24, there shall be paid to her or her personal representative the difference between such aggregate amount and the said equivalent sum.

(3) For the purposes of this Regulation an officer who has surrendered any part of his retirement compensation under Regulation 23(5) of these Regulations shall be deemed to have received during any period the amount of compensation for that period which he would have received but for any such surrender.

#### **Deduction of outstanding additional contributory payments**

27. There shall be deducted from the retirement compensation payable to any person any additional contributory payments remaining unpaid at the date when he suffered loss of employment; and any such payments not recovered at the date of his death shall be deducted from any compensation payable in respect of the person under Regulation 24 25 or 26 of these Regulations.

#### **Calculation of compensation where superannuation benefit is payable**

28. Where an officer to whom this Part of these Regulations applies, or his widow, child or other dependant or personal representative has become entitled to any superannuation benefit under a pension scheme associated with the employment which the officer has lost, the retirement compensation payable to the officer, or the compensation payable in respect of the officer under Regulations 24 25 and 26 of these Regulations shall be calculated in the first place as if the said superannuation benefit had not been payable but—

- (a) compensation by way of annual amounts shall be reduced by the annual amount of any such superannuation benefit as is payable periodically, and
- (b) compensation payable as a lump sum shall be reduced by the amount of any such superannuation benefit payable as a lump sum.

#### **Compensation payable to non-pensionable officer on attainment of normal retiring age**

29.—(1) In the case of an officer who is not a pensionable officer, the compensating authority may, on his attaining normal retiring age, if they are satisfied that he would in the normal course have continued in the employment he has lost for a substantial period beyond that age, continue to pay compensation to him for the remainder of his life at half its former rate.

(2) In the case of an officer who is not a pensionable officer and who suffers loss of employment on or after attaining normal retiring age, the compensating authority may, if they are satisfied that he would in the normal course have continued in the employment he has lost for a further substantial period, pay compensation to him for the remainder of his life at half the rate to which he would have been entitled under Regulation 15 of these Regulations had he not attained normal retiring age at the date on which he lost his employment.

### **Persons subject to policy schemes**

**30.**—(1) Except in relation to any accrued pension, accrued retiring allowance, accrued incapacity pension or accrued incapacity retiring allowance attributable to service as a contributory employee or local Act contributor, the provisions of Regulations 18, 19, 20 and 21 of these Regulations shall not apply to a person who had been participating in a scheme associated with his employment for providing superannuation benefits by means of contracts or policies of insurance, and who, after the loss of his employment or the diminution of his emoluments, continued to participate in that scheme, or became entitled to a benefit or prospective benefit thereunder other than a return of contributions.

(2) If the claimant is such a person as is mentioned in paragraph (1) of this Regulation who has lost his employment, the compensating authority may, if the relevant scheme so permits, make such payments to or in respect of him, whether by way of the payment of premiums or otherwise, as will secure that his benefits under the scheme are increased to an extent actuarially equivalent to that by which similar amounts of retirement compensation could be increased under Regulation 23(2) or (4) of these Regulations.

(3) If the claimant is such a person as is mentioned in paragraph (1) of this Regulation who has suffered a diminution of his emoluments, the compensating authority may, if the relevant scheme so permits, make such payments to or in respect of him, whether by way of the payment of premiums or otherwise, as will secure to the claimant the like benefits under the scheme as if his emoluments had not been diminished.

(4) If the claimant is such a person as aforesaid and he becomes entitled to a benefit under such a scheme as is mentioned in paragraph (1) of this Regulation before reaching normal retiring age, the compensating authority may reduce any long-term compensation payable to him under Part IV of these Regulations by the amount of such benefit.

### **Intervals for payment of compensation under Part V**

**31.** Retirement compensation and other compensation awarded as annual sums under this Part of these Regulations shall be payable at intervals equivalent to those at which the corresponding benefit would have been payable under the pension scheme to which the claimant was subject prior to the loss of employment or diminution of emoluments or at such other intervals as may be agreed between the recipient and the compensating authority.