

STATUTORY INSTRUMENTS

1985 No. 1492

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

**The National Health Service (Superannuation—
Special Provisions) Regulations 1985**

Made - - - - - 25th September 1985
Laid before Parliament 4th October 1985
Coming into Operation 25th October 1985

The Secretary of State for Social Services, in exercise of powers conferred by sections 10 and 12 of and Schedule 3 to the Superannuation Act 1972(a) and all other powers enabling him in that behalf, after consulting such representatives of persons likely to be affected by these regulations as appear to him to be appropriate, and with the consent of the Treasury(b), hereby makes the following regulations:—

Citation and commencement

1. These regulations may be cited as the National Health Service (Superannuation—Special Provisions) Regulations 1985 and shall come into operation on 25th October 1985.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

“the Act of 1973” means the National Health Service Reorganisation Act 1973(c);

“health service employment” means employment with an employing authority or a corresponding authority in Scotland, Northern Ireland or the Isle of Man;

“relevant local authority”, in relation to any person, means the local authority by which he was employed immediately before he was transferred to the employment of the employing authority under the Act of 1973;

“the superannuation regulations” means the National Health Service (Superannuation) Regulations 1980(d),

and other expressions have the same meaning as in the superannuation regulations.

(a) 1972 c. 11.

(b) See the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), Article 2.

(c) 1973 c. 32.

(d) S.I. 1980/362, amended by S.I. 1981/1205, 1982/288, 1765.

(2) Unless the context otherwise requires, any reference in these regulations to a numbered regulation is a reference to the regulation in these regulations which bears that number and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Persons to whom the regulations apply

3. These regulations shall apply to any person—

- (a) who was transferred to the employment of an employing authority under the Act of 1973 and before being so transferred had been in the employment of the relevant local authority for 12 months or more; and
- (b) to or in respect of whom, if—
 - (i) he had not been so transferred,
 - (ii) the relevant local authority had continued in existence and followed their normal practice, and
 - (iii) he had attained any minimum age or length of service required by the relevant local authority,one or more ex gratia payments in the nature of superannuation benefits would have been made by the relevant local authority on his dying or otherwise ceasing to be in their employment; and
- (c) who continued in health service employment without a break of more than 12 months; and
- (d) who is not eligible for a benefit under the superannuation regulations.

Application

4.—(1) Benefit calculated in accordance with regulation 5 shall be payable to or in respect of any person to whom regulation 3 applies and who—

- (a) ceases, otherwise than by death, to be in health service employment, on or after attaining the age at which he could have received a superannuation benefit had he been subject to the superannuation regulations, but before attaining the age of 70 years; or
- (b) attains the age of 70 years while in health service employment; or
- (c) dies at any age.

(2) Health service employment on and after the date of transfer under the Act of 1973 shall be reckonable for the purposes of determining entitlement to benefit but not for the purposes of calculating that benefit.

(3) The benefit referred to in paragraph (1) shall not be payable unless the person entitled first makes a claim in writing to the Secretary of State.

Amount of benefit

5.—(1) Subject to the provisions of this regulation, the benefit payable to a person to whom regulation 3 applies and who either—

- (a) ceases, otherwise than by death, to be in health service employment before attaining the age of 70 years; or
- (b) attains the age of 70 years while in health service employment,

shall be equal to the amount of the payment (of the kind referred to in regulation 3(b)) that would have been paid by the relevant local authority if he had not been transferred under the Act of 1973 and, on the date when he ceases to be in health service employment or attains the age of 70 (as the case may be), he had ceased to be in the employment of the relevant local authority (assuming, in a case where they have not continued in existence, that they had so continued).

(2) Subject to the provisions of this regulation, the benefit payable in respect of a person to whom regulation 3 applies and who dies while in health service employment shall be—

(a) payable to persons in the same categories as those to whom payment would have been made, and

(b) equal in amount to the payment or payments (of the kind referred to in regulation 3(b)) that would have been made,

by the relevant local authority if that person had not been transferred under the Act of 1973 and had on the day of his death been in the employment of the relevant local authority (assuming, in a case where they have not continued in existence, that they had so continued).

(3) Subject to the provisions of this regulation, the benefit payable in respect of a person to whom regulation 3 applies, who dies after he has ceased to be in health service employment and to whom benefit has become payable under paragraph (1) shall be—

(a) payable to persons in the same categories as those to whom payment would have been made, and

(b) equal in amount to the payment or payments (of the kind referred to in regulation 3(b)) that would have been made,

by the relevant local authority if that person had not been transferred under the Act of 1973 and one or more payments (of the kind referred to in regulation 3(b)) had been made to him by the relevant local authority (assuming, in a case where they have not continued in existence, that they had so continued).

(4) Where the benefit falls to be calculated by reference to a person's average remuneration and the method of calculating that remuneration cannot be determined by reference to the normal practice of the relevant local authority, his average remuneration shall be calculated in accordance with regulation 36 of the superannuation regulations.

(5) Where the benefit is not calculated by reference to a person's remuneration at the time of his ceasing to be employed but is calculated by reference to an amount which was fixed by the relevant local authority, the benefit shall be increased by the same percentages as those of the increases authorised by section 1 of the Pensions (Increase) Act 1971(a), the review orders made under section 2 of that Act and the orders made under section 59 of the Social Security Pensions Act 1975(b) in respect of the period between the date on which the person was transferred under the Act of 1973 and the date on which the benefit becomes payable.

(a) 1971 c. 56.

(b) 1975 c. 60.

(6) Where a person ceases to be in health service employment on or after attaining the age at which he could have received a superannuation benefit had he been subject to the superannuation regulations ("the earlier age") but before attaining the age at which the relevant local authority would have granted the benefit ("the later age"), then for the purposes of paragraph (1) the assumption shall be made that he has attained the later age, but the amount of benefit payable shall, except where the person retired by reason of permanent ill-health or infirmity of mind or body, be reduced by such amount as may be determined by the Government Actuary, to allow for the difference between the earlier age and the later age.

Power to commute small benefit

6. Where the annual sum of benefit payable to any person is less than £78 the Secretary of State may discharge his liability in respect of that annual sum by payment of a lump sum representing the capital value of that annual sum.

Determination of questions

7. Any question arising under these regulations shall be determined by the Secretary of State whose determination shall be final.

Retrospective effect of these regulations

8. Regulations 2, 3, 4(1) and (2), 5 and 6 shall have effect from 1st April 1974.

Signed by authority of the Secretary of State for Social Services.

John Patten,
Parliamentary Under-Secretary of State,
Department of Health and Social Security.

27th August 1985.

We consent to the making of these regulations.

Tristan Garel-Jones,
A. Hamilton,
Lords Commissioners of Her Majesty's Treasury.

25th September 1985.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations provide for the payment in prescribed circumstances by the Secretary of State of benefits equivalent to ex gratia payments which local authority employees who were transferred to employment in the National Health Service under the National Health Service Reorganisation Act 1973 and who elected not to contribute to the National Health Service superannuation scheme might have expected had they not been so transferred.

The regulations set out which employees are eligible for benefits (regulation 3), when such benefits are payable (regulation 4), and the amount payable (regulation 5). They provide that when an annual sum of less than £78 is payable, the Secretary of State may commute it to a lump sum (regulation 6). The determination of questions is reserved for the Secretary of State (regulation 7).

In accordance with section 12(1) of the Superannuation Act 1972, regulations 2, 3, 4(1) and (2), 5 and 6 have retrospective effect as from 1st April 1974 (regulation 8).

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