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STATUTORY INSTRUMENTS

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**1997 No. 3001**

**The Teachers' Pensions Regulations 1997**

**PART E**

**BENEFITS**

**Overriding provision as to guaranteed minimum pensions**

**E1.**—(1) This regulation applies where a person's pensionable employment is contracted-out employment.

(2) Where this regulation applies it overrides anything in these Regulations that is inconsistent with it, except regulations E14 (abatement on re-employment) and E18 (deferment, etc. of benefits).

(3) Where this regulation applies and the person, in relation to employment up to 6th April 1997, has a guaranteed minimum in relation to benefits under these Regulations—

- (a) unless on the cessation of the pensionable employment he is entitled to a retirement pension at a higher rate, he is from the date on which he attains state pensionable age entitled to a pension at a weekly rate equal to his 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 the 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 and leaves a widow, unless she is entitled to a widow's pension at a higher rate she is, during any such period as is mentioned in section 17(5) of the 1993 Act, entitled to a pension at a weekly rate equal to half his guaranteed minimum, and
- (d) in the case of a woman who dies at any time leaving a widower who is not entitled to a widower's pension at a higher rate, in circumstances prescribed under section 17(6) of the 1993 Act, the widower is entitled to a pension payable for the period so prescribed.

(4) The weekly rate of a widower's pension payable under paragraph (3)(d) is half of that part of the deceased's guaranteed minimum which is attributable to earnings factors for the period beginning with the tax year 1988-89 and ending with the tax year 1996-7.

(5) In paragraph (4) "earnings factors" means the earnings factors referred to in section 14(2) of the 1993 Act.

**Nature of retirement benefits**

**E2.** Retirement benefits consist of—

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

calculated in accordance with this Part.

### **Qualification for retirement benefits**

**E3.**—(1) A person is qualified for retirement benefits if—

- (a) immediately before 6th April 1988 he would, but for his age, have been entitled under regulation 53 of the 1976 Regulations to payment of an annual allowance and an additional allowance by way of lump sum payment.
  - (b) immediately before 3rd February 1998 regulation E3(5) of the 1988 Regulations applied to him and he was qualified for retirement benefits under regulation E3 of those Regulations, or
  - (c) an appropriate qualifying period has been completed.
- (2) An appropriate qualifying period—
- (a) comprises every period of a kind described in Schedule 8 together with any period referred to in paragraph (4)(b), where that sub-paragraph applies, but excluding any contributions refund period, and
  - (b) may be discontinuous.
- (3) If the person—
- (a) was in pensionable employment, or paying contributions for a current period under regulation 30 of the 1976 Regulations on 6th April 1988, or
  - (b) entered pensionable employment after 6th April 1988 without having been in such employment before that date,

any qualifying period of 2 years is an appropriate one.

(4) If paragraph (3) does not apply, but the person was in pensionable employment before 6th April 1988 and subsequently entered pensionable employment again after that date, any qualifying period of—

- (a) two years beginning on or after 6th April 1988; or
- (b) such period beginning on or after 6th April 1988 as will, when taken with every period of a kind described in Schedule 9 to the 1988 Regulations before 6th April 1988, amount to 5 years

whichever is the shorter, is an appropriate one.

(5) For the purposes of paragraph (4) any period of the kind described in paragraph 4 of Schedule 8 (transfer value accepted) is to be treated as having begun after 5th April 1988.

(6) Notwithstanding that an appropriate qualifying period has not been completed, a person is qualified for retirement benefits—

- (a) subject to paragraph (7), if he has a guaranteed minimum in relation to benefits under these Regulations, or
- (b) if 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.

(7) If a contributions equivalent premium is paid by the Secretary of State, paragraph (6)(a) is to be treated as not having applied.

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

**E4.**—(1) Subject to regulation E33(2) (application for payment), a person qualified for retirement benefits becomes entitled to payment of them in any of the Cases described in this regulation.

(2) In Case A the person—

- (a) has attained the age of 60,
  - (b) has ceased to be in pensionable employment, and
  - (c) is not within Case B or D.
- (3) In Case B the person—
- (a) has attained the age of 60,
  - (b) has ceased after 31st March 1972 and after attaining that age to be in pensionable employment, but would have ceased to be in such employment before attaining that age had not the employment continued beyond the attainment of that age due to a period of paid sick leave, and
  - (c) has become incapacitated before attaining that age.
- (4) In Case C the person—
- (a) has not attained the age of 60,
  - (b) has ceased after 31st March 1972 and before attaining the age of 60 to be in pensionable employment,
  - (c) is incapacitated and became so before attaining the age of 60, and
  - (d) is not within Case D,

and, in cases where the pensionable employment ceased on or after 1st April 1997 the Secretary of State has notified the person in writing that he has not exercised, or is not considering the exercise of, his powers under regulation 10(2) or (10) of the Education (Teachers) Regulations 1993(1) to direct on grounds of that person's misconduct that he be not appointed to or employed in relevant employment as defined in regulation 7 of those Regulations.

- (5) In Case D the person—
- (a) has attained the age of 50,
  - (b) has ceased after attaining that age but before attaining the age of 60 to be in pensionable employment or excluded employment,
  - (c) is not within Case C, and
  - (d) has not received and is not to receive compensation under Part III of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997(2) (discretionary compensation for termination), and his employer has notified the Secretary of State in writing—
    - (i) that his employment was terminated by reason of his redundancy or in the interests of the efficient discharge of the employer's functions, and
    - (ii) that the employer has agreed that he should become entitled to retirement benefits under this Case.

(6) If regulation 4(8) of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997 (employer to notify for purposes of those Regulations if requested by governing body) applies, the employer must notify the Secretary of State as mentioned in paragraph (5) above.

(7) In Cases A and B the entitlement takes effect as soon as the person falls within the Case.

(8) In Case C the entitlement takes effect—

- (a) where, immediately before the person became incapacitated he was in excluded employment, on the day after the last day of his excluded employment; and

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(1) [S.I. 1993/543](#); relevant amending instruments are [S.I. 1994/222](#) and [S.I. 1995/2594](#).

(2) [S.I. 1997/311](#).

(b) in any other case, as soon as the person falls within the Case or as soon as the person would have fallen within the Case had there not been a requirement that the Secretary of State notify that person that he has not exercised, or is not considering the exercise of, his powers of direction under regulation 10(2) or (10) of the Education (Teachers) Regulations 1993, or (in all cases), if later, 6 months before the date of the last of any medical reports considered by the Secretary of State in determining under regulation H9 that the person had become incapacitated.

(9) In Case D the entitlement takes effect as from the day after the end of the employment.

(10) In no case shall a person be regarded as having ceased to be in pensionable employment until at least one day has passed without the person being in pensionable employment.

### **Amount of retirement pension**

**E5.**—(1) Subject to paragraphs (2) to (6) and regulations E7 to E10, the annual rate of a person's retirement pension is 1/80th of his average salary multiplied by his effective reckonable service.

(2) If—

- (a) the person is entitled to count a period as reckonable service by virtue of regulation D3 (past period for which additional contributions have been paid), and
- (b) by reason of regulation E32(3) 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 average salary.

(3) Subject to paragraphs (4) to (6), where a person who has become entitled to payment of retirement benefits by virtue of regulation E4(5) has ceased to be in pensionable employment or excluded employment on or after 1st September 1997, the annual rate of the person's retirement pension shall be the annual rate of such pension calculated in accordance with paragraphs (1) and (2) and, where appropriate, regulations E7 or E9 but disregarding the effect of regulation E10, multiplied by the appropriate factor.

(4) Paragraph (3) does not apply where notice to terminate the person's employment was given or his resignation tendered on or before 22nd October 1996.

(5) If—

- (a) the person has a guaranteed minimum in relation to employment up to 6th April 1997, and
- (b) **A exceeds B,**

where—

A is the annual equivalent of his guaranteed minimum pension together with that of any equivalent pension benefits, and

B is the annual rate calculated in accordance with paragraphs (1) and (2) and, where applicable, paragraph (3),

the annual rate of his retirement pension is A.

(6) If a contributions equivalent premium has been paid in respect of the person 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**

**E6.**—(1) Subject to paragraphs (2) and (3) and regulations E7 and E8, the amount of a person's retirement lump sum is

$$A \times (B + C)$$

where—

A is 3/80th of the persons average salary,

B is his effective reckonable service (except any falling within C), and

C is any period which he is entitled to count as reckonable service by virtue of regulation D3 (past period for which additional contributions have been paid).

(2) If the person's effective reckonable service is restricted by regulation E32(2) the part of his retirement lump sum that is attributable to service before he attained the age of 60 is not to exceed his average salary multiplied by 1½.

(3) Subject to paragraph (4), where a person who has become entitled to the payment of retirement benefits by virtue of regulation E4(5) has ceased to be in pensionable employment or excluded employment on or after 1st September 1997, the amount of the person's retirement lump sum shall be the amount calculated in accordance with paragraphs (1) and (2) multiplied by the appropriate factor.

(4) Paragraph (3) shall not apply where notice to terminate the person's employment was given or his resignation tendered on or before 22nd October 1996.

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

**E7.**—(1) Paragraphs (2) to (5) apply to a person who has made an election under regulation C1(6) of the 1988 Regulations or regulation C2(1) (reduced salary treated as having continued at previous rate) and whose average salary falls to be calculated by reference to the notional rate or, as the case may be, the rate specified in regulation C2(4).

(2) The annual rate of the person'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
50	2/5
51	3/10
52	1/5
53	1/10
54	1/14

(3) Where the person has been in pensionable employment for less than 20 years, his retirement lump sum is not to exceed 3/80ths 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 Table 2 below.

**TABLE 2**

<i>Years in pensionable employment</i>	<i>Period in years</i>
19	17
18	15

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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>Years in pensionable employment</i>	<i>Period in years</i>
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 person has been in pensionable employment for 20 years or more his retirement lump sum is not to exceed the appropriate sum multiplied by 1½.

(5) The appropriate sum is the greater of—

- (a) the person's contributable salary for the best one of his last 5 years in pensionable employment, and
- (b) 1/3rd 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.

(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 E5(3) or E6(3).

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

**E8.**—(1) This regulation applies to a person who has become entitled to payment of retirement benefits by virtue of regulation E4(3) or (4) by reason of his having become incapacitated before ceasing to be in pensionable employment, but only if—

- (a) he had completed periods of the kinds described in Schedule 8 totalling at least 5 years, excluding any contributions refund period, and
- (b) the application for payment required by regulation E33 is made within 6 months after the end of his pensionable employment.

(2) Subject to regulation E32(2) (limitation of effective reckonable service to 45 years, etc.), for the purpose of calculating the person's retirement benefits the effective reckonable service of a person to whom this regulation applies is to be treated as having been increased by the appropriate period.

(3) If the person's relevant service amounts to 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.

(4) If the person's relevant service amounts to 10 years or more, the appropriate period is the longer of period A and period B.

(5) Period A is the shortest of—

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

(6) Period B is so much of the period beginning when the person's 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.

(7) A person's relevant service is so much of his effective reckonable service as does not consist of periods that count—

- (a) by virtue of regulation D3 (past period for which additional contributions have been paid), or
- (b) by virtue of the application to him of regulation 7 of the 1976 Regulations (war service).

(8) For the purposes of this regulation a person is to be treated as having been in pensionable employment during any period for which he was paying additional contributions under regulation C9 or C10.

### **Avoidance of duplicate pensions**

**E9.**—(1) Subject to paragraph (2), this regulation applies where a person's effective reckonable service includes a period that also counts towards another pension payable directly or indirectly out of moneys provided by Parliament or by the rates or council tax levied by local authorities ("the double period").

(2) This regulation does not apply where the other pension is subject to reduction under Schedule D6 to the Local Government Pension Scheme Regulations 1995(3) or, when in force, regulation 142 of the Local Government Pension Scheme Regulations 1997(4) or where the other pension is payable under regulation 7 of the Teachers (Compensation for Redundancy and Premature Retirement) Regulations 1997(5).

(3) Subject to paragraphs (4) and (5), where this regulation applies the person'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 amount of the contributions paid by the person in respect of the double period, including any paid under regulation C9 or C10, and

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(3) [S.I. 1995/1019.](#)

(4) [S.I. 1997/1612.](#)

(5) [S.I. 1997/311.](#)

D is interest on those contributions at 3% 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 the person 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) For the purposes of this regulation—

- (a) the other pension 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; and
- (b) references to “retirement benefits” are references to such benefits before any actuarial reduction required by regulation E5(3) or E6(3).

### **National Insurance modification of pensions**

**E10.** Part I of Schedule 10 has effect for modifying the retirement pensions of persons who were in pensionable employment before 1st April 1980 including retirement pensions that have been actuarially reduced under regulation E5(3).

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

**E11.**—(1) A person who has become qualified for retirement benefits may, unless he becomes entitled to payment of them by virtue of regulation E4(4) (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 person making the allocation (“the allocator”), for a surviving spouse or dependant, or
- (b) an annuity payable to the allocator while the allocator and allocator’s 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) shall be determined in accordance with tables prepared by the Government Actuary.

(4) An allocation must 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 an allocation under this regulation are contained in Schedule 11.

### **Duration of retirement pension**

**E12.** Subject to regulations E13 to E15 and E18, a retirement pension continues to be payable, at the rate at which it initially became payable in accordance with regulation E5, until the death of the person entitled to it.

### **Pensioner ceasing to be incapacitated**

**E13.**—(1) This regulation applies where a person who became entitled to payment of a teacher’s pension by virtue of regulation E4(4) ceases to be incapacitated.

(2) On the person ceasing to be incapacitated the pension ceases to be payable, but any equivalent pension benefits continue to be payable.

(3) Subject to paragraph (4) and to regulation E33(2) (application for payment), the pension becomes payable again—



- (a) from the person's 60th birthday, or
- (b) if earlier, from the start of any renewed incapacity.

(4) Paragraph (3) does not apply if the person has been in pensionable employment at any time after he first became entitled to payment of the pension.

(5) If the pension becomes payable again under paragraph (3)(a) it is to be treated for the purposes of regulation E14 as one to the payment of which the person has become entitled by virtue of regulation E4(2).

### **Abatement of retirement pension during further employment**

**E14.**—(1) This regulation applies while a person who has become entitled to payment of a teacher's pension is employed—

- (a) in pensionable employment, comparable British service, or employment which would have been pensionable employment but for—
  - (i) his having made an election under regulation B5 (election for employment not to be pensionable),
  - (ii) his having attained the age of 70, or
  - (iii) regulation B4(2)(a) (employment not pensionable).
- (b) in part-time employment in a capacity described in paragraphs 1 to 9 of Schedule 2.

(2) If the person is concurrently both in employment falling within paragraph (1)(a) and in employment falling within paragraph (1)(b), this regulation applies only in respect of the former.

(3) Where this regulation applies, the annual rate of the pension is reduced—

- (a) If A equals or exceeds (C+D-E), to zero, and
- (b) in any other case, and subject to paragraph (4), by the amount (if any) which is necessary to secure that (A+B) does not exceed

$$(C + D - E).$$

where—

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

B is the reduced annual rate of the pension as increased under the Pensions (Increase) Act 1971(6) disregarding any actuarial reduction required by regulation E5(3),

C is, or where his previous pensionable employment was part-time 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, or, if applicable, the highest annual rate of contributable salary that was payable to him during the 3 years ending immediately before he ceased to be employed in any pensionable employment entered into by him after he 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 been increased if it had been the annual rate of an official pension, within the meaning of section 5(1) of the Pensions (Increase) Act 1971 beginning, and first qualifying for increases under that Act, on the same date as the pension, and

E is any part of the pension allocated under regulation E11.

(4) Where regulation E5(3) applies the amount (if any) by which the annual rate of the pension is to be reduced under paragraph (3)(b) shall be the amount (if any) referred to in that sub-paragraph multiplied by the appropriate factor.

### **Retirement benefits on cessation of further employment**

**E15.**—(1) This regulation applies to a person who—

- (a) became entitled to payment of a teacher’s 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 E8 (enhancement of retirement benefits in case of incapacity), the person—

- (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 (8), 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 average 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, the person—

- (a) remains entitled to the first pension, and
- (b) subject to paragraph (7), becomes entitled to payment of retirement benefits calculated by reference to his reckonable service in the further employment.

(4) Subject to paragraph (7), if the first pension was enhanced under regulation E8 he becomes entitled to payment of the first pension and of additional retirement benefits in respect of the further employment.

(5) The additional retirement benefits are to be calculated—

- (a) in respect of pensionable employment before attaining the age of 60, as if regulation E8 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 E5 and E6,

but the additional retirement lump sum is subject to reduction under paragraph (8).

(6) If in the application of regulation E8 to the calculation of the first pension the appropriate period was Period B, paragraph (5)(a) applies with the substitution for “60” of “65”.

(7) If the person ceased to be in the further employment before attaining the age of 60 and neither regulation E4(4) (incapacity) nor regulation E4(5) (redundancy, etc.) applied, he does not become entitled to payment of retirement benefits under paragraph (3)(b) or (4) until he attains that age.

(8) A retirement lump sum payable under paragraph (2)(b), and an additional retirement lump sum payable under paragraph (4), is reduced by the amount of the retirement lump sum to which the person became entitled when he became entitled to payment of the first pension, of any lump sum to which he had previously become entitled under this regulation, and of any short-service incapacity grant paid to him under regulation E17.

(9) Where a person ceases to be in further employment on or after 1st September 1997 and becomes entitled to retirement benefits by virtue of regulation E4(5)—

- (a) regulation E5(3) shall apply to that person’s retirement pension under paragraph (2)(b) or (3)(b) or to his additional retirement pension under paragraph (4); and
- (b) regulation E6(3) shall also apply to that person’s retirement lump sum under paragraph (2) (b) or (3)(b) or to his additional retirement lump sum under paragraph (4).

### Short-service annuity

**E16.**—(1) A person who—

- (a) has not been in pensionable employment at any time after 5th April 1980, and
- (b) is not qualified for retirement benefits, and
- (c) would, but for regulation 46(2) of the 1976 Regulations or regulation C12(2) (salary exceeding £5,000), have been entitled to be repaid the balance of his contributions,

is entitled to be paid, from his 60th birthday, an annuity for life.

(2) The rate of the annuity is the actuarial equivalent of the balance of his contributions calculated in accordance with regulation C13 as at his 60th birthday.

### Short-service incapacity grant

**E17.**—(1) A person who—

- (a) has been in pensionable employment for at least one year, and
- (b) has become incapacitated, and
- (c) had not attained the age of 70 when he became incapacitated, and
- (d) is not entitled to payment of retirement benefits the aggregate value of which exceeds the relevant amount,

is entitled, if he applies for payment within 6 months after the end of his pensionable employment, to an incapacity grant.

(2) The aggregate value of retirement benefits is the total of the retirement lump sum and the actuarial equivalent of the retirement pension.

(3) The relevant amount is

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

where,

A is the person's average salary, and

B is the length of his reckonable service.

(4) The amount of the incapacity grant is the difference between the relevant amount and the aggregate value of any retirement benefits to which the person is entitled.

(5) The incapacity grant is not to be paid before the end of the person's pensionable employment.

### Deferment etc. of benefits

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

- (a) an offence of treason,
- (b) one offence or more under the Official Secrets Acts 1911 to 1989(7) 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 the aggregate to, at least 10 years, or
- (c) an offence in connection with pensionable employment or excluded 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 person has a guaranteed minimum in relation to benefits under these Regulations, and
- (b) the offence 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.

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

**E19.**—(1) Where, at the time when a person first becomes entitled to a retirement pension by virtue of regulation E4(3) or (4), there are exceptional circumstances of serious ill health affecting the person the Secretary of State may discharge the liability to pay that pension in respect of so much of it as exceeds the person'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 person exceeds the amount of his guaranteed minimum.

### **Death grant**

**E20.**—(1) Subject to paragraph (6), if at the time of his death a person—

- (a) was in pensionable employment, or
- (b) was paying additional contributions under regulation C9 or C10, or
- (c) had, not more than 12 months earlier, ceased to be in pensionable employment while incapacitated,

a death grant may be paid.

(2) The amount of a death grant under paragraph (1) is the greater of—

- (a) the amount which, if on the date of the person's death he had ceased to be employed on becoming incapacitated, would have become payable by way of retirement lump sum or short-service incapacity grant, or both, and
- (b) (i) in a case of a death occurring before 1st April 1998, his average salary, or  
(ii) in the case of a death occurring on or after 1st April 1998, twice his average salary, less, in either case, the amount of any retirement lump sum or short-service incapacity grant previously paid to him.

(3) Subject to paragraph (6), if a person who has ceased after 31st March 1972 to be in pensionable employment 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—

(a) if the person ceased to be in pensionable employment before 1st November 1988, is that he was entitled to count at least 2 years' reckonable service, and  
(b) in any other case, is that he was so entitled and was qualified for retirement benefits,  
but, where sub-paragraph (a) applies, it is to be assumed for the purpose of calculating the death grant that he was qualified for retirement benefits.

(5) The amount of a death grant under paragraph (3) is the amount that would have become payable by way of retirement lump sum if the person had become entitled under regulation E4(2) to payment of retirement benefits, less the amount of any retirement lump sum or short-service incapacity grant previously paid to him.

(6) If a person 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 and no pension becomes payable under regulation E26 to a surviving spouse or a nominated beneficiary,

a death grant equal to the balance of his contributions, calculated in accordance with regulation C13 as at the date of his 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 personal representatives.

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

### **Supplementary death grant**

**E21.**—(1) Subject to paragraph (5), this regulation applies where a person 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 the person's retirement benefits, and
- (b) the total of the amounts paid in respect of them is less than his average salary,

a supplementary death grant equal to that deficiency or, where regulation E5(3) applies for the calculation of retirement pension, equal to that deficiency multiplied by the appropriate factor, may be paid.

(3) If—

- (a) less than 10 years' reckonable service was taken into account in calculating the person's retirement benefits, 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 supplementary death grant equal to that deficiency or, where regulation E5(3) applies for the calculation of retirement pension, equal to that deficiency multiplied by the appropriate factor, may be paid.

(4) For the purposes of this regulation—

- (a) any amount by which a retirement pension was reduced under regulation E5(3), E9 (avoidance of duplicate pensions) or E14 (abatement of retirement pension during further employment), and any part of a pension allocated under regulation E11, is to be treated as having been paid, and
- (b) a retirement lump sum is to be treated as having been paid without any deduction under these Regulations (including any actuarial reduction under regulation E6(3)).

(5) This regulation does not apply if the person's last employment was of a kind described in Part II of Schedule 9 to the 1988 Regulations and, by virtue of regulation E3(1)(b), formed part of the qualifying period for the purposes of regulation E3.

(6) Where any supplementary 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 personal representatives.

(7) Any nomination for the purposes of paragraph (6) shall be made by giving written notice to the Secretary of State.

### **Family benefits generally**

**E22.**—(1) Pensions are payable in accordance with regulations E24 to E30 to widows, widowers, children and nominated beneficiaries of persons who die in, or after having been in, pensionable employment.

(2) References in those regulations to a surviving spouse are references to a widow or widower; but—

- (a) in the case of a man who has not been in pensionable employment or paying additional contributions for a current period under regulation C9 or C10 at any time after 5th April 1978, such references, and references to a widow, do not include references to a woman married by that man after his last day in pensionable employment or, as the case may be, the end of the period for which such contributions were paid;
- (b) subject to paragraph (3), in the case of a woman who has not been in pensionable employment or paying additional contributions for a current period under regulation C9 or C10 at any time after 5th April 1988, such references and references to a widower do not include references to a man married by that woman after her last day in pensionable employment or, as the case may be, the end of the period for which such contributions were paid.

(3) Where a woman who nominated a person under regulation E23 subsequently marries, paragraph 2(b) shall have effect with the substitution of "1978" for "1988".

(4) Where those regulations provide for a pension to be payable to a widow and there are two or more widows, the widows are jointly entitled to the pension.

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

- (a) his legitimate, adopted or illegitimate child, or
- (b) accepted by him as a member of the family and 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) and paragraph 14 of Schedule 15, for the purposes of regulations E23 to E30 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 and he has been receiving such education or attending such a course of training or both continuously since having attained that age without a break at any one time of longer than a year, or
  - (c) having ceased while incapacitated to fall within sub-paragraph (a) or (b), he continues to be incapacitated.
- (7) For the purposes of paragraph (6)(b)—
- (a) a person is to be treated as receiving full-time education up to and including the week which includes the first Monday in January or the first Monday after Easter Monday or the first Monday in September next following the end of the last term in which he received it, and
  - (b) a person is to be treated as not attending a course of training while he is receiving disqualifying remuneration.
- (8) For the purposes of paragraph (7)(b) disqualifying remuneration is remuneration at a rate of not less than the annual rate at which an official pension, within the meaning of section 5(1) of the Pensions (Increase) Act 1971(8), 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 E24 to E30 to a nominated beneficiary are to a person nominated under regulation E23.

### **Nomination of beneficiaries**

**E23.**—(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 Secretary of State, 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 E24 to E30.

(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 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, and
- (b) on the marriage of the appointor.

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

**E24.**—(1) Subject to paragraphs (3) and (4), a short-term pension is payable, from the day after that of his death, if a person dies—

- (a) while in pensionable employment,
- (b) during a period for which he is paying additional contributions under regulation C9 or C10,
- (c) within 12 months after ceasing to be in pensionable employment, or to pay such contributions, 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.
- (2) The short-term pension is payable—
- (a) subject to paragraph (4), to any surviving spouse or, if a nomination under regulation E23 had effect at the time of his death, to the nominated beneficiary; and
  - (b) if the deceased is survived by a child or children of his 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 E26(7)(b) shall apply in a like manner to short-term pensions payable by virtue of this regulation.
- (4) No short-term pension is payable—
- (a) to a widower if one is payable to another person as a nominated beneficiary,
  - (b) to a nominated beneficiary who, at the date of death of the deceased, 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 under regulation E26 to a long-term pension.

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

**E25.**—(1) Subject to paragraphs (2) and (4), the annual rate of a short-term pension under regulation E24—

- (a) if regulation E24(1)(a) or (c) applies, is 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 E24(1)(b) applies, is the annual rate, at the time of the deceased’s death, of the notional salary described in regulation C9(7) or, as the case may be, C10(4),
- (c) if regulation E24(1)(d) applies, is the annual rate, at the time of the deceased’s death, of his retirement pension, and
- (d) if regulation E24(1)(a) and (d) both apply, is the total of the rates specified in subparagraphs (a) and (c) above.

(2) If—

- (a) the short-term pension is payable to a surviving spouse, and
- (b) the annual rate calculated in accordance with paragraph (1) is less than that of a long-term pension to which the surviving spouse is prospectively entitled under regulation E26,

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 ascertained 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 E24(2)</i>	<i>Duration of pension (months)</i>
1	Spouse or nominated beneficiary	3



<i>Category</i>	<i>Person falling within regulation E24(2)</i>	<i>Duration of pension (months)</i>
2	One child or more where an adult pension is payable	3
3	Where no adult pension is payable	6

(4) Where regulation E5(3) applies the annual rate of the short-term pension shall be the annual rate calculated in accordance with paragraph (1) or (2) multiplied by the appropriate factor.

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

**E26.**—(1) A long-term pension is payable in accordance with paragraph (2) if a person dies who—

- (a) has been in pensionable employment at any time after 31st March 1972, and
- (b) has relevant service within the meaning of regulation E27 amounting to at least 2 years,

but, in the case of a person 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) If paragraph (1) applies—

- (a) subject to paragraph (3) a long-term pension is payable to any surviving spouse,
- (b) if a nomination under regulation E23 had effect at the time of the death, a long-term pension is payable to the nominated beneficiary provided that, at the date of death of the deceased, the nominated beneficiary was wholly or mainly financially dependent on the deceased, 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 is payable to, or for the benefit of, the child or, as the case may be, the children jointly.

(3) Subject to paragraph (5), unless family benefit contributions have, or are to be treated as having, been paid under Part II of Schedule 6, no long-term pension is payable to a widower if one is payable to another person as a nominated beneficiary.

(4) If when a person dies paragraph (2) does not apply but he—

- (a) has been in pensionable employment at any time after 31st March 1972, and
- (b) is qualified for retirement benefits, and
- (c) is survived by a child or children of his,

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

(5) Subject to paragraph (6), if neither paragraph (2) nor paragraph (4) applies but the deceased had a guaranteed minimum in relation to benefits under these Regulations and leaves a surviving spouse, a long-term pension is payable to the surviving spouse.

(6) If a contributions equivalent premium is paid by the Secretary of State, paragraph (5) is to be treated as not having applied.

- (a) (7) (a) Sub-paragraph (b) 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.
- (b) 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 which by virtue of their relevant service provide pensions of the largest amounts.

### Relevant service

**E27.**—(1) In the case of a man, and in the case of a woman in relation to a nominated beneficiary or a widower on whose marriage to her a nomination ceased to have effect, relevant service, subject to paragraph (3), comprises—

- (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 C9 or C10,
- (c) any period for which additional contributions have been paid under regulation C4 or under Schedule 5, except paragraph 7, 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 acceptance of any other transfer value under regulation F4 or under the Teachers' Superannuation (Added Years and Interchange) Regulations 1974<sup>(9)</sup>,
- (f) so much of any period counting as reckonable service by virtue of an election under regulation 4 of the Teachers' Superannuation (Policy Schemes) Regulations 1979<sup>(10)</sup> as is attributable to service after 31st March 1972,
- (g) any period counting as reckonable service by virtue of regulation 34 of the 1976 Regulations (special provision relating to period from December 1973 to 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, any additional period and any period that fell to be calculated in accordance with paragraph 7(3) of Schedule 6.

(2) In relation to a widower not falling within paragraph (1), the deceased's relevant service comprises, subject to paragraph (3)—

- (a) so much of the periods described in paragraph (1)(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 C4 in accordance with an election made after 31st May 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 the deceased entered pensionable employment after 5th April 1988, and a transfer value offered in respect of him was accepted under regulation F4, any period counting as reckonable service by virtue of the acceptance of the transfer value.

(3) Relevant service does not include any contributions refund period.

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<sup>(9)</sup> S.I. 1974/260 revoked by S.I. 1976/1987.

<sup>(10)</sup> S.I. 1979/47 revoked by S.I. 1988/1652.

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

**E28.**—(1) Subject to paragraph (2), the annual rate of a pension payable under regulation E26 to a surviving spouse or a nominated beneficiary is 1/160th of the deceased's average salary multiplied by the length of his family benefit service.

(2) If—

(a) paragraph 16 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 had done so, the retrospective salary increase is not to be taken into account in calculating the deceased's average salary.

(3) Family benefit service does not include any contributions refund period.

(4) Subject to paragraphs (3), (5) and (8) to (10), if the pension is payable to a nominated beneficiary, to a widower on whose marriage to the deceased a nomination ceased to have effect, 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 E27(1)(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 7(3) of Schedule 6, and

(c) any period related to war service in respect of which an additional contribution has been paid under regulation C8(8) or Part IV of Schedule 6 or which is included by virtue of paragraph 21(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 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, subject to paragraph (3), comprises—

(a) any period of pensionable employment after 5th April 1978,

(b) any period for which additional contributions have been paid under regulation C4 in accordance with an election made after that date,

(d) if a transfer value has been accepted 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 acceptance after that date of any other transfer value, and

(f) so much of any period counting as reckonable service by virtue of an election under regulation 4 of the Teachers' Superannuation (Policy Schemes) Regulations 1979(11) as is attributable to service after that date.

(7) If the pension is payable to a widower not falling within paragraph (4), the deceased's family benefit service, subject to paragraphs (3) and (8) to (10), comprises the relevant service described in regulation E27(2).

(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 C9 or 10, 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 E8 (enhancement of retirement benefits in case of incapacity).

(9) If paragraph (8) applies and the family benefit service calculated in accordance with paragraphs (3) to (7) is less than the deceased's 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 (7),

B is his effective reckonable service apart from C, and

C is the period which was, or would if regulation E8 had applied have been, the appropriate period within the meaning of regulation E8.

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

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

**E29.**—(1) Subject to paragraphs (3) to (6), if a long-term pension become payable under regulation E26—

- (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 average salary multiplied by the length of his family benefit service.

(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) Subject to paragraphs (4) to (6), if—

- (a) an adult pension becomes payable to a woman whom the deceased married after his last day in pensionable employment,
- (b) before that day he had married another woman, and
- (c) the persons to or for whose benefit a children's pension is payable include a child who was, or children who were, a child or children of the deceased's at any time during the earlier marriage, the annual rate of the children's pension is the appropriate fraction of his average salary multiplied by the length of what would have been his family benefit service if regulation E28(4) had applied (“the notional family benefit service”).

(4) If the children's pension is payable to, or for the benefit of—

- (a) one child who was a child of the deceased's during the earlier marriage, and
- (b) one or more children who were not children of his during that marriage,

the annual rate of the children's pension is

$$A - B,$$

where—

A is  $\frac{1}{320}$ th of his average salary multiplied by the length of the notional family benefit service, and

B is  $\frac{1}{320}$ th of his average salary multiplied by the actual length of his family benefit service.

(5) 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 average salary multiplied by the greater of C and D or, where regulation E28(8) applies, the greater of

**C and (D + E),**

where—

C is the notional family benefit service,

D is the deceased's effective reckonable service apart from E, and

E is the period which was, or would if regulation E8 had applied have been, the appropriate period within the meaning of regulation E8.

(6) The applicable fraction—

(a) while a children's pension is payable to or for the benefit of 2 or more children, is  $\frac{1}{120}$ th, and

(b) while a children's pension is payable to or for the benefit of one child, is  $\frac{1}{240}$ th.

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

**E30.**—(1) A pension under regulation E26 payable to a surviving spouse or a nominated beneficiary ("an adult pension") is to be paid—

(a) from the day on which any short-term pension that became so payable under regulation E24 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 is payable for life.

(3) Unless the Secretary of State determines otherwise in the particular case, and subject always to regulation E1(3)(c) and (d) (guaranteed minimum pension for surviving spouse), an adult pension is not payable during or after any marriage or period of cohabitation outside marriage.

(4) A pension under regulation E26 payable to or for the benefit of a child or children ("a children's pension") is to 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 E24 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.

### **Average salary**

**E31.**—(1) Subject to paragraph (11), a person's average salary—

(a) where the material part of his average salary 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) In determining, for the purposes of paragraph (1), what are the best consecutive 365 days of the material part of the person's average salary service, days on which the person is not in pensionable employment are disregarded.

(3) Average salary service comprises—

- (a) any period spent by the person in pensionable employment,
- (b) any period counting as reckonable service by virtue of regulation D4 (current period for which additional contributions have been paid), and
- (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.

(4) The material part of a person's average salary service is—

- (a) where the person 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 person's average salary service, periods when the person 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 person who is employed under a contract whereby that person 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 is not undertaking work (whether or not such a person would be so treated apart from this paragraph).

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

- (a) for a period falling within paragraph (3)(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 (3)(b), is the notional salary by reference to which the additional contributions paid under regulation C9 or, as the case may be, C10 were calculated, and
- (c) for a period falling within paragraph (3)(c), is what would have been his salary for the purpose of calculating benefits under the pension scheme to which he was subject in the relevant employment.

(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 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>(12)</sup>.

(9) For—

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

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<sup>(12)</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, 1977/1294.

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) Regulations 1981(13).

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

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

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

is greater than zero where—

A is the person's salary before the increase (or, in a case where the person has previously received an increase in salary such as is mentioned in this paragraph but no election under regulation G8 is made, the salary which the person is treated as receiving in accordance with the provision of this paragraph),

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

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

the person is treated as having received an increase in his contributable salary such that his salary after the increase is

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

unless an election is made under regulation G8(3) to pay the additional contribution referred to in that regulation.

(12) Paragraph (11) does not apply—

- (a) in relation to a person who becomes entitled to the payment of retirement benefits by virtue of regulation E4(4),
- (b) for the purpose of calculating—
  - (i) a death grant under regulation E20, or
  - (ii) a pension payable under regulation E28 (spouses' and nominated beneficiaries' long-term pensions) or E29 (children's long-term pensions) in relation to a person who died while in pensionable employment, or
- (c) to any increase in contributable salary which was received while the person was employed by an employer other than the body which was the person's employer immediately before he became entitled to the payment of retirement benefits.

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

- (a) where a person 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 person's salary before the first increase and B is the person's salary after the last increase;
- (b) a discretionary increase of salary is an increase received by a person to whom on the material date the 1991 Act applied which arises from—
  - (i) the person's promotion such that his salary is based on a different pay spine; or

- (ii) the person being paid at the discretion of the body responsible for determining the person's salary at a higher point within the pay spine applicable to him;
- (c) the material date is the date on which the increase of salary took effect;
- (d) the standard increase of salary is—
  - (i) in the case of a person to whom on the material date the 1991 Act applied, the increase, if any, other than a discretionary increase of salary, that would have been received on the material date by the person in question in accordance with any order under section 2 of the 1991 Act for the time being in force or under any document referred to in such an order, had he not received the increase in salary referred to in paragraph (11) or, if he would have received no increase on that date in accordance with any such order or document, the next increase other than a discretionary increase of salary that would have been received by him in accordance with any such order or document;
  - (ii) In the case of a person to whom on the material date the 1991 Act does not apply, 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 institution where the person in question was employed and whose circumstances corresponded most closely to those of that person or, if there were no comparable employees, by persons who were employed as teachers at that school or institution 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;
- (e) where a body becomes a person'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 person's previous employer shall be taken to be the same employer.

(14) Where an election under regulation G8 is made after the person becomes entitled to payment of retirement benefits the person is, until the date on which the election is received by the Secretary of State, entitled to retirement benefits calculated on the basis only of the contributable salary he 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 Secretary of State the person becomes entitled to—

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

### **Effective reckonable service**

**E32.**—(1) A person'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 E26.

- (2) Subject to paragraph (3), effective reckonable service does not include—
  - (a) any reckonable service in excess of 45 years—
  - (b) any reckonable service in excess of 40 years before attaining the age of 60.
- (3) In relation to a retirement lump sum, if the person'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 acceptance of a transfer value, and



(c) any period counting as reckonable service by virtue of an election under regulation 4 of the Teachers' Superannuation (Policy Schemes) Regulations 1979<sup>(14)</sup>, 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 period for which additional contributions have been paid) 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

(4) For the purposes of paragraph (3) a person who becomes entitled to payment of retirement benefits by virtue of regulation E4(4) or (5) (incapacity or redundancy before attaining the age of 60) is to be treated as having continued in pensionable employment up to that age.

(5) Effective reckonable service does not include—

- (a) any period in respect of which a short-service annuity is payable under regulation E16, or
- (b) any period which, having been reckoned under section 17 of the Local Government Superannuation Act 1937<sup>(15)</sup> or a corresponding provision contained in a local Act scheme within the meaning of that Act, has become reckonable as service under regulations under section 10 of the Superannuation Act 1972 (persons engaged in health services, etc.).

### Payment of benefits

**E33.**—(1) Benefits under this Part are payable by the Secretary of State.

(2) No benefit is to be paid unless a written application for payment has been made and paragraph (3), if applicable, has been complied with.

(3) If the Secretary of State notifies him in writing that he so requires, the applicant is to provide any relevant information specified by the Secretary of State that is in his possession or that he can reasonably be expected to obtain.

(4) Subject to paragraphs (6) to (9), a benefit that does not consist of a single payment is to be paid monthly—

- (a) in the case of a family benefit, on the 28th of the month, and
- (b) in any other case, on the day before the birth date of the person entitled to payment,

and the first payment under this paragraph is to be made on the first date referred to in subparagraph (a) or (b) which falls at least one month after the person's entitlement to benefit took effect.

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<sup>(14)</sup> S.I. 1979/47 revoked by S.I. 1988/1652.

<sup>(15)</sup> 1937 c. 68; section 17 was repealed, with savings, by the Superannuation Act 1972 (c. 11), section 29 and Schedule 8.

(5) If a person was born on the 1st of a month, his birth date in any month is the 1st, and so on; in any month in which the date arrived at in that way does not occur, his birth date is the last day of the month.

(6) If—

- (a) the person's entitlement to payment of the benefit took effect, or
- (b) the benefit ceases to be payable,

on the day other than the day following the one specified in paragraph (4) (the "due date"), a proportionate payment is to be made for the relevant period as soon as practicable after the material date.

(7) The relevant period is—

- (a) where paragraph (6)(a) applies, the period beginning on the day on which the entitlement took effect and ending with the material date, and
- (b) where paragraph (6)(b) applies, the period beginning on the day following the last due date before the benefit ceased to be payable and ending with the material date.

(8) The material date is—

- (a) where paragraph (6)(a) applies, the due date immediately following the date on which the person's entitlement to benefit took effect, and
- (b) where paragraph (6)(b) applies, the day before the benefit ceased to be payable.

(9) A proportionate payment is a payment of

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

where—

- A is the annual rate of the benefit,
- B is the number of days in the relevant period, and
- C is the number of days in the month ending with the material date.

(10) The Apportionment Act 1870(16) (being inconsistent with paragraphs (4) to (9)) is to be taken not to have effect in relation to benefits under this Part.

(11) If the person entitled to payment of a benefit has not attained the age of 18, 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.

### **Interest on late payment of certain benefits**

**E34.**—(1) Where all or any part of the benefits payable under this Part, other than a pension payable under regulation E24, is not paid within one month of the due date, the Secretary of State shall pay to the person to whom the benefit is payable interest on the amount 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) the date on which the person becomes entitled to the benefit, where the benefit consists of a single payment other than a death grant referred to in paragraph (b), or
  - (b) the day after the date on which the Secretary of State has become satisfied that the death grant may be paid under regulation E20 or E21, where the benefit is a death grant payable under either of those regulations.
- (4) For the purposes of paragraph (1) the due date, in a case where a benefit does not consist of a single payment, is—
- (a) the material date referred to in regulation E33(8) in the case of the payment referred to in regulation E33(6), or
  - (b) the date referred to in regulation E33(4) in relation to each payment in the case of any other monthly payment.
- (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 institutions for the time being which—
    - (i) are authorised by the Bank of England under the Banking Act 1987<sup>(17)</sup>;
    - (ii) are incorporated in and carrying on within the United Kingdom a deposit-taking business (as defined in section 6, but subject to any order under section 7 of that Act); and
    - (iii) quote a base rate applicable to sterling deposits.

### **Benefits not assignable**

**E35.**—(1) Any assignment of or charge on or agreement to assign or charge any benefit under this Part is void.

(2) An allocation under regulation E11 is not an assignment, and an arrangement for the recovery by the Secretary of State of an overpayment does not constitute an assignment or an agreement to assign.

(3) Paragraph (1) shall not preclude any payment of benefit pursuant to an order of the court under section 25B or 25C of the Matrimonial Causes Act 1973<sup>(18)</sup> or pursuant to regulations under section 25D of that Act.

(4) On the bankruptcy of a person entitled to a benefit under this Part, no part of the benefit passes to any trustee or other person acting on behalf of the creditors except in accordance with an income payments order made by a court under section 310 of the Insolvency Act 1986<sup>(19)</sup>.

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<sup>(17)</sup> 1987 c. 22.

<sup>(18)</sup> 1973 c. 18; Sections 25B and 25C were inserted by Section 166 of the 1995 Act.

<sup>(19)</sup> 1986 c. 45.