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STATUTORY INSTRUMENTS

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**1992 No. 280**

**The Teachers' Superannuation (Scotland) Regulations 1993**

**PART E**

**BENEFITS**

**Overriding provisions as to guaranteed minimum pension**

**E1.**—(1) This regulation shall override any other provisions of these Regulations which are inconsistent with it, except the provisions of regulation E15 (abatement) and E18 (forfeiture of benefits).

(2) If a teacher has a guaranteed minimum in relation to benefits under these Regulations—

- (a) he shall be entitled to receive from state pension age an annual pension payable at a rate equivalent to a weekly rate of not less than the guaranteed minimum;
- (b) if he attains state pensionable age while in pensionable employment, continues in the same employment for a further period of 5 years and does not then cease to hold it, he is (unless he consents to a postponement of his entitlement) entitled from the end of that period to so much of his retirement pension as equals his guaranteed minimum;
- (c) in the case of a man who dies at any time leaving a widow, in relation to the weekly rate of widow's pension provided for her under these Regulations, she shall be entitled, during any such period as is mentioned in section 36(6) of the Pensions Act(1), to a long term pension which shall not be less than half his guaranteed minimum; and
- (d) in the case of a woman who dies on or after 6th April 1989 leaving a widower, in relation to the weekly rate of the pension provided for him under these Regulations, he shall be entitled to a long term pension which shall not be less than half of that part of the member's guaranteed minimum which is attributable to earnings factors for the tax year 1988/89 and subsequent tax years.

(3) The guaranteed minimum pensions referred to in paragraph (2) shall, insofar as they are attributable to earnings factors in the tax years from (and including) 1988/89, be increased in accordance with the requirements of section 37A of the Pensions Act(2) and to the extent of any orders made thereunder.

(4) If the commencement of any teacher's guaranteed minimum pension is postponed for any period, the guaranteed minimum pension shall be increased to the extent, if any, specified in section 35(6), (6A) and (6B) of the Pensions Act(3), as amended from time to time.

**Revaluation of guaranteed minimum in certain cases**

**E2.**—(1) This regulation applies where a teacher—

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(1) Section 36(6) was amended by the Social Security Act 1986 (c. 50), Schedule 11.  
(2) Section 37A was inserted by the Social Security Act 1986 (c. 50), section 9(7).  
(3) Subsection (6) of section 35 was amended by the Social Security (Miscellaneous Provisions) Act 1977 (c. 5), section 3(2); subsections (6A) and (6B) were inserted by the Social Security Act 1986, section 9(2).

- (a) has ceased to be employed in reckonable service; and
  - (b) has acquired a right to a transfer value under regulation F1; and
  - (c) has taken that right by exercising the option conferred by paragraph 13(2) of Schedule 1A to the Pensions Act(4) in the way specified in head (b) of that sub-paragraph and where his guaranteed minimum, and where appropriate that of his widow, are appropriately secured within the meaning of section 52C(4) of that Act(5).
- (2) Where this regulation applies—
- (a) for the purposes of section 35(2) of the Pensions Act (amount of guaranteed minimum), the teacher’s earnings factors shall be determined without reference to any order that comes into force under section 21 of that Act after the relevant year in which his service was terminated; and
  - (b) thereafter the weekly equivalent mentioned in section 35(2) of that Act shall be increased—
    - (i) in accordance with any additional requirements for the time being prescribed for the purposes of section 45(1)(b) of that Act; or
    - (ii) by the minimum rate of increase provided for in section 35(7) of that Act, whichever provides the greater increase.
- (3) In this regulation “relevant year ” has the meaning given in section 35(9) of the Pensions Act.

### **Nature of retiring allowances**

**E3.** Retiring allowances consist of—

- (a) a retirement pension; and
- (b) a retirement lump sum,

calculated in accordance with this Part.

### **Qualification for retiring allowances**

**E4.—**(1) A teacher shall qualify for retiring allowances if—

- (a) immediately before 6th April 1988 he would but for his age have been entitled under regulation 46 of the 1977 Regulations to payment of retiring allowances; or
- (b) he has completed an appropriate qualifying period.

(2) A qualifying period, which may be discontinuous, comprises

- (a) where paragraph (3) or (4) applies, every period of a kind described in Part 1 of Schedule 8; or
- (b) where paragraph (5) applies, every period of a kind described in Schedule 8, excluding, in either case, any period in respect of which contributions have been returned to the teacher and not repaid to the Secretary of State.

(3) If the teacher was in pensionable employment, or paying additional contributions to purchase current added years under regulation C8, on 6th April 1988, any qualifying period of 2 years shall be an appropriate one.

(4) If paragraph (3) does not apply, a qualifying period of 2 years beginning after 5th April 1988 shall be an appropriate one; and any period of the kind described in paragraph 4 of Schedule 8

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(4) Schedule 1A was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 3 and amended by the Social Security Act 1986, Schedule 10, paragraphs 29 and 30.

(5) Section 52C was inserted by the Social Security Act 1985, Schedule 1, paragraph 2, and amended by the Social Security Act 1986, Schedule 10, paragraph 26.

(transfer value received) shall be treated for the purposes of this paragraph as having begun after 5th April 1988.

(5) If neither paragraph (3) nor paragraph (4) applies, and the teacher was in pensionable employment before 6th April 1988, any qualifying period of 5 years shall be an appropriate one.

(6) Notwithstanding that an appropriate qualifying period has not been completed, a teacher shall qualify for retiring allowances if—

- (a) he has been employed in pensionable employment during a period in respect of which he has a guaranteed minimum pension being a period in respect of which a contributions equivalent premium cannot be paid; or
- (b) a transfer value was paid in respect of him by the Secretary of State to the superannuation scheme of the Commission of the European Communities and one has since been received by the Secretary of State from that scheme.

### **Entitlement to payment of retiring allowances**

**E5.**—(1) A teacher who has qualified for retiring allowances shall be entitled to payment of them if he—

- (a) has attained the age of 60 and has ceased to be in pensionable employment; or
- (c) has attained the age of 60 and has ceased to be in pensionable employment falling within paragraph 5, 6, 7 or 8 of Schedule 8; or
- (d) has attained the age of 70 and is in employment which would be pensionable employment but for regulation B5(1)(a) (exclusion on age grounds); or
- (e)
  - (i) has not attained the age of 60;
  - (ii) has ceased after 31st March 1972 to be in pensionable employment and
  - (iii) has become incapacitated; or
- (f)
  - (i) has not attained the age of 60, and
  - (ii) has attained the age of 50, and
  - (iii) has ceased after attaining that age to be in pensionable employment, and his employer has certified in writing to the Secretary of State that his pensionable employment, or employment which would be pensionable but for an election under regulation B6 (excluded employment), has been terminated by reason of his redundancy or in the interests of the efficient exercise of the employer's functions.

(2) Entitlement under—

- (a) paragraphs 1(a) to (d) takes effect as soon as the teacher meets the conditions prescribed therein;
- (b) paragraph 1(e) takes effect—
  - (i) as from the day after the end of pensionable employment; or
  - (ii) if the date of the teacher's application for payment of retiring allowances on grounds of incapacity is later, that date or such other date as the Secretary of State, having regard to all the circumstances, thinks appropriate; and
- (c) paragraph 1(f) takes effect as from the day after the end of the pensionable employment.

### Amount of retirement pension

**E6.**—(1) Subject to paragraphs (2) and (3) and regulations E8 to E11, the annual rate of a teacher's retirement pension shall be 1/80th of his pensionable salary multiplied by his effective reckonable service.

(2) If—

- (a) the teacher is entitled to count a period as reckonable service by virtue of regulation D3 (past added years purchased by additional contributions); and
- (b) by reason of regulation E30(5) part of that period does not count in calculating his retirement lump sum,

the annual rate calculated in accordance with paragraph (1) is, in respect of each year comprised in that part, increased by 1/350th of his pensionable salary.

(3) If a contributions equivalent premium has been paid in respect of the teacher and has not been refunded (and his entitlement to a guaranteed minimum pension is therefore extinguished), the annual rate of his retirement pension is reduced by the annual equivalent of the guaranteed minimum pension to which he would otherwise have been entitled.

### Amount of retirement lump sum

**E7.**—(1) Subject to paragraph (2) and regulations E8 and E9, the amount of a teacher's retirement lump sum shall be the aggregate of A + B + C where—

A is the amount ascertained by multiplying 1/30th of his pensionable salary by his effective reckonable service before 1st October 1956 (except any falling within C),

B is the amount ascertained by multiplying 3/80ths of his pensionable salary by his effective reckonable service after 30th September 1956 (except any falling within C),

C is the amount ascertained by multiplying 3/80ths of his pensionable salary by the period which he is entitled to count as reckonable service by virtue of regulation D3.

(2) If the teacher's reckonable service includes service before 1st October 1956, the part of his retirement lump sum that is attributable to service before he attained the age of 60 is not to exceed his pensionable salary multiplied by 1½.

### Limitation of retiring allowances in certain cases

**E8.**—(1) Paragraphs (2) to (5) apply to a teacher who has made an election under regulation C1(8) (reduced salary treated as having continued at previous rate) and whose average salary falls to be calculated by reference to the notional rate.

(2) The annual rate of the teacher's retirement pension is not to exceed the fraction of the appropriate sum ascertained, by reference to the relevant age, from the Table below.

TABLE

<i>Relevant age</i>	<i>Fraction</i>
Under 50	1/2
50	2/5
51	3/10
52	1/5
53	1/10

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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<i>Relevant age</i>	<i>Fraction</i>
54	1/14

(3) Where the teacher has been in pensionable employment for less than 20 years, his retirement lump sum is not to exceed  $\frac{3}{80}$ ths of the appropriate sum multiplied by the total of his reckonable service and the period ascertained, by reference to the number of complete years he has been in pensionable employment, from the Table below.

TABLE

<i>Years in pensionable employment</i>	<i>Period in years</i>
19	17
18	15
17	13
16	11
15	9
14	7
13	5
12	4
11	3
10	2
9	1
Fewer than 9	0

(4) Where the teacher has been in pensionable employment for 20 years or more his retirement lump sum is not to exceed the appropriate sum multiplied by  $1\frac{1}{2}$ .

(5) The appropriate sum is the greater of—

- (a) the teacher's contributable salary for the best one of his last 5 years in pensionable employment; and
- (b)  $\frac{1}{3}$ rd of his aggregate contributable salary for his best 3 consecutive years in pensionable employment within the 10 years ending with its cessation,

and for the purposes of paragraph (2) the relevant age is his age when he first entered pensionable employment, unless he was not continuously in pensionable employment in which case it is the figure obtained by subtracting the number of years in pensionable employment from 60.

#### **Enhancement of retiring allowances in case of incapacity**

**E9.**—(1) Subject to paragraph (2), this regulation applies to a teacher who has become entitled to payment of retiring allowances by virtue of regulation E5(1)(e) by reason of his becoming incapacitated while employed in pensionable employment, but only if—

- (a) he had completed periods of the kind described in Part 1 of Schedule 8 totalling at least 5 years, excluding any period in respect of which contributions have been returned to him and not repaid to the Secretary of State; and

(b) the application for payment of retiring allowances under regulation E5(1)(e) is made within 12 months after the end of his pensionable employment or such longer period as may be approved by the Secretary of State.

(2) In relation to a teacher who was, or has at any time been, in part-time service which was pensionable employment, this regulation shall not apply unless the aggregate of the periods of contract of employment during which the part-time service was given and the period of full-time service, if any, extends to at least 5 years.

(3) Subject to regulation E30(2) (limitation of effective reckonable service to 45 years, etc), for the purpose of calculating his retiring allowances the effective reckonable service of a teacher to whom this regulation applies shall be treated as having been increased by the appropriate period.

(4) If the teacher's relevant service amounts to at least 5 years but less than 10 years, the appropriate period is the shorter of—

- (a) the length of his relevant service; and
- (b) the period beginning when his pensionable employment ended and ending immediately before his 65th birthday.

(5) If his relevant service amounts to 10 years or more, the appropriate period is the longer of period A and B.

(6) Period A is the shortest of—

- (a) the period by which his relevant service falls short of 40 years;
- (b) the period beginning when his pensionable employment ended and ending immediately before his 60th birthday; and
- (c) 6 years and 243 days.

(7) Period B is so much of the period beginning when his pensionable employment ended and ending immediately before his 65th birthday as would not cause his effective reckonable service to be increased to more than 20 years.

(8) A teacher's relevant service is so much of his effective reckonable service as does not consist of periods that count by virtue of regulation D3 (past added years purchased by additional contributions).

### **Avoidance of duplicate pensions**

**E10.**—(1) Subject to paragraph (2), this regulation applies where a teacher's effective reckonable service includes a period that also counts towards another pension payable directly or indirectly out of moneys provided by Parliament or the non-domestic rates and community charges levied by local authorities ("the double period").

(2) This regulation does not apply where the other pension is subject to reduction under regulation E14 of the Local Government Superannuation (Scotland) Regulations 1987(6).

(3) Subject to paragraphs (4) and (5), where this regulation applies the teacher's retiring allowances are reduced by so much as is necessary to secure that A is reduced by B, where—

- A is the actuarial value of the retiring allowances in respect of the double period, and
- B is the actuarial value of the other pension in respect of that period.

(4) A is not to be reduced to less than the actuarial value of (C+D), where—

- C is the contributions paid by the person in respect of the double period, including any paid under regulation C8 (current added years), and

D is interest on those contributions at 3 per cent per annum, compounded with yearly rests, from the first day of the financial year following that in which they were paid to the date on which he became entitled to payment of the retirement pension.

(5) A retirement pension is not to be reduced so that so much of it as is attributable to the double period falls below the rate of any equivalent pension benefits attributable to that period.

(6) The other pension mentioned in this regulation includes any sum payable, whether as a continuing allowance or as a lump sum, by way of pension, superannuation allowance, compensation for loss or abolition of office or otherwise in respect of retirement.

### **Modification for national insurance**

**E11.** Part I of Schedule 9 has effect for modifying the retirement pensions of teachers who were in pensionable employment before 1st April 1980.

### **Allocation of part of retirement pension**

**E12.**—(1) A teacher who has become qualified for retiring allowances may, unless he becomes entitled to payment of them by virtue of regulation E5(1)(e) (incapacity), allocate part of his retirement pension to the provision of an alternative benefit.

(2) The alternative benefit may be either—

- (a) an annuity for life, commencing on the death of the teacher making the allocation (“the allocator”), for a surviving spouse or dependant; or
- (b) an annuity payable to the allocator while the allocator and a spouse are both alive, and if the spouse is the survivor a subsequent annuity for life, at twice the rate of the first annuity, for the spouse.

(3) The rates of the annuities mentioned in paragraph (2) are to be determined in accordance with tables prepared by the Government Actuary.

(4) An allocation is to be made by delivering a declaration to the Secretary of State, and in paragraph (2) “spouse” refers to status at the time of its delivery.

(5) Further provisions as to allocations under this regulation are contained in Schedule 10.

### **Duration of retirement pension**

**E13.** Subject to regulations E14 to E16 and E18, a retirement pension under regulation E6 continues to be payable until the death of the person entitled to it.

### **Suspension and resumption of incapacity pensions**

**E14.**—(1) This regulation applies where a teacher who became entitled to payment of a pension by virtue of regulation E5(1)(e) ceases to be incapacitated.

(2) On his ceasing to be incapacitated the pension may be suspended from such date as the Secretary of State thinks appropriate, but any equivalent pension benefits continue to be payable.

(3) Subject to paragraphs (4) to (6) payment of the pension shall be resumed—

- (a) from the date he attains age 60; or
- (b) if earlier, and the Secretary of State is satisfied that he has again become incapacitated, from the date on which application for resumption of payment is received.

(4) A pension shall not be resumed under paragraph (3)(b) if the teacher has been in pensionable employment at any time after he first became entitled to payment of the pension, unless he became so

employed in the period of 12 months immediately preceding the date of application for resumption of payment.

(5) If a pension becomes payable again under paragraph (3)(b) and the Secretary of State is satisfied that the teacher was incapacitated during any part of the period during which the payment of the pension was suspended, the pension appropriate to that period shall be paid to the teacher.

(6) If a pension becomes payable again under paragraph (3)(a), it shall be treated for the purposes of regulation E15 as one to the payment of which he has become entitled by virtue of regulation E5(1)(a).

### **Abatement of retirement pension**

**E15.**—(1) Subject to paragraph (5) this regulation applies while a teacher who has become entitled to payment of retiring allowances is employed—

- (a) as a teacher in pensionable employment, comparable British service or employment which would be pensionable employment or comparable British service but for his having made an election under regulation B6 or other provisions to the like effect; or
- (b) as a teacher in part-time service in an employment specified in Schedule 2, and has not attained the age of 70 or had 45 years reckonable service.

(2) Where this regulation applies in respect of any employment falling within paragraph (1) being employment which is expressed to be regular employment, the annual rate of the retirement pension shall be reduced—

- (a) if A equals or exceeds (C+D–E), to zero; and
- (b) in any other case, by the amount (if any) which is necessary to secure that (A+B) does not exceed (C+D–E).

(3) Where this regulation applies in respect of any employment falling within paragraph (1) being employment which is not expressed to be regular employment, the retirement pension in any quarter shall be reduced—

- (a) if

$$\frac{F}{4}$$

equals or exceeds

$$\frac{(C+D-F)}{4}$$

, to zero; and

- (b) in any other case, by the amount (if any) which is necessary to secure that

$$\frac{(B+F)}{4}$$

does not exceed

$$\frac{(C+D-L)}{4}$$

- (4) In paragraphs (2) and (3)–

A is the initial annual rate of the teacher's salary in the employment,



B is the reduced annual rate of the retirement pension as increased under the Pensions (Increase) Act 1971(7),

C is, or where his previous pensionable employment was employment in part-time service is the full-time equivalent of, the highest annual rate of contributable salary that was payable to him during the 3 years ending immediately before he became entitled to payment of the pension,

D is the amount (if any) by which, immediately before the first day of the employment, C would have increased if it had been the annual rate of an official pension, within the meaning of the Pensions (Increase) Act 1971, beginning, and first qualifying for increases under that Act, on the same date as the pension,

E is any part of the retirement pension allocated under regulation E12, and

F is the annual rate of the teacher's remuneration in the employment on the first day of the pension quarter.

(5) Unless he either changes his employment, or varies the conditions of any contracts of employment concurrently in force, this regulation shall not apply in the case of a teacher—

- (a) to whom retiring allowances have become payable by reason of redundancy or in the interests of the efficient exercise of the employer's functions; and
- (b) who continues to be employed in pensionable employment under a contract of employment for part-time service which was concurrently in force with the contract of employment which he ceased to hold.

(6) In the case of a teacher to whom paragraph (5) applies, there shall be no reduction in the retirement pension payable to him so long as he continues to be employed under the contract of employment for part-time service referred to in paragraph (5)(b), and for the purposes of this paragraph the rate of earnings shall be deemed to remain constant throughout the period of that employment.

### **Retiring allowances on cessation of further employment**

#### **E16. –**

(1) This regulation applies to a teacher who—

- (a) became entitled to payment of a retirement pension (“the first pension”);
- (b) was subsequently in pensionable employment (“the further employment”); and
- (c) has ceased to be in the further employment.

(2) Subject to paragraph (3), if the first pension was not enhanced under regulation E9 (incapacity) the teacher—

- (a) ceases to be entitled to payment of the first pension; and
- (b) becomes entitled to payment of retiring allowances (“combined benefits”) calculated, subject to paragraph (9), by reference to the total of his reckonable service in the further employment and the reckonable service taken into account in calculating the first pension.

(3) If the pensionable salary by reference to which combined benefits would fall to be calculated is less than that by reference to which the first pension was calculated, he—

- (a) remains entitled to the first pension; and
- (b) subject to paragraph (8), becomes entitled to payment of retiring allowances calculated by reference to his reckonable service in the further employment.

(4) Subject to paragraph (8), if the first pension was enhanced under regulation E9, he becomes entitled to payment of the first pension and of additional retiring allowances in respect of the further employment.

(5) The additional retiring allowances shall be calculated—

(a) in respect of pensionable employment before attaining the age of 60, as if regulation E9 had applied and the further employment had begun when he became entitled to payment of the first pension; and

(b) in respect of other pensionable employment, in accordance with regulations E6 and E7, but the additional retirement lump sum shall be subject to reduction under paragraph (9).

(6) For the purposes of paragraphs (2)(b) and (3)(a), the amount of any retirement pension shall be taken to be the amount before any allocation under regulation E12.

(7) If, in the application of regulation E9 to the calculation of the first pension, the appropriate period was Period B, paragraph (5)(a) applies with the substitution for “60” of “65”.

(8) If the teacher ceased to be in the further employment before attaining the age of 60 and neither regulation E5(1)(e) (incapacity) nor regulation E5(1)(f) (redundancy, etc.) applied, he shall not become entitled to payment of retirement benefits under paragraph (3)(b) or (4) until he attains that age.

(9) A retirement lump sum payable under paragraph (2)(b), and an additional retirement lump sum payable under paragraph (4), shall be reduced by the amount of the retirement lump sum to which the teacher became entitled when he became entitled to payment of the first pension and of any lump sum to which he had previously become entitled under this regulation.

### **Gratuities on grounds of incapacity**

**E17.**—(1) A teacher who ceases to be employed in pensionable employment and who—

(a) is not entitled to payment of retiring allowances under this Part; and

(b) before attaining the age of 70 became incapacitated; and

(c) has been employed in pensionable employment for at least one year; and

(d) has been so employed within the 12 months immediately preceding an application for a gratuity under this regulation,

shall be entitled to payment of an incapacity gratuity calculated in accordance with paragraph (2).

(2) The amount of the incapacity gratuity is obtained by multiplying 1/12th of the teacher’s pensionable salary by the length of his reckonable service in years.

(3) Where a teacher subsequently becomes entitled to retiring allowances under this Part by virtue of again becoming employed in pensionable employment, the amount of the retirement lump sum payable shall be reduced by the amount of the incapacity gratuity paid under this regulation.

### **Forfeiture of benefits**

**E18.**—(1) This regulation applies where a teacher is convicted of—

(a) an offence of treason; or

(b) one or more offences under the Official Secrets Acts 1911 to 1989(8) for which he has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in aggregate to, at least 10 years; or

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(8) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

- (c) an offence in connection with pensionable employment which is certified by the Secretary of State either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service,  
and any benefit under regulations E1 to E17 becomes payable to him after the offence was committed.
- (2) Subject to paragraph (3), the Secretary of State may–
  - (a) defer or as the case may be suspend payment of the benefit for so long; or
  - (b) reduce its amount or rate by so much,as he may determine.
- (3) If–
  - (a) the teacher has a guaranteed minimum in relation to benefits under these Regulations; and
  - (b) the case does not fall within paragraph (1)(a) or (b),a determination under paragraph (2) may not deprive him of his guaranteed minimum pension after he attains state pensionable age.

## **Death gratuities**

### **E19. –**

- (1) Subject to paragraph (6), if at the time of his death a teacher–
  - (a) was in pensionable employment; or
  - (b) was paying additional contributions under regulation C8 (current added years); or
  - (c) had, not more than 12 months earlier, ceased to be in pensionable employment while incapacitated,a death gratuity may be paid.
- (2) The amount of the gratuity payable under paragraph (1) is the greater of–
  - (a) the amount which, if on the date of the teacher's death he had ceased to be employed on becoming incapacitated, would have become payable by way of retirement lump sum; and
  - (b) his pensionable salary,less, in either case, the amount of any retirement lump sum or incapacity gratuity previously paid to him.
- (3) Subject to paragraph (6), if a teacher dies without having become entitled to payment of retiring allowances and–
  - (a) the qualifying condition is satisfied; and
  - (b) no death gratuity could be paid under paragraph (1),a death gratuity may be paid under this paragraph.
- (4) The qualifying condition is that he was entitled to count at least 2 years' reckonable service and ceased to be in pensionable employment on or after 6th April 1988.
- (5) The amount of the gratuity under paragraph (3) is the amount that would have become payable by way of retirement lump sum if he had become entitled under regulation E5(1)(a) to payment of retiring allowances, less the amount of any retirement lump sum or short service incapacity grant previously paid to him.
- (6) If a teacher who has at any time been in pensionable employment dies and–
  - (a) no death gratuity could be paid under paragraph (1) or (3); or

- (b) the amount of such a death gratuity would be smaller than the balance of his contributions, calculated in accordance with regulation C11 as at the date of his death, and no pension becomes payable under regulation E25 to a surviving spouse or a nominated beneficiary, a death gratuity equal to the balance of his contributions, calculated in accordance with regulation C11 as at the date of his death, may be paid.

(7) Subject to paragraph (8), where any death gratuity is paid under this regulation, it shall be paid to the deceased's spouse, whom failing, to the legal personal representative.

(8) In the event of the deceased being survived by two or more spouses, they shall be entitled to an equal share of the death gratuity payable under this regulation.

### **Deficiency grants**

**E20.**—(1) Subject to paragraph (5), this regulation applies where a teacher dies who—

- (a) has become entitled to payment of retirement benefits; and
- (b) is not in pensionable employment.

(2) If—

- (a) at least 10 years' reckonable service was taken into account in calculating his retiring allowances; and
- (b) the total of the amounts paid in respect of these allowances is less than the pensionable salary,

a grant equal to that deficiency may be paid.

(3) If—

- (a) less than 10 years' reckonable service was taken into account in calculating his retiring allowances; and
- (b) the amount paid in respect of his retirement pension is less than 5 times the annual rate at which it was payable when he died,

a grant equal to that deficiency may be paid.

(4) For the purposes of this regulation any part of a pension allocated under regulation E12, or any amount deducted from the retirement lump sum, shall be treated as having been paid.

(5) This regulation does not apply if the person's last employment was of a kind described in Part II of Schedule 9 (employment at reduced salary) and formed part of the qualifying period for the purposes of regulation E4(5) (retiring allowances).

(6) Subject to paragraph (7), where any grant is paid under this regulation, it shall be paid to the deceased's spouse, whom failing, to the legal personal representative.

(7) In the event of the deceased being survived by two or more spouses, they shall be entitled to an equal share of the grant payable under this regulation.

### **Family benefits generally**

**E21.**—(1) Pensions are payable in accordance with regulations E23 to E28 to widows, widowers, children and nominated beneficiaries of teachers who die in, or after having been in, pensionable employment.

(2) Subject to paragraph (3), references in regulations E23 to E28 to a surviving spouse are references to a widow or widower; but in the case of—

- (a) a male teacher who has not been in pensionable employment, or paying additional contributions to purchase current added years under regulation C8, at any time after 5th April 1978; or

(b) a female teacher who has not been in pensionable employment, or paying additional contributions to purchase current added years under regulation C8, at any time after 5th April 1988,

such references, and references to a widow or widower, do not include references to a person to whom a male or female teacher became married after his or her last day in pensionable employment or, as the case may be, the end of the period for which any such contributions were paid.

(3) References to a widower in regulations E23 to E28 do not include a widower of a teacher who was, before 6th April 1988, nominated by her as a beneficiary under regulation 65 of the 1977 Regulations.

(4) Where regulations E23 to E28 provide for a pension to be payable to a widow and there are two or more widows, the widows shall be entitled to an equal share of the pension; and where the death of one or more widows occurs, the survivor shall be entitled in full to the pension payable under those regulations, or, in the case of survivors, they shall be entitled to an equal share.

(5) References in regulations E23 to E28 to a teacher's child are to a person who is—

- (a) his child or adopted child; or
- (b) accepted by him as a member of the family,

who is wholly or mainly dependent on him and who is a child within the meaning given in paragraphs (6) to (8).

(6) Subject to paragraphs (7) and (8), for the purposes of regulations E22 to E28 a person is a child while he is unmarried and—

- (a) he has not attained the age of 17; or
- (b) having attained that age, he is receiving full-time education or attending a course of not less than 2 years' full-time training for a trade, profession or calling; or
- (c) having not attained the age of 19, he is not in remunerative full-time work and is not entitled to income support by reason that he is receiving relevant education for the purposes of section 20 of the Social Security Act 1986<sup>(9)</sup>; or
- (d) having ceased while incapacitated to fall within sub-paragraph (a), (b) or (c), he continues to be incapacitated.

(7) For the purposes of paragraph (6)(b) a person is to be treated as not attending a course of training while he is receiving disqualifying income.

(8) Disqualifying income is remuneration at a rate not less than the annual rate at which an official pension, within the meaning of the Pensions (Increase) Act 1971<sup>(10)</sup>, would for the time being be payable if it had begun, and first qualified for increases under that Act, on 1st April 1972 and had then been payable at an annual rate of £250.

(9) References in regulations E23 to E28 to a nominated beneficiary are to a person nominated under regulation 65 of the 1977 Regulations (including a spouse of a female teacher nominated by her before 6th April 1988) or regulation E22.

### **Nomination of beneficiaries**

**E22.**—(1) Subject to paragraph (2), an unmarried person (“the appointor”) may at any time while in pensionable employment, by giving written notice to the Secretary of State, nominate an eligible

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(9) 1986 c. 50; section 20 was amended by the Social Security Act 1988 (c. 7), sections 3 and 4, by the Local Government Finance Act 1988 (c. 41), Schedule 10, paragraph 2, by the Social Security Act 1989 (c. 24), sections 5(1) and 13 and Schedule 8, paragraph 15(1).

(10) 1971 c. 56.

person who is wholly or mainly financially dependent on the appointor and who is not a child to receive a pension under regulations E23 to E28.

(2) No person may be nominated while a previous nomination under this regulation or under regulation 65 of the 1977 Regulations has effect.

(3) The eligible persons are—

- (a) a parent of the appointor;
- (b) a brother or sister of the appointor; and
- (c) a widowed step-parent of the appointor.

(4) A nomination under this regulation may be revoked by giving written notice to the Secretary of State, and if not previously revoked ceases to have effect—

- (a) on the death or marriage (or as the case may be remarriage) of the person nominated; or
- (b) on the marriage of the appointor.

#### **Entitlement to short-term family benefits**

**E23.**—(1) Subject to paragraphs (3) and (4), a short-term pension shall be payable, from the day after that of his death, in respect of a teacher who, on or after the date on which these Regulations come into force, dies—

- (a) while in pensionable employment; or
- (b) during a period for which he is paying additional contributions under regulation C8; or
- (c) within 12 months after ceasing to be in pensionable employment, or to pay such contributions, by reason of incapacity, but before becoming entitled to payment of retiring allowances; or
- (d) having become entitled after the date on which these Regulations come into force, to receive payment of retiring allowances.

(2) The short-term pension shall be payable—

- (a) subject to paragraph (4)(a), to any surviving spouse; or
- (b) if a nomination under regulation E22 had effect at the time of his death, to the nominated beneficiary; or
- (c) if there is no surviving spouse or nominated beneficiary and the deceased is survived by a child or children, to or for the benefit of the child or, as the case may be, the children jointly.

(3) Where two or more teachers confer on the same child or, as the case may be, children, entitlement to a short-term pension, regulation E25(12) shall apply in a like manner to short-term pensions payable by virtue of this regulation.

(4) No short-term pension shall be payable—

- (a) to a widower if one is payable to another person as a nominated beneficiary; or
- (b) if there is no surviving spouse, nominated beneficiary or surviving child; or
- (c) where paragraph (1)(d) applies, to a person who is not entitled to a long-term pension under regulation E25.

#### **Amount and duration of short-term family benefits**

**E24.**—(1) Subject to paragraph (2), the annual rate of a short-term pension under regulation E23 shall be—

- (a) if regulation E23(1)(a) or (c) applies, the annual rate of the deceased's contributable salary on his last day in pensionable employment, disregarding any reduction by reason of sick leave or maternity leave;
- (b) if regulation E23(1)(b) applies, the annual rate at the time of his death of the notional salary described in regulation C8(7);
- (c) if regulation E23(1)(d) applies, the annual rate at the time of his death of his retirement pension; and
- (d) if regulation E23(1)(a) and (d) both apply, the total of the rates specified in sub-paragraphs (a) and (c) above.

(2) Where the annual rate of a short-term pension payable to a surviving spouse, nominated beneficiary or child calculated in accordance with paragraph (1) is less than that of a long-term pension to which those persons are prospectively entitled under regulation E25, the annual rate of the short-term pension is the same as that of the long-term pension.

(3) Subject to paragraph (4), the duration of the short-term pension payable shall be ascertained from the table below.

TABLE

<i>Category</i>	<i>Payee</i>	<i>Duration of pension (months)</i>
1	Spouse or nominated beneficiary but with no child	3
2	Spouse or nominated beneficiary with one child or more	6
3	No spouse or nominated beneficiary but one child or more	6

(4) On the death of a spouse or nominated beneficiary before the termination of the short-term pension payable under category 2 of the table in paragraph (3), the balance of pension is payable to the child or children as the case may be.

### **Entitlement to long-term family benefits**

**E25.**—(1) Long-term pensions are payable in accordance with paragraphs (5) and (6) if a teacher dies who—

- (a) has been in pensionable employment at any time after 31st March 1972; and
- (b) has relevant service amounting to at least 2 years,

but in the case of a teacher who ceased to be in pensionable employment before 6th April 1988 sub-paragraph (b) has effect with the substitution for “2 years” of “5 years”.

(2) Relevant service does not include any period in respect of which contributions made by the teacher have been returned and not repaid to the Secretary of State in pursuance of regulation C13.

(3) In the case of a male teacher, and in the case of a woman teacher in relation to a nominated beneficiary, relevant service comprises, subject to paragraph (2)—

- (a) any period of pensionable employment after 31st March 1972;
- (b) any period beginning after that date for which additional contributions have been paid under regulation C8 (current added years);

- (c) any period for which additional contributions have been paid under regulation C3 or C5(1) (past added years) in accordance with an election made after 31st March 1974;
  - (d) if a transfer value has been received in respect of comparable British service, the period that would, immediately before its receipt, have counted for family benefits in the relevant superannuation scheme;
  - (e) any period counting as reckonable service by virtue of the receipt of any other transfer value under regulation F3 or under the Teachers Superannuation (Added Years and Interchange) (Scotland) Regulations 1974<sup>(11)</sup>;
  - (f) any period counting as reckonable service by virtue of regulation 6A of the 1977 Regulations<sup>(12)</sup>;
  - (g) any period counting as reckonable service by virtue of regulation 29 of the 1977 Regulations (special provisions relating to period from 1st December 1973 to 31st March 1974);
  - (h) any period in respect of which family benefit contributions have, or are to be treated as having, been paid under Part I of Schedule 6; and
  - (i) in the case of a member, so much of his credited service as does not exceed the total of his normal service and any additional period, and in addition any period that fell to be calculated in accordance with paragraph 6(3) of Schedule 6.
- (4) In relation to a woman teacher not falling within paragraph (3), relevant service comprises, subject to paragraph (2)–
- (a) so much of the periods described in paragraph (3)(a), (b) and (d) as consists of, or is attributable to, service after 5th April 1988;
  - (b) any period for which additional contributions have been paid under regulation C3 (past added years) in accordance with an election made after 5th April 1988;
  - (c) any period in respect of which family benefit contributions have, or are to be treated as having, been paid under Part II of Schedule 6; and
  - (d) if she entered pensionable employment after 5th April 1988, and a transfer value offered in respect of her was accepted under regulation F3, any period counting as reckonable service by virtue of receipt of the transfer value.
- (5) If paragraph (1) applies–
- (a) subject to paragraph (7) a long-term pension shall be payable to any surviving spouse;
  - (b) if a nomination under regulation 65 of the 1977 Regulations or under regulation E22 had effect at the time of death, a long-term pension shall be payable to the nominated beneficiary; and
  - (c) if a pension is payable under sub-paragraph (a) or (b) and the deceased is survived by a child or children of his, a long-term pension shall be payable to or for the benefit of the child or, as the case may be, the children jointly.
- (6) If when a teacher dies paragraph (5) does not apply but he–
- (a) has been in pensionable employment at any time after 31st March 1972; and
  - (b) is qualified for retiring allowances; and
  - (c) is survived by a child or children of his,
- a long-term pension shall be payable to or for the benefit of the child or, as the case may be, the children jointly.

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(11) S.I. 1974/1135, revoked by S.I. 1977/1360.

(12) Regulation 6A was inserted by S.I. 1977/1808.



(7) Subject to paragraphs (8) and (9), no long-term pension is payable to a widower if one is payable to another person as a nominated beneficiary.

(8) If the other person was nominated as a beneficiary by a married woman teacher under regulation 65 of the 1977 Regulations, and she has not revoked that nomination, in addition to the long-term pension payable to that person under paragraph (5)(b) there shall be payable to the widower a long-term pension calculated in accordance with regulation E26(7).

(9) Subject to paragraph (10) and regulation E26(7), if neither paragraph (5) nor paragraph (8) applies but the deceased had a guaranteed minimum in relation to benefits under these Regulations and leaves a surviving spouse, subject to regulation E1(2)(c) or (d) a long-term pension shall be payable.

(10) If a contributions equivalent premium is paid by the Secretary of State, paragraph (9) is to be treated as not having applied.

(11) Paragraph (12) applies where two or more teachers, by virtue of this regulation, confer on the same child or, as the case may be, children, entitlement to a long-term pension.

(12) The child or, as the case may be, children shall be entitled to receive payment of the long-term pension in respect of not more than two teachers; but where entitlement derives from the relevant service of three or more teachers, the child or, as the case may be, children shall be entitled to receive payment of the long-term pension in respect of the two teachers whose relevant service provides pensions of the largest amounts.

#### **Amounts of spouses' and nominated beneficiaries' long-term pensions**

**E26.**—(1) Subject to paragraphs (2) and (7), the annual rate of a pension payable under regulation E25 to a surviving spouse or a nominated beneficiary shall be 1/160th of the deceased's pensionable salary multiplied by the length of his family benefit service.

(2) If—

- (a) paragraph 15 of Schedule 6 (retrospective salary increases affecting deductions from terminal sums and amounts of lump sum payments) applies; and
- (b) a person entitled to limit the amount of the deduction or lump sum has done so, the retrospective salary increase is not to be taken into account in calculating the deceased's pensionable salary.

(3) Family benefit service does not include any period in respect of which contributions made by a teacher have been returned and not repaid to the Secretary of State in pursuance of regulation C13.

(4) Subject to paragraphs (3), (5), (8), (9) and (10), if the pension is payable to a nominated beneficiary or to a woman whom the deceased married before the end of his pensionable employment, the deceased's family benefit service comprises—

- (a) any period falling within regulation E25(3)(a) to (h);
- (b) in the case of a member, his credited service and any period that fell to be calculated in accordance with paragraph 6(3) of Schedule 6; and
- (c) any period related to war service in respect of which an additional contribution has been paid under regulation C7(8) or Part IV of Schedule 6 or which is included by virtue of paragraph 20(1) of that Schedule.

(5) If the member's credited service exceeds the total of his normal service and any additional period, for the purposes of paragraph (4)(b) his credited service is reduced by 1/6th of the excess.

(6) If the pension is payable to a widower, other than a widower to whom paragraph (7) applies, the deceased's family benefit service comprises, subject to paragraphs (3) and (8) to (10), the relevant service described in regulation E25(4).

(7) Notwithstanding anything in paragraphs (1), (4), (5), (6) and (8) to (10), the pension payable to a widower of a teacher who had in effect at the date of death a nomination in respect of another person under regulation 65 of the 1977 Regulations, shall be the aggregate of the following amounts—

- (a) a pension equal to one half of that part of the teacher's guaranteed minimum which is attributable to earnings for the tax year 1988/89 and subsequent tax years; and
- (b) a pension calculated by multiplying 1/160th of the deceased teacher's pensionable salary by the period in respect of which family benefit contributions have been paid under Part II of Schedule 6.

(8) This paragraph applies if the deceased died—

- (a) while in pensionable employment; or
- (b) during a period for which he was paying additional contributions under regulation C8 (current added years); or
- (c) within 12 months after ceasing to be in pensionable employment as a result of ill-health but before becoming entitled to payment of retirement benefits; or
- (d) after becoming entitled to payment of retirement benefits, if they fell to be enhanced under regulation E9 (incapacity), and

he had at least 5 years' reckonable service.

(9) If paragraph (8) applies and the family benefit service calculated in accordance with paragraphs (3) to (6) is less than his effective reckonable service, his family benefit service is increased by—

$$\frac{A}{B} \times C$$

where—

A is the family benefit service calculated in accordance with paragraphs (3) to (6),

B is his effective reckonable service apart from C, and

C is the period which was, or would if regulation E9 (enhancement) had applied have been, the appropriate period within the meaning of regulation E9.

(10) If paragraph (8) applies and A is not less than B, his family benefit service is increased by C.

(11) If the deceased had been in pensionable employment after 5th April 1978 and the pension is payable to a woman whom he first married after his last day in pensionable employment, his family benefit service comprises, subject to paragraph (3)—

- (a) any period of pensionable employment after 5th April 1978;
- (b) any period for which additional contributions have been paid under regulation C3 (past added years) in accordance with an election made after that date;
- (c) any period beginning after that date for which additional contributions have been paid under regulation C8;
- (d) if a transfer value has been received after that date in respect of comparable British service, any period of reckonable service attributable to comparable British service after that date;
- (e) any period counting as reckonable service by virtue of the receipt after that date of any other transfer value; and
- (f) so much of any period counting as reckonable service by virtue of regulation 6A of the 1977 Regulations as is attributable to service after that date.

### **Amounts of children's long-term pensions**

**E27.** –

- (1) Subject to paragraph (3), if long-term pensions become payable under regulation E25–
  - (a) to a surviving spouse or a nominated beneficiary (an “adult pension”); and
  - (b) to or for the benefit of a child or children (a “children’s pension”),  
the annual rate of the children’s pension is the appropriate fraction of the deceased’s pensionable salary multiplied by A or, where regulation E26(6) applies, B, where–  
A is in all cases the length of what would have been the deceased’s family benefit service if regulation E26(4) had applied, and  
B is the number of years on which A is calculated increased in like proportion as if it were service to which regulation E26(9) or, as the case may be, regulation E26(10) had applied.
- (2) The appropriate fraction–
  - (a) while a children’s pension is payable to or for the benefit of 2 or more children, is 1/160th;  
and
  - (b) while a children’s pension is payable to or for the benefit of one child, is 1/320th.
- (3) If–
  - (a) no adult pension becomes payable; or
  - (b) an adult pension ceases to be payable,  
the annual rate of a children’s pension is the applicable fraction of the deceased’s pensionable salary multiplied by C or, where regulation E26(6) applies, C + D, where–  
C is the deceased’s effective reckonable service apart from D, and  
D is the period which was, or would if regulation E9 (enhancement) had applied have been, the appropriate period within the meaning of regulation E9.
- (4) The applicable fraction–
  - (a) while a children’s pension is payable to or for the benefit of 2 or more children, is 1/120th;  
and
  - (b) while a children’s pension is payable to or for the benefit of one child, is 1/240th.

### **Commencement and duration of long-term family pensions**

**E28.** –

- (1) A pension under regulation E25 payable to a surviving spouse or a nominated beneficiary (“an adult pension”) shall be paid–
  - (a) from the day on which any short-term pension that became so payable under regulation E23 ceases to be payable; or
  - (b) if no short term pension became payable, from the day after that of the death.
- (2) Subject to paragraph (3), an adult pension shall be payable for life.
- (3) Subject to regulation E1(2)(c) and (d) (guaranteed minimum pension for surviving spouse), an adult pension–
  - (a) shall not, unless the Secretary of State determines otherwise in the particular case, be payable during any subsequent marriage or any period of cohabitation outside marriage;  
and

- (b) if the Secretary of State so decides, may be payable upon the former recipient again becoming a widow or widower or on the termination of any such marriage or, as the case may be, of the period of cohabitation.
- (4) A pension under regulation E25 payable to or for the benefit of a child or children (“a children’s pension”) shall be paid–
  - (a) from the day on which any short-term pension that became so payable, or payable to a surviving spouse or a nominated beneficiary, under regulation E23 ceases to be payable; or
  - (b) if no short-term pension became payable, from the day after that of the death.
- (5) A children’s pension ceases to be payable to a person or for his benefit when he ceases to be a child.

### **Pensionable salary**

**E29.**—(1) Subject to paragraphs (9) and (10), a teacher’s pensionable salary–

- (a) where the material part of his terminal service is one year or more, is his full salary for the best consecutive 365 days of that part; and
- (b) in any other case, is the average annual rate of his full salary for that part.
- (2) Terminal service comprises–
  - (a) any period counting as reckonable service by virtue of regulation D1(1)(a) (pensionable employment); and
  - (b) any period counting as reckonable service by virtue of regulation D4 (current added years purchased by additional contributions); and
  - (c) subject to paragraph (3), any period of a kind described in paragraphs 5 to 8 of Schedule 8 (certain periods of employment counting towards qualification for benefits).
- (3) A teacher who is in an employment falling within paragraphs 5 to 8 of Schedule 8 may, by giving written notice to the Secretary of State, elect that from the date from which the election takes effect the employment is not to constitute terminal service.
- (4) An election under paragraph (3)–
  - (a) if the notice is received before the teacher attains the age of 60, takes effect from his 60th birthday; and
  - (b) in any other case, takes effect from the first day of the month following that in which the notice was received.
- (5) The material part of a teacher’s terminal service is–
  - (a) where he has less than 3 years of such service, the whole of it; or
  - (b) in any other case, the last 3 years of it.
- (6) Subject to paragraphs (7) and (8), a person’s full salary–
  - (a) for a period falling within paragraph (2)(a), is his contributable salary for the period of pensionable employment, disregarding any reduction during sick leave or maternity leave;
  - (b) for a period falling within paragraph (2)(b), is the notional salary by reference to which the additional contributions paid under regulation C8 were calculated; and
  - (c) for a period falling within paragraph (2)(c), is what would have been his salary for the purpose of calculating benefits under the superannuation scheme to which he was subject in the relevant employment.
- (7) For–
  - (a) a period of pensionable employment; or

(b) a period counting as reckonable service by virtue of regulations D1(1)(b) and D4, beginning after 31st July 1975 and ending before 1st August 1978, a person's full salary includes any sums that would have been payable to him if payment of them had not been withheld, whether by virtue of an enactment or otherwise, in order to comply with limits referred to in section 1 of the Remuneration, Charges and Grants Act 1975<sup>(13)</sup>.

(8) For—

(a) a period of pensionable employment; or

(b) a period counting as reckonable service by virtue of regulations D1(1)(b) and D4, beginning after 31st March 1979 and ending before 1st September 1980, a person's full salary is the notional salary resulting from the application to him of the Teachers' Superannuation (Notional Salaries) (Scotland) Regulations 1982<sup>(14)</sup>.

(9) In the case of a teacher employed in part-time service under contracts of employment concurrently in force who ceases to be employed under any one of those contracts in circumstances by virtue of which he becomes entitled to retiring allowances under regulation E5(1)(f), his pensionable salary shall be deemed to be the pensionable salary which is related to the contract of employment which he ceased to hold.

(10) If the Secretary of State is satisfied that the salary of a teacher has been unreasonably increased in respect of any period which is in the opinion of the Secretary of State relevant for the purposes of this regulation, his pensionable salary shall be calculated by reference to such a salary in respect of that period as the Secretary of State considers reasonable.

### **Effective reckonable service**

**E30.**—(1) A teacher's effective reckonable service is so much of his reckonable service as counts for the purpose of calculating a benefit under this Part, except a pension under regulation E25.

(2) Subject to paragraph (3), effective reckonable service does not include—

(a) any reckonable service in excess of 45 years; or

(b) any reckonable service in excess of 40 years before attaining age 60.

(3) In relation to a retirement lump sum, if the teacher's reckonable service includes service before 1st October 1956—

(a) any reckonable service excluded by paragraph (2)(a) is to be taken from the beginning of his reckonable service; and

(b) paragraph (2)(b) does not apply.

(4) In respect of a teacher employed in part-time service under contracts of employment concurrently in force who ceases to be employed under any of those contracts in circumstances by virtue of which he becomes entitled to retiring allowances under regulation E5(1)(f), effective reckonable service does not include any reckonable service recorded whether before or after cessation of the said contract of employment in respect of any contracts of employment under which he continues to be employed.

(5) In relation to a retirement lump sum, if the teacher's relevant service, that is to say the total of—

(a) the time he has spent in pensionable employment;

(b) any comparable British service counting as reckonable service by virtue of the receipt of a transfer value; and

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<sup>(13)</sup> 1975 c. 57; section 1 was amended, and the period for which it had effect extended to end with 31st July 1978, by the Price Commission Act 1977 (c. 33), section 17; references to limits set out in documents laid before Parliament in 1976 and 1977 were added by S.I. 1976/1097 and 1977/1294.

<sup>(14)</sup> S.I. 1982/1302.

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(c) any period counting as reckonable service by virtue of regulation 6A of the 1977 Regulations,  
is less than 20 years, his effective reckonable service does not include so much of any period counting as reckonable service by virtue of regulation D3 (past added years purchased by additional contributions) as exceeds the maximum ascertained from the Table below.

TABLE

<i>Relevant service in years</i>	<i>Maximum</i>
19	17 years
18	15 years
17	13 years
16	11 years
15	9 years
14	7 years
Fewer than 14	8 years less than the length in years and days of the relevant service

(6) For the purposes of paragraph (5) a person who becomes entitled to payment of retirement benefits by virtue of regulation E5(1)(e) or (f) (incapacity or redundancy before attaining the age of 60) is to be treated as having continued in pensionable employment up to that age.

### Payment of benefits

**E31.**—(1) Benefits under this Part are payable by the Secretary of State.

(2) A benefit that does not consist of a single payment shall normally be paid monthly; but—

- (a) may, on the application of the person entitled thereto, be paid quarterly; or
- (b) may be paid in such instalments and at such intervals as the Secretary of State may think appropriate.

(3) Where payment of any such sum is due in respect of a period which is less than the interval at which it is payable—

- (a) the amount payable in respect of each complete month of the period shall be 1/12th of the annual rate of the sum; and
- (b) the amount payable in respect of a period of less than 1 complete month shall be

$$\frac{A}{12} \times \frac{B}{C},$$

where—

A is the annual rate of the benefit,

B is the number of days in respect of which the benefit is payable, and

C is the total number of days in the month in which the days in B fall.

(4) If the person entitled to payment of a benefit is a person under legal disability by reason of nonage, or is incapable by reason of infirmity of mind or body of managing his affairs, the Secretary of State may—

- (a) pay it to any person having the care of the person entitled; or

(b) apply it as he thinks fit for the benefit of the person entitled or his dependants.

**Benefits not assignable**

**E32.**—(1) Any assignment of or charge on, or agreement to assign or charge, any benefit under this Part shall be void.

(2) On the sequestration of the estate of a person entitled to any such benefit or on the bankruptcy of such a person, no part of the benefit shall pass to any trustee or other person acting on behalf of the creditors, except as provided in paragraph (3).

(3) Nothing in paragraph (2) shall affect the powers of the Court under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985<sup>(15)</sup> or under section 310 of the Insolvency Act 1986<sup>(16)</sup>, as the case may be.

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<sup>(15)</sup> 1985 c. 66.

<sup>(16)</sup> 1986 c. 45.