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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 393**

**The Teachers' Superannuation (Scotland) Regulations 2005**

**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 regulations E18 and E22.

(2) If a teacher has, in relation to employment before 6th April 1997, a guaranteed minimum in relation to benefits under these Regulations—

- (a) he or she 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 that teacher 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 or she is (unless he or she consents to a postponement of his or her entitlement) entitled from the end of that period to so much of his or her retirement pension as equals his or her 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 17(5) of the 1993 Act<sup>(1)</sup>, 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 for the period beginning with the tax year 1988 89 and ending with the tax year 1996 97, be increased in accordance with the requirements of section 109 of the 1993 Act<sup>(2)</sup>.

(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 15 of the 1993 Act.

**Residual liability for guaranteed minimum pensions and for section 9(2B) rights**

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

- (a) a teacher has exercised his or her right to a cash equivalent;

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<sup>(1)</sup> 1993 c. 48. Section 17(5) is amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) Schedule 5, paragraph 1 and Schedule 9, Part III(4).

<sup>(2)</sup> Section 109 is amended by the Pensions Act 1995 (c. 26), section 55.

- (b) the other occupational pension scheme or personal pension scheme into which he or she has transferred or is in the course of transferring his or her cash equivalent is not willing or able to accept the cash equivalent of his or her guaranteed minimum pension or section 9(2B) rights; and
  - (c) that teacher has not transferred the cash equivalent of his or her guaranteed minimum pension or section 9(2B) pension rights into a policy described in section 19(4)(a)(3) of the 1993 Act or a separate personal pension scheme.
- (2) Where this regulation applies, the teacher is entitled–
- (a) to a pension at a weekly rate equal to his or her guaranteed minimum from the date on which he or she attains state pensionable age; or
  - (b) to a lump sum and a pension in respect of his or her section 9(2B) rights from the date on which he or she attains the age of 60,
- or to both.

### **Revaluation of guaranteed minimum in certain cases**

- E3.**—(1) This regulation applies where–
- (a) a teacher has ceased to be employed in reckonable service; and
  - (b) the guaranteed minimum in relation to his or her pension is appropriately secured (within the meaning of section 19 of the 1993 Act).
- (2) The earnings factors of such a teacher shall be determined for the purposes of section 14(2) of that Act–
- (a) by reference to the last order under section 21 of the Pensions Act(4) or section 148 of the Social Security Administration Act 1992(5) to come into force before the end of the tax year in which he or she ceased to be a pensionable employee; and
  - (b) without reference to the last such order to come into force before the end of the final relevant year.
- (3) The weekly equivalent mentioned in section 14(2) of the 1993 Act shall be increased by at least the prescribed percentage for each relevant year after the end of the tax year in which he or she ceased to be a pensionable employee and in accordance with such additional requirements as may be prescribed for the purposes of section 16(3)(6) of that Act.
- (4) In this regulation–
- “relevant year” and “final relevant year” have the meanings given respectively in sections 14(8) and 16(5) of the 1993 Act(7); and
  - “prescribed percentage” has the meaning given in regulation 62 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(8).

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(3) Section 19(4)(a) is amended by [S.I. 2001/3649](#), article 116.

(4) [1975 c. 60](#); section 21 was repealed by the Social Security (Consequential Provisions) Act [1992 \(c. 6\)](#), section 3(1) and Schedule 1.

(5) [1992 c. 5](#) as amended by the Pension Schemes Act [1993 \(c. 48\)](#), Schedule 8, the Pension Act [1995 \(c. 26\)](#), section 128 and the Child Support, Pensions and Social Security Act [2000 \(c. 19\)](#), sections 33 and 37.

(6) Section 16(3) was amended by the Pensions Act [1995 \(c. 26\)](#), section 151 and Schedule 5, paragraph 28 and is modified by [S.I. 1996/1172](#), regulation 65.

(7) Section 14(8) was amended by the Pension Act [1995 \(c. 26\)](#) (“the 1995 Act”) section 151 and, Schedule 5, paragraph 27; and section 16(5) was amended by the 1995 Act, Schedule 5, paragraph 28 and the Welfare Reform and Pensions Act [1999 \(c. 30\)](#), Schedule 2, paragraph 4.

(8) [S.I. 1996/1172](#), as amended by [S.I. 2002/681](#).

### **Nature of retirement benefits**

**E4.** Retirement benefits consist of—

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

calculated in accordance with this Part.

### **Qualification for retirement benefits**

**E5.**—(1) A teacher shall qualify for retirement benefits if—

- (a) immediately before 6th April 1988 that teacher would but for his or her age have been entitled under regulation 46 of the 1977 Regulations<sup>(9)</sup> to payment of retirement benefits;
- (b) immediately before the date these Regulations come into force, regulation E4(5) of the 1992 Regulations<sup>(10)</sup> applied to that teacher; or
- (c) he or she has completed an appropriate qualifying period.

(2) A qualifying period, which may be discontinuous, comprises every period of a kind described in Schedule 8 but excludes any period in respect of which contributions have been returned to the teacher and not repaid to the Scottish Ministers.

(3) If a teacher was in pensionable employment by virtue of regulation B9, any period of one year in such employment is an appropriate qualifying period.

(4) If the teacher was in pensionable employment, or paying additional contributions to purchase current added years under regulation 28 of the 1977 Regulations, on 6th April 1988, any qualifying period of 2 years shall be an appropriate one.

(5) If paragraph (4) 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 shall be treated for the purposes of this paragraph as having begun after 5th April 1988.

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

(7) Notwithstanding that an appropriate qualifying period has not been completed, a teacher shall qualify for retirement benefits if—

- (a) that teacher has been employed in pensionable employment during a period in respect of which he or she 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 or her by the Scottish Ministers to the superannuation scheme of the Commission of the European Communities and one has since been received by the Scottish Ministers from that scheme.

### **Entitlement to payment of retirement benefits**

**E6.**—(1) A teacher who has qualified for retirement benefits shall be entitled to payment of them if he or she—

- (a) has attained the age of 60 and has ceased to be in pensionable employment;
- (b) has attained the age of 70 and is in employment which would be pensionable employment but for regulation B6(1);

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<sup>(9)</sup> Regulation 46 was amended by [S.I. 1978/1507](#), [1980/344](#), [1983/639](#), [1988/1618](#) and [1989/666](#) (and revoked by [S.I. 1992/280](#)).

<sup>(10)</sup> [S.I. 1992/280](#) (“the 1992 Regulations”). The 1992 Regulations are revoked in their entirety by these Regulations (see Schedule 1 to these Regulations).

- (c) –
- (i) has not attained the age of 60;
  - (ii) has ceased after 31st March 1972 to be in pensionable employment;
  - (iii) has become incapacitated;
  - (iv) in the case of a teacher registered or formerly registered with the General Teaching Council for Scotland and who has ceased after 31st March 1997 to be in pensionable employment, has not had his or her name removed from the Council’s register following a direction by the Council’s Disciplinary Committee and is not under an investigation which might result in such removal; and
  - (v) in any other case, where he or she has ceased after 31st March 1997 to be in pensionable employment, and has not ceased to be in pensionable employment as a result of dismissal on grounds of misconduct;
- (d) –
- (i) has not attained the age of 60;
  - (ii) has attained the age of 50;
  - (iii) has ceased after attaining that age to be in pensionable employment, or in excluded employment, or in employment which would have been pensionable employment had an election been made under regulation B2, and that teacher’s employer has certified in writing to the Scottish Ministers that his or her employment has been terminated as a result of their redundancy or in the interests of the efficient exercise of the employer’s functions; and
  - (iv) has not received, and is not to receive, compensation under Part IIIA of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996<sup>(11)</sup> and that teacher’s employer has agreed that he or she should become entitled to retirement benefits under this paragraph; or
- (e) –
- (i) has attained the age of 55;
  - (ii) has ceased on or after 30th June 2002 and before attaining the age of 60 to be in pensionable employment or excluded employment; and
  - (iii) is not entitled to payment of retirement benefits by virtue of paragraph (1)(c) or (1)(d),
- and the conditions specified in paragraph (4) are satisfied.

(2) Entitlement under–

- (a) paragraph (1)(a) and (b) takes effect as soon as the teacher meets the conditions prescribed therein;
- (b) paragraph (1)(c) 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 retirement benefits on grounds of incapacity is later, that date or such other date as the Scottish Ministers, having regard to all the circumstances, think appropriate; and
- (c) paragraph (1)(d) takes effect, unless the teacher entitled to receive payment has waived his or her right to such payment in terms of paragraph (3), as from the day after the end of the employment;
- (d) paragraph (1)(e) takes effect–

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<sup>(11)</sup> S.I. 1996/2317; Part IIIA was inserted by S.I. 1997/675, regulation 7.

- (i) where, at the time of the application for benefits under regulation E36, the teacher was in pensionable employment or excluded employment, as from the day after the end of the employment; and
- (ii) in any other case on a date determined by the teacher making the application for benefits under regulation E36 being a date no earlier than 6 weeks after the date of such application.

(3) A teacher entitled to payment of retirement benefits by virtue of paragraph (1)(d), who is also a teacher to whom the provisions of regulation 7 of the Local Government (Education Administration) (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995(12) applies, may waive his or her entitlement to such payment under paragraph (1)(d) by notice in writing to their employer, but such waiver shall not prejudice his or her entitlement to benefit under any other provision of this regulation.

(4) The conditions referred to in paragraph (1)(e) are—

- (a) where the teacher has a guaranteed minimum pension in respect of employment before 6th April 1997, or an equivalent pension benefit relating to employment undertaken during the period starting on 3rd April 1961 and ending on 5th April 1975 (or both) that the annual rate of the teacher's retirement benefits in the opinion of the Government Actuary is equal to or exceeds the equivalent pension benefit or the value of the guaranteed minimum pension (or if both the aggregate); and
- (b) where, at the time of the application for payment of benefits under regulation E36, the teacher was in pensionable employment (otherwise than by virtue of regulation B9) or excluded employment that—
  - (i) his or her employer has consented to the application; or
  - (ii) 6 months have elapsed since the date on which the teacher requested his or her employer to give consent and such consent has not been given.

### **Amount of retirement pension**

**E7.**—(1) Subject to paragraphs (2) to (4) and regulations E9 to E13, the annual rate of a teacher's retirement pension shall be 1/80th of that teacher's pensionable salary multiplied by his or her effective reckonable service.

(2) If—

- (a) the teacher is entitled to count a period as reckonable service by virtue of regulation D3; and
- (b) by reason of regulation E35(5) part of that period does not count in calculating his or her 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 or her pensionable salary.

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

(4) Where this paragraph applies the annual rate of a teacher's retirement pension shall be the annual rate, calculated in accordance with the foregoing provisions of this regulation, of the retirement pension to which he or she would be entitled apart from this paragraph and ignoring the effect of regulation E12 multiplied by the appropriate factor.

- (5) Subject to sub paragraph (b), paragraph (4) applies where—
- (a) a teacher is entitled to payment of retirement benefits under regulation E6(1)(d) and ceased to be in pensionable employment or in excluded employment on or after 1st September 1997; or
  - (b) a teacher has become entitled to payment of retirement benefits by virtue of regulation E6(1)(e).
- (6) For the avoidance of doubt, references in regulations E9 to E11 to “retirement benefits” and “retirement pension” are references to such benefits as calculated before any actuarial reduction required by paragraph (4).

### **Amount of retirement lump sum**

**E8.**—(1) Subject to paragraphs (2) and (3) and regulations E9 and E10, the amount of a teacher’s retirement lump sum shall be  $A \times (B + C)$  where—

- A is 3/80ths of the teacher’s pensionable salary;
- B is his or her effective reckonable service (except any falling within C); and
- C is any period which he or she is entitled to count as reckonable service by virtue of regulation D3.

(2) If the teacher’s effective reckonable service is restricted by regulation E35(2), the part of that teacher’s retirement lump sum that is attributable to service before he or she attained the age of 60 shall not exceed their pensionable salary multiplied by 1.5.

- (3) Subject to paragraph (4), where—
- (a) a teacher who has become entitled to the payment of retirement benefits by virtue of regulation E6(1)(d) has ceased to be in pensionable or excluded employment on or after 1st September 1997; or
  - (b) a teacher has become entitled to payment of retirement benefits by virtue of regulation E6(1)(e),

the amount of the teacher’s retirement lump sum shall be the amount calculated in accordance with paragraphs (1) and (2) multiplied by the appropriate factor.

(4) References in regulations E9 and E10 to “retirement benefits” and “retirement lump sum” are references to such benefits as calculated before any actuarial reduction required by paragraph (3).

### **Limitation of retirement benefits in certain cases**

- E9.**—(1) Paragraphs (2) to (5) apply to a teacher who has made an election—
- (a) under regulation C1(8) of the 1992 Regulations<sup>(13)</sup> and whose pensionable salary falls to be calculated by reference to the notional rate as described in that provision; or
  - (b) under regulation C2(1) and whose pensionable salary falls to be calculated by reference to regulation C2(4).

(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 Table 1 below.

**TABLE 1**

<i>Relevant age</i>	<i>Fraction</i>
Under 50	1/2

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(13) S.I. 1992/280. Regulation C1(8) was repealed by S.I. 1998/718 with effect from 15th April 1998.

<i>Relevant age</i>	<i>Fraction</i>
50	2/5
51	3/10
52	1/5
53	1/10
54	1/14

(3) Where the teacher has been in pensionable employment for less than 20 years, his or her retirement lump sum is not to exceed  $\frac{3}{80}$ ths of the appropriate sum multiplied by the total of his or her reckonable service and the period ascertained, by reference to the number of complete years he or she has been in pensionable employment, from Table 2 below.

**TABLE 2**

<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 or her 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 or her last 5 years in pensionable employment; and
- (b) one third of that teacher's aggregate contributable salary for his or her best 3 consecutive years in pensionable employment within the 10 years ending with its cessation,

and, for the purpose of paragraph (2), the relevant age is the teacher's age when he or she first entered pensionable employment, unless he or she 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.

(6) In this regulation, references to "retirement pension" and "retirement lump sum" are references to such pension and lump sum before any actuarial reduction required by regulation E7(4) or E8(3).

### **Enhancement of retirement benefits in case of incapacity**

**E10.**—(1) Subject to paragraph (2), this regulation applies to a teacher who has become entitled to payment of retirement benefits by virtue of regulation E6(1)(c) by reason of his or her becoming incapacitated while employed in pensionable employment, but only if—

- (a) —
  - (i) where his or her pensionable employment terminates before 1st October 2001, he or she had completed periods of the kind described in Schedule 8 totalling at least 5 years, excluding any period in respect of which contributions have been returned to him or her and not repaid to the Scottish Ministers; or
  - (ii) where his or her pensionable employment terminates on or after 1st October 2001, he or she had completed periods of the kind described in Schedule 8 totalling at least 2 years, excluding any period in respect of which contributions have been returned to him or her and not repaid to the Scottish Ministers; and
- (b) the application for payment of retirement benefits under regulation E6(1)(c) is made within 12 months after the end of his or her pensionable employment or such longer period as may be approved by the Scottish Ministers.

(2) In relation to a teacher who was 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, where pensionable employment terminates before 1st October 2001 and 2 years where pensionable employment terminates after that date.

(3) Subject to regulation E35(2), for the purpose of calculating his or her retirement benefits 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 2 years but less than 10 years, the appropriate period is the shorter of—

- (a) the length of that teacher's relevant service; and
- (b) the period beginning when that teacher's pensionable employment ended and ending immediately before his or her 65th birthday, or, if he or she is entitled to retirement benefits by virtue of regulation E6(1)(e) and subsequently becomes entitled to retirement benefits by virtue of regulation E6(1)(c) with reference to his or her reckonable service in further employment which is pensionable by virtue of regulation B9, his or her 60th birthday.

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

(6) Period A is the shortest of—

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

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

(8) A teacher's relevant service is so much of his or her effective reckonable service as does not consist of periods that count by virtue of regulation D3.

(9) For the purposes of this regulation a teacher is to be treated as having been in pensionable employment during any period for which he or she was paying additional contributions under regulation C8 or C9.



### **Avoidance of duplicate pensions**

**E11.**—(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 monies provided by Parliament or paid out of the Scottish Consolidated Fund or the non domestic rates and council tax levied by local authorities (“the double period”).

(2) This regulation does not apply where the other pension is subject to reduction under regulation 33 of the Local Government Pension Scheme (Scotland) Regulations 1998<sup>(14)</sup> or where the other pension is payable under regulation 16C of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996<sup>(15)</sup>.

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

A is the actuarial value of the retirement benefits 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 teacher in respect of the double period, including any paid under regulation C8; 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 or she 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**

**E12.** Part I of Schedule 9 has effect for modifying the retirement pensions of teachers who were in pensionable employment before 1st April 1980 including retirement pensions that have been actuarially reduced under regulation E7(4).

### **Pension debit member**

**E13.**—(1) The amount of a retirement pension or retirement lump sum payable to a pension debit member shall be reduced to take into account the debit to which the shareable rights of the pension debit member are subject under a pension sharing order.

(2) The amount of the reduction shall be in accordance with the guidance issued for this purpose by the Government Actuary.

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

**E14.**—(1) A teacher who has become qualified for retirement benefits may, unless he or she becomes entitled to payment of them by virtue of regulation E6(1)(c), allocate part of his or her retirement pension to the provision of an alternative benefit.

(2) The alternative benefit may be either—

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<sup>(14)</sup> S.I. 1998/366.

<sup>(15)</sup> S.I. 1996/2317. Regulation 16C was added by S.I. 1997/675.

- (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 Scottish Ministers, 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 11.

### **Duration of retirement pension**

**E15.** Subject to regulations E16 to E19 and E22, a retirement pension under regulation E7 continues to be payable until the death of the person entitled to it.

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

**E16.**—(1) This regulation applies where a teacher who became entitled to payment of a pension on or before 31st March 1997 by virtue of regulation E5(1)(e) of the 1992 Regulations(16) ceases to be incapacitated.

(2) On the teacher ceasing to be incapacitated the pension may be suspended from such date as the Scottish Ministers think 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 the teacher attains age 60; or
- (b) if earlier, and the Scottish Ministers are satisfied that he or she 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 or she first became entitled to payment of the pension, unless he or she 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 Scottish Ministers are satisfied that the teacher was incapacitated during any part of the period 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 E18 as one to the payment of which he or she has become entitled by virtue of regulation E6(1)(a).

### **Withdrawal of incapacity pensions**

**E17.** Where a teacher who becomes entitled on or after 1st April 1997 to payment of a pension under regulation E6(1)(c) re enters pensionable employment, or employment which would be pensionable but for an election under regulation B7 or the lack of an election under regulation B2, the teacher shall cease to be entitled to that pension; and if he or she subsequently becomes entitled to benefits under these Regulations any reckonable service which was taken into account in calculating the pension under regulation E6(1)(c) shall be taken into account in calculating those benefits.

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(16) S.I. 1992/280 (“the 1992 Regulations”). Regulation E5(1)(e) was amended by S.I. 1993/2513 and 1997/676. The 1992 Regulations are revoked in their entirety by these Regulations (see Schedule 1 to these Regulations).

### **Abatement of retirement pension**

**E18.**—(1) Subject to paragraph (4), this regulation applies while a teacher who has become entitled to payment of a teacher's pension is employed—

- (a) in pensionable employment, comparable British service or employment which would be pensionable employment or comparable British service but for his or her having made an election under regulation B7 or but for regulation B6(5) 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, 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, and subject to paragraph (6), by the amount (if any) which is necessary to secure that (A + B) does exceed (C + D E).

(3) In paragraph (2)—

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

B is the reduced annual rate of the retirement pension, disregarding any actuarial reduction required by regulation E7(4), as increased under the 1971 Act<sup>(17)</sup>;

C is, or where that teacher's 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 or her during the 3 years ending immediately before they became entitled to payment of the pension, or, if applicable, the highest annual rate of contributable salary that was payable to him or her during the 3 years ending immediately before they ceased to be employed in any pensionable employment entered into by them after they became entitled to payment of the pension, whichever is the greater;

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 1971 Act, 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 E14, and

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

(4) Unless he or she either changes his or her 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 retirement benefits 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 or she ceased to hold.

(5) In the case of a teacher to whom paragraph (4) applies, there shall be no reduction in the retirement pension payable to him or her so long as he or she continues to be employed under the contract of employment for part-time service referred to in paragraph (4)(b), and for the purposes of this paragraph the rate of earnings shall be deemed to remain constant throughout the period of that employment.

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(17) 1971 c. 56.

(6) Where regulation E7(4) applies the amount (if any) by which the annual rate of the pension is to be reduced under paragraph (2)(b) shall be the amount (if any) referred to in that sub paragraph multiplied by the appropriate factor.

(7) This regulation shall not apply in respect of a pension (or part of a pension) to which a teacher is entitled by virtue of regulation E6(1)(e).

### **Retirement benefits on cessation of further employment which began on or before 30th September 2001**

**E19.**—(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 which began on or before 30th September 2001 (“the further employment”) (other than further employment to which regulation B9(1) applies); 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 of the 1992 Regulations<sup>(18)</sup> the teacher—

- (a) ceases to be entitled to payment of the first pension; and
- (b) becomes entitled to payment of retirement benefits (“combined benefits”) calculated, subject to paragraph (9), by reference to the total of his or her 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 or she—

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

(4) Subject to paragraph (8), if the first pension was enhanced under regulation E9 of the 1992 Regulations, he or she becomes entitled to payment of the first pension and of additional retirement benefits in respect of the further employment.

(5) The additional retirement benefits shall be calculated—

- (a) in respect of pensionable employment before attaining the age of 60, as if regulation E10 had applied and the further employment had begun when he or she became entitled to payment of the first pension; and
- (b) in respect of other pensionable employment, in accordance with regulations E7 and E8,

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 E14.

(7) If, in the application of regulation E9 of the 1992 Regulations 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 E6(1)(c) nor regulation E6(1)(d) applied, he or she shall not become entitled to payment of retirement benefits under paragraph (3)(b) or (4) until he or she attains that age, save that where the teacher ceases to be in further employment on or after 30th June 2002 and is entitled to payment

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(18) Regulation E9 was amended by [S.I. 2001/291](#) and [2002/288](#).

of retirement benefits under sub paragraph 3(b), he or she shall upon attaining the age of 55 become entitled to retirement benefits multiplied by the appropriate factor.

(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 or she became entitled to payment of the first pension and of any lump sum to which he or she had previously become entitled under this regulation.

(10) Where a teacher ceases to be in further employment on or after 1st September 1997 and is entitled to payment of retirement benefits under regulation E6(1)(d)–

- (a) regulation E7(4) shall also apply to that teacher and to his or her retirement pension under paragraph (2)(b) or (3)(b) or to his or her additional retirement pension under paragraph (4); and
- (b) regulation E8(3) shall also apply to that teacher and to his or her retirement lump sum under paragraph (2)(b) or (3)(b) or to his or her additional retirement lump sum under paragraph (4).

### **Retirement benefits on cessation of further employment which began on or after 1st October 2001**

**E20.**—(1) This regulation applies–

- (a) to a teacher who has been in further employment which began on or after 1st October 2001 for the appropriate qualifying period under regulation E5(3); and
- (b) where such employment has ceased.

(2) A teacher to whom this regulation applies becomes entitled to payment of retirement benefits in accordance with paragraphs (3) to (7) by reference to his or her reckonable service in the further employment.

(3) Where regulation E6(1)(a) or (b) apply, subject to paragraph (7), a teacher’s entitlement to retirement benefits takes effect–

- (a) where, at the time of the application for benefits under regulation E36 the teacher was in pensionable or excluded employment, as from the day after the end of the employment; and
- (b) in any other case on a date determined by the teacher making the application for benefits under regulation E36, being a date no earlier than 6 weeks after the date of such application.

(4) Where regulation E6(1)(c) applies, subject to paragraph (7), a teacher’s entitlement to retirement benefits takes effect in accordance with regulation E6(2)(b).

(5) Where regulation E6(1)(d) applies, subject to paragraph (7), a teacher’s entitlement to retirement benefits takes effect in accordance with regulation E6(2)(c).

(6) Where regulation E6(1)(e) applies, subject to paragraph (7), a teacher’s entitlement to retirement benefits takes effect in accordance with regulation E6(2)(d).

(7) Where a teacher ceases to be in further employment which is pensionable by virtue of regulation B9 and he or she subsequently enters further employment without making an application for benefits under regulation E36 in respect of the earlier further employment, he or she cannot make such an application during any period of subsequent further employment.

### **Grants on grounds of incapacity**

**E21.**—(1) A teacher who ceases to be employed in pensionable employment and who–

- (a) is not entitled to payment of retirement benefits 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 grant under this regulation,

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

(2) The amount of the incapacity grant is obtained by multiplying one twelfth of the teacher's pensionable salary by the length of his or her reckonable service in years.

(3) Where a teacher subsequently becomes entitled to retirement benefits 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 grant paid under this regulation.

### **Forfeiture of benefits**

**E22.**—(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<sup>(19)</sup> for which he or she 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
- (c) an offence in connection with pensionable employment or excluded employment which is certified by the Scottish Ministers 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 E21 becomes payable to him or her after the offence was committed.

(2) Subject to paragraph (3), the Scottish Ministers 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 they 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 that teacher of his or her guaranteed minimum pension after he or she attains state pensionable age.

### **Commutation: exceptional circumstances of ill-health**

**E23.**—(1) Where at the time when a teacher becomes entitled to a retirement pension by virtue of regulation E6(1)(c) there are exceptional circumstances of serious ill-health affecting that teacher the Scottish Ministers may discharge their liability in respect of so much of that pension as exceeds the teacher's guaranteed minimum by payment of a lump sum calculated in accordance with paragraph (2).

(2) The lump sum is an amount equal to five times the amount by which the annual rate of the retirement pension which would otherwise be payable to the teacher exceeds the amount of his or her guaranteed minimum.

### **Death grants**

**E24.**—(1) Subject to paragraph (6), if at the time of his or her death a teacher—

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(19) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

- (a) was in pensionable employment;
- (b) was paying additional contributions under regulation C8 or C9;
- (c) had, not more than 12 months earlier, ceased to be in pensionable employment while incapacitated and had not, during the period since he or she ceased to be in pensionable employment, become entitled to retirement benefits under regulation E6(1);
- (d) had, not more than 2 months earlier, ceased to be in pensionable employment and had not at that time been entitled to payment of retirement benefits, or
- (e) was on unpaid maternity, paternity, adoption or parental leave,

a death grant may be paid.

(2) The amount of the grant payable under paragraph (1) is twice his or her pensionable salary, less the amount of any retirement lump sum or incapacity grant previously paid to him or her.

(3) Subject to paragraph (6), if a teacher dies without having become entitled to payment of retirement benefits and—

- (a) the qualifying condition is satisfied; and
- (b) no death grant could be paid under paragraph (1),

a death grant may be paid under this paragraph.

(4) The qualifying condition is that the teacher was entitled to count at least 2 years' reckonable service and ceased to be in pensionable employment on or after 6th April 1988, or 5 years' reckonable service if pensionable employment ceased prior to that date.

(5) The amount of the grant under paragraph (3) is the amount that would have become payable by way of retirement lump sum if the teacher had become entitled under regulation E6(1)(a) to payment of retirement benefits, less the amount of any retirement lump sum or short service incapacity grant previously paid to them.

(6) If a teacher who has at any time been in pensionable employment dies and—

- (a) no death grant could be paid under paragraph (1) or (3); or
- (b) the amount of such a death grant would be smaller than the balance of his or her contributions, calculated in accordance with regulation C12 as at the date of his or her death, and no pension becomes payable under regulation E28 to a surviving spouse or a nominated beneficiary,

a death grant equal to the balance of his or her contributions, calculated in accordance with regulation C11 as at the date of his or her death, may be paid.

(7) Where any death grant is paid under this regulation, it is to be paid to the individual nominated by the deceased to receive the grant or, in the absence of such a nomination—

- (a) if the deceased is survived by one widow or by a widower, to the widow or widower;
- (b) if there are two or more widows, to the widows in equal shares, or
- (c) if there is no widow or widower, to the legal personal representative.

(8) Any nomination for the purposes of paragraph (7) shall be made by giving written notice to the Scottish Ministers.

### **Deficiency grants**

**E25.**—(1) Subject to paragraph (7), 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) the teacher became entitled to retirement benefits before 1st October 2001;

(b) at least 10 years' reckonable service was taken into account in calculating his or her retirement benefits; and

(c) the total of the amounts paid in respect of these benefits is less than the pensionable salary, subject to paragraph (6) a grant equal to that deficiency may be paid.

(3) If—

- (a) the teacher became entitled to retirement benefits before 1st October 2001;
- (b) less than 10 years' reckonable service was taken into account in calculating his or her retirement benefits; and
- (c) the amount paid in respect of his or her retirement pension is less than 5 times the annual rate at which it was payable when he or she died,

subject to paragraph (6) a grant equal to that deficiency may be paid.

(4) If—

- (a) the teacher's entitlement to retirement benefits takes effect on or after 1st October 2001; and
- (b) the amount paid in respect of his or her retirement pension is less than 5 times the annual rate at which it was payable when he or she died,

subject to paragraph (6) a grant equal to that deficiency may be paid.

(5) For the purposes of this regulation any amount by which a pension was reduced under regulation E7(4) or any part of a pension allocated under regulation E14, or any amount deducted from the retirement lump sum (including any actuarial reduction under regulation E8(3) or any debited pension rights by virtue of regulation F5 shall be treated as having been paid.

(6) Where regulation E7(4) applies a deficiency grant may be paid equal only to the deficiency referred to in paragraph (2),(3) or (4) as the case may be, multiplied by the appropriate factor.

(7) This regulation does not apply if the teacher's last employment was of a kind described in Part II of Schedule 9 and formed part of the qualifying period for the purposes of regulation E5(5).

(8) Where any deficiency grant is paid under this regulation, it is to be paid to the individual nominated by the deceased to receive the grant or, in the absence of such a nomination—

- (a) if the deceased is survived by one widow or by a widower, to the widow or widower,
- (b) if there are two or more widows, to the widows in equal shares, or
- (c) if there is no widow or widower, to the legal personal representative.

(9) Any nomination for the purposes of paragraph (8) shall be made by giving written notice to the Scottish Ministers.

### **Family benefits generally**

**E26.**—(1) Pensions are payable in accordance with regulations E28 to E33 to widows, widowers, children and nominated beneficiaries of teachers who die in, or after having been in, pensionable employment.

(2) Where a teacher has further employment which is pensionable by virtue of regulation B9, in calculating the benefits payable under regulations E28 to E33, that further employment shall not be taken into account but those regulations shall apply to further employment which is pensionable by virtue of regulation B9 as it applies to any other pensionable employment.

(3) Subject to paragraph (4), references in regulations E28 to E33 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 or C9, 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 or C9, 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.

(4) References to a widower in regulation E28 to E33 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<sup>(20)</sup>.

(5) Where regulations E28 to E33 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.

(6) References in regulations E28 to E33 to a teacher's child are to a person who is—

- (a) that teacher's child born during his or her lifetime or within 12 months of the date of his or her death, or their adopted child; or
- (b) accepted by him or her as a member of the family,

who is wholly or mainly dependent on him or her and who is a child within the meaning given in paragraphs (7) to (9).

(7) Subject to paragraphs (8) and (9), for the purposes of regulations E27 to E33 a person is a child while he or she is unmarried and—

- (a) he or she has not attained the age of 17;
- (b) having attained that age, he or she is receiving full-time education or attending a course of not less than 2 years' full-time training for a trade, profession or calling and he or she has been receiving full-time education or attending such course of training or both continuously since having attained that age without a break at any one time of longer than 18 months;
- (c) having not attained the age of 19, he or she is not in remunerative full-time work and is not entitled to income support by reason that he or she is receiving education for the purposes of section 142 of the Social Security Contributions and Benefits Act 1992<sup>(21)</sup>; or
- (d) having ceased while incapacitated to fall within sub-paragraph (a), (b) or (c), he or she continues to be incapacitated.

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

(9) Disqualifying income is remuneration at a rate not less than the annual rate at which an official pension, within the meaning of the 1971 Act<sup>(22)</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.

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<sup>(20)</sup> S.I. 1977/1360 ("the 1977 Regulations"). Regulation 65 was substituted by S.I. 1989/666. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

<sup>(21)</sup> 1992 c. 4.

<sup>(22)</sup> 1971 c. 56.

(10) References in regulations E28 to E33 to a nominated beneficiary are to a person nominated under regulation E27 (including in the case of a female teacher, her spouse, where nominated before 6th April 1988).

### **Nomination of beneficiaries**

**E27.**—(1) Subject to paragraph (2), an unmarried person (“the appointor”) may at any time before retirement benefits have been paid, by giving written notice to the Scottish Ministers, nominate an eligible person who is wholly or mainly financially dependent on the appointor and who is not a child to receive a pension under regulations E28 to E33.

(2) No person may be nominated while a previous nomination under this regulation has effect.

(3) The eligible persons are—

- (a) a parent, brother or sister of the appointor who is not married and is either widowed or has never been married; and
- (b) a widowed step-parent of the appointor.

(4) A nomination under this regulation may be revoked by giving written notice to the Scottish Ministers, 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**

**E28.**—(1) Subject to paragraphs (3) and (4), a short-term pension shall be payable from the day after that of his or her 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;
- (b) during a period for which he or she is paying additional contributions under regulation C8 or C9;
- (c) within 12 months after ceasing to be in pensionable employment, or within 12 months of ceasing to pay contributions referred to in sub-paragraph (b), by reason of incapacity, but before becoming entitled to payment of retirement benefits; or
- (d) having become entitled after the date on which these Regulations come into force, to receive payment of retirement benefits.

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

- (a) subject to paragraph (4)(a), to any surviving spouse, or, if a nomination under regulation E27 has effect at the time of his or her death, to the nominated beneficiary; and
- (b) if 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 E30(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 nominated beneficiary;
- (b) to a nominated beneficiary who, at the date of the deceased’s death, was not wholly or mainly financially dependent on the deceased;
- (c) if there is no surviving spouse, nominated beneficiary or surviving child; or

- (d) where paragraph (1)(d) applies, to a person who is not entitled to a long-term pension under regulation E30.

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

**E29.**—(1) Subject to paragraphs (2) and (4), the annual rate of a short-term pension under regulation E28 shall be—

- (a) if regulation E28(1)(a) or (c) applies, the annual rate of the deceased’s contributable salary on his or her last day in pensionable employment, disregarding any reduction by reason of sick leave or maternity, paternity or adoption leave;
- (b) if regulation E28(1)(b) applies, the annual rate at the time of his or her death of the notional salary described in regulation C8(7) or, as the case may be, C9(4);
- (c) if regulation E28(1)(d) applies, the annual rate at the time of his or her death of his or her retirement pension save that any reduction in that retirement pension by virtue of a pension sharing order shall be disregarded if the short-term pension is payable to a child; and
- (d) if regulation E28(1)(a) and (d) both apply, the total of the rates specified in sub paragraphs (a) and (c).

(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 E30, the annual rate of the short-term pension is the same as that of the long-term pension.

(3) The duration of the short-term pension payable shall be determined from the Table below, and in that table “adult pension” means a short-term pension payable to the spouse or nominated beneficiary.

**TABLE**

<i>Category</i>	<i>Person falling within regulation E28(2)</i>	<i>Duration of pension (months)</i>
1	Spouse or nominated beneficiary	3
2	One child or more where an adult pension is payable	3
3	One child or more where no adult pension is payable	6

(4) Where regulation E7(4) applies the annual rate of a short-term pension payable under regulation E28 shall be the annual rate calculated in accordance with paragraph (1) or (2) multiplied by the appropriate factor.

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

**E30.**—(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 Scottish Ministers in pursuance of regulation C14.

(3) In the case of a male teacher, and in the case of a female 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 or C9;
- (c) any period for which additional contributions have been paid under regulation C5 or C7(1) in accordance with an election made after 31st March 1974;
- (d) if a transfer value has been accepted in respect of comparable British service, the period that would, immediately before its acceptance, have counted for family benefits in the relevant pension scheme;
- (e) any period counting as reckonable service by virtue of the receipt of any other transfer value under regulation G2 or under the Teachers Superannuation (Added Years and Interchange) (Scotland) Regulations 1974(23);
- (f) any period counting as reckonable service by virtue of regulation 6A of the 1977 Regulations(24);
- (g) any period counting as reckonable service by virtue of regulation 29 of the 1977 Regulations;
- (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 that member’s 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 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 C5 or C7(1) 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 G2, 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 E27 had effect at the date of death, a long term pension shall be payable to the nominated beneficiary provided that he or she was wholly or mainly financially dependent on the deceased at that date; and
- (c) if a pension is payable under sub-paragraph (a) or (b) and the deceased is survived by his or her child or children, 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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(23) S.I. 1974/1135, revoked by S.I. 1977/1360.

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

- (6) If when a teacher dies paragraph (5) does not apply but he or she—
- (a) has been in pensionable employment at any time after 31st March 1972; and
  - (b) qualifies for retirement benefits; and
  - (c) is survived by his or her child or children,

a long term pension shall be payable to or for the benefit of the child or, as the case may be, the children jointly.

(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) Where the person was nominated as a beneficiary under regulation 65 of the 1977 Regulations<sup>(25)</sup> by a teacher who is a married woman 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 E31(7).

(9) Subject to paragraph (10) and regulation E31(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 Scottish Ministers, 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**

**E31.**—(1) Subject to paragraphs (2), (3) and (8), the annual rate of a pension payable under regulation E30 to a surviving spouse or a nominated beneficiary shall be 1/160th of the deceased's pensionable salary multiplied by the length of his or her family benefit service.

- (2) If—
- (a) paragraph 15 of Schedule 6 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) Where after a pension sharing order has taken effect a surviving spouse of a nominated beneficiary becomes entitled to a pension under regulation E30, that pension shall be reduced by the same proportion by which the deceased's retirement benefits would have been reduced if he or she had become entitled to them on the day he or she died.

(4) 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 Scottish Ministers in pursuance of regulation C14.

(5) Subject to paragraphs (4), (6) and (9) to (11), if the pension is payable to a nominated beneficiary or to a woman whom the deceased married before the end of his or her pensionable employment, the deceased's family benefit service comprises—

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(25) Regulation 65 was substituted by [S.I. 1989/666](#).

- (a) any period falling within regulation E30(3)(a) to (h) and;
- (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.

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

(7) If the pension is payable to a widower, other than a widower to whom paragraph (8) applies, the deceased's family benefit service comprises, subject to paragraphs (4) and (9) to (11), the relevant service described in regulation E30(4).

(8) Notwithstanding anything in paragraphs (1), (5), (6), (7) and (9) to (11), 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 years 1988/89 to 1996/97 inclusive; 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.

(9) This paragraph applies if the deceased died—

- (a) while in pensionable employment;
- (b) during a period for which he or she was paying additional contributions under regulation C8 or C9;
- (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 E10, and

he or she had at least 5 years' reckonable service.

(10) If paragraph (9) applies and the family benefit service calculated in accordance with paragraphs (4) to (7) is less than his or her effective reckonable service, his or her family benefit service is increased by—

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

where—

- A is the family benefit service calculated in accordance with paragraphs (4) to (7);
- B is his or her effective reckonable service apart from C; and
- C is the period which was, or would if regulation E10 had applied have been, the appropriate period within the meaning of regulation E10.

(11) If paragraph (9) applies and A is not less than B, his or her family benefit service is increased by C.

(12) 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 (4)—

- (a) any period of pensionable employment after 5th April 1978;
- (b) any period for which additional contributions have been paid under regulation C5 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 or C9;
- (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<sup>(26)</sup> as is attributable to service after that date.

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

**E32.**—(1) Subject to paragraph (3), if long-term pensions become payable under regulation E30—

- (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 E31(7) applies, B, where—

A is in all cases the length of what would have been the deceased’s family benefit service if regulation E31(5) 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 E31(10) or, as the case may be, regulation E31(11) 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 E31(9) 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 E10 had applied have been, the appropriate period within the meaning of regulation E10.

(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.

(5) In the case of a pension debit member, the pension is calculated by reference to the pension to which the deceased would have been entitled had his or her shareable rights not been subject to a pension debit.

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<sup>(26)</sup> *S.I. 1977/1360* (“the 1977 Regulations”). Regulation 6A was substituted by *S.I. 1989/666*. The 1977 Regulations were revoked in their entirety (see Schedule 1 to these Regulations).

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

**E33.**—(1) A pension under regulation E30 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 E28 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), an adult pension—

- (a) shall not, unless the Scottish Ministers determine otherwise in the particular case, be payable during any subsequent marriage or any period of cohabitation outside the marriage; and
- (b) if the Scottish Ministers so decide, 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 E30 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 E28 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 or her benefit when he or she ceases to be a child.

### **Pensionable salary**

**E34.**—(1) Subject to paragraph (11), a teacher’s pensionable salary—

- (a) where the material part of that teacher’s terminal service is one year or more, is his or her full salary for the best consecutive 365 days of that part; and
- (b) in any other case, is the average annual rate of his or her full salary for that part.

(2) In determining, for the purposes of paragraph (1), what are the best consecutive 365 days of the material part of the teacher’s terminal service, days on which the person is not in pensionable employment are disregarded.

(3) Terminal service comprises—

- (a) any period spent by the teacher in pensionable employment;
- (b) any period counting as reckonable service by virtue of regulation D4;
- (c) any period of comparable British service which began before 1st April 1974 and has not been followed by a period of pensionable employment and for which a transfer value has been accepted;
- (d) subject to paragraph (4), any period of a kind described in Schedule 8; and
- (e) any period counting as reckonable service by virtue of regulation C8.

(4) The material part of a teacher’s terminal service is—

- (a) where he or she has less than 3 years of such service, the whole of it; or
- (b) in any other case, the last 3 years of it.

(5) In determining the material part of a teacher’s terminal service, periods when the teacher was not in pensionable employment shall be disregarded and accordingly the period of 3 years referred to in paragraph (4) may be discontinuous.



(6) For the purposes of paragraphs (2), (3)(a) and (5) a teacher who is employed under a contract whereby that teacher is available for work but only undertakes (and accordingly is only paid for) work when, and for periods, requested by the employer is not treated as being in pensionable employment during periods when he or she is not undertaking work (whether or not such a teacher would be so treated apart from this paragraph).

(7) Subject to paragraphs (8) and (9), a teacher's full salary—

- (a) for a period falling within paragraph (3)(a), is his or her contributable salary for the period of pensionable employment, disregarding any reduction during sick leave or maternity, paternity or adoption leave;
- (b) for a period falling within paragraph (3)(b), is the notional salary by reference to which the additional contributions paid under regulation C8 or C9 were calculated; and
- (c) for a period falling within paragraph (3)(c), is what would have been his or her salary for the purpose of calculating benefits under the pension scheme to which he or she was subject in the relevant employment;
- (d) for a period falling within paragraph (3)(d), is what would have been his or her salary for the purpose of calculating benefits under the pension scheme to which he or she was subject in the relevant employment; and
- (e) for the period falling within paragraph (3)(e), is the notional salary by reference to which the additional contributions paid under regulation C9 were calculated.

(8) For—

- (a) a period of pensionable employment; or
- (b) a period counting as reckonable service by virtue of regulation D4,

beginning after 31st July 1975 and ending before 1st August 1978, a teacher's full salary includes any sums that would have been payable to him or her 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(27).

(9) For—

- (a) a period of pensionable employment; or
- (b) a period counting as reckonable service by virtue of regulation D4,

beginning after 31st March 1979 and ending before 1st September 1980, a teacher's full salary is the notional salary resulting from the application to him or her of the Teachers' Superannuation (Notional Salaries) (Scotland) Regulations 1982(28).

(10) Where a teacher has during the material part of his or her terminal service spent any period employed in part-time service, the full salary for that period shall be the amount which it would have been if the employment had been in full-time service during that period.

(11) Subject to paragraph (12), where at any time during the material part of a teacher's terminal service a teacher has received an increase in his or her contributable salary such that—

$$\left(\frac{B}{A} - 1\right) \times 100 - C - 10$$

is greater than zero where—

(27) 1975 c. 57; section 1 was amended, and the period for which it had effect extended to end on 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, 1977/1294. Section 1 was repealed by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part II.

(28) S.I. 1982/1302.

A is the teacher's salary before the increase (or, in the case where the teacher has previously received an increase in salary such as is mentioned in this paragraph but no election under regulation H6(5) is made, the salary which the teacher before the increase is treated as receiving in accordance with the provision of this paragraph),

B is the teacher's salary after the increase, and

C is the standard increase of salary (expressed as a percentage),

the teacher shall be treated as having received an increase in his or her contributable salary such that his or her salary after the increase is—

$$A\left(1 + \frac{C + 10}{100}\right)$$

unless an election is made under regulation H6(5) to pay the additional contribution referred to in that regulation.

(12) Paragraph (11) does not apply—

- (a) in relation to a teacher who becomes entitled to the payment of retirement benefits by virtue of regulation E6(1)(c);
- (b) for the purpose of calculating—
  - (i) a death grant under regulation E24, or
  - (ii) a pension payable under regulation E31 or E32 in relation to a teacher who died while in pensionable employment;
- (c) to any increase in contributable salary which was received while the teacher was employed by an employer other than the body which was the teacher's employer immediately before he or she became entitled to the payment of retirement benefits, or
- (d) where the Scottish Ministers are satisfied that the increase in contributable salary was agreed on or before 5th October 1998.

(13) For the purposes of paragraph (11), paragraph (12) and this paragraph—

- (a) where a teacher receives more than one increase in salary in a financial year the increases taken together shall be treated as one increase and accordingly, in paragraph (11), A is the teacher's salary before the first increase and B is the teacher's salary after the last increase;
- (b) the material date is the date on which the increase of salary took effect;
- (c) the standard increase of salary is the average percentage of the increases, if any, that would have been received on the material date by persons ("the comparable employees") who were employed at the school or establishment where the teacher in question was employed and whose circumstances corresponded most closely to those of that teacher or, if there were no comparable employees, by persons who were employed as teachers at that school or establishment or, if the comparable employees or the persons so employed as teachers (as the case may be) would have received no increases on that date, the next increases they would have received; and
- (d) where a body becomes a teacher's employer by virtue of any enactment regarding the transfer of staff or the transfer of rights and liabilities under a contract of employment that body and the teacher's previous employer shall be taken to be the same employer.

(14) Where an election under regulation H6(5) is made after the teacher becomes entitled to payment of retirement benefits the teacher shall, until the date on which the election is received by the Scottish Ministers, be entitled to retirement benefits calculated on the basis only of the contributable salary he or she is treated as receiving in the absence of such an election and accordingly as from the date on which the election is received by the Scottish Ministers the person shall become entitled to—

- (a) a lump sum payment equal to the difference between the retirement lump sum to which the teacher is entitled taking into account the election and the retirement lump sum previously paid to the teacher; and
- (b) a retirement pension taking into account the election.

(15) Where a teacher has spent the material part of his or her terminal service employed in part-time service under regulation J2, that teacher's pensionable salary shall be calculated by reference to his or her salary for the last consecutive 365 days prior to commencement of his or her winding down employment under regulation J2 taking into account prospective increases under the 1971 Act<sup>(29)</sup>.

### Effective reckonable service

**E35.**—(1) A teacher's effective reckonable service is so much of his or her reckonable service as counts for the purpose of calculating a benefit under this Part, except a pension under regulation E30.

(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 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 or she becomes entitled to retirement benefits under regulation E6(1)(d), 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 or she continues to be employed.

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

- (a) the time he or she has spent in pensionable employment;
- (b) any comparable British service counting as reckonable service by virtue of the acceptance of a transfer value; and
- (c) any period counting as reckonable service by virtue of regulation 6A of the 1977 Regulations<sup>(30)</sup>,

is less than 20 years, his or her effective reckonable service does not include so much of any period counting as reckonable service by virtue of regulation D3 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

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<sup>(29)</sup> 1971 c. 56.

<sup>(30)</sup> S.I. 1977/1360 ("the 1977 Regulations"). Regulation 6A was inserted by S.I. 1977/1808. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

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

<i>Relevant service in years</i>	<i>Maximum</i>
Fewer than 14	8 years less than the length in years and days of the relevant service

(5) For the purposes of paragraph (4) a person who becomes entitled to payment of retirement benefits by virtue of regulation E6(1)(c) or (d) is to be treated as having continued in pensionable employment up to that age.

**Payment of benefits**

**E36.**—(1) Benefits under this Part or Part F are payable by the Scottish Ministers.

(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 Scottish Ministers 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 or her affairs, the Scottish Ministers may—

- (a) pay it to any person having the care of the person entitled; or
- (b) apply it as they think fit for the benefit of the person entitled or his or her dependants.

**Interest on late payment of certain benefits**

**E37.**—(1) Where all or any part of the benefits payable under this Part, other than a pension payable under regulation E28 or under Part F, is not paid within one month of the due date (other than in cases where the beneficiary has not accepted payment or has knowingly by his or her actions made payment impossible or impracticable), the Scottish Ministers shall pay to the person to whom the benefit is payable interest on the amount remaining unpaid at the base rate for the time being quoted by the reference banks.

(2) The interest referred to in paragraph (1) shall be calculated on a day to day basis from the due date to the date of payment, and compounded with three-monthly rests.

(3) For the purposes of paragraph (1) the due date, where a benefit consists of a single payment, is—

- (a) in the case of a death grant under regulation E24 or a deficiency grant under regulation E25, the day after the date on which the Scottish Ministers have become satisfied that the benefit may be paid; and
  - (b) in any other case, the date on which the person becomes entitled to the benefit.
- (4) For the purposes of paragraph (1) the due date, in a case where a benefit does not consist of a single payment, is the last day of the month in which entitlement to the benefit took effect.
- (5) For the purposes of paragraph (1)–
- (a) “the base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of four, is the first in the sequence; and
  - (b) “the reference banks” means the four largest persons for the time being who–
    - (i) have permission under Part 4 of the Financial Services and Markets Act 2000<sup>(31)</sup> to accept deposits;
    - (ii) are incorporated in and carrying on in the United Kingdom a regulated activity of accepting deposits; and
    - (iii) quote a base rate applicable to sterling deposits,and in this definition the reference to accepting deposits must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

### **Benefits not assignable**

**E38.**—(1) Any assignation 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>(32)</sup> or under section 310 of the Insolvency Act 1986<sup>(33)</sup>, as the case may be.

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(31) 2000 c. 8, to which there are amendments not relevant to these Regulations.

(32) 1985 c. 66. Section 32(2) is amended by the Pensions Act 1995 (c. 26), Schedule 3 and its effect modified by the Welfare and Pensions Reform Act 1999 (c. 30), Schedule 2, paragraph 1.

(33) 1986 c. 45. Section 310 is amended by the Pensions Act 1995 (c. 26), Schedule 3, the Welfare and Pensions Reform Act 1999 (c. 30) Schedule 2, paragraph 2 and the Enterprise Act 2002 (c. 40), section 259(4) and Schedule 26.