20. TRANSFER OF OFFICERS AND COMPENSATION

The National Health Service (Transfer of Officers and Compensation) (Scotland) Regulations, 1948

1948 No. 1465 (S. 124)

Made - - - - 29*th June*, 1948
Coming into Operation 5*th July*, 1948

In exercise of the powers conferred on me by section 67 of the National Health Service (Scotland) Act, 1947, as amended by sub-paragraph (4) of paragraph 7 of the Sixth Schedule to the National Assistance Act, 1948, I hereby make the following regulations:— 10 & 11 Geo. 6. c. 27. 11 & 12 Geo. 6. c. 29.

PART I

Citation and Interpretation

1. These regulations may be cited as the National Health Service (Transfer of Officers and Compensation) (Scotland) Regulations, 1948, and shall come into operation on the fifth day of July, 1948.

2. In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

" accrued pension ", in relation to a pensionable officer who has suffered loss of employment, means—

(*a*) if the pension scheme to which the officer was last subject before losing his employment consisted of arrangements for the provision of superannuation benefits in which he had no right to participate but had reasonable expectations of participating, such proportion of the pension of which he had reasonable expectations as the compensating authority considers equitable, having regard to his age, the length of his employment at the date of loss and all the other circumstances of the case; and

(*b*) in any other case the pension to which he would have become entitled in respect of his pensionable service according to the method of calculation, as modified by paragraph 18 of the schedule to these regulations, prescribed by the pension scheme to which he was last subject before losing his employment, if at the date on which he ceased to be subject thereto he had attained normal retiring age and complied with any requirement of the said scheme as to a minimum period of qualifying service or contribution,

and includes the annual value as ascertained by an actuary of any contingent right under the scheme in respect of widow's pension or any other benefit which might have become payable to his widow or to his legal personal representatives on his death had he not lost his employment, but does not include any part of such pension as aforesaid which is attributable to any remuneration enjoyed, whether before or after the appointed day, in consequence of an increase between the 19th day of March, 1946, and the appointed day in the remuneration of any employment, if it can be shown that the increased

remuneration was not granted in the ordinary course of that employment or in consideration of the person's assumption of increased responsibilities or new duties in connexion with the discharge of the existing functions of the body employing him;

" accrued incapacity pension " has the same meaning as " accrued pension " except that the reference to a person's having attained normal retiring age shall be construed as a reference to his having become incapable of discharging efficiently the duties of his employment by reason of permanent ill-health or infirmity of mind or body;

" accrued retiring allowance ", in relation to a pensionable officer who has suffered loss of employment, means any lump sum payment to which he would have become entitled in respect of his pensionable service according to the method of calculation, as modified by paragraph 18 of the schedule to these regulations, prescribed by the pension scheme to which he was last subject before losing his employment, if at the date on which he ceased to be subject thereto he had attained normal retiring age and complied with any requirement of the said scheme as to a minimum period of qualifying service;

" the Act " means the National Health Service (Scotland) Act, 1947;

" actuary " means a Fellow of the Faculty of Actuaries in Scotland, or of the Institute of Actuaries;

" appointed day " means the fifth day of July, 1948;

" compensating authority " means—

(*a*) in relation to a person who was or is an officer of a local authority, not being a person transferred from their employment by virtue of these Regulations, who suffers loss of employment or diminution of emoluments by reason of the cesser of any functions of that authority in consequence of the Act, the local health authority for the area of that local authority;

(*b*) in relation to a person who was or is an officer of any such body as is mentioned in paragraph (*a*) or (*b*) of subsection (1) of section 76 of the Act which is dissolved as from the appointed day by virtue of that section, not being a person transferred from the employment of that body by virtue of these regulations, such one of the constituent authorities as may be agreed between them or, in default of agreement, as may be determined by the Secretary of State; and

(*c*) in any other case, the Secretary of State;

" emoluments " means all salary, wages, fees and other payments paid or made to an officer as such for his own use, and includes the money value of any apartments, rations or other allowances in kind appertaining to his employment, but does not include payments for overtime or any allowances payable to him to cover the cost of providing office accommodation or clerical or other assistance, or any travelling or subsistence allowance or other moneys to be spent, or to cover expenses incurred by him, for the purposes of his employment, and also does not include any remuneration enjoyed, whether before or after the appointed day, in consequence of an increase between the 19th day of March, 1946, and the appointed day in the remuneration of any employment, if it can be shown that the increased remuneration was not granted in the ordinary course of that employment or in consideration of the person's assumption of increased responsibilities or new duties in connexion with the discharge of the existing functions of the body employing him;

" existing officer " means a person who immediately before the appointed day—

(*a*) devoted the whole of his time to any of the following employments or to any combination of such employments, namely employment in Great Britain by the governing body of a voluntary hospital, a local authority, an insurance committee or by any other body for the purposes of the local government service or by the Crown; and

(*b*) was employed for at least part of his time for the purposes of any hospital transferred to the Secretary of State by virtue of the Act or for the purposes of functions which cease, or are transferred from the employing authority or body, in consequence of the Act;

and who had devoted the whole of his time for a period of not less than eight years before the appointed day after attaining the age of eighteen years without a break of more than twelve months at any one time to employment by any such authority or body as aforesaid or employment under an officer of any such authority or body for the purposes of the function of such authority or body, or employment by the Ophthalmic Benefit Approved Committee, the Dental Benefit Council, or any voluntary organisation which provided services similar to those which local authorities may be required to provide in the discharge of their functions under Part III of the Act or under the Mental Deficiency (Scotland) Acts, 1913 and 1940, or to any combination of the said employments or to war service undertaken on ceasing to follow any of the said employments or any combination thereof; 3 & 4 Geo. 5. c. 38. 3 & 4 Geo. 6. c. 8.

" net emoluments ", in relation to an officer who suffers loss of employment or diminution of emoluments, means the annual rate of his emoluments immediately before such loss or diminution, after deducting therefrom the like percentage thereof as the percentage of his emoluments which he was then liable to contribute under any pension scheme associated with his employment:

Provided that—

(*a*) if, for the purposes of the foregoing definition, account is required to be taken of any fees payable to a person as part of his emoluments, the amount thereof shall be taken to be the annual average of the fees paid to him during the three years immediately preceding the loss of employment or diminution of emoluments, or, if the fees where payable in respect of a shorter period, such shorter period; and

(*b*) any amount by which the annual rate of his emoluments exceeds £4,000 shall be disregarded; and

(*c*) if the officer was not a pensionable officer, no deduction shall be made on account of pension contributions;

" normal retiring age " means, in relation to an officer in whose case an age of compulsory retirement applied by virtue of any pension scheme associated with the employment he has lost or the emoluments of which have been diminished or by virtue of the conditions of that employment, that age, and, in any other case, the age of sixty-five years if the officer is a male, or sixty years if the officer is a female;

" office " means any place, situation or employment, and the expression " officer " shall be construed accordingly;

" pensionable officer ", in relation to an officer who has suffered loss of employment, means an officer who immediately before the appointed day was subject to a pension scheme;

" pension scheme " means a scheme or arrangements for the payment of superannuation benefits to a person as part of the terms and conditions of any employment held by him, and includes arrangements for the provision of superannuation benefits in which by virtue of any employment held by him a person had reasonable expectations of participating on the 19th day of March, 1946, and immediately before the appointed day;

" service " in relation to a person means any period of whole-time or part-time employment in Great Britain, after attaining the age of eighteen years, under a Regional Hospital Board, an Executive Council, a joint committee of Executive Councils, or under any such authority or body as is mentioned in Section 68 (1) (*e*) (i) of the National Health Service Act, 1946, or under any authority or body functions of which cease or are transferred in consequence of the Act or the National Health Service Act, 1946, or under any other body for the purposes of the Crown or the local government service, or under an officer of any such authority or body for the purposes of the functions of that authority or body, or at or for the purposes of any hospital transferred to the Secretary of State by virtue of the Act, or any hospital transferred to the Minister of Health by virtue of the National Health Service Act, 1946, or under the Ophthalmic Benefit Approved Committee, or the Dental Benefit Council, and includes any period of war service undertaken on the person's ceasing to hold any such employment as aforesaid, but does not include employment of which account has been taken, or is required to be taken, in calculating the amount of any superannuation benefits to which the person has become entitled;

9 & 10 Geo. 6. c. 81.

" tribunal " means such referee or board of referees appointed by the Minister of Labour and National Service, after consultation with the Lord President of the Court of Session, as has jurisdiction in respect of the district in which a claimant for compensation is or was last employed;

" war service " in relation to any person means war service within the meaning of the Local Government Staffs (War Service) Act, 1939, or employment for war purposes within the meaning of the Superannuation Schemes (War Service) Superannuation Act, 1940.

2 & 3 Geo. 6. c. 94. 3 & 4 Geo. 6. c. 26.

3. The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

52 & 53 Vict. c. 63.

PART II

Transfer of Officers

4. All officers who immediately before the appointed day were employed solely or mainly at or for the purposes of any hospital which is transferred to the Secretary of State by virtue of the Act or of any such premises as are mentioned in paragraph 7 (1) of the Sixth Schedule to the National Assistance Act, 1948, shall on that day be transferred to and become officers of the Regional Hospital Board for the area in which the hospital or premises is situated:

Provided that any officer employed as aforesaid for the purposes of two or more hospitals, not all of which will be administered by the same Regional Hospital Board, shall be transferred to such Board as the Secretary of State shall determine.

5.—(i) All officers who immediately before the appointed day were employed by an insurance committee shall on that day be transferred to and become officers of the Executive Council for the area comprising the area of the insurance committee or, where the area of the insurance committee is not wholly comprised in the area of one Executive Council, to such Executive Council as may be determined by the Secretary of State.

(ii) All officers who immediately before the appointed day were employed by a joint insurance committee, constituted under Section 94 of the National Health Insurance Act 1936, shall on that day be transferred to and become officers of such Executive Council or Joint Committee established for the areas of two or more such Councils as may be determined by the Secretary of State. 26 Geo. 5 1 Edw. 8. c. 32.

6. Any question arising under either of the two last preceding regulations shall be determined by the Secretary of State.

Part III

Compensation of Officers who suffer Loss of Employment or Diminution of Emoluments which is attributable to the passing of the Act

7. Subject to the provisions of the next succeeding regulation, every person who was an existing officer and who suffers loss of employment or diminution of emoluments which is attributable to the passing of the Act shall be entitled to have his case considered for the receipt of compensation under these regulations, such compensation to be determined in accordance with the provisions of the schedule hereto:

8. Nothing in the last preceding regulation shall entitle a person to have his case considered for compensation unless—

(*a*) the cause of the claim to compensation arises not later than ten years after the appointed day, and the claim is made not later than two years after the date on which the cause of claim arises; and

(*b*) (i) his office is abolished and he is not offered a reasonably comparable office in the Government service or the local government service or under any body constituted under the Act; or

(ii) his appointment is determined because his services are not required or because his duties are diminished (no misconduct being established); or

(iii) his emoluments are diminished:

Provided that for the purposes of this regulation a person shall not be deemed to have been offered an office which is not reasonably comparable with an office which is abolished by reason only of the fact that the duties of the office offered are duties in relation to the administration of a different service from that in connexion with which his office was held or are duties which involve a transfer of his employment from one place to another within Scotland.

9. If a person who has claimed compensation under these regulations is aggrieved by the refusal of the compensating authority to accept his claim or by their failure to come to a decision on his claim within three months after the date on which it was received by them, or by a decision that no compensation should be paid to him or by the amount of compensation awarded, he may, within three months after the refusal or failure or after the date on which he received notice of the decision, as the case may be, refer the matter to the tribunal, and the tribunal shall consider any matter so referred in accordance with the provisions of these regulations and determine accordingly whether any, and if so what, compensation ought to be awarded to the claimant, and the compensating authority shall give effect to the decision of the tribunal.

10.—(1) Any compensation to which an officer becomes entitled under these regulations shall be paid by the compensating authority and shall be payable to, or in trust for, the person who is entitled to receive it, and shall not be assignable.

(2) Any sum payable as compensation to a person by a local health authority shall be recoverable as a debt due from the authority.

(3) Where the compensating authority is a constituent authority of a body which is dissolved as from the appointed day by virtue of section 76 of the Act, the other constituent authorities shall contribute towards the payment of any compensation payable by the first mentioned authority in such proportions as may be agreed between the constituent authorities or, in default of agreement, as may be determined by the Secretary of State.

PART IV

Officers on War Service on the Appointed Day

11. Any person (hereinafter referred to as an " officer on war service ") who is engaged in war service immediately before the appointed day and who, if he had continued to be employed until the appointed day in the capacity in which he was employed before becoming engaged in war service, would have been an existing officer, shall be deemed to be an existing officer within the meaning of these regulations, and if at the date on which he ceased to be so employed he was subject to a pension scheme, and his war service or any part thereof would be reckonable for the purposes of that scheme if he again became subject thereto on the termination of his war service, he shall also be deemed to be a pensionable officer within the meaning of these regulations.

12. Subject to the provisions of the next succeeding regulation, if an officer on war service ceases to be engaged in war service and in consequence of the Act—

(*a*) is not given or offered re-employment in his former office or in any reasonably comparable office, or is not employed or offered employment in any office to which, but for his war service, he would have been transferred by these regulations, or in any reasonably comparable office; or

(*b*) is so re-employed or employed with reduced emoluments,

he shall be deemed for the purposes of these regulations, in the former case, to have suffered loss of employment which is attributable to the Act owing to the abolition of his office at the date of the refusal to re-employ him or employ him as aforesaid, and, in the latter case, to have suffered diminution of emoluments which is attributable to the Act.

13. No person shall, by virtue of the last preceding regulation, be entitled to have his case considered for compensation for any loss suffered by him by reason of his not being re-employed or employed as therein mentioned unless within a period of two months after the date on which he ceased to be engaged in war service he gives notice in writing to his former employer or to the authority to whom he would have been transferred by these regulations, as the case may be, that he is available for employment:

Provided that if the person is prevented from giving notice within the said period by his sickness or other reasonable cause, the notice may be given as soon as reasonably may be after the expiration of that period.

14. For the purpose of ascertaining the net emoluments of a person to whom regulation 12 applies such person shall be deemed to have continued to follow his former employment until the cause of claim arose and to have been entitled to the emoluments thereof.

15. In relation to a pensionable officer to whom sub-paragraph (*a*) of regulation 12 applies, the expression " accrued pension " means the pension to which he would have become entitled according to the method of calculation, as modified by paragraph 18 of the schedule to these regulations, prescribed by the pension scheme to which he was subject before becoming engaged in war service, if at the date on which he ceased to be engaged in war service he had been serving in his civil capacity and had attained normal retiring age, having complied with any requirement of the said pension scheme as to a minimum period of qualifying service.

Arthur Woodburn,
One of His Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.
29th June, 1948.

SCHEDULE

Determination of Compensation

I. *General*

1. A person desiring to make a claim for compensation under these regulations shall make his claim in a form approved by the Secretary of State for the purpose, and shall deliver his claim to the compensating authority. The claim shall be accompanied by a statutory declaration as to the truth of the statements contained therein.

2.—(1) Where the compensating authority are a local health authority, a claimant, if so required by that authority, by notice sent through the clerk of the authority, shall attend at a meeting of the authority, or of any committee appointed by the authority for the purpose, and answer all questions asked by any member of the authority or committee touching the matters set forth in his claim, and shall further produce all books, papers and documents in his possession or under his control relating to the claim.

(2) Where the compensating authority is the Secretary of State, a claimant, if so required by the Secretary of State, shall attend before a person appointed by him for the purpose, and answer all questions asked by that person touching the matters set forth in his claim, and shall further produce all such books, papers and documents as aforesaid.

(3) A claimant required to attend at a meeting pursuant to sub-paragraph (1) of this paragraph or before a person appointed by the Secretary of State pursuant to sub-paragraph (2) thereof may further be required to make a statutory declaration as to the truth of any of the answers given by him to questions asked on the occasion of such attendance touching the matters set forth in his claim.

(4) Such a claimant as aforesaid may be accompanied by a representative who shall be entitled to address the authority, committee or person before whom the claimant is required to attend touching the matters set forth in his claim.

II. *Compensation for Loss of Employment*

3. On receipt of a claim for compensation in respect of loss of employment, the compensating authority shall consider forthwith whether the claimant satisfies the conditions of eligibility for the payment of compensation set out in regulations

7 and 8 and if they are satisfied that these conditions are not fulfilled, shall reject the claim and advise the claimant in writing accordingly within one month after the receipt of the claim.

A. *Interim payments of Compensation*

4. If the compensating authority accept the claim, then, unless they are satisfied that the claimant has substantially made good his loss by virtue of having obtained other employment, they shall forthwith commence to make interim payments of compensation to the claimant subject to and in accordance with the provisions of the next succeeding paragraph, and shall continue to make such payments until, in accordance with paragraph 6 of this schedule, they decide whether any further compensation is payable to him under these regulations.

5.—(1) Interim compensation shall be payable as from the date of claim, and shall be at a rate not exceeding two-thirds of the net emoluments of the employment which the claimant has lost, less two-thirds of any unemployment benefit to which the claimant may be entitled, and less any sum to which the claimant may be entitled by way of compensation under the Re-instatement in Civil Employment Act, 1944.

(2) In determining the amount of interim compensation, the compensating authority shall have regard to any payments to which the claimant becomes entitled in consequence of the loss of his employment under any contract or arrangement with the authority or body by whom he was employed (other than payments by way of a return of contributions under a pension scheme).

(3) The payments shall be made at intervals equivalent to those at which the said emoluments were previously payable, and the payments shall be reduced or terminated if the claimant obtains other employment or the compensating authority are satisfied that he is not actively seeking employment or has unreasonably refused suitable employment which has been offered to him.

(4) If the claimant obtains other employment, he shall immediately notify the compensating authority in writing accordingly.

(5) The compensating authority may require, as a condition of making or continuing to make interim payments, that the claimant should be registered for employment at an Employment Exchange, or the Appointments Department of the Ministry of Labour and National Service, at the option of the claimant.

B. *Assessment of Compensation*

6. Having determined the amount of the interim payments (if any) to be made under the preceding provisions of this schedule to a claimant whose claim has been accepted, the compensating authority shall, within a period of three months after the date of receipt of the claim, assess the just amount (if any) of the compensation payable under the succeeding provisions of this schedule, and shall forthwith notify the claimant in writing of their decision.

7.—(1) The compensating authority shall, within a period of two years after the date on which any decision is notified to a claimant under paragraph 6 of this schedule, or if the claimant has referred any such decision to the tribunal under regulation 9, within a period of two years after the date of the decision of the tribunal, review their decision or the decision of the tribunal, as the case may be, at intervals of not more than six months, and on any review the compensating authority may, in the light of any material change in the circumstances of the case, award compensation or increase or reduce the amount of any compensation awarded.

(2) If the claimant obtains other employment within the said period of two years, he shall immediately notify the compensating authority in writing accordingly.

(3) A claimant to whom a decision under paragraph 6 of this schedule has been notified may, within the like period as is mentioned in sub-paragraph (1) of this paragraph, require the compensating authority to review their decision or the decision of the tribunal, as the case may be, if he considers that there has been a material change in the circumstances of his case.

(4) The compensating authority shall forthwith notify the claimant in writing of their decision on any review under the preceding provisions of this paragraph, and if the claimant is aggrieved by such decision he may refer the matter to the tribunal within three months after the date on which he receives notice of the decision, and the tribunal shall determine any matter so referred, and the compensating authority shall give effect to the determination of the tribunal.

Compensation payable, subject to earlier cesser in certain cases, until normal retiring age

8. For the purpose of determining whether any compensation, apart from any interim compensation paid under paragraphs 4 and 5 of this schedule, is payable to any person for loss of employment, and if so the amount of the compensation to be paid, subject to the provisions of paragraph 11 of this schedule, until normal retiring age, the compensating authority shall have regard to—

(*a*) the conditions upon which his appointment was made;

(*b*) the nature of his office;

(*c*) the extent to which he has sought suitable alternative employment; and

(*d*) all the other circumstances of the case.

9.—(1) Compensation for loss of employment shall be an annual sum, calculated in accordance with the provisions of sub-paragraph (2) of this paragraph, and shall be payable, subject to the provisions of paragraph 11 of this schedule, until normal retiring age, as from the date of loss, if the claim was made within three months thereafter, and in any other case, as from the date on which the claim was made or from such earlier date, not being more than three months before the date on which the claim was made, as the compensating authority may in their discretion allow.

(2) The said annual sum shall, subject as hereinafter provided, be the aggregate of the following sums, namely—

(*a*) for every completed year of the claimant's service, one-sixtieth of the net emoluments of the employment he has lost; and

(*b*) in the case of a claimant over the age of forty-five years at the date of loss, a further one-sixtieth of the said net emoluments for every completed year of service since he attained the age of forty-five:

Provided that—

(i) where the claimant has undertaken or obtained other work or employment in place of the employment he has lost or has been offered other suitable employment, the said annual sum shall be calculated by reference only to the amount (if any) by which the annual rate of the emoluments of the employment he has lost exceeds the annual rate of the emoluments of the work or employment undertaken, obtained or offered to him as aforesaid;

(ii) if the said annual sum is required to be calculated in accordance with proviso (i) to this sub-paragraph, it shall be reduced or increased by such amount (if any) as the compensating authority think fit, having regard to the relative security of tenure of the employment lost and the work or employment undertaken, obtained or offered as aforesaid, so however that the said annual sum shall not by virtue of any such increase as aforesaid be greater than if it were calculated without reference to proviso (i) and this proviso;

(iii) the said annual sum shall also be reduced by such an amount (if any) as the compensating authority think fit having regard to the matters to which they are required to have regard by the last preceding paragraph and to any compensation payable to the claimant under the Re-instatement in Civil Employment Act, 1944, or under or in pursuance of any other enactment; and

(iv) the said annual sum shall in no case exceed two-thirds of the net emoluments of the employment which the claimant has lost.

10. There shall be deducted from any payments made under paragraph 9 of this schedule in respect of any period in respect of which interim payments have been made under paragraphs 4 and 5 the amount of such payments, so far as they do not exceed the payments due under paragraph 9 in respect of that period.

Compensation payable to pensionable officer on his becoming incapacitated or reaching pensionable age

11.—(1) If the claimant was a pensionable officer, and before attaining normal retiring age—

(*a*) he 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 last subject before losing his employment; or

(*b*) he attains an age at which had he continued to serve in the employment he has lost he would have become entitled to retire with a pension on the ground of having attained that age and completed a prescribed period of service,

and compensation is not then payable to him under these regulations, or compensation by way of an annual sum equal to the amount of his accrued incapacity pension or his accrued pension, as the case may be, together with the annual value of his accrued retiring allowance (if any), would be greater than the annual amount of any compensation to which he may then be entitled under these regulations, he shall be entitled, if he so requests at any time thereafter by notice in writing to the compensating authority, as from the date on which the compensating authority receive such notice, 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 sub-paragraph, to an annual sum equal to the amount of his accrued incapacity pension, and a lump sum equal to the amount of his accrued retiring allowance (if any); and

(ii) in the case mentioned in head (*b*) of this sub-paragraph, 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 if in calculating the amount of compensation payable to a person who has given such notice as aforesaid, the compensating authority, by virtue of paragraph 20 of this schedule, have credited him with additional years of service or contributions, no account shall be taken for the purpose of the foregoing provision of any number of such additional years beyond the number of years which he could have served, had he not lost his employment, before the date on which such notice as aforesaid was received by the compensating authority.

(2) On receipt of a notice under the last preceding sub-paragraph, the compensating authority shall consider forthwith whether the person giving the notice is a person to whom that sub-paragraph applies, and within three months after the date of the receipt of the notice—

(*a*) if they are satisfied that he is not such a person, they shall notify him in writing accordingly; and

(*b*) if they accept the notice, 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) A compensating authority may require any such person as is mentioned in head (*a*) of sub-paragraph (1) of this paragraph, who gives a notice under that sub-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.

Compensation payable to a pensionable officer on attainment of normal retiring age

12. Subject as hereinafter provided, the compensation payable to a claimant who was a pensionable officer (not being a person to whom paragraph 11 has been applied) on his attaining normal retiring age 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).

Supplementary provisions as to compensation payable to pensionable officer

13.—(1) Where a claimant, after suffering loss of employment, enters employment in which he participates in the benefits of the pension scheme associated with the employment he has lost, or becomes entitled to participate in any other pension scheme, in circumstances in which he is entitled to reckon for the purposes thereof service which falls to be taken into account for the purpose of assessing compensation under paragraph 11 or 12 of this schedule, no compensation under either of those paragraphs shall be payable unless the amount of the annual rate of the emoluments of the employment he has lost exceeds the amount of the annual rate of the emoluments to which he becomes entitled on entering such employment as aforesaid by more than 5 per cent. of the first-mentioned amount, and any compensation payable thereunder shall be calculated by reference only to the amount of the difference.

(2) If a claimant has unreasonably refused a suitable offer of such employment as is mentioned in the preceding sub-paragraph, he shall be deemed for the purposes of that sub-paragraph to have entered the employment so offered to him.

14. The provisions of paragraphs 11 and 12 of this schedule shall not apply to a person who had been participating in a scheme for providing superannuation benefits by means of contracts or policies of insurance, and who, on losing his employment, continued to participate in that scheme, or became entitled to a benefit or prospective benefit thereunder other than a return of contributions.

15.—(1) If the claimant was a person in respect of whose service a widow's pension might have become payable under the pension scheme to which he was last subject before losing his employment, then, if he so desires and informs the compensating authority by notice in writing accordingly when making his claim, he may surrender so much of any annual sum which may become payable to him as compensation under paragraph 11 or 12 of this schedule as represents the annual value of the contingent right in respect of widow's pension, in consideration of the payment by the compensating authority to the person who as his widow might have become entitled to such widow's pension as aforesaid in the event of her surviving him—

(*a*) if he dies before attaining normal retiring age, and without having given a notice pursuant to the provisions of paragraph 11 of this schedule, of an annual sum equal to the amount of the pension to which she would have become entitled had he, immediately before he died, become entitled to a pension under the pension scheme on grounds of ill-health of an amount equal to the amount of his accrued incapacity pension, less the part thereof surrendered under the provisions of this paragraph and any part thereof surrendered under the provisions of paragraph 17; and

(*b*) if he dies on or after attaining normal retiring age, or after giving a notice pursuant to the provisions of paragraph 11 of this schedule, of an annual sum equal to the amount of the pension to which she would have become entitled in accordance with the method of calculation prescribed by the pension scheme had he, at the date on which he attained normal retiring age, or gave the said notice, become entitled to a pension under the pension scheme of an amount equal to the amount of his accrued pension or accrued incapacity pension, as the case may be, less the part thereof surrendered under the provisions of this paragraph and any part thereof surrendered under the provisions of paragraph 17.

(2) In the calculation of the amount of the annual sum payable to a widow under the preceding sub-paragraph, account shall be taken of any additional years of service or additional contributions credited to the claimant under paragraph 20 of this schedule:

Provided that no account shall be taken of any number of such additional years of service or contributions beyond the number of years which the claimant could have served before his death had he not lost his employment.

(3) Any sum payable to a widow under this paragraph shall cease to be payable or shall be suspended in any circumstances in which a widow's pension under the aforesaid pension scheme would have ceased to be payable or would have been suspended.

16. If under the pension scheme to which he was last subject before losing his employment, 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 in writing accordingly within one month after becoming entitled to compensation under paragraph 11 or 12 of this schedule, 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.

17.—(1) If the claimant was a person in respect of whose service a death benefit might have become payable to his legal personal representatives under the pension scheme to which he was last subject before losing his employment, then, if he so desires, and informs the compensating authority in writing accordingly when making his claim, he may surrender so much of any annual sum which may become payable to him as compensation under paragraph 11 or 12 of this schedule as represents the annual value of the contingent right in respect of the said benefit, in consideration of the payment by the compensating authority to his legal personal representatives—

(*a*) if he dies before attaining normal retiring age, and without having given a notice pursuant to the provisions of paragraph 11 of this schedule, of a sum equal to the amount of any death benefit which would have become payable in accordance with the method of calculation, as modified by the next succeeding paragraph, prescribed by the pension scheme to which he was last subject before losing his employment, had he died immediately before the date on which he lost his employment and complied with any requirement of the said scheme as to a minimum period of qualifying service; or

(*b*) if he dies on or after attaining normal retiring age or after giving a notice pursuant to the provisions of paragraph 11 of this schedule, of a sum equal to the amount of any such death benefit as aforesaid, less a sum equal to the aggregate amount of any payments made to him by way of compensation under paragraph 11 or 12 of this schedule.

(2) In the calculation of the amount of the sum payable under the preceding sub-paragraph, account shall be taken of any additional years of service or additional contributions credited to the claimant under paragraph 20 of this schedule:

Provided that no account shall be taken of any number of such additional years of service or contributions beyond the number of years which the claimant could have served before his death had he not lost his employment.

18. For the purposes of these regulations—

(*a*) the amount of any accrued pension or accrued incapacity pension, if the number of years of service by reference to which the pension is to be calculated is less than any minimum number of years of qualifying service prescribed by the pension scheme, shall, notwithstanding any minimum benefit prescribed by the pension scheme, not exceed such proportion of such minimum benefit as the number of years of pensionable service bears to the minimum number of years of qualifying service ; and

(*b*) if the amount of any death benefit falls to be ascertained, by virtue of any pension scheme, wholly or partly by reference to the emoluments or average emoluments of a pensionable officer, and the number of years of his pensionable service is less than any minimum number of years of qualifying service prescribed by the pension scheme for the receipt of a death benefit, the said amount shall not exceed such proportion of the emoluments or average emoluments of the officer as the number of years of pensionable service bears to the minimum number of years of qualifying service.

19. If under the pension scheme to which the claimant was last subject before suffering loss of employment the amount of any pension 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 or if under the said pension scheme any additional or supplementary payments might have been made to the claimant on his becoming entitled to a pension, the compensating authority may increase the compensation payable under paragraph 11 or 12 of this schedule by an annual sum not exceeding the amount by which his accrued incapacity pension or accrued pension might have been increased or the annual value of the payments which might have been made to him by way of addition to or supplementation of his accrued pension.

20. If the claimant had attained the age of forty years at the date on which he lost his employment, the compensating authority in calculating the amount of the compensation payable to him under paragraph 11 or 12 of this schedule may credit him with additional years of service or additional contributions not exceeding one year of service or one year's contributions for each completed year between the date on which he attained the age of forty years and the date on which he lost his employment, but not in any case exceeding ten years or such number of years as the claimant could have served had he continued in his employment until attaining normal retiring age, whichever is the less.

21. In deciding whether to add any number of years under the last preceding paragraph, the compensating authority shall have regard to the considerations set out in paragraph 8 of this schedule, and also to the claimant's rights under any pension scheme associated with any employment which he may have obtained in place of the employment he has lost.

22.—(1) If the claimant was such an officer as is mentioned in paragraph 14 of this schedule, the compensating authority may make such payments to or in respect of him, whether by way of the payment of premiums or otherwise, as are actuarially equivalent to the compensation which could have become payable to him by virtue of paragraph 19 or 20 of this schedule if he had been a person to whom paragraph 11 or 12 applied.

(2) If the claimant is such an officer as aforesaid, and he becomes entitled to a benefit under such a scheme as is mentioned in paragraph 14 of this schedule before reaching normal retiring age, the compensating authority may reduce any compensation payable to him under paragraph 9 of this schedule accordingly.

23.—(1) Compensation shall not be payable or shall cease to be payable under paragraph 11 or 12 of this schedule to a person who has received any sum by way of a return of contributions under the pension scheme to which he

was last subject on his ceasing to be subject thereto, unless forthwith on receiving such sum he pays to the compensating authority an amount equivalent thereto, such amount to be held by the compensating authority subject to the condition that if the pension scheme made no provision for death benefit and if he dies before he has received in the aggregate by way of compensation under paragraph 11 or 12 of this schedule a sum equal to the amount so paid as aforesaid to the compensating authority, together with compound interest thereon, calculated at the rate of 2½ per cent. per annum, with half-yearly rests, up to the date of his death, as from the first day of April or the first day of October following the half year in which the amount was paid, there shall be paid to his legal personal representatives the difference between the aggregate amount received by way of compensation and the said sum:

Provided that—

(*a*) if a sum becomes payable to his widow on his death under paragraph 15 of this schedule and on her death or re-marriage the sum ceases to be payable, and the aggregate amount of the payments which were made to her or her husband under these regulations is less than a sum equal to the amount so paid to the compensating authority by her husband as aforesaid on account of contributions, after the addition thereto of interest thereon as aforesaid, there shall be paid to her legal personal representatives or to her the difference between the aggregate amount of the payments made to her or her husband as aforesaid and the said sum;

(*b*) this paragraph shall not apply to a person to whom paragraph 13 of this schedule applies, and in the event of a claimant becoming such a person after having made a payment under this paragraph, the amount of the sum so paid shall be returned to him by the compensating authority; and

(*c*) this paragraph shall not apply to a person who has been an officer on war service to whom regulation 15 applies, and who received a return of contributions before ceasing to be engaged in war service.

(2) A person to whom paragraph 11 or 12 of this schedule may become applicable shall on or before the date on which compensation may become payable to him thereunder be entitled, if he so desires and informs the compensating authority in writing accordingly, to receive from the compensating authority in lieu of any such compensation—

(*a*) if the person has paid any sum to the compensating authority under sub-paragraph (1) of this paragraph, an amount equivalent thereto, together with interest thereon, calculated in the manner provided by the pension scheme as from the date of payment of the said sum; and

(*b*) if the person has not received a return of contributions under the pension scheme, and if, being entitled to such a return he has relinquished that right, an amount equivalent to the amount of such contributions together with interest thereon, calculated in manner provided by the pension scheme;

and any liability of the compensating authority under paragraph 15 or 17 of this schedule shall cease in the event of his giving such notice as aforesaid.

Compensation payable to non-pensionable officer after attainment of normal retiring age

24.—(1) If the claimant was 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) If the claimant was not a pensionable officer and 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 paragraph 9 of this schedule had he not attained normal retiring age at the date on which he lost his employment.

III. *Compensation for diminution of emoluments*

25. On receipt of a claim for compensation for diminution of the emoluments of any employment the compensating authority shall within a period of three months after the date of receipt of the claim decide whether any compensation is payable and, if so, the amount of that compensation, and shall forthwith notify the claimant in writing of their decision.

26. A decision under the last preceding paragraph shall be subject to review in like manner as a decision under paragraph 6 of this schedule:

Provided that

(*a*) no review shall take place after the date on which the claimant loses that employment, except a review as at that date; and

(*b*) while the claimant continues to hold that employment, there shall be no limit to the period within which a review may take place.

27. In determining whether compensation is payable and, if so, the amount of that compensation, the compensating authority shall have regard to the conditions upon which the claimant's appointment was made, the nature of his office, and all the other circumstances of the case. No compensation shall be payable where the diminution is less than five per cent. of the net emoluments of the claimant.

28. Compensation for diminution of emoluments shall be an annual sum payable as from the date of loss, if the claim was made within three months thereafter, and in any other case as from the date on which the claim was made, or from such earlier date, not being more than three months before the date on which the claim was made, as the compensating authority, may in their discretion allow.

29. Compensation to a person for diminution of the emoluments of any employment shall be payable for the same period or periods as compensation for loss of employment and shall not during any period exceed a sum bearing the same proportion to the maximum amount of compensation which could have been awarded in respect of that period had he lost his employment as the amount by which his net emoluments are diminished bears to their amount before diminution:

Provided that the compensation shall cease if the person voluntarily relinquishes his employment, without the consent of his employer otherwise than on reaching pensionable age.

30. A person entitled to compensation for diminution of emoluments shall have the like rights in relation to such compensation as are conferred by paragraphs 15, 16 and 17 upon a person entitled to compensation for loss of employment.

IV. *Miscellaneous*

31. Any dispute as to who are the compensating authority for the purposes of these regulations shall, in default of agreement, be determined by the Secretary of State:

Provided that if the Secretary of State is a party to the dispute, the matter shall be determined by the Treasury.

32.—(1) A notification of a decision by a compensating authority to a claimant for compensation under these regulations shall contain a statement directing the attention of the claimant to his right, if he is aggrieved by the decision, to refer the matter to the tribunal, and giving him the address of the office to which the reference should be sent.

(2) On any such reference the tribunal may, if it thinks fit, appoint a person having special knowledge or experience in relation to the subject matter of the reference to sit with the tribunal as an assessor.

33. For the purpose of determining the amount of any compensation payable in respect of the loss of a whole-time office or of any two or more offices which in the aggregate involved the whole-time employment of an officer, any previous period of part-time employment shall be treated as though it were whole-time employment for a proportionately reduced period.

34. For the purpose of making any calculation under these regulations in respect of the service of an officer all periods of his service shall be aggregated, and if the aggregated service includes a fraction of a year, that fraction shall, if it equals or exceeds six months, be treated as a year, and in any other case be disregarded.

35. If in determining the amount of any compensation payable to a person under these regulations account is taken of any employment prior to the first world war and that person was temporarily absent from that employment during that war whilst serving in His Majesty's Forces or the Forces of the Allied or Associated Powers, either compulsorily or with the sanction or permission of the authority in whose employment he was immediately before such temporary absence, such period of temporary absence shall be reckoned as a period of service:

Provided that, in the case of a person who after the 11th day of November, 1918, voluntarily extended his term of service in such Forces, no period of absence during any such extension shall be reckoned.

36.—(1) Where a person to whom compensation is payable under these regulations for loss of employment has become or becomes entitled to a pension in respect of the employment he has lost otherwise than on losing such employment or where a person to whom compensation is payable under these regulations for loss of employment or diminution of emoluments has become or becomes entitled to a pension in respect of any employment the remuneration of which was payable out of public funds and which he had obtained in place of the employment he had lost or in place of or in addition to the employment the emoluments of which were diminished, and in calculating the amount of such pension account is taken of any service which was taken into account in calculating the compensation payable, then, if the compensation does not exceed such part of the pension as is attributable solely to that service, the compensation shall cease to be payable, and if it exceeds such part of the pension as aforesaid, it shall be reduced by an amount equal to that part.

(2) Where a claimant's widow to whom an annual sum is payable under paragraph 15 or 30 of this schedule has become or becomes entitled to a widow's pension in respect of any employment of her husband the remuneration of which was payable out of public funds and which he had obtained in place of the employment he had lost or in place of or in addition to the employment the emoluments of which were diminished, and any part of such widow's pension is attributable to service of her husband of which account was taken in calculating his accrued pension or accrued incapacity pension by reference to which the said annual sum was calculated, then if the said annual sum does not exceed such part of the pension as is attributable solely to that service, the said annual sum shall cease to be payable, and if it exceeds such part of the pension as aforesaid, it shall be reduced by an amount equal to that part.

(3) Where a claimant's legal personal representatives to whom a sum is payable on the claimant's death under paragraph 17 or 30 of this schedule have become entitled to receive a death benefit under a pension scheme associated with any employment of the claimant the remuneration of which was payable out of public funds and which he had obtained in place of the employment he had lost or in place of or in addition to the employment the emoluments of which were diminished, and as one of the factors in the calculation of the amount of such benefit account fell to be taken of any service which fell to be taken into account

as one of the factors in the calculation of the said sum, the said sum shall be reduced by an amount equal to such proportion of the amount of the death benefit as the number of years of the said service bears to the total number of years of service of which account fell to be taken as aforesaid in the calculation of the death benefit.

(4) Where any compensation, annual sum or lump sum is reduced in accordance with the foregoing provisions of this paragraph, such compensation, annual sum or lump sum shall be further reduced by an amount equal to such part thereof (if any) as is attributable to any additional years of service or contributions credited in accordance with paragraph 20 of this schedule and by an amount equal to such part thereof (if any) as is attributable to any minimum benefit prescribed by a pension scheme.

(5) This paragraph shall not apply to or in respect of a person in whose case paragraph 13 of this schedule has been applied, except to the extent to which the amount of the pension, widow's pension or death benefit to which the person, his widow or his legal personal representatives have become or becomes entitled as aforesaid is attributable to annual emoluments of a greater amount than the amount of the annual emoluments to which the person became entitled on entering the employment referred to in that paragraph.

(6) This paragraph shall not apply to or in respect of a person to whom compensation is or was payable for diminution of emoluments and who has become entitled to a pension in respect of employment which he had obtained in place of the employment the emoluments of which were diminished or whose widow has become entitled to a widow's pension or whose legal personal representatives have become entitled to a death benefit in respect of such employment, except to the extent to which the amount of the pension, widow's pension or death benefit is attributable to annual emoluments of a greater amount than the amount of the annual emoluments of the person's former employment after their diminution.

37.—(1) If a person receiving compensation for loss of employment obtains other employment in place of the employment he has lost and the remuneration thereof is payable out of public funds, he shall not, so long as he holds that employment, be entitled to receive any greater sum by way of compensation in respect of such loss than would make up the amount (if any) by which the net emoluments of that employment fall short of the net emoluments of the employment he has lost.

(2) If a person receiving compensation for diminution of the emoluments of any employment loses that employment in circumstances in which he does not become entitled to compensation in respect of that loss and thereupon or thereafter he obtains in place of that employment other employment the remuneration of which is payable out of public funds, he shall not, so long as he holds that employment, be entitled to receive any greater sum by way of compensation than would make up the amount (if any) by which the net emoluments of that employment fall short of the net emoluments of the former employment before diminution.

38.—(1) If a person becomes subject to the provisions of either of the two last preceding paragraphs he shall immediately notify the compensating authority in writing accordingly.

(2) A person who has become subject to the provisions of the last preceding paragraph shall also notify the compensating authority in writing of any increase in the remuneration of the employment he has obtained in place of the employment he lost.

39.—(1) Notwithstanding the preceding provisions of this schedule, if the annual sum which has been or might be awarded under those provisions does not exceed twenty-six pounds, the compensating authority may at their discretion discharge their liability in respect thereof by the payment of a lump sum representing the capital value of the annual sum, and if any lump sum has been or might be awarded in addition to such annual sum under the provisions

of paragraph 12 of this schedule, the compensating authority may likewise discharge their liability in respect thereof by an immediate lump sum payment.

(2) If the annual sum which has been or might be so awarded exceeds twenty-six pounds and the claimant is not entitled to any lump sum in respect of accrued retiring allowance under these regulations, the compensating authority, if so requested by the claimant, may discharge their liability in respect of one quarter thereof by the payment of a lump sum representing the capital value of one quarter of the annual sum:

Provided that if the remaining three-quarters thereof does not exceed twenty-six pounds the compensating authority may discharge their liability as aforesaid in respect of the whole of the said sum.

(3) Any lump sum payable under the preceding provisions of this paragraph shall be of such amount as shall be certified by an actuary to be appropriate.

EXPLANATORY NOTE

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

(Paragraph Numbers refer to the Schedule.)

These regulations provide for the transfer to Regional Hospital Boards of officers employed at hospitals which are transferred to the Secretary of State under the National Health Service (Scotland) Act, 1947, and for the transfer of officers employed by Insurance Committees to the Executive Councils established under that Act.

The regulations also provide the machinery for compensating persons losing employment or remuneration as a result of the transfer of functions under the National Health Service (Scotland) Act, 1947. A claimant must have served for eight years in central or local government, voluntary hospital, etc., employment (see definition of " existing officer " in regulation 2). If he has not refused a reasonably comparable office (regulation 8) he will be eligible for " interim " payments of two thirds of his net emoluments, with deductions if he gets other employment or unemployment benefit, for a period of up to three months (paragraphs 4 and 5). During this period his claim will be assessed. He will be expected to look for and take other suitable employment (paragraphs 5 (5) and 8). Compensation will be payable to him up to normal retiring age, and will be an annual sum based on a percentage of his net emoluments and the length of his service. The amount will be adjusted, in the light of the circumstances of the case, regard being had to any other emoluments which have or could have been obtained and the other factors mentioned in paragraphs 8 and 9. The award will be subject to review for a period of two years. If pensionable in his old employment, he will have a right to a payment equivalent to his accrued pension rights as from the age at which he would have retired, and in this payment account will be taken of any rights that may have existed under the pension scheme in respect of widow's pension, death benefit or incapacity pension (paragraphs 11, 12, 15, 16 and 17). For persons over 40, an addition may be made in recognition of their loss of future pensionable service (paragraph 20). If the claimant was not pensionable, compensation will cease at normal retiring age unless he had expected to continue for a substantial period thereafter, in which case he will receive compensation after that age, for life, at half the rate he was getting up to that age (paragraph 24). Overlap with pension or remuneration from public funds is avoided (paragraphs 13, 36 and 37). A claimant who is aggrieved by a decision of a compensating authority may appeal to referees appointed by the Minister of Labour and National Service after consultation with the Lord President of the Court of Session (Regulation 9).