1974. No. 248 **[C]**

HEALTH SERVICES SUPERANNUATION

HEALTH SERVICES SUPERANNUATION REGULATIONS, DATED 2ND OCTOBER 1974, MADE BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES WITH THE CONSENT OF THE DEPARTMENT OF FINANCE UNDER ARTICLES 12 AND 14 OF THE SUPERANNUATION (NORTHERN IRELAND) ORDER 1972.

The Department of Health and Social Services, in exercise of powers conferred by section 103 of the National Insurance Act (Northern Ireland) 1966(**a**) (having been determined by the Department of Finance to be the appropriate department for the purposes of that section to make regulations modifying the scheme for the provision of pensions and other benefits established by regulations made under section 67 of and Schedule 8 to the Health Services Act (Northern Ireland) 1971(**b**)) and in exercise of powers conferred by Articles 12 and 14 of the Superannuation (Northern Ireland) Order 1972(**c**) and of any other powers enabling it in that behalf, after consulting representatives of persons likely to be affected by these regulations, and with the consent of the Department of Finance hereby makes the following regulations:—

Citation and commencement

1. These regulations may be cited as the Health Services (Superannuation) (Amendment) (No. 2) Regulations (Northern Ireland) 1974 and shall come into operation on 8th November 1974.

Interpretation

2. In these regulations "the principal regulations" means the Health Services (Superannuation) Regulations (Northern Ireland) 1962(**d**) and other words and expressions used have the same meanings as in the principal regulations.

Amendments relating to reduction of pension or injury allowance in certain cases

3. For regulation 32 of the principal regulations (reduction of pension or injury allowance) there shall be substituted the following regulation—

"*Reduction of pension in certain cases*

32.—(1) Where a person who has become entitled to a pension—

(*a*) continues in or enters the employment of an employing authority as defined in regulation 2(1), of these regulations, in regulation 2(1) of the National Health Service (Superannuation) Regulations 1961(**e**) or in regulation 2(2) of the National Health Service (Superannuation) (Scotland) Regulations 1961(**f**); or

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

(*c*) being a person to whom regulation 7(1)(*a*)(v) applies enters or has entered employment the remuneration of which is payable by the Department of Health and Social Services,

(a) 1966. c. 6 (N.I.).
(b) 1971. c. 1 (N.I.).
(c) S.I. 1972, No. 1073 (N.I. 10).
(d) S.R. & O. (N.I.) 1962, No. 237.
(e) S.I. 1961, No. 1441 (II, p. 2824).
(f) S.I. 1961, No. 1398 (II, p. 2697).

he shall forthwith give notice in writing to his employer and to such other person as the Department may specify that he continues in or has entered such employment having become entitled to such pension, and, until he attains the age of 70 years, such pension shall be liable to reduction under this regulation:

Provided that the reference in sub-paragraph (*a*) of this paragraph to an employing authority shall not be deemed to include an employer with whom an agreement has been made under Article 12(9) of the Superannuation (Northern Ireland) Order 1972 or in respect of whom a direction has been made under Article 12(6) of that Order.

(2) Whilst a person holds any employment to which paragraph (1) applies, being employment—

(*a*) as a practitioner, or

(*b*) in which the remuneration consists of or includes fees, variable allowances, or other payments not of a fixed nature, or

(*c*) which is not expressed to be for a regular number of hours in a pay period, or

(*d*) which is concurrent with some other employment to which this paragraph applies,

the pension payable for any quarter shall be so reduced (if necessary) as to ensure that his uprated pension for that quarter together with his re-employment earnings in that quarter do not exceed one-quarter of his pre-retirement earnings uprated to the last day of that quarter.

(3)(*a*) Whilst a person holds any employment to which paragraph (1) applies other than an employment to which paragraph (2) applies, the rate of pension payable shall be so reduced (if necessary) as to ensure that the rate of his uprated pension at the date of commencement of that employment together with the rate of his re-employment earnings at that date do not exceed his pre-retirement earnings uprated to that date.

(*b*) For the purposes of this paragraph—

(i) an employment which was held on 1st October 1972 shall be deemed to have commenced on that date;

(ii) a continuing employment shall be deemed to have commenced on the day on which the pension commenced; and

(iii) an employment shall be deemed to end and a new one commence—

(*a*) on a change in the number of hours required to be worked in a pay period, except for the first 30 days during which the hours are increased in any period of 12 months;

(*b*) on a change of grade other than as a result of re-structuring of grades, except for the first 30 days during which there is a change to a higher grade in any period of 12 months;

(*c*) on the cessation or commencement of a concurrent employment to which this paragraph applies;

(*d*) in the case of an employment to which paragraph (2)(*d*) applies, on the cessation of all concurrent employment to which paragraph (2) applies;

(*e*) on the employee attaining such age or satisfying the other conditions which comprise qualifying conditions under the

Pensions (Increase) Act (Northern Ireland) 1971(**g**) and thereupon becoming entitled to pensions increase, under that Act; or

(*f*) on a change in the conditions or terms of employment which, in the opinion of the Department, constitutes a new employment.

(4) In this regulation—

(*a*) "annual rate of remuneration" in relation to a person means the annual rate of so much of his remuneration as consisted of salary, wages or other payments or emoluments of a fixed nature as was payable immediately before he last became entitled to a pension, together with so much of his remuneration as consisted of fees and other payments or emoluments not of a fixed nature as was payable during the last year before he became so entitled or, in the case of a practitioner, the annual average of such payments during the last three financial years before he became so entitled;

(*b*) "continuing employment" means any employment to which paragraph (1) of this regulation applies which a person held immediately before he became entitled to the said pension and which he continues to hold;

(*c*) "pension" means a pension payable under these or the previous regulations, and includes an allowance under regulation 9 or the corresponding provision of the previous regulations;

(*d*) "uprated pension" means the aggregate amount of all pensions payable for the quarter specified in paragraph (2), or the aggregate of all pensions payable at the date specified in paragraph (3), together (in either case) with any increases thereon payable under the Pensions (Increase) Act (Northern Ireland) 1971;

(*e*) "pre-retirement earnings" means—

(i) in the case of a person who last became entitled to a pension in relation to employment as a practitioner or employment in which the service was deemed to be service as a practitioner, the average of the annual amounts of remuneration for service which was or was deemed to be service as a practitioner during each of the three consecutive financial years when it was greater than in any other three consecutive financial years,

(ii) in the case of a person who last became entitled to a pension in relation to employment otherwise than as a practitioner and in which the service was not deemed to be service as a practitioner, the annual rate of remuneration in such employment or the average remuneration of such employment, whichever is the greater, and

(iii) in the case of a person to whom sub-paragraphs (i) and (ii) applied simultaneously, the aggregate of the amounts calculated under those sub-paragraphs:

Provided that such pre-retirement earnings shall be increased by the annual rate of remuneration of any continuing employment;

(g) 1971. c. 35 (N.I.).

(*f*) "pre-retirement earnings uprated" means the pre-retirement earnings uprated to the specified date by an amount equal to any increase which would have been payable at such date under the Pensions (Increase) Act (Northern Ireland) 1971 on a pension of the same amount as the pre-retirement earnings and beginning on the day following the last day of service had that Act applied to such pension:

Provided that where an officer who is entitled to a pension ceases to be such an officer and thereby becomes entitled to a further pension, his pre-retirement earnings as uprated shall not be less than they would have been had he not become entitled to such further pension;

(*g*) "re-employment earnings" means, in relation to employments to which paragraph (1) applies, the person's remuneration for the purposes of these regulations, the National Health Service (Superannuation) Regulations 1961 or the National Health Service (Superannuation) (Scotland) Regulations 1961, or such amount as would be that remuneration if in such employment he were an officer to whom these regulations applied.".

Amendments relating to deferred benefits

4. In regulation 7 of the principal regulations (officer's pension and retiring allowance)—

(*a*) For sub-paragraph (iv) of paragraph (1)(*a*) there shall be substituted the following sub-paragraph—

"(iv) he has completed five years' service not being service that is reckonable otherwise than under regulation 34 solely for the purpose of determining whether any benefit is payable under these regulations or he is a person to whom regulation 30(4) applies, and in either case he has not, within 12 months and without having become entitled to receive such benefit, again become an officer; and";

(*b*) For the proviso to paragraph (1) there shall be substituted the following proviso—

"Provided that a person who satisfied the requirements of sub-paragraph (*a*)(iv) shall not on that account become entitled to receive payment of such benefit until he also satisfies the requirements of paragraph (2).";

(*c*) After paragraph (1) there shall be inserted the following paragraph—

"(2) A person who satisfied the requirements of paragraph (1)(*a*)(iv) shall satisfy the requirements of this paragraph—

(*a*) when, not then being an officer, he attains the age of 60 years or, in the case of a person to whom the conditions of paragraph (4) are applicable, the earliest age at which he would have been entitled to receive a pension under paragraph (1)(*a*)(ii); or

(*b*) if he is an officer when he attains the age specified in sub-paragraph (*a*), on ceasing thereafter to be an officer; or

(*c*) if he satisfies the Department that he is permanently incapacitated by physical or mental infirmity from engaging in regular employment; or

(*d*) on subsequently becoming entitled to receive some other benefit under paragraph (1):

Provided that—

(i) a person shall not be able to satisfy the requirements of this paragraph if there have been returned to him his contributions for any service to which the benefit in question related or any concurrent or subsequent service; and

(ii) in the case of a person to whom regulation 36 applies, for the reference in sub-paragraph (*a*) to the age of 60 years there shall be substituted a reference to age 60 or such later age at which he would have become entitled to receive a pension under these regulations on ceasing to be such an officer.".

(*d*) In paragraph (5)—

(i) in sub-paragraph (*b*), for the words "on ceasing to be employed in the circumstances mentioned in paragraph (1)(*a*)(iv)" there shall be substituted the words "on ceasing after completing five years' contributing service, or in circumstances in which regulation 30(4) applies to him, to be an officer to whom regulation 36 applies and not having, within 12 months and without having become entitled to receive such benefits, again becomes such an officer,";

(ii) in sub-paragraph (*b*)(i), for the words "on attaining" to the word "scheme" there shall be substituted the words "on satisfying the requirements of paragraph (2),";

(iii) in sub-paragraph (*b*)(ii), after the words "in the case of a woman," there shall be inserted the words "or, in either case, if an officer on attaining that age, on ceasing thereafter to be an officer,".

(*e*) In paragraph (6), for the words "who on his retirement elects not to receive such an allowance" there shall be substituted the words "who, on becoming entitled to receive payment of such an allowance, elects not to receive that allowance".

Consequential amendments

5. In the principal regulations—

(*a*) in regulation 2 (interpretation), in the definition of "service", the word "receive" in both places where it occurs shall be deleted, and for the words ", whether under these regulations or otherwise" there shall be substituted the words "under these or the previous regulations, other than a return of contributions";

(*b*) in regulation 11 (allocation of part of pension etc.), for the word "employed" wherever it occurs there shall be substituted the words "an officer";

(*c*) in regulation 13(3A) (widow's pension)—

(i) in sub-paragraph (*a*) the words "on retirement" shall be deleted;

(ii) in sub-paragraph (*b*) after the words "regulation 12(1)(*a*) or (*b*)," there shall be inserted the words "or on the death whilst entitled to benefits under regulation 7(1)(*a*)(iv) but before becoming entitled to receive payment of those benefits,";

(*d*) in regulations 13B(5) and 13C(2) (pensions of limited duration) for the words "paragraph 4" there shall be substituted the words "paragraph 5";