

1963 No. 1988

## NATIONAL INSURANCE

**The National Insurance (Non-participation—Assurance of Equivalent Pension Benefits) Amendment (No. 2) Regulations 1963**

|                        |                    |
|------------------------|--------------------|
| Made - - - - -         | 5th December 1963  |
| Laid before Parliament | 13th December 1963 |
| Coming into Operation  | 6th January 1964   |

The Minister of Pensions and National Insurance, in conjunction with the Treasury so far as relates to matters with regard to which the Treasury have so directed, in exercise of powers conferred by sections 7(8), 9(3), (4) and (7) and 13(2) of the National Insurance Act 1959(a) and of all other powers enabling him in that behalf, after considering the report of the National Insurance Advisory Committee on the preliminary draft submitted to them, hereby makes the following regulations:—

*Citation, interpretation and commencement*

1. These regulations, which may be cited as the National Insurance (Non-participation—Assurance of Equivalent Pension Benefits) Amendment (No. 2) Regulations 1963, shall be read as one with the National Insurance (Non-participation—Assurance of Equivalent Pension Benefits) Regulations 1960(b), as amended(c), (hereinafter referred to as “the principal regulations”) and shall come into operation on the 6th January 1964.

*Amendment of regulation 2 of the principal regulations*

2.—(1) Regulation 2 of the principal regulations (end of period of service and disregard of interruptions) shall be amended in accordance with the following provisions of this regulation and shall accordingly have effect as set out in Schedule 1 of these regulations.

(2) In regulation 2(5) there shall be inserted:—

(a) after the words “at any time within” the words “the period beginning one month before and ending”;

(b) after the word “as” where it first occurs the words “coming or”;

(c) after the word “given” the words “(and, in the case of a notice given in advance of termination, that termination occurs on the date specified in the notice)”.

(3) In the proviso to the said regulation 2(5) there shall be:—

(a) deleted the words “but before a payment in lieu of contributions has been made in respect of the person’s period of service”;

(b) inserted after the words “notice under this paragraph” the words “not later than the end of the assurance period”;

(c) added after the words “the person dies” the words “before a payment in lieu of contributions has been made in respect of his period of service”.

(a) 7 & 8 Eliz. 2. c. 47.

(b) S.I. 1960/1103 (1960 II, p. 2244).

(c) S.I. 1961/1378, 1963/676, 1265 (1961 II, p. 2662; 1963 I, p. 815; II, p. 2114).

*Amendment of regulation 3 of the principal regulations*

3.—(1) Regulation 3 of the principal regulations (employment not treated as continuing during interruption) shall be amended in accordance with the provisions of the next following paragraph and shall accordingly have effect as set out in Schedule 2 of these regulations.

(2) After the words “non-participating employment” where they first occur there shall be inserted the words “(or, if that is earlier, on or after the giving of a notice by that person and that employer under regulation 2(5))”.

*Amendment of regulation 4 of the principal regulations*

4.—(1) Regulation 4 of the principal regulations (notice of end of employment) shall be amended in accordance with the following provisions of this regulation and shall accordingly have effect as set out in Schedule 3 of these regulations.

(2) In proviso (i) to the said regulation 4 after the words “relates to both” there shall be inserted the words “and the person enters the new employment within 13 weeks after the coming to an end of his service in the previous employment”.

(3) At the end of proviso (ii) to the said regulation 4 the following words shall be added:—

“and

(iii) where either—

(A) a person retires from service in a non-participating employment and equivalent pension benefits in respect of the period of his service commence to be payable not later than the end of the assurance period, or

(B) a person's employment ceases to be a non-participating employment,

the employer may give notice under this regulation at any time after such retirement or cessation, as the case may be, and not later than the end of the assurance period.”

*Amendment of regulation 7 of the principal regulations*

5.—(1) Regulation 7 of the principal regulations (conditions for assurance of equivalent pension benefits) shall be amended in accordance with the following provisions of this regulation and shall accordingly have effect as set out in Schedule 4 of these regulations.

(2) In the proviso to regulation 7(1)—

(a) after the words “Provided that” there shall be inserted the following words:—

“(i) where the benefits commence to be payable not later than the end of the assurance period the delivery of a certificate of assurance shall not be required if the employer delivers to the person and to the Minister without charge particulars of the benefits and of the person's right thereto in such form as the Minister shall approve; and

(ii)”;

(b) after the words “given by them” there shall be inserted the words “or of such particulars as are referred to in the foregoing paragraph of this proviso”.

(3) After regulation 7(2) there shall be inserted the following paragraphs:—

“(3) References in this regulation to the appropriate recognised superannuation scheme shall, in cases where the recognised superannuation scheme by virtue of which the certificate under Part II of the Act of

1959 relating to a person's employment was in force was not the same throughout the period of his service, include, as respects any part of that period, a reference to the scheme by virtue of which the certificate was in force during that part; and, in such cases, instead of a single certificate of assurance relating to the entire period, there may be delivered two or more certificates of assurance relating to parts of the period given by the responsible paying authorities of the schemes concerned, so, however, that the periods to which such certificates relate must between them comprise the entire period of service.

(4) In the application of proviso (ii) to paragraph (1)(b) of this regulation to a case to which the last preceding paragraph applies, the reference to the end of the period of service shall be construed in relation to all the certificates as a reference to the end of the entire period of service”.

*Amendment of regulation 9 of the principal regulations*

6. Regulation 9 of the principal regulations (period for exercise of options, etc.) shall be amended by the deletion of the words “and before the making of any payment in lieu of contributions in respect of the period of his service”.

*Amendment of regulation 11A of the principal regulations*

7.—(1) Regulation 11A(a) of the principal regulations (exemption from duty to give notice of end of employment or certificate under regulation 11) shall be amended in accordance with the provisions of the next following paragraph and shall accordingly have effect as set out in Schedule 5 of these regulations.

(2) After regulation 11A(a) there shall be inserted the following paragraph:—

“(a) the recognised superannuation scheme relating to the previous employment is a statutory scheme and the provisions of section 9(4)(c) of the Act of 1959 are satisfied by virtue of either—

- (i) rules made under section 2 of the Superannuation (Miscellaneous Provisions) Act 1948(b) (pensions of persons transferring to different employment); or
- (ii) regulation 78 of the National Health Service (Superannuation) Regulations 1961(c) or regulation 76 of the National Health Service (Superannuation) (Scotland) Regulations 1961(d) (rights on transfer to other employment); or”.

*Amendment of regulation 18 of the principal regulations*

8.—(1) Regulation 18 of the principal regulations (extension of temporary interruptions and of assurance periods) shall be amended in accordance with the following provisions of this regulation and shall accordingly have effect as set out in Schedule 6 of these regulations.

(2) In regulation 18(1)(a) after the word “shall” there shall be inserted the words “unless the Minister in exceptional circumstances so allows”.

(3) At the end of regulation 18(2) there shall be added the words “unless the Minister is satisfied that the extension is required for the purpose only of remedying an error or omission made in seeking to comply with the provisions of these regulations and without failure to exercise due care and diligence”.

(a) *Inserted by S.I. 1961/1378 (1961 II, p. 2662).*

(b) 11 & 12 Geo. 6. c. 33.

(c) S.I. 1961/1441 (1961 II, p. 2824).

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

(4) In regulation 18(4) all words after the word "dies" shall be deleted.

(5) After regulation 18(5) there shall be inserted the following paragraph :—

"(5A) If the employer so requests, the provisions of the last preceding paragraph shall apply at the end of the period of 13 weeks referred to in regulation 2(2) and (3) where no extension is allowed in accordance with the provisions of paragraph (1) of this regulation, as they apply at the end of such an extension".

*Amendment of the Schedule to the principal regulations*

9. In paragraph 3 of Schedule 1 of the principal regulations (particulars to be given in a certificate of assurance) there shall be deleted the words "The place, time and manner of payment of such benefits" and "and the source from which".

*Richard Wood,*

Minister of Pensions and National Insurance.

4th December 1963.

*John Hill,*

*M. A. Hamilton,*

Two of the Lords Commissioners of  
Her Majesty's Treasury.

5th December 1963.

SCHEDULE 1

Regulation 2

REGULATION 2 OF THE PRINCIPAL REGULATIONS, AS AMENDED BY THESE REGULATIONS\*

End of period of service and disregard of interruptions

2.—(1) The following provisions of this regulation shall have effect in determining whether a person's period of service in a non-participating employment is to be treated, for the purpose of the provisions of Part II of the Act of 1959 relating to the making of a payment in lieu of contributions at the end of such a period, as having come to an end.

(2) Subject to the following provisions of this regulation, a person's employment shall not be treated, for the purpose of the said provisions of Part II of the Act of 1959, as having come to an end unless thirteen contribution weeks have elapsed since the termination of a period of contribution liability in relation to the employment, and in that event the employment shall be treated as having come to an end upon that termination.

(3) Where, after the termination of a period of contribution liability in relation to a person's employment, either—

(a) a new period of contribution liability begins in relation to that employment after an interruption not exceeding thirteen contribution weeks; or

\* The words added by these regulations are shown in italics.

(b) the interruption is brought to an end by the person's death before the expiration of thirteen contribution weeks ;

the interruption shall be disregarded and the employment shall not be treated, for the purpose of the said provisions of Part II of the Act of 1959, as having come to an end upon that termination and shall, subject to the provisions of regulation 3, be treated for that purpose as having continued during the interruption and, where the person has so died, as having come to an end by his death :

Provided that this paragraph shall not apply in a case to which paragraph (5) applies.

(4) The Minister may, subject to and in accordance with the provisions of regulation 18, extend the period of thirteen weeks referred to in the foregoing provisions of this regulation, and in that event those provisions shall, subject to the provisions of paragraph (5) of regulation 18, apply with the substitution of the extended period for the said period of thirteen weeks and the assurance period shall begin at the end of that extended period and, subject to the provisions of that regulation, end thirteen weeks thereafter :

(5) A person and his employer may, at any time within *the period beginning one month before and ending* thirteen weeks after the termination of a period of contribution liability in relation to the person's employment, together give the Minister notice in writing that they wish the employment to be treated, for the purpose of the said provisions of Part II of the Act of 1959, as *coming or* having come to an end upon that termination and, if such notice is given (*and, in the case of a notice given in advance of termination, that termination occurs on the date specified in the notice*), the employment shall be treated for that purpose as having come to an end upon that termination :

Provided that this paragraph shall not apply if a new period of contribution liability has begun in relation to the employment without any such notice having been given, or if, after such notice has been given, either the person and the employer together give the Minister written notice withdrawing the notice under this paragraph *not later than the end of the assurance period* or the person dies *before a payment in lieu of contributions has been made in respect of his period of service*.

(6) If either—

(a) a person's employment becomes a non-participating employment in the course of his service in it, and a period of contribution liability in relation to that employment is not then current ; or

(b) in any other case, the beginning of a person's period of service in a non-participating employment occurs in such circumstances as not to fall in a period of contribution liability in relation to that employment ;

and in either case no such period of contribution liability has begun before the end of the first contribution week beginning in his period of service in non-participating employment, the foregoing provisions of this regulation shall apply as if the termination of a period of contribution liability had occurred immediately before the beginning of that contribution week.

(7) Nothing in the foregoing provisions of this regulation shall prevent a person's period of service in a non-participating employment from being treated, for the purpose of the said provisions of Part II of the Act of 1959, as having come to an end when either—

(a) the employment ceases to be a non-participating employment ; or

(b) the employer dies and the employment is not treated under regulations made under that Act as continuing under a new employer ;

unless in either of those events the period of service falls, under the said foregoing provisions, to be treated for that purpose as having come to an end at some earlier date.

## SCHEDULE 2

## Regulation 3

## REGULATION 3 OF THE PRINCIPAL REGULATIONS, AS AMENDED BY THESE REGULATIONS\*

## Employment not treated as continuing during interruption

3. A person's employer may, after the end of that person's period of service in a non-participating employment (*or, if that is earlier, on or after the giving of a notice by that person and that employer under regulation 2(5)*) and not later than the end of the assurance period, give the Minister notice in writing that he wishes the employment not to be treated, for the purpose of the provisions of Part II of the Act of 1959 relating to the making of a payment in lieu of contributions at the end of such a period of service, as having continued during such number of contribution weeks as may be specified in the notice, being contribution weeks during which it would, apart from this regulation, fall, under paragraph (3) of regulation 2, to be treated for that purpose as having continued, and, if such a notice is given, the employment shall not be so treated as having continued during those weeks:

Provided that—

- (a) no such notice shall include any contribution weeks in a contribution year where the number of contribution weeks in that year during which the employment would so fall to be treated as having continued is three or less ; and
- (b) where that number of contribution weeks exceeds three, at least three of those weeks shall be excluded from the notice ; and
- (bb) where a person's service does not fall wholly within the period to which any one Part of Schedule 2 of these regulations is appropriate, the notice shall specify separately the number of contribution weeks included in it which fall in each such period.
- (c) where a person's period of service in a non-participating employment would fall to be treated, for the purpose of the said provisions of Part II of the Act of 1959, as having come to an end but for the provisions of subsection (4) of section 9 of that Act (which subsection provides that, for the purpose of any liability to make a payment in lieu of contributions, two employments are in certain cases to be treated as a single continuous employment), the employer in the previous employment may give notice under this regulation not later than the end of the assurance period relating to that employment.

## SCHEDULE 3

## Regulation 4

## REGULATION 4 OF THE PRINCIPAL REGULATIONS, AS AMENDED BY THESE REGULATIONS\*

## Notice of end of employment

4. Where a person's period of service in a non-participating employment—

- (a) falls to be treated, for the purpose of the provisions of Part II of the Act of 1959 relating to the making of a payment in lieu of contributions at the end of such a period, as having come to an end ; or
- (b) would fall to be so treated for that purpose but for the provisions of subsection (4) of section 9 of that Act (which subsection provides that, for the purpose of any liability to make a payment in lieu of contributions, two employments are in certain cases to be treated as a single continuous employment) ;

it shall be the duty of the employer to give the Minister notice in writing to that effect within the assurance period:

\* The words added by these regulations are shown in italics.

Provided that—

- (i) this regulation shall not apply where notice under paragraph (5) of regulation 2 has been given by the person and his employer, or, in a case such as is referred to in paragraph (b) of this regulation, if both employments are under the same employer and the same recognised superannuation scheme relates to both *and the person enters the new employment within 13 weeks after the coming to an end of his service in the previous employment* or if the Minister has so directed under regulation 11A; and
- (ii) a notice of application for an extension or further extension of the period of thirteen contribution weeks referred to in paragraphs (2) and (3) of regulation 2 shall, if the application is not granted, be deemed to be a notice for the purpose of this regulation; *and*
- (iii) *where either—*
  - (A) *a person retires from service in a non-participating employment and equivalent pension benefits in respect of the period of his service commence to be payable not later than the end of the assurance period, or*
  - (B) *a person's employment ceases to be a non-participating employment, the employer may give notice under this regulation at any time after such retirement or cessation, as the case may be, and not later than the end of the assurance period.*

#### Regulation 5

#### SCHEDULE 4

#### REGULATION 7 OF THE PRINCIPAL REGULATIONS, AS AMENDED BY THESE REGULATIONS\*

#### Conditions for assurance of equivalent pension benefits

7.—(1) Subject to the provisions of paragraph (4) of regulation 10, for the purpose of the provisions of Part II of the Act of 1959 relating to the making of a payment in lieu of contributions at the end of a person's period of service in a non-participating employment, a person who at the end of his service in a non-participating employment has equivalent pension benefits in respect of it, to which he either is absolutely and indefeasibly entitled or would be so entitled but for their being capable of being terminated or suspended for any cause prescribed for the purpose of paragraph (c) of subsection (1) of section 8 of the Act of 1959 (which subsection contains conditions governing equivalent pension benefits), shall be deemed to be assured of those benefits if, and shall be deemed not to be assured of them unless—

- (a) the benefits are secured, and provision is made for their payment, under or by virtue of the appropriate recognised superannuation scheme, and, where that scheme is a non-statutory scheme, the benefits are secured by irrevocable trust, contract of assurance or annuity contract which satisfies paragraph (1) or (2) of regulation 3 of the Benefits and Schemes Regulations, being a trust or contract enforceable by that person (or by some other person as trustee for him) against the responsible paying authority; and
- (b) a certificate of assurance given by the responsible paying authority containing the particulars specified in Schedule 1 to these regulations has been delivered without charge to the person by the person's employer in the non-participating employment:

Provided that—

- (i) *where the benefits commence to be payable not later than the end of the assurance period the delivery of a certificate of assurance shall not be required if the employer delivers to the person and to the Minister without charge particulars of the benefits and of the person's right thereto in such form as the Minister shall approve; and*

\* The words added by these regulations are shown in italics.

(ii) in the case of a non-statutory scheme where the responsible paying authority are the trustees or other person or body mentioned in the proviso to head (c) of the definition of that expression in paragraph (2) of regulation 1 of these regulations, the delivery of a certificate of assurance given by them *or of such particulars as are referred to in the foregoing paragraph of this proviso* shall not be deemed to satisfy this condition if at the end of the period of service the scheme had ceased to satisfy the requirements of the Act of 1959 for being a recognised superannuation scheme.

(2) A certificate of assurance required by this regulation to be delivered to any person shall be treated as duly delivered if sent by registered post or by recorded delivery service addressed to him at his usual or last-known address, and shall be treated as having effect from the end of the person's service if it is delivered to him not later than the end of the assurance period.

(3) *References in this regulation to the appropriate recognised superannuation scheme shall, in cases where the recognised superannuation scheme by virtue of which the certificate under Part II of the Act of 1959 relating to a person's employment was in force was not the same throughout the period of his service, include, as respects any part of that period, a reference to the scheme by virtue of which the certificate was in force during that part; and, in such cases, instead of a single certificate of assurance relating to the entire period, there may be delivered two or more certificates of assurance relating to parts of the period given by the responsible paying authorities of the schemes concerned, so, however, that the periods to which such certificates relate must between them comprise the entire period of service.*

(4) *In the application of proviso (ii) to paragraph (1) (b) of this regulation to a case to which the last preceding paragraph applies, the reference to the end of the period of service shall be construed in relation to all the certificates as a reference to the end of the entire period of service.*

## SCHEDULE 5

## Regulation 7

### REGULATION 11A OF THE PRINCIPAL REGULATIONS, AS AMENDED BY THESE REGULATIONS\*

Exemption from duty to give notice of end of employment or certificate under regulation 11

11A. Where, apart from this regulation, a certificate is required to be given and delivered under regulation 11, the Minister may, where either—

(a) the recognised superannuation scheme relating to the new employment is a statutory scheme; or

(aa) *the recognised superannuation scheme relating to the previous employment is a statutory scheme and the provisions of section 9 (4) (c) of the Act of 1959 are satisfied by virtue of either—*

(i) *rules made under section 2 of the Superannuation (Miscellaneous Provisions) Act 1948 (pensions of persons transferring to different employment); or*

(ii) *regulation 78 of the National Health Service (Superannuation) Regulations 1961 or regulation 76 of the National Health Service (Superannuation) (Scotland) Regulations 1961 (rights on transfer to other employment); or*

(b) both employments are under the same employer, but the same recognised superannuation scheme does not relate to both; or

(c) the same recognised superannuation scheme relates to both employments, but the previous employment and the new employment are under different employers;

\* The words added by these regulations are shown in italics.



by a direction in writing in such cases as he may direct and subject to such conditions as he may impose exempt the employer in the previous employment from his duty to give a notice of the end of that employment under regulation 4 or (whether so exempting that employer or not) dispense with or modify the requirements of regulation 11 concerning the giving and delivery of a certificate thereunder.

## Regulation 8

## SCHEDULE 6

## REGULATION 18 OF THE PRINCIPAL REGULATIONS, AS AMENDED BY THESE REGULATIONS\*

## Extension of temporary interruptions and of assurance periods

18.—(1) Subject to the following provisions of this regulation, the Minister, on application being made to him, may, for the purpose of paragraphs (2) and (3) of regulation 2, in any particular case or class of cases extend the period of thirteen contribution weeks referred to in those paragraphs for such further period or periods as he shall from time to time direct, so, however, that no such extension—

- (a) shall, *unless the Minister in exceptional circumstances so allows*, prolong the said period to more than one hundred and thirty weeks in all ; or
- (b) shall be granted save in the following cases, that is to say,
  - (i) the insured person's incapacity for work, where the Minister is satisfied that but for the incapacity the employment would continue or have continued ; or
  - (iii) any other case in which the Minister, having regard to whether the insured person retains membership of the recognised superannuation scheme relating to the employment or other qualification for benefit thereunder and to any other relevant circumstances, is satisfied that the interruption can be regarded as temporary.

(2) Subject as aforesaid, the Minister, on application being made to him, may, for the purpose of all or any of the provisions of these regulations which require or authorise or make other provision with respect to the making of a payment in lieu of contributions, the giving of any notice or the doing of any other thing within (or not later than the end of) an assurance period, in any particular case or class of cases extend the assurance period for such further period or periods as he shall from time to time direct, so, however, that no such extension shall prolong the assurance period to more than sixty-five weeks in all, *unless the Minister is satisfied that the extension is required for the purpose only of remedying an error or omission made in seeking to comply with the provisions of these regulations and without failure to exercise due care and diligence.*

(3) In so extending any period the Minister may impose a condition that the employer or the insured person shall furnish the Minister with such information and give him notice of such events as he may reasonably require for the purpose of any provision of these regulations, and every such person shall observe or perform any such condition accordingly.

(4) An extension of any period under this regulation shall cease if the Minister by written notice to the employer so directs or if the insured person dies.

(5) Where at the end of any extension allowed in accordance with the provisions of paragraph (1) of this regulation no further such extension is allowed, but a new period of contribution liability has not begun in relation to the employment and the insured person is still living, the employment shall be treated, for the purpose of the provisions of Part II of the Act of 1959 relating to the making of a payment in lieu of contributions at the end of a person's period of service in a non-participating employment, as having come to an end upon the termination of the period of contribution liability or upon such later date, not being later than the end of the extension, as the Minister shall direct ; and where the date on which the employment is so treated as having come to an end is a later date than the termination of the period of contribution liability, the provisions of regulation 3 shall apply to any contribution weeks

\* The words added by these regulations are shown in italics.

in the intervening period as though they were weeks during which the employment would, apart from that regulation, fall to be treated for that purpose as having continued under paragraph (3) of regulation 2:

Provided that, in a case to which the provisions of paragraph (6) of regulation 2 apply, the references in this paragraph to the termination of the period of contribution liability shall be construed as references to the end of the contribution week immediately preceding the first contribution week beginning in the person's period of service.

*(5A) If the employer so requests, the provisions of the last preceding paragraph shall apply at the end of the period of 13 weeks referred to in regulation 2(2) and (3) where no extension is allowed in accordance with the provisions of paragraph (1) of this regulation, as they apply at the end of such an extension.*

(6) In relation to an employment of any class to which section 12 of the Act of 1959 (which relates to certain statutory superannuation schemes) applies, or to an employment where the appropriate recognised superannuation scheme is established by or under the Superannuation Acts or by or under those Acts as applied by any enactment or other instrument having the force of law or by any instrument to which paragraph (3) of regulation 3 of the Benefits and Schemes Regulations applies, the foregoing provisions of this regulation shall be without prejudice to any special arrangements made by the Minister with the consent of the Treasury providing for the time and manner of any payment in lieu of contributions in such a case or otherwise concerning its making.

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#### EXPLANATORY NOTE

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

These Regulations amend the National Insurance (Non-participation—Assurance of Equivalent Pension Benefits) Regulations 1960. Provision is made allowing earlier notice to be given of the end of a period of service in non-participating employment in certain cases; modifying the cases in which the giving of such a notice or of a certificate is dispensed with on a transfer to other non-participating employment; dispensing in certain cases with certificates of assurance; and amending the provisions for extension of periods of interruption and assurance periods. The remaining provisions are of a minor or consequential nature.

The report of the National Insurance Advisory Committee on the preliminary draft of these Regulations, dated 19th November 1963, is contained in House of Commons Paper No. 23 (Session 1963/1964) published by Her Majesty's Stationery Office.