

1973 No. 242

NATIONAL HEALTH SERVICE, ENGLAND AND WALES
**The National Health Service (Superannuation) (Amendment)
Regulations 1973**

<i>Made</i>	- - -	14th February 1973
<i>Laid before Parliament</i>		23rd February 1973
<i>Coming into Operation</i>		19th March 1973

The Secretary of State for Social Services in exercise of powers conferred by sections 10 and 12 of the Superannuation Act 1972(a) and of any other powers enabling him in that behalf, after consulting representatives of persons likely to be affected by these regulations, and with the consent of the Minister for the Civil Service, hereby makes the following regulations:—

Citation and commencement

1.—(1) These regulations may be cited as the National Health Service (Superannuation) (Amendment) Regulations 1973 and shall come into operation on 19th March 1973.

(2) The National Health Service (Superannuation) Regulations 1961(b), the National Health Service (Superannuation) (Amendment) Regulations 1966(c), the National Health Service (Superannuation) (Amendment) Regulations 1972(d), the National Health Service (Superannuation) (Amendment) (No. 2) Regulations 1972(e) and these regulations may be cited together as the National Health Service (Superannuation) Regulations 1961 to 1973.

Interpretation

2.—(1) In these regulations “the principal regulations” means the National Health Service (Superannuation) Regulations 1961, as amended (c), (d), (e) and (f), and other words and expressions used have the same meanings as in the principal regulations.

(2) The Interpretation Act 1889(g) applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

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| (a) 1972 c. 11. | (b) S.I. 1961/1441 (1961 II, p. 2824). |
| (c) S.I. 1966/1523 (1966 III, p. 4309). | (d) S.I. 1972/1339 (1972 II, p. 4054). |
| (e) S.I. 1972/1537 (1972 III, p. 4512). | (f) S.I. 1967/949 (1967 II, p. 2906). |
| (g) 1889 c. 63. | |

Amendments relating to part-time employment

3. In regulation 2(1) of the principal regulations (which defines expressions used therein)—

(a) after the definition of “teaching service” there shall be inserted the following definition—

“ “transferred officer” means, subject to paragraphs (5) and (6) of this regulation, a person who became an officer on transfer under the Act to the employment of an employing authority, or who became an officer in consequence of the acquisition of premises under section 58 of the Act;”;

(b) in the definition of “mental health officer”—

(i) for the words “means an officer” there shall be substituted “means a whole-time officer”, and

(ii) for the words “and any officer employed” there shall be substituted “and any medical officer who devotes substantially the whole of his time to the provision at such a hospital of specialist services to such persons pursuant to section 3 of the Act, and any officer employed for the whole or substantially the whole of his time”, and

(iii) after the words “ten years” there shall be inserted “and, if the Secretary of State in a particular case so consents, any other officer who, having been a mental health officer, without a break in his service and without having become entitled to any benefit under these regulations subsequently becomes employed in a part-time capacity in any employment as aforesaid,”.

4. In regulation 4(1) of the principal regulations (application of the regulations) for sub-paragraph (c) to the end of the paragraph there shall be substituted—

“(c) any other whole-time officer who was transferred under the Act or entered employment of an employing authority in consequence of the acquisition of premises under section 58 of the Act, and immediately before either of those events had reasonable expectations of superannuation benefits on retirement and since either of those events has remained an officer without a continuous break of 12 months or more other than a period to which regulation 18(2) applies;

(d) any other whole-time officer who at any time since attaining the age of eighteen years has been in the employment of that or any other employing authority as such whole-time officer for a continuous period of two years or for an aggregate period of two years without having had before the expiration of that aggregate period a break of more than one month at any one time;

(e) any part-time officer who is employed as a medical officer or dental officer; and

(f) any other part-time officer who satisfies the requirements of schedule 7:

Provided that—

(i) for the purposes of sub-paragraph (d) of this paragraph, account shall be taken of the employment of a transferred officer which he held at the time of transfer, and of any other employment before

transfer in which, had he continued to hold it, he would have been transferred as if such employment had been employment under an employing authority;

- (ii) where, on the termination of the employment of an officer of an employing authority, a payment is made in lieu of leave not taken by the officer, his employment as an officer in the employment of that authority shall for the purposes of these regulations be deemed to have continued for a period equal to such leave, and such payment shall be deemed to be his remuneration for that period; and
- (iii) a whole-time officer of an employing authority, other than a practitioner, shall not in addition be an officer by virtue of sub-paragraph (e) or (f) of this paragraph;

and the term "officer" shall be construed accordingly."

5. In regulation 17 of the principal regulations (reckoning of previous periods of employment), for paragraph (2) there shall be substituted—

"(2) If a person has become an officer on or before completion of the period of two years of employment required under regulation 4(1)(d) or under any provision in the previous regulations there shall be reckonable as service in relation to the employment in which he became such an officer any previous period of employment under an employing authority which was included in such period of two years and which was prior to the employment in which he became such an officer."

6. In regulation 22 of the principal regulations (reckoning of qualifying service)—

- (a) In paragraph (4) before the words "This regulation" there shall be inserted the words "The foregoing paragraphs of";
- (b) after paragraph (4) there shall be added—

"(5) A person who has become an officer by virtue of regulation 4(1)(f) shall be entitled to reckon for the purpose of determining whether any benefit is payable to or in respect of him but not for the purpose of calculating any such benefit, every period of employment which satisfies all of the following requirements, that is to say that it was a period of employment—

- (i) after he attained the age of eighteen years;
- (ii) under any body which is or is deemed to be an employing authority under these or the previous regulations or any corresponding Scottish regulations;
- (iii) for not less than half of such hours in any period as would have constituted whole-time employment in his case;
- (iv) which was followed, within not more than three months, by other employment to which this paragraph applies or by employment which is reckonable as contributing service; and
- (v) which is not and has not been reckonable as contributing service under these or the previous regulations or any corresponding Scottish regulations;

and the proviso to paragraph (1) of this regulation shall apply to a person to whom this paragraph applies."

7. The schedule to these regulations shall be included as schedule 7 to the principal regulations.

Income tax on contributions refunded

8. In regulation 35 of the principal regulations (return of contributions)—

(a) for paragraph (1)(a) there shall be substituted—

“(1)(a) In this regulation, the provisions of paragraph (2) shall apply subject to the provisions of paragraphs (8) and (9) in relation to a person who is an excepted officer, the provisions of paragraphs (3) to (5) shall apply subject to the provisions of paragraphs (8) and (9) in relation to a person who is not an excepted officer, and the provisions of paragraph (7) shall apply in relation to any person whether or not he is an excepted officer.”;

(b) for paragraph (1)(b)(i) there shall be substituted—

“(i) have not been returned to the person or, if they have been returned to him, he has repaid the amount he received and any further amount which he is required under these or the previous regulations to pay, and”;

(c) after paragraph (7) there shall be added the following paragraphs—

“(8) Where the Secretary of State is charged to income tax on any amount paid under this regulation, the sum payable by him under this regulation shall be reduced by an amount equal to that tax.

(9) Where an officer would, apart from this paragraph, be entitled to receive under this regulation a return of his contributions and any of those contributions were paid in respect of remuneration exceeding £5,000 in any financial year, or were paid under some other superannuation scheme in which he was subject, on leaving, to a provision corresponding to this paragraph, he shall not be entitled to receive any payment under this regulation, but in lieu thereof shall be entitled on attaining the age of 60 years (or if he is then an officer on ceasing after that age to be an officer) to the benefits to which he would be entitled under regulation 8(1)(a)(ii) if he satisfied the requirements of that provision.”.

9. Where any provision of the principal regulations enables a person to pay or repay an amount equal to any sum paid to him by way of return of contributions together with an amount equal to any income tax which was deducted from his contributions in respect of such payment, the requirement to repay an amount equal to such income tax shall not require the person to repay an amount equal to any reduction of the payment under regulation 35(8) of the principal regulations.

Amendments relating to actuarial investigation

10. In regulation 61 of the principal regulations (accounts and actuarial investigations) for paragraph (5) there shall be substituted the following paragraph—

“(5) As at the expiration of every period of 5 years after 31st March 1969 there shall be an actuarial investigation by the Government Actuary of the assets and liabilities of the Secretary of State in respect of the benefits provided by the Secretary of State under these regulations, and the Government Actuary shall submit to the Secretary of State and to the Minister for the Civil Service a report of every such investigation”.

Amendments relating to reduction of pension or injury allowance

11. In regulation 39 of the principal regulations (reduction of pension or injury allowance)—

(a) for the words from the beginning of paragraph (1) to and including the words “payable out of public funds, then” there shall be substituted—

“(1) Where a person who has become entitled to a pension or injury allowance under these regulations or the previous regulations—

(a) continues in or enters the employment of an employing authority as defined in regulation 2(1) of these regulations or in regulation 2(2) of the National Health Service (Superannuation) (Scotland) Regulations 1961(a), but not including employment with an employer with whom an agreement has been made under section 18 of the National Health Service (Amendment) Act 1949(b) or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(c); or

(b) continues in or enters any other employment in which he participates in the benefits provided under these regulations or the National Health Service (Superannuation) (Scotland) Regulations 1961, as amended(d),

then, until he attains the age of 70 years,”;

(b) in paragraph (2) for the words “the remuneration of which will be payable out of public funds” there shall be substituted the words “to which paragraph (1) of this regulation applies”.

Amendments relating to qualification for benefit

12.—(1) In regulation 4 of the principal regulations (application of the regulations), after paragraph (4) there shall be added—

“(5) On the attainment of the age of 70 years an officer, other than an officer to whom the provisions of regulation 43 apply, shall, for the purposes of these regulations other than regulation 10, cease to be an officer.”.

(2) In regulation 8 of the principal regulations (officer’s pension and retiring allowance) for the words from the beginning of paragraph (1) to the words “the Minister” there shall be substituted the words “On ceasing to be an officer, a person shall be entitled to receive from the Secretary of State—”.

(3) In the principal regulations—

(a) in regulation 13(1)(b) (death gratuity) there shall be deleted the words “(other than a person to whom paragraph (2) of regulation 8 applies)”;

(b) in regulation 14(3B) (widow’s pension) for the reference to “, (b) or (c)” there shall be substituted a reference to “or (b)”;

(c) in the proviso to regulation 14(3) (widow’s pension) for the words “sub-paragraphs (b) and (c)” there shall be substituted the words “sub-paragraph (b)”;

(a) S.I. 1961/1398 (1961 II, p. 2697).

(b) 1949 c. 93.

(c) 1967 c. 28.

(d) S.I. 1966/1522, 1972/1604 (1966 III, p. 4268; 1972 III, p. 4709).

- (d) in regulations 14(3A)(b) (widow's pension) and 14A(2)(a) (child's allowance) for the reference to "(b) or (d)" there shall be substituted a reference to "or (b)";
- (e) in regulation 34(1) (average remuneration) for the words "ceased to hold his employment as an officer" there shall be substituted the words "ceased to be an officer";
- (f) in regulation 35 (return of contributions) in paragraphs (2), (3)(b) and (4)(b), for the words "a person (other than a person to whom paragraph (2) of regulation 8 applies) who" there shall be substituted the words "a person who, before becoming entitled to such a benefit".
- (4) In regulation 46(2) of the principal regulations (supplementary payments) for the words "the Minister with the approval of the Treasury, on his ceasing to be employed or on his death" there shall be substituted the words "then, on or after his ceasing to be an officer, the Secretary of State, with the approval of the Minister for the Civil Service", and for the words "the Minister considers equitable" there shall be substituted the words "the Secretary of State considers equitable".
- (5) In regulation 46(3) of the principal regulations (supplementary payments) for the words "the Minister, on his ceasing to be employed or on his death," there shall be substituted the words "on or after his ceasing to be an officer the Secretary of State".

Rate of child's allowance and widow's pension for the first three months following a parent's death

13. Schedule 6 to the principal regulations (child's allowance) shall be amended as follows—

- (a) there shall be inserted at the beginning the following paragraph, and the remaining paragraphs shall be renumbered accordingly—

"1. Where an officer or a person entitled to a pension under these or the previous regulations dies leaving an eligible child then, subject to the provisions of regulation 14C(4), a child's allowance shall be payable for the first three months following the death of the parent or, if the child was born within that period, the remainder of the period—

- (a) if the parent was an officer on or after 1st October 1972 and was, at the time of his death, entitled to a pension under these or the previous regulations and was not then an officer, at the rate set out in regulation 14(3B)(a);
- (b) if the parent was, at the time of his death, entitled to a pension under these or the previous regulations and was also an officer, at the rate set out in regulation 14(3B)(b); or
- (c) if the parent was an officer at the time of his death and was not then entitled to a pension under these or the previous regulations, at the rate set out in regulation 14(3B)(c);

and provisos (ii), (iii) and (iv) to regulation 14(3B) shall apply to the calculation of such a rate:

Provided that no allowance shall be payable under this paragraph for any period during which a widow's pension is payable at the rate specified in regulation 14(3B).";

- (b) in paragraph 2 (as renumbered by this regulation) after the words "regulation 14C(4)" there shall be inserted the words "except whilst any amount is payable under paragraph 1 of this schedule";
- (c) in paragraph 3 (as renumbered by this regulation) for the words "paragraph 1(a)" there shall be substituted the words "paragraph 2(a)"; and
- (d) in paragraph 4 (as renumbered by this regulation) for the words "was entitled or deemed to be entitled to the larger pension", there shall be substituted the words "would result in the larger payment".

14. In regulation 14(3B) of the principal regulations (widow's pension)—

- (a) the words in sub-paragraph (c) from "so, however" to the end of the sub-paragraph shall be deleted; and
- (b) after proviso (iii) there shall be added—
 - "(iv) an officer whose remuneration was suspended by reason of his absence from duty immediately before his death shall be deemed to be a person mentioned in paragraph (1)(a) of this regulation who had become entitled to a pension under regulation 8(1)(a)(i) on the date of his death."

Revocation

15.—(1) The following regulations of the principal regulations are hereby revoked—

regulations 7(4)(a), 8(2), 12(3), 13(1)(d), 14(1)(c), 14(3)(c), 14(3B)(d) and regulation 14(1) proviso (iii).

(2) Section 38 of the Interpretation Act 1889 shall apply as if these regulations were an Act of Parliament and as if the regulations revoked by these regulations were an Act of Parliament repealed by an Act of Parliament.

Date from which amendments take effect

16.—(1) Regulations 3 to 7 of these regulations shall have effect from 1st April 1973.

(2) Regulations 8 and 9 of these regulations shall have effect from 6th April 1973.

(3) Regulations 11 to 15 of these regulations shall have effect as from 1st October 1972.

SCHEDULE

PART-TIME EMPLOYMENTS

Regulation 4(1)(f)

The requirements to be satisfied in order that a person employed in a part-time capacity may be an officer by virtue of regulation 4(1)(f) are that: --

1. He fulfils one of the following minimum employment qualifications: --
 - (a) he is employed by one or more employing authorities for such hours in any period as in the aggregate amount to not less than one-half of the hours which would constitute whole-time employment in his case; or

- (b) he satisfies the Secretary of State that in the aggregate of his employment under one or more employing authorities and employment under a local authority or governing body of a medical school or such other employment as the Secretary of State may designate he is employed for such hours in any period as would constitute whole-time employment in his case; or
- (c) he was transferred under the Act or entered employment of an employing authority in consequence of the acquisition of premises under section 58 of the Act, and immediately before either of those events had reasonable expectations of superannuation benefits on retirement, and since either of those events has remained an officer without a continuous break of 12 months or more other than a period to which regulation 18(2) applies:

Provided that any part-time officer who, whilst continuing to be employed by an employing authority, no longer satisfies a minimum employment qualification under this paragraph shall be deemed to satisfy such a qualification for a period of one month unless during that period he elects otherwise in writing to his employing authority.

2.—(1) There is in respect of him an election made in writing to his employing authority and having effect in accordance with this paragraph.

(2) (a) Where the employment commenced before 1st April 1973 and the election is made before 1st May 1973, the election shall take effect as from 1st April 1973;

(b) where the employment commences on or after 1st April 1973 and the election is made within one month after such commencement, the election shall take effect as from the date of such commencement; and

(c) where the election is made one month or more after the commencement of the employment and on or after 1st May 1973, the election shall take effect as from the beginning of the next pay period following the receipt by the employing authority of that election:

Provided that—

- (i) an employment in which a person does not fulfil a minimum employment qualification under paragraph 1 of this schedule shall be deemed for the purposes of this paragraph to commence when he fulfils such qualification; and
- (ii) an officer shall be deemed to have made an election taking effect as from 1st April 1973 if, before that date, he was a part-time officer to whom these regulations applied and he satisfied the description contained in paragraph 1(b) or 1(c) of this schedule.

(3) An election under this paragraph shall continue to have effect as an election to his employing authority as long as the officer remains an officer without a continuous break of 12 months or more other than a period to which regulation 18(2) applies.

Keith Joseph,
Secretary of State for Social Services.

13th February 1973.

Consent of the Minister for the Civil Service given under his Official Seal on 14th February 1973.

(L.S.)

K. H. McNeill,
Authorised by the Minister
for the Civil Service.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations further amend the National Health Service (Superannuation) Regulations 1961 which provide for the superannuation of persons engaged in the National Health Service (except employees of local health authorities and local education authorities).

The main changes are—

- (a) Persons employed in the National Health Service in a part-time capacity for at least one-half of such hours in any period as would constitute whole-time employment (other than part-time medical or dental officers, who are already members of the superannuation scheme) will be able to elect to join the scheme (regulations 3 to 7 and the schedule).
- (b) Hitherto, when a refund of contributions has been made, the Secretary of State has been required to deduct and pay to the Inland Revenue an amount equal to the tax relief allowed to the officer when the contributions were originally paid. From 6th April 1973 (the date on which section 22 Finance Act 1970 (c.24) comes into operation) the Secretary of State will instead himself be liable to a tax charge, at the rate of 10%, on any such refunds; these Regulations enable him to recover this tax from the contributions returned. From the same date, no return of contributions may be made to an officer who has earned over £5,000 a year, but instead the benefits accrued to him as a result of those contributions will be preserved and put into payment later (regulations 8 and 9).
- (c) The superannuation scheme will be subject to an actuarial investigation every 5 years from 31st March 1969 instead of every 7 years (regulation 10).
- (d) Under an existing provision of the principal regulations a pensioner re-employed in any employment remunerated from public funds receives only so much of his pension as would bring his re-employment earnings up to the level of his pre-retirement earnings. This provision will now apply only to a pensioner re-employed in the National Health Service in England, Wales or Scotland, or in employment outside the National Health Service in which he is contributing to the superannuation scheme covering National Health Service employment in England and Wales or in Scotland, and will cease to operate when a pensioner reaches the age of 70 (regulation 11).
- (e) Entitlement to a pension and retiring allowance is given to an officer on reaching age 70 without his being required to give up employment (regulation 12).
- (f) Any child's allowance will be payable for the first three months at the rate of remuneration of the deceased parent if he died in service, or at the rate of his pension if he died on pension, in lieu of the existing rate; this provision will apply only where no widow's pension is payable. The existing provision concerning the rate of widow's pension for the first three months where the husband died in service is extended to a case where the husband was also a pensioner (regulations 13 and 14).

In accordance with section 12(1) of the Superannuation Act 1972 regulations 11, 12, 13 and 14 of these regulations have retrospective effect as from 1st October 1972 (regulation 16(3)).

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