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STATUTORY INSTRUMENTS

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**1988 No. 1652**

**The Teachers' Superannuation (Consolidation) Regulations 1988**

**PART A**

**PRELIMINARY**

**Title and commencement**

**A1.** These Regulations may be cited as the Teachers' Superannuation (Consolidation) Regulations 1988 and shall come into force on 1st November 1988.

**Interpretation**

**A2.**—(1) Schedule 1 to these Regulations contains a glossary of expressions; and in these Regulations, unless the context otherwise requires, any expression for which there is an entry in the first column of that Schedule has the meaning given against it in the second column or is to be construed in accordance with directions given against it in that column.

(2) In these Regulations, unless the context otherwise requires—

- (a) any reference to a regulation, Part or Schedule identified by a letter or number or both (an “indicator”) is to be construed as a reference to the regulation, Part or Schedule, as the case may be, identified by that indicator in these Regulations, and any reference to a numbered paragraph in a regulation of or a Schedule to these Regulations is to be construed as a reference to the paragraph bearing that number in that regulation or, as the case may be, that Schedule,
- (b) any reference to, or to things done or falling to be done under or for the purposes of, any provision of these Regulations is, if and so far as the nature of the reference permits, to be construed as including, in relation to circumstances or purposes in relation to which the corresponding provision in any Regulations revoked by these Regulations, or in previous provisions, has or had effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision,
- (c) any reference to the purchase of added years is, in relation to previous provisions, to be construed as including a reference to the payment of contributions by a person in respect of a period during which he was not in pensionable employment,
- (d) any reference to contributions and benefits payable in respect of a person is to be construed as including a reference to contributions paid by him and benefits paid to him, and
- (e) any reference to a transfer value paid or received is to be construed as including a reference to a transfer value which would have been paid or received but for arrangements made for the avoidance of payments between Ministers.

(3) Where these Regulations require anything to be done within a specified period after or from a specified day or event, the period begins immediately after the specified day or, as the case may be, the day on which the specified event occurs.

(4) For the purposes of these Regulations a person's pensionable employment ends with the last day of the employment or, as the case may be, the last day on which the employment was pensionable.

## PART B

### PENSIONABLE EMPLOYMENT

#### Full-time employment

**B1.**—(1) Subject to paragraphs (2) and (3) and regulations B5 to B7, a person is in pensionable employment while he is in full-time employment in a capacity described in Schedule 2 and satisfies every condition, and is not within any exception, specified in Schedule 2 in relation to employment in that capacity.

(2) Full-time employment in a capacity described in Part II of Schedule 2 is not pensionable unless the person has elected that it is to be so.

(3) An election for the purposes of paragraph (2)—

- (a) must be made by giving written notice to the Secretary of State within 3 months after the start of the employment, and
- (b) except in the case of employment in a capacity described in paragraph 14, 21, 22 or 24 of Schedule 2, may not be made without the consent of the employer.

#### Part-time employment

**B2.**—(1) Subject to paragraph (2) and regulations B5 to B7, a person who has at any time made an election for the purposes of this regulation is in pensionable employment while he is a part-time employee who—

- (a) is employed in a capacity described in paragraphs 1 to 7, 14 or 16 of Schedule 2 and satisfies every condition, and is not within any exception, specified in Schedule 2 in relation to employment in that capacity, or
  - (b) is employed by a local education authority to provide either primary or secondary education otherwise than at school, in pursuance of section 56 of the Education Act 1944<sup>(1)</sup> or section 3 of the Education Act 1981<sup>(2)</sup>, or
  - (c) is employed by a local education authority to provide further education at a prison, remand centre, detention centre, Borstal institution or attendance centre within the meaning of the Prison Act 1952<sup>(3)</sup>, or
  - (d) is employed as a teacher or organiser by the Christian Education Movement, or
  - (e) would be in pensionable employment by virtue of regulation B4 (accepted schools) if his employment were full-time.
- (2) A person is not in pensionable employment by virtue of paragraph (1) while—
- (a) he is or is deemed to be a pensionable employee within the meaning of the Local Government Superannuation Regulations 1986<sup>(4)</sup>, or
  - (b) he is entitled to be paid a teacher's pension.
- (3) An election for the purposes of this regulation—

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(1) 1944 c. 31; section 56 was amended by the Education (Miscellaneous Provisions) Act 1948 (c. 40), Schedule 1, Part I.

(2) 1981 c. 60.

(3) 1952 c. 52.

(4) S.I. 1986/24; relevant amendments were made by S.I. 1986/380, 1987/293.

- (a) may be made at any time by giving written notice to the Secretary of State, and
- (b) unless the Secretary of State specifies an earlier date, has effect from the first day of the month following that in which he notifies the person making it of its acceptance.

### **Continuing employment**

**B3.** Subject to regulations B5 to B7, a person who immediately before 1st November 1988 was in employment (“the first employment”) which was pensionable employment by virtue of regulation 4(2)(c) or (cc) of the 1976 Regulations (employment in continuation or further continuation of employment treated as reckonable service for the purposes of the 1967 Regulations) is in pensionable employment—

- (a) while he is in the first employment, and
- (b) while he is in employment which is in continuation of the first employment.

### **Employment in accepted school**

**B4.—**(1) Subject to paragraph (2) and regulations B5 to B7, a person is in pensionable employment while he is in full-time employment as a teacher in an accepted school.

(2) A person employed in an accepted school is not in pensionable employment if—

- (a) he has any financial interest in the establishment other than a right to a salary unrelated to its profits or its other performance as an economic enterprise, or
- (b) the establishment is an accepted school by virtue of paragraph (3)(a) and immediately before 1st November 1988 his employment in it was not pensionable employment.

(3) Subject to paragraph (7), an establishment is an accepted school if—

- (a) immediately before 1st November 1988 it was an accepted school for the purposes of regulation 6 of the 1976 Regulations, or
- (b) the Secretary of State has accepted it for the purposes of this regulation.

(4) The establishments that may be accepted are—

- (a) an independent school finally registered under section 70 of the Education Act 1944(5),
- (b) an independent school provisionally registered under that section which had been a school of a kind mentioned in paragraph 1, 2 or 3 of Schedule 2,
- (c) an independent school provisionally registered under that section which was constituted by an amalgamation of schools of which at least one was an accepted school, and
- (d) an establishment of further education constituted by an amalgamation of such establishments of which at least one was an accepted school.

(5) An establishment may only be accepted if its governing body have made a written application to the Secretary of State.

(6) No establishment need be accepted, but if an establishment is accepted its acceptance takes effect—

- (a) where paragraph (4)(b) applies, as from the date of provisional registration, and
- (b) in any other case, as from a date to be agreed between the Secretary of State and the governing body, which must be—
  - (i) the first day of a month later than that in which the application was made, or
  - (ii) if the establishment was constituted by an amalgamation, either the first day of such a month or the date of the amalgamation.

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(5) 1944 c. 31; section 70 was amended by the Education Act 1980 (c. 20), section 34.

(7) An establishment which has become an accepted school ceases to be one from the date specified in a written notice given to its governing body by the Secretary of State.

(8) Notice for the purposes of paragraph (7) may be given—

(a) in the case of an independent school, if it ceases to be a registered or provisionally registered school within the meaning of section 70 of the Education Act 1944, or

(b) in the case of an establishment of further education or a nursery school, if—

(i) it ceases to be one, or

(ii) it employs as a teacher a person whom it would have been precluded from employing if regulations for the time being in force under section 27 of the Education Act 1980<sup>(6)</sup> had applied, or

(c) in any case, if the governing body—

(i) have made a written application to the Secretary of State for the establishment to cease to be an accepted school, or

(ii) have failed to pay or remit contributions to the Secretary of State, or

(iii) have failed to comply with regulation H3 (records and information) or any other provision of these Regulations relating to pensionable employment.

(9) Paragraphs (5) to (8) apply to an establishment which had previously ceased to be an accepted school as they apply to an establishment which has not previously been an accepted school.

(10) In this regulation “governing body” includes any person by whom teachers are employed.

### **Exclusion from pensionable employment**

**B5.**—(1) A person is not in pensionable employment unless he is—

(a) 18 years old or older and under 70, and

(b) entitled to be paid his salary in full, or on sick leave or maternity leave and entitled to be paid not less than half his salary.

(2) A person is not in pensionable employment while he is in an employment which immediately before 1st November 1988 by virtue of regulation 8(1)(a) of the 1976 Regulations (employments treated as not being reckonable service by previous provisions) was not pensionable employment.

(3) This paragraph applies to a person who—

(a) immediately before 1st November 1988 was in, or

(b) not more than 12 months before that date had ceased to hold,

an employment which by virtue of regulation 8(3) of the 1976 Regulations (employments superannuable under section 7 or 8 of the Superannuation Act 1972<sup>(7)</sup>) was not pensionable employment.

(4) Subject to paragraph (5), a person to whom paragraph (3) applies is not in pensionable employment while he is in an employment which would not have been pensionable employment if—

(a) regulation 8(3) of the 1976 Regulations had continued in force, and

(b) he had made no election under regulation 8(3)(c).

(5) Within 3 months after the start of an employment to which paragraph (3) applies the person may, by giving written notice to the Secretary of State and to the appropriate administering

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<sup>(6)</sup> 1980 c. 20.

<sup>(7)</sup> 1972 c. 11.

authority within the meaning of the Local Government Superannuation Regulations 1986<sup>(8)</sup>, elect that paragraph (4) is to cease to apply.

### **Election not to be pensionable**

**B6.**—(1) A person who—

- (a) is in pensionable employment, or
- (b) is not in pensionable employment but expects to enter an employment which would otherwise be pensionable employment,

may at any time, by giving written notice to the Secretary of State, make an election under this regulation.

(2) As from the date from which the election has effect—

- (a) where paragraph (1)(a) applies, the person ceases to be in pensionable employment for all purposes of these Regulations, and
- (b) in any case, subject to regulation B7, no subsequent employment of his is pensionable employment.

(3) Where paragraph (1)(a) applies, an election under this regulation—

- (a) if the notice is given within 3 months after the start of the person's pensionable employment, has effect as from the first day of his pensionable employment, and
- (b) in any other case, has effect from the first day of the month after that in which the notice was given.

(4) Where paragraph (1)(b) applies, the election has effect as from the day before that on which the person first enters any such employment as is there mentioned.

(5) An election made under proviso (b)(ii) to regulation 6(7) of the 1976 Regulations (accepted schools) or regulation 10 of the Teachers' Superannuation (Miscellaneous Provisions) (No. 2) Regulations 1988<sup>(9)</sup> is to be treated as having been made under this regulation.

### **Resumption of pensionable status**

**B7.**—(1) Subject to paragraphs (5) and (6), a person who has made an election under regulation B6, who has since been in employment which would otherwise have been pensionable employment ("excluded employment"), and who—

- (a) is in excluded employment, or
- (b) is not in, but expects to enter, excluded employment,

may at any time, by giving written notice to the Secretary of State, make an election under this regulation.

(2) As from the date on which the election has effect, subject to regulation B6 any employment on and after that date which would otherwise have been excluded employment is pensionable employment.

(3) Where paragraph (1)(a) applies, an election under this regulation—

- (a) if the notice is given within 3 months after the start of any period of excluded employment, has effect as from the first day of that employment, and
- (b) in any other case, has effect from the first day of the month after that in which the notice was given.

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<sup>(8)</sup> S.I. 1986/24; relevant amendments were made by S.I. 1986/380, 1987/293.

<sup>(9)</sup> S.I. 1988/816.

(4) Where paragraph (1)(b) applies, the election has effect as from the day before that on which the person first enters any excluded employment.

(5) If a person who has made an election under this regulation makes a further election under regulation B6, he may make a further election under this regulation only if, since he made the further election under regulation B6, there has been a qualifying period during which he was not in any excluded employment.

(6) Unless the Secretary of State approves a shorter period in the particular case, a qualifying period is one of not less than 5 years.

(7) An election made under regulation 11 of the Teachers' Superannuation (Miscellaneous Provisions) (No. 2) Regulations 1988 is to be treated as having been made under this regulation.

## PART C

### TEACHERS' CONTRIBUTIONS

#### Salary on which contributions are payable

**C1.**—(1) Subject to paragraphs (2) to (11), a person's contributable salary is the total of—

- (a) the amounts payable by his employer, in respect of his pensionable employment—
  - (i) by way of salary, and
  - (ii) in satisfaction of any statutory liability arising out of sickness or maternity, and
- (b) if the employer has satisfied the Secretary of State that it is expedient for residential accommodation to be provided free in connection with the employment, the money value as an allowance in kind of—
  - (i) the accommodation provided, and
  - (ii) any heat, lighting or water provided free in connection with it.

(2) If the money value of any accommodation provided exceeds one sixth of the amounts mentioned in paragraph (1)(a), the excess is not part of the person's contributable salary.

(3) A person's contributable salary does not include—

- (a) any allowance in kind not falling within paragraph (1)(b),
- (b) any payment in respect of overtime, or
- (c) any payment by way of travelling or expense allowance.

(4) The contributable salary of a person employed as mentioned in paragraph 12 of Schedule 2 (teachers in European Schools) does not include any amount not payable by, or money value not attributable to, the Secretary of State.

(5) The contributable salary of a services education officer is the amount that would for the time being be payable by way of salary, in accordance with provision made under section 3 of the Teachers' Pay and Conditions Act 1987<sup>(10)</sup>, to a teacher of his age, qualifications and experience employed in a school outside the London area (within the meaning of any document referred to in an order for the time being in force under that section).

(6) A person who continues in full-time pensionable employment but whose contributable salary is reduced, otherwise than by reason of sick leave or maternity leave, may elect that it is to be treated as having continued at the rate applicable immediately before the reduction ("the notional rate").

(7) An election for the purposes of paragraph (6)—

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<sup>(10)</sup> 1987 c. 1.

- (a) must be made by giving written notice to the Secretary of State within 6 months after the reduction,
  - (b) has effect from the first day of the month following that in which the notice was received, and
  - (c) subject to paragraph (9), continues to have effect until a relevant event occurs.
- (8) The relevant events are—
- (a) the actual rate's exceeding the notional rate,
  - (b) the person's entering part-time pensionable employment, and
  - (c) unless he elects to pay additional contributions under regulation C8, his ceasing to be in pensionable employment.
- (9) An election made for the purposes of paragraph (6) may be cancelled by giving written notice to the Secretary of State at any time.
- (10) Notice of cancellation—
- (a) has effect from the first day of the month following that in which it was received, and
  - (b) is irrevocable.
- (11) If while an election made for the purposes of paragraph (6) has effect there is any further reduction during a period of sick leave or maternity leave, the notional rate is, during that period, to be treated as having been reduced in the same proportion as the actual rate.

### **Ordinary contributions**

- C2.**—(1) Subject to paragraph (3), a person, other than a services education officer, who is in pensionable employment is to pay contributions of 6 per cent of this contributable salary for the time being.
- (2) Subject to paragraph (3), a services education officer is to pay contributions of the aggregate of—
- (a) 6 per cent of his contributable salary for the time being, and
  - (b) the employer's contributions that would have been payable if regulation G5 had applied.
- (3) No contributions are to be paid by anyone to whom regulation E30(2)(a) (restriction of reckonable service to 45 years) has become applicable.

### **Additional contributions for past period**

- C3.**—(1) This regulation applies to a person who—
- (a) except where paragraph (5) applies, is in pensionable employment, and
  - (b) first became employed in pensionable employment, or has been credited with reckonable service on the receipt of a transfer value in respect of comparable British service that began, before he attained the age of 55, and
  - (c) has not become entitled to payment of retirement benefits under regulation E4(2) to (5).
- (2) Subject to paragraphs (3) to (12), a person to whom this regulation applies may elect to pay additional contributions in accordance with—
- (a) Part I of Schedule 4 ("Method A"),
  - (b) Part II of Schedule 4 ("Method B"),
  - (c) Part III of Schedule 4 ("Method C"), or
  - (d) where paragraph (5) applies, Part IV of Schedule 4 ("Method D"),

in order to become entitled to count an additional period (“the past period”) as reckonable service.

(3) Except where paragraph (5) applies, or the person’s pensionable employment is part-time, payment may be made by Method A, B or C.

(4) Where the person’s pensionable employment is part-time, payment may only be made by Method B.

(5) This paragraph applies where—

- (a) the election is a further election made by a person whose last pensionable employment was full-time, and
- (b) his previous election was one made after 29th August 1982 to make payment by Method A and the notice of it contained a statement of the kind mentioned in paragraph (12)(d)(ii), and
- (c) he has not elected under paragraph 4 of Schedule 4 to shorten the period during which additional contributions were to be paid so that it ends before his 69th birthday, and
- (d) when notice of the further election is given he has applied for payment of retirement benefits but has not been paid a retirement lump sum.

(6) The past period must not exceed the maximum calculated in accordance with Schedule 3, and—

- (a) must have begun after the person attained the age of 20,
- (b) must have ended—
  - (i) before he attained the age of 60,
  - (ii) before the date of the election, and
  - (iii) if he has become entitled to payment of retirement benefits by virtue of regulation E4(7) (redundancy, etc.), before the relevant termination of employment,
- (c) must be one during which he was not in full-time pensionable employment, unless—
  - (i) contributions in respect of the period have been repaid after 31st May 1973, or
  - (ii) the right to count reckonable service in respect of it has been extinguished by payment of a transfer value,
- (d) if payment is to be made by Method A, must satisfy paragraph 2 of Schedule 4,
- (e) if payment is to be made by Method B and the election is a further election, must have begun after the date of the previous election,
- (f) if payment is to be made by Method C, must—
  - (i) satisfy paragraph 13 of Schedule 4, and
  - (ii) if the election is a further election, have begun after the date of the previous election,
- (g) unless—
  - (i) payment is to be made by Method B and notice of the election is given no earlier than the date of applying for payment of retirement benefits, or
  - (ii) payment is to be made by Method D,

must be a period of not less than 30 days, and

- (h) if payment is to be made by Method D, must have ended before the date of the previous election.

(7) If the person is already entitled to count any reckonable service in respect of the past period, that period is for the purposes of payment under this regulation and those of regulation D1 (reckonable service) reduced by the length of that service.



(8) The period during which additional contributions are to be paid (“the contribution period”) must—

- (a) where payment is to be made by Method A, satisfy paragraph 2 of Schedule 4, and
- (b) where payment is to be made by Method C, satisfy paragraph 13 of Schedule 4.

(9) Subject to paragraphs (10) and (11), an election under this regulation may be made at any time.

(10) A further election to make payment by Method B or C, other than an election by a part-time employee to make payment by Method B, must be made within 6 months after the start of the person’s latest pensionable employment.

(11) A person may not simultaneously make different elections under this regulation, except that an election to make payment by Method A or C may be made at the same time as an election to make payment by Method B in respect of a different past period.

(12) An election under this regulation must be made by giving written notice to the Secretary of State, which—

- (a) is to specify the past period,
- (b) is to specify the method by which payment is to be made,
- (c) where payment is to be made by Method A or C, is to specify the length of the contribution period, and
- (d) where payment is to be made by Method A—
  - (i) is to contain a declaration that the person has no reason to believe that his health may prevent him from continuing in pensionable employment until payment has been completed, and
  - (ii) where the contribution period is such that payment cannot be completed until he has attained the age of 69 and he wishes to reserve the right to make a further election to make payment by Method D, is to contain a statement to that effect.

(13) Subject to paragraph 4 of Schedule 4 (shortening of contribution period where payment to be made by Method A), an election becomes irrevocable one month after the date on which the Secretary of State notifies the person in writing that it has been accepted.

(14) Where payment is to be made by Method A and—

- (a) within 12 months after the date of the election the person becomes incapacitated, and
- (b) the declaration required by paragraph (12)(d)(i) was not made in good faith,

the election is to be treated as not having been made and any additional contributions paid are to be refunded.

(15) In this regulation “further election” means an election made after 29th August 1982 which was not the person’s first election, and “previous election” means the last election before the one being made.

#### **Additional contributions for past period by family pensioner**

**C4.—**(1) This regulation applies where a person dies and—

- (a) if on the date of his death he had ceased to hold his employment he—
  - (i) would have become entitled under regulation E4 to payment of retirement benefits, and
  - (ii) would on applying for them have become entitled under regulation C3 to elect to pay additional contributions by Method D, and
- (b) another person (“the pensioner”) is entitled under regulation E25 to a long-term pension in respect of him.

(2) Where this regulation applies the pensioner, or in the case of a child a person acting on his behalf, may by giving written notice to the Secretary of State within 3 months after the death make any election which, on the hypothesis stated in paragraph (1)(a), the deceased person could have made under regulation C3.

(3) Subject to paragraph (4), an election under this regulation has effect as if it had been made under regulation C3 by the deceased person.

(4) The additional contributions—

- (a) are to be calculated under paragraph 16(1) of Schedule 4 even if the deceased person had attained the age of 60, and
- (b) except to the extent that they are, with the consent of any person entitled to it, met out of a terminal sum, are payable by the pensioner.

#### **Additional contributions for past period under earlier provisions**

**C5.**—(1) Part I of Schedule 5 has effect where immediately before 1st November 1988 additional contributions remained to be paid by virtue of regulations 25 to 28 of the 1976 Regulations (elections made before 30th August 1982.)

(2) Part II of Schedule 5 has effect where immediately before 1st November 1988 additional contributions remained to be paid by virtue of regulation 29 of the 1976 Regulations (payments commenced before 1973).

#### **Reduction of past period on account of war service**

**C6.**—(1) This regulation applies where—

- (a) an election has been made under regulation C3 or C4, and
- (b) the person by or in respect of whom it was made subsequently becomes entitled to count as reckonable service, by virtue of regulation D5 or D6, a period related to war service, and
- (c) apart from this regulation some of his reckonable service (“the excess period”) consequently would, or would if he continued in pensionable employment until his 60th birthday, be left out of account, by reason of regulation E30(2), for the purpose of calculating benefits.

(2) Where this regulation applies the period in respect of which the election mentioned in paragraph (1)(a) was made is to be treated as reduced by the excess period.

(3) Where the additional contributions already paid exceed those required for the reduced period, the excess is to be refunded.

#### **Additional contributions in respect of war service**

**C7.**—(1) This regulation applies to a person who became entitled by virtue of regulations 7 and 72(1)(b) of the 1976 Regulations to count as reckonable service a period related to war service (“the war service period”).

(2) Subject to paragraph (6), there is to be paid by or in respect of a person to whom this regulation applies, by way of deduction from the appropriate terminal sum, an additional contribution of A +B, where—

A is 3.75 per cent of the salary notionally received during the person’s war service, and

B is interest on A at 3.5 per cent per annum, compounded with yearly rests, from 1st July 1950 to the relevant date.

(3) The salary notionally received during the person’s war service is £200 per annum in the case of a man and £175 per annum in the case of a woman.

- (4) The relevant date is—
- (a) 1st September 1974 if the person was then receiving a teacher’s pension,
  - (b) if a transfer value has become payable in respect of him after 31st August 1974, the date on which he became subject to the receiving scheme, and
  - (c) in any other case, the date on which the terminal sum is paid.
- (5) If the additional contribution exceeds the terminal sum the excess is to be paid in such manner as may be agreed.
- (6) If—
- (a) the counting of the war service period does not increase the retirement benefits payable, and
  - (b) no election is made under paragraph (8),
- no additional contribution is payable under paragraph (2).
- (7) This paragraph applies where the whole of the person’s other reckonable service would, in the event of his death, count in the calculation under regulation E26 of a spouse’s or nominated beneficiary’s pension (“the family pension”).
- (8) Where paragraph (7) applies the person may elect that there is to be paid, by way of a further deduction from the appropriate terminal sum, an additional contribution in respect of his war service.
- (9) The amount of the additional contribution is the actuarial cost of the increase in the family pension that would result from the war service period’s counting under regulation E26(4)(c).
- (10) An election under paragraph (8) must be made by giving written notice to the Secretary of State before the appropriate terminal sum is paid.
- (11) If a person who could have made an election under paragraph (8) dies without having made it, the election may be made by the nominated beneficiary or surviving spouse before the appropriate terminal sum has been paid.

#### **Additional contributions for current period**

- C8.**—(1) Subject to paragraphs (11) to (13), this regulation applies, unless his pensionable employment was employment as a relief teacher, to a person who—
- (a) before attaining the age of 60 has ceased to be in pensionable employment, otherwise than by virtue of an election under regulation B6, and
  - (b) was not then incapacitated, and
  - (c) did not then become entitled to payment of retirement benefits, and
  - (d) has not become a member of another occupational pension scheme.
- (2) Subject to paragraphs (3), (4) and (10), a person to whom this regulation applies may elect to pay additional contributions in order to become entitled to count as reckonable service a period (“the period”) beginning on the day after the cessation of the pensionable employment, or where paragraph (4)(a) applies on the day after the last day of the earlier period.
- (3) The period—
- (a) must end before his 60th birthday, and
  - (b) must not in any case exceed the maximum calculated in accordance with Schedule 3, and
  - (c) if he has become employed as a teacher or supervisor in a school or educational service outside the British Islands, must not exceed 6 years, and
  - (d) in any other case, must not exceed 3 years.
- (4) If the person has paid additional contributions under this regulation for an earlier period and—

- (a) he has not since the end of that period been in pensionable employment, or
- (b) he has since been in pensionable employment but for less than 12 months, the earlier period is to be deducted from the maximum allowed by paragraph (3).

(5) If before the end of the period the person—

- (a) becomes entitled to payment of retirement benefits, or
- (b) becomes a member of another occupational pension scheme, or
- (c) dies,

the period is to be treated as having ended on the day on which the relevant event occurred; and if before the end of the period he fails to pay an additional contribution, or a late payment is not accepted under paragraph (9), it is to be treated as having ended on the day up to which contributions have been paid.

(6) An additional contribution is payable for each financial year and is a percentage of the notional salary for so much of the period as falls within that year.

(7) The notional salary is the salary that would have been payable if pensionable employment had not ceased and the person had continued to be employed in the same post and on the same terms; and the percentage is (A+B), where A is the percentage specified under regulation G4(3) and B is any percentage specified under regulation G4(7) and (8).

(8) The contribution for a financial year is to be paid direct to the Secretary of State—

- (a) where the period has not ended during the financial year, within 3 weeks after the end of the financial year, and
- (b) in any other case, within 6 weeks after the end of the period or the date of a written notification by the Secretary of State that payment is due, whichever is the later.

(9) A late payment of a contribution may for special reasons be accepted by the Secretary of State; but if it is accepted the person is to pay interest on the amount of the contribution at 4 per cent per annum, compounded with yearly rests, from the due date of payment to the date of payment.

(10) An election under this regulation must be made by giving written notice to the Secretary of State, which must specify the period and must be given—

- (a) if paragraph (3)(c) applies, within 6 months, and
- (b) in any other case, within 3 months,

after the cessation of his pensionable employment or, if later, the end of a previous period for which he has paid additional contributions under this regulation.

(11) For the purposes only of this regulation a person remains in pensionable employment while he is absent from duty during and in consequence of a trade dispute.

(12) Paragraph (11) applies—

- (a) even if the person was not participating in or financing or otherwise directly interested in the trade dispute, and
- (b) even if his employer was not a party to the trade dispute.

(13) In this regulation “trade dispute” has the meaning given by section 29 of the Trade Union and Labour Relations Act 1974(11).

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(11) 1974 c. 52; part of section 29(3) was repealed by the Trade Union and Labour Relations (Amendment) Act 1976 (c. 7), section 1(d), and section 29(7) was repealed by the Criminal Law Act 1977 (c. 45), section 65 and Schedule 13; further amendments were made to section 29 by the Employment Act 1982 (c. 46), section 18.

### **Additional contributions for family benefits**

**C9.**—(1) Parts I and III of Schedule 6 have effect for enabling men and unmarried women to pay additional contributions (“family benefit contributions”) in order to secure, or to increase, family benefits in respect of reckonable service before April 1972.

(2) Parts II and III of Schedule 6 have effect for enabling married women to pay family benefit contributions in respect of reckonable service before 6th April 1988.

### **Right to repayment of balance of contributions**

**C10.**—(1) Subject to paragraphs (3) and (4), this regulation applies where a person has ceased to be in pensionable employment and—

- (a) if he ceased to be in pensionable employment by virtue of an election under regulation B6, he had not completed one or more periods of the kinds described in Part I of Schedule 9 amounting to 2 years or more, and
- (b) in any other case, he is not qualified for retirement benefits, and
- (c) no transfer value has since been paid or become payable in respect of him, and
- (d) he has not since taken any right to a cash equivalent, and
- (e) he did not within the relevant period re-enter pensionable employment, and
- (f) the relevant period is not a period, or part of a period, for which he has elected to pay additional contributions under regulation C8.

(2) The relevant period is—

- (a) if he has ceased to be ordinarily resident within the area comprising the British Islands and the Republic of Ireland, the period of one month, and
- (b) in any other case, the period of 3 months,

beginning when he ceased to be in pensionable employment.

(3) Subject to paragraph (4), this regulation does not apply if—

- (a) the person ceased to be in pensionable employment before 6th April 1980, and
- (b) his contributable salary in any year had exceeded £5,000.

(4) If the Secretary of State is satisfied that the excess was caused solely by a general increase in the remuneration of teachers authorised after the person ceased to be in pensionable employment, he may after consulting the Commissioners of Inland Revenue apply this regulation to him.

(5) For the purposes of paragraph (1) a woman who ceased to be in pensionable employment wholly or partly because of pregnancy or confinement is to be treated—

- (a) as having remained in such employment while she enjoyed the right to return to work conferred by sections 45 and 47 of the Employment Protection (Consolidation) Act 1978(12), and
- (b) if she has exercised that right, as not having ceased to be in pensionable employment.

(6) Subject to regulation C13 (application for payment), where this regulation applies the person is entitled to be repaid the balance of his contributions, calculated in accordance with regulation C11.

(7) The entitlement takes effect at the end of the relevant period, or on his 70th birthday if earlier.

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(12) 1978 c. 44; section 47 was amended by the Employment Act 1980 (c. 42), section 11(3).

### Calculation of balance of contributions

**C11.**—(1) The balance of contributions is to be calculated as at the date of the calculation, or the person’s 70th birthday if earlier (“the calculation date”).

(2) The balance is  $(A-B)-C$ , where—

A is the total of the amounts specified in paragraph (3),

B is the total of the deductions specified in paragraph (4), and

C is the amount of the tax chargeable on  $(A-B)$  under section 598 of the Income and Corporation Taxes Act 1988<sup>(13)</sup>.

(3) The amounts are those of—

(a) all contributions paid, up to the date of receipt of the application for repayment, under regulations C2, C3, C8 and C9, except—

(i) any treated for the purposes of regulation G2 as employer’s contributions, and

(ii) any paid in respect of a period of employment for which a short service incapacity grant under regulation E17 has been received, and

(b) contributions paid in respect of any comparable British service in respect of which the person is entitled to count reckonable service by virtue of the receipt of a transfer value, and

(c) if the person was entitled to count any reckonable service by virtue of the receipt of a transfer value in respect of an employment that was not comparable British service, either—

(i) any payment by way of repayment of contributions, and interest, that he would otherwise have been entitled to receive under the rules of the superannuation scheme to which he was subject in the employment, or

(ii) if that scheme made no provision for the repayment of contributions, the contributions he paid under it in respect of the employment, and

(d) interest to the calculation date, at 3 per cent per annum, compounded with yearly rests—

(i) on the contributions mentioned in sub-paragraphs (a) and (b), from the first day of the financial year following that in which they were paid, and

(ii) where sub-paragraph (c) applies, from the first day of the financial year following that in which the transfer value was paid.

(4) The deductions are—

(a) the amount of any previous repayment of contributions,

(b) if the Secretary of State has made a payment in lieu of contributions, or the person is entitled to equivalent pension benefits, half the amount of the payment in lieu of contributions that was, or as the case may be would otherwise have been, made, and

(c) if the Secretary of State has paid a contributions equivalent premium, the amount recoverable by him under section 47 of the Pensions Act<sup>(14)</sup>.

### Repayment of certain contributions paid for family benefits

**C12.**—(1) This paragraph applies where a member who has made no election under paragraph 3 of Schedule 6—

(a) becomes entitled under regulation C10 to the repayment of the balance of his contributions,  
or

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(13) 1988 c. 1.

(14) 1975 c. 60; section 47 was amended by the Social Security Act 1985 (c. 53), Schedule 5, paragraphs 29 and 30.

- (b) becomes entitled to have a transfer value paid under regulation F1, unless by giving written notice to the Secretary of State he elects that this regulation is not to apply, or
  - (c) becomes entitled to payment of retirement benefits, unless on his death family benefits would become payable.
- (2) Subject to regulation C13, where paragraph (1) applies the member is entitled to be repaid an amount calculated in accordance with paragraphs (3) to (5).
- (3) Where no family benefit would have been payable if the member had died before 1st April 1972, the amount includes the whole of his normal contributions and any additional contributions.
- (4) Where paragraph (3) does not apply, the amount includes—
- (a) half the normal contributions paid in respect of any period during which family benefits would have been payable in the event of his death, and
  - (b) the whole of the normal contributions paid in respect of any other period, and
  - (c) the whole of any additional contributions.
- (5) The remainder of the amount consists of interest at 3 per cent per annum, compounded with yearly rests, from the first day of the financial year following that in which the contributions were paid to—
- (a) the date of the calculation, or
  - (b) the member's 70th birthday, or
  - (c) the date of his death,
- whichever is the earliest.
- (6) There is to be deducted from the amount the tax chargeable on it under section 598 of the Income and Corporation Taxes Act 1988.
- (7) Subject to regulation C13, where a member who has made no election under paragraph 3 of Schedule 6 dies and he was entitled under regulation C10 to be repaid the balance of his contributions or—
- (a) a death grant is payable under regulation E19, and
  - (b) no family benefit other than a children's pension is payable,
- his personal representatives are entitled to be paid an amount calculated in accordance with paragraphs (3) to (5) but with the interest component calculated to the date of his death.

### **Application for repayment**

**C13.**—(1) An amount to which a person is entitled under regulation C10 or C12 is to be paid to him only if the Secretary of State receives a written application for payment and paragraph (2), if applicable, is complied with.

(2) 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.

### **Return of repaid contributions**

**C14.**—(1) A person to whom contributions were repaid before June 1973—

- (a) who is in pensionable employment, or
- (b) who is in comparable British service and in respect of whom no transfer value has been paid since the end of his last pensionable employment,

may at any time, by giving written notice to the Secretary of State, elect to return the contributions, with interest, to him.

(2) The return—

- (a) may in any case, and
- (b) if the amount of the contributions, together with the interest payable, does not exceed £500, must,

be made by a single payment.

(3) Except where paragraph (2)(b) applies, the person may elect to make the return—

- (a) if he is in full-time pensionable employment, by instalments under paragraph (5), or
- (b) if he is in part-time pensionable employment or in comparable British service, by instalments under paragraph (7).

(4) Interest is payable at the rate of 3.5 per cent per annum from the date on which the contributions were repaid to the date on which their return is completed, and—

- (a) where the return is made by a single payment, is payable on the full amount of the contributions and is compounded with yearly rests, and
- (b) where the return is made by instalments, is payable on the balance for the time being outstanding and is compounded with yearly rests on 31st March.

(5) Instalments payable under this paragraph are of equal amounts and are, subject to paragraph (6), payable by deduction from the person's salary for a number of whole years, not exceeding 5 and ending before his 61st birthday, to be specified in the notice of the election.

(6) Where the total of—

- (a) the instalments payable by a person under paragraph (5) in any year, and
- (b) the other amounts to be deducted in that year under regulation C16, would otherwise exceed 15 per cent of his contributable salary for that year, the instalments are payable for the smallest number of whole years that will secure that that total does not exceed 15 per cent of his annual contributable salary.

(7) Instalments payable under this paragraph are of equal amounts and are, subject to paragraph (8), payable—

- (a) at equal intervals, of not more than six months, and
- (b) for a period,

determined by the Secretary of State after consulting the person making the election.

(8) The annual amount of instalments paid under paragraph (7) is not to exceed the lesser of—

$$(A-D) \text{ and } \left\{ \frac{B}{C} - D \right\}$$

where—

A is 9 per cent of the annual rate of the person's contributable salary at the date on which notice of the election is received,

B is the amount of the contributions and the interest payable,

C is the length of the period mentioned in paragraph (7), and

D is the excess of any amounts to be deducted under regulation C16 over 6 per cent of the annual rate mentioned in A.

(9) Where immediately before 1st November 1988 instalments remained to be paid by virtue of regulation 19B(7) of the 1976 Regulations (certain elections made before April 1984), the person is



to be treated as having elected to pay instalments under paragraph (5), but payment is to be completed no later than—

- (a) the fifth anniversary of the first payment, or
- (b) if earlier, his 60th birthday.

### **Uncompleted return by instalments of repaid contributions**

#### **C15. —**

(1) This Regulation applies where instalments are payable by a person under regulation C14(5) or (7).

(2) If before all the instalments have been paid—

- (a) the person becomes entitled to payment of retirement benefits, or
- (b) a death grant becomes payable in respect of him,

the balance outstanding, discounted for early payment, is to be deducted from the appropriate terminal sum and the return of the contributions is to be treated as having been completed.

(3) This paragraph applies where the instalments are payable under regulation C14(5) and before they have all been paid the person—

- (a) ceases to be in full-time pensionable employment, and
- (b) does not become entitled to payment of retirement benefits, and
- (c) continues in part-time pensionable employment or in comparable British service.

(4) Where paragraph (3) applies—

- (a) the person may elect to pay the balance outstanding by instalments under regulation C14(7), and
- (b) if he does not so elect, he is to make a single payment of the balance outstanding, discounted for early payment.

(5) This paragraph applies where before all the instalments have been paid—

- (a) the person ceases to be in pensionable employment or in comparable British service, and
- (b) neither paragraph (2) nor paragraph (3) applies.

(6) Where paragraph (5) applies—

- (a) the person may, if he elects to pay additional contributions for a current period under regulation C8, elect to pay the balance outstanding by instalments under regulation C14(7) (but payable at the same times as the additional contributions), and
- (b) if he does not so elect, he is to make a single payment of the balance outstanding, discounted for early payment.

(7) Where paragraph (3) or (5) applies and the person has not within 3 months after the end of the relevant employment—

- (a) made a payment under paragraph (4)(b) or (6)(b), or
- (b) made any election he could have made under paragraph (4)(a) or (6)(a),

the amount of the instalments already paid is to be repaid to him.

(8) Where—

- (a) a person who has elected as mentioned in regulation C14(3)(b) is in part-time pensionable employment or in comparable British service and an instalment has not been paid by the due date, or

- (b) a person has made an election under paragraph (4)(a) and an instalment has not been paid by the due date, or
- (c) a person has made an election under paragraph (6)(a) and an instalment is not paid by 21st April in the financial year following that in which it fell due,

then unless within 3 months he makes a single payment of the balance outstanding, discounted for early payment, the amount of the instalments already paid is to be repaid to him.

### **Deduction, payment and recovery of contributions**

**C16.**—(1) The employer of a person in pensionable employment, other than a services education officer, is to deduct from his salary each month—

- (a) the contributions payable under regulation C2(1),
- (b) any additional contributions payable in accordance with Part I or III of Schedule 4 as a result of an election under regulation C3,
- (c) any additional contributions payable by virtue of regulation C5 or C9, and
- (d) any instalments payable under regulation C14(5),

and any amount not so deducted in any month is to be deducted from the employee's salary no later than 30th April next following the end of the financial year in which it ought to have been deducted.

(2) If and so far as deductions are not made under paragraph (1), any sum remaining due is to be paid by the employee to the Secretary of State on receipt of a written demand specifying the sum.

(3) If the sum is not paid within 6 weeks after the date of the demand, interest is payable on it at 4 per cent per annum, compounded with yearly rests, from the expiry of the 6 weeks to the date of payment.

(4) Without prejudice to any other means of recovery, any sum due to the Secretary of State under paragraph (2) or (3) may be recovered by deducting it from any benefits payable under Part E.

(5) Amounts due from a person under this Part which are not deductible under paragraph (1) are to be paid by him to the Secretary of State.

(6) If any amount to which paragraph (5) applies, except one due under regulation C8, C14 or C15, is not paid within 6 months after the end of the period to which it relates, but remains payable, interest is payable on it at 4 per cent per annum, compounded with yearly rests, from the expiry of the 6 months to the date of payment.

## **PART D**

### **RECKONABLE SERVICE**

#### **Reckonable service generally**

**D1.**—(1) Subject to regulation D2, a person is entitled to count as reckonable service—

- (a) subject to paragraph (2), any period spent by him in pensionable employment,
- (b) any period counting as reckonable service by virtue of regulations D3 to D6 or of regulation F5(7) (receipt of transfer value),
- (c) any period which does not count by virtue of sub-paragraph (a) or (b) but which immediately before 1st November 1988 counted as reckonable service under regulation 4(1) of the 1976 Regulations,

- (d) any period which immediately before 1st November 1988, under regulations 7 and 72(1) (a) of the 1976 Regulations (war service), was capable of counting as reckonable service for the purpose of calculating benefits under Part III of those Regulations, and
- (e) any period of specified country service.

(2) Where during a financial year a person has spent one or more periods in part-time pensionable employment the length at which each such period counts as reckonable service is—

$$365 \times \frac{A}{B}$$

where—

- A is the person's contributable salary for the period, and
- B is what his contributable salary for the whole of the financial year would have been if the employment had been full-time and had continued throughout the year.

- (3) For the purposes of paragraph (2)—
- (a) a period of part-time employment ends, and another such period begins, when any change occurs in the rate of the person's contributable salary,
  - (b) no account is to be taken of any reduction in contributable salary during a period of sick leave or maternity leave,
  - (c) if a half or any greater fraction of a day results it is to be taken as one day, and any smaller fraction resulting is to be left out, and
  - (d) if the calculation would result in more than 365 days' counting as reckonable service in respect of the financial year, the excess does not so count.

#### **Exclusion from reckonable service**

**D2.** The following do not count as reckonable service:

- (a) any contributions refund period, and
- (b) any period in respect of which a transfer value has been paid under regulation F1 or a cash equivalent has been paid,

and where a period related to war service counted by virtue of regulation 4(1)(d) or regulations 7 and 72(1)(a) of the 1976 Regulations, regulations D5 and D6 do not apply.

#### **Past period for which additional contributions have been paid**

**D3.—**(1) A person—

- (a) who has paid additional contributions for a past period in accordance with Part II or Part IV of Schedule 4, or
- (b) who has completed payment of additional contributions in accordance with Part I or Part III of Schedule 4, or with Schedule 5,

is entitled to count the past period as reckonable service.

(2) A person who has begun to pay additional contributions in accordance with Part I or Part III of Schedule 4, or has continued to pay them in accordance with Schedule 5, but who has not completed payment is entitled to count as reckonable service a period calculated in accordance with Schedule 7.

#### **Current period for which additional contributions have been paid**

**D4.** A person who has paid additional contributions for a current period in accordance with regulation C8 is entitled—

- (a) if he was in full-time pensionable employment immediately before the start of the period, to count as reckonable service the period in respect of which they were paid, or
- (b) if he was then in part-time pensionable employment, to count as reckonable service the proportion of the period that would have counted under regulation D1 if he had continued in that employment.

### **War service reckonable without receipt of a transfer value**

**D5.**—(1) If a claim has been made to the Secretary of State, this regulation applies where—

- (a) a person was entitled at the material time to count a period as reckonable service for the purposes of the 1976 Regulations or previous provisions by virtue of a period of service of a kind described in the first column of Part I of Schedule 8 (“qualifying service”), and
- (b) the condition specified opposite the qualifying service in the second column is satisfied.

(2) A claim made for the purposes of this regulation may be treated as ineffective if it is not supported by a certificate, given by or on behalf of the scheme managers of the pension scheme appropriate to the qualifying service, as to the satisfaction of the condition and as to the duration of the person’s war service.

(3) The material time is 1st April 1978, unless the person died before that date but after 31st August 1974 when it is the time of his death.

(4) Where this regulation would be capable of applying by virtue of more than one period of qualifying service it applies by virtue only of the first such period, and the others are to be disregarded.

(5) Subject to paragraphs (6) and (7), where this regulation applies the person is to be treated as having been entitled at the material time to count as reckonable service—

- (a) where the qualifying service is police or fire service or Northern Ireland police or fire service, a period equal to  $63\frac{2}{3}$  per cent of his war service, and
- (b) in any other case, a period equal to 47 per cent of his war service.

(6) Where the person died before 1st April 1978, paragraph (5) does not apply for the purpose of calculating any terminal payment or the rate before that date of any family benefits.

(7) Where paragraph (5) applies for the purpose of calculating a retirement lump sum, the period is to be treated as reckonable service before 1st October 1956.

(8) In this regulation “war service” has the meaning given, in relation to the qualifying service, in the third column of Part I of Schedule 8.

### **War service reckonable on receipt of additional transfer value**

**D6.**—(1) If a claim has been made to the Secretary of State, this regulation applies to a person—

- (a) who had war service within the meaning of a qualifying public service scheme (“war service”), and
- (b) who ceased to be in service or employment in which he was subject to that scheme at a time when he could not reckon service for the purposes of the scheme by virtue of his war service but could have done so had he continued in that service or employment, and
- (c) in respect of whom a transfer value became payable to the Secretary of State before 1st April 1978 which took account of that service or employment, and
- (d) who by virtue of that transfer value was on 1st April 1978 entitled to count reckonable service for the purposes of the 1976 Regulations, and
- (e) in respect of whom an appropriate additional transfer value has been accepted.

(2) The public service schemes are the Universities Superannuation Scheme and any occupational pension scheme established by or under an enactment or the Royal Prerogative or a Royal Charter—

- (a) all the particulars of which are set out in, or in a legislative instrument made under, an enactment, Royal Warrant or charter, or
- (b) which cannot come into force, or be amended, without the scheme or amendment being approved by a Minister of the Crown or government department,

and a qualifying public service scheme is one that does not fall within paragraph (3).

(3) The schemes that are not qualifying ones are—

- (a) the schemes referred to in the first column of Part I of Schedule 8, and
- (b) any Scottish or Northern Ireland teachers' scheme, that is to say—
  - (i) a scheme comprised in regulations extending to Scotland only from time to time in force under section 9 of the Superannuation Act 1972, the Teachers Superannuation (Scotland) Act 1968<sup>(15)</sup> or section 102 of the Education (Scotland) Act 1962<sup>(16)</sup> or comprised in a Teachers Superannuation Scheme (within the meaning of section 145(47) of the said Act of 1962) from time to time in force, or
  - (ii) a scheme comprised in, or in regulations or rules from time to time in force under, article 11 of the Superannuation (Northern Ireland) Order 1972<sup>(17)</sup> or the Teachers Superannuation Acts (Northern Ireland) 1950 to 1967<sup>(18)</sup> or a 1923 Act Scheme (within the meaning of the Teachers Superannuation Act (Northern Ireland) 1950<sup>(19)</sup>).

(4) An appropriate additional transfer value is, subject to paragraph (5), one paid under any qualifying public service scheme which—

- (a) is paid in pursuance of war service provisions which had effect while the person was alive, and
- (b) is calculated, by reference to his war service, in the same manner as an additional transfer value payable by the Secretary of State under regulation F2, and war service provisions are provisions analogous to those which were contained in regulations 2 to 7 of the Teachers' Superannuation (War Service, etc.) Regulations 1975<sup>(20)</sup>.

(5) Notwithstanding that it complies with paragraph (4), an additional transfer value is not an appropriate one if, after the end of his war service and before entering the service or employment in which he was subject to the qualifying public service scheme, the person was subject to another such scheme by virtue of which this regulation would be capable of applying to him.

(6) A person to whom this regulation applies is entitled to count as reckonable service, or as the case may be is to be treated as having been entitled to count as reckonable service for the purposes of the 1976 Regulations, a period of—

$$\frac{A}{B} \text{ years,}$$

where—

- A is the basic transfer value, and
- B is his adjusted pensionable emoluments.

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<sup>(15)</sup> 1968 c. 12; partially repealed with savings by section 29(4) of the Superannuation Act 1972 (c. 11).

<sup>(16)</sup> 1962 c. 47; sections 102 and 145(47) were repealed by the Education (Scotland) Act 1980 (c. 44), Schedule 5.

<sup>(17)</sup> S.I. 1972/1073 (N.I. 10).

<sup>(18)</sup> 1950 c. 33 (N.I.); 1951 c. 28 (N.I.) (in part); 1956 c. 22 (N.I.); 1963 c. 7 (N.I.); 1967 c. 3 (N.I.); partially repealed with savings by article 23 of the Superannuation (Northern Ireland) Order 1972 (S.I. 1972/1073 (N.I. 10)).

<sup>(19)</sup> 1950 c. 33 (N.I.).

<sup>(20)</sup> S.I. 1975/276, revoked by S.I. 1976/1987.

(7) The basic transfer value is the additional transfer value less the amount representing compound interest, and the adjusted pensionable emoluments are the pensionable emoluments by reference to which the additional transfer value was calculated multiplied by the age factor ascertained from the table in Part II of Schedule 8.

## 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.).

(3) Where this regulation applies and the person 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 36(6) of the Pensions Act(21), 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 36(7A) of the Pensions Act(22) 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 tax year 1988—89 and subsequent tax years.

(5) In paragraph (4) “earnings factors” means the earnings factors referred to in section 35 of the Pensions Act and “tax year” means a period of 12 months beginning with 6th April.

#### **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.

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(21) 1975 c. 60; section 36(6) was repealed in part by the Social Security Act 1986 (c. 50), Schedule 11.

(22) Section 36(7A) was inserted by the Social Security Act 1986, section 9(3)(c).

### **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, or
  - (b) an appropriate qualifying period has been completed.
- (2) A qualifying period, which may be discontinuous, comprises—
- (a) where paragraph (3) or (4) applies, every period of a kind described in Part I of Schedule 9, or
  - (b) where paragraph (5) applies, every period of a kind described in Schedule 9,
- excluding, in either case, any contributions refund period.
- (3) If the person was in pensionable employment, or paying contributions for a current period under regulation C8, on 6th April 1988, any qualifying period of 2 years is an appropriate one.
- (4) If paragraph (3) does not apply but the person has subsequently entered pensionable employment, a qualifying period of 2 years beginning after 5th April 1988 is an appropriate one; and any period of the kind described in paragraph 4 of Schedule 9 (transfer value received) is to be treated for the purposes of this paragraph as having begun after 5th April 1988.
- (5) If neither paragraph (3) nor paragraph (4) applies, any qualifying period of 5 years is an appropriate one.
- (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 E31(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, C or D.
- (3) In Case B the person—
- (a) has attained the age of 60,
  - (b) is in employment falling within paragraph 5, 6, 7 or 8 of Schedule 9, and
  - (c) has elected under regulation E29(3) that his salary in the employment is not to count in calculating his average salary.
- (4) In Case C the person—
- (a) has attained the age of 60, and

- (b) has ceased to be in employment falling within paragraph 5, 6, 7 or 8 of Schedule 9.
- (5) In Case D the person—
  - (a) has attained the age of 70, and
  - (b) is in an employment which would be pensionable employment but for regulation B5(1)(a).
- (6) In Case E the person—
  - (a) has not attained the age of 60,
  - (b) has ceased after 31st March 1972 to be in pensionable employment,
  - (c) has become incapacitated, and
  - (d) is not within Case F.
- (7) In Case F the person—
  - (a) has not attained the age of 60,
  - (b) has attained the age of 50,
  - (c) has ceased after attaining that age to be in pensionable employment, and
  - (d) is not within Case E,
 and his employer has notified the Secretary of State in writing that his pensionable employment was terminated by reason of his redundancy or in the interests of the efficient discharge of the employer's functions.
- (8) In Cases A to D the entitlement takes effect as soon as the person falls within the Case.
- (9) In Case E the entitlement takes effect—
  - (a) as soon as the person falls within the Case, or
  - (b) if later, 6 months before the date of the last of any medical reports considered by the Secretary of State in determining under regulation H7 that the person had become incapacitated.
- (10) In Case F the entitlement takes effect as from the day after the end of the pensionable employment.

### **Amount of retirement pension**

**E5.**—(1) Subject to paragraphs (2) to (4) 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 purchased by additional contributions), and
  - (b) by reason of regulation E30(4) 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) If—
  - (a) the person has a guaranteed minimum, 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),



the annual rate of his retirement pension is A.

(4) 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 paragraph (2) and regulations E7 and E8, the amount of a person's retirement lump sum is  $(A \times B) + (C \times (D + E))$ , where—

A is 1/30th of his average salary,

B is his effective reckonable service before 1st October 1956 (except any falling within E),

C is 3/80ths of his average salary,

D is his effective reckonable service after 30th September 1956 (except any falling within E), and

E is any period which he is entitled to count as reckonable service by virtue of regulation D3.

(2) If—

(a) the person's reckonable service includes service before 1st October 1956, and

(b) his effective reckonable service is restricted by regulation E30(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  $1\frac{1}{2}$ .

### **Limitation of retirement benefits where salary reduced**

**E7.**—(1) This regulation applies to a person who has made an election under regulation C1(6) (reduced salary treated as having continued at previous rate) and whose average salary falls to be calculated by reference to the notional rate.

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

**TABLE**

Relevant age	Fraction
Under 50	$\frac{1}{2}$
50	#
51	$\frac{3}{10}$
52	#
53	$\frac{1}{10}$
54	$\frac{1}{14}$

(3) Where the person has been in pensionable employment for less than 20 years, his retirement lump sum is not to exceed  $8\frac{1}{3}$  of the appropriate sum multiplied by the total of his reckonable service and the period ascertained, by reference to the length of time he has been in pensionable employment, from the Table below.

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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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**TABLE**

Years in pensionable employment	Period in years
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 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) ½rd of his aggregate contributable salary for his best 3 consecutive years in pensionable employment within the 10 years ending with its cessation,

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

#### **Enhancement of 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(6) 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 Part I of Schedule 9 totalling at least 5 years, excluding any contributions refund period, and
- (b) the application for payment required by regulation E31 is made within 6 months after the end of his pensionable employment.

(2) Subject to regulation E30(2) (limitation of effective reckonable service to 45 years, etc.), for the purpose of calculating his 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 his 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 his relevant service falls short of 40 years,
  - (b) the period beginning when his pensionable employment ended and ending immediately before his 60th birthday, and
  - (c) 6 years and 243 days.
- (6) Period B is so much of the period beginning when his pensionable employment ended and ending immediately before his 65th birthday as would not cause his effective reckonable service to be increased to more than 20 years.
- (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 purchased by additional contributions), or
  - (b) by virtue of the application to him of regulation 7 of the 1976 Regulations (war service).

#### **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 raised by a rate ("the double period").

(2) This regulation does not apply where the other pension is subject to reduction under regulation E14 of the Local Government Superannuation Regulations 1986(23).

(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 contributions paid by the person 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 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.

#### **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.

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(23) [S.I. 1986/24](#), to which there are amendments not relevant to this regulation.

### **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(6) (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 a spouse are both alive, and if the spouse is the survivor a subsequent annuity for life, at twice the rate of the first annuity, for the spouse.

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

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

(5) Further provisions as to allocations under this regulation are contained in Schedule 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(6) ceases to be incapacitated.

(2) On his 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 E31(2) (application for payment), the pension becomes payable again—

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

(4) Paragraph (3) does not apply if he 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 he 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 his having made an election under regulation B6 or attained the age of 70, or
- (b) in part-time employment described in regulation B2(1)(a), (b), (c) or (e), except employment in a capacity described in paragraph 14 or 16 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 in respect of employment falling within paragraph (1)(a), 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, 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(24),

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,

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 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) For any pension quarter in which this regulation applies in respect of an employment falling within paragraph (1)(b), the pension is reduced—

- (a) If

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

equals or exceeds

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

, to zero, and

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

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

does not exceed

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

where B, C, D and E are the same as in paragraph (3), and F is the annual rate of the person's remuneration in the employment on the first day of the pension quarter.

(5) The pension quarters are—

- (a) where the pension is paid on the last day of a month but not because the anniversary of the person's birth falls on the first day of a month, the periods of 3 months beginning on 1st January, 1st April, 1st July and 1st October, and

- (b) in any other case, the periods of 3 months beginning on that anniversary and 3, 6 and 9 months after it.

### **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 (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, he—

- (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 he ceased to be in the further employment before attaining the age of 60 and neither regulation E4(6) (incapacity) nor regulation E4(7) (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.

### **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 (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 C11 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

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

where—

- A is his 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 he is entitled.

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

### **Deferment, etc., of benefits**

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

- (a) an offence of treason, or
- (b) one or more offences under the Official Secrets Acts 1911 to 1939<sup>(25)</sup> 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 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,

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(25) 1911 c. 28; 1920 c. 75; 1939 c. 121.

as he may determine.

(3) If—

- (a) the person has a guaranteed minimum in relation to benefits under these Regulations, and
- (b) the case does not fall within paragraph (1)(a) or (b),

a determination under paragraph (2) may not deprive him of his guaranteed minimum pension after he attains state pensionable age.

### **Death grants**

**E19.**—(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 C8, 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 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) 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 he 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 grant under paragraph (3) is the amount that would have become payable by way of retirement lump sum if he 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 E25 to a surviving spouse or a nominated beneficiary,

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



(7) Any death grant under this regulation may be paid to the deceased's widow or widower or, if there is no widow or widower, to the personal representatives.

### **Supplementary death grants**

**E20.**—(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 his 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 may be paid.

(3) If—

- (a) less than 10 years' reckonable service was taken into account in calculating his retirement benefits, and
- (b) the amount paid in respect of his 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 may be paid.

(4) For the purposes of this regulation—

- (a) any amount by which a pension was reduced under regulation E9 (avoidance of duplicate pensions) or E14 (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.

(5) This regulation does not apply if—

- (a) the person'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 E3, or
- (b) his average salary service for the purposes of regulation E29 included a period of a kind described in paragraphs 5 to 8 of Schedule 9.

(6) Any death grant under this regulation may be paid to the deceased's widow or widower or, if there is no widow or widower, to the personal representatives.

### **Family benefits generally**

**E21.**—(1) Pensions are payable in accordance with regulations E23 to E28 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 in the case of a person who has not been in pensionable employment, or paying additional contributions for a current period under regulation C8, at any time after 5th April 1978, such references, and references to a widow or to a widower, do not include references to a man or woman married by that person after his last day in pensionable employment or, as the case may be, the end of the period for which any such contributions were paid.

(3) 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.

- (4) 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 (5) to (7).
- (5) Subject to paragraphs (6) and (7), for the purposes of regulations E22 to E28 a person is a child while he is unmarried and—
- (a) he has not attained the age of 17, or
  - (b) having attained that age, he is receiving full-time education or attending a course of not less than 2 years' full-time training for a trade, profession or calling, or
  - (c) having ceased while incapacitated to fall within sub-paragraph (a) or (b), he continues to be incapacitated.
- (6) For the purposes of paragraph (5)(b)—
- (a) a person is to be treated as receiving full-time education up to (but not including) 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.
- (7) Disqualifying remuneration is remuneration at a rate not less than the annual rate at which an official pension, within the meaning of the Pensions (Increase) Act 1971<sup>(26)</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.
- (8) References in regulations E23 to E28 to a nominated beneficiary are to a person nominated under regulation E22.

### **Nomination of beneficiaries**

**E22.**—(1) Subject to paragraph (2), an unmarried person (“the appointor”) may at any time while in pensionable employment, by giving written notice to the Secretary of State, nominate an eligible person who is wholly or mainly financially dependent on the appointor and who is not a child to receive a pension under regulations E23 to E28.

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

(3) The eligible persons are—

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

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

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

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

**E23.**—(1) Subject to paragraph (3), a short-term pension is payable, from the day after that of his death, if a person dies—

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(26) 1971 c. 56.

- (a) while in pensionable employment, or
  - (b) during a period for which he is paying additional contributions under regulation C8, or
  - (c) within 12 months after ceasing to be in pensionable employment, or to pay such contributions, 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 (3)(a), to any surviving spouse, or
  - (b) if a nomination under regulation E22 had effect at the time of his death, to the nominated beneficiary, or
  - (c) if there is no surviving spouse or nominated beneficiary and the deceased is survived by a child or children of his, to or for the benefit of the child or, as the case may be, the children jointly.
- (3) No short-term pension is payable—
- (a) to a widower if one is payable to another person as a nominated beneficiary, or
  - (b) if there is no surviving spouse, nominated beneficiary or surviving child, or
  - (c) where paragraph (1)(d) applies, to a person who is not entitled under regulation E25 to a long-term pension.

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

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

- (a) if regulation E23(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 E23(1)(b) applies, is the annual rate, at the time of his death, of the notional salary described in regulation C8(7),
- (c) if regulation E23(1)(d) applies, is the annual rate, at the time of his death, of his retirement pension, and
- (d) if regulation E23(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 E25,

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

(3) Subject to paragraphs (4) and (5), a short-term pension is to be paid for 3 months.

(4) If—

- (a) either—
  - (i) no long-term pension is payable under regulation E25, or
  - (ii) less than 2 years' service counts in the calculation of a pension payable under that regulation, and
- (b) the deceased is survived by a child or children of his, and

- (c) the short-term pension is payable to a surviving spouse, or to a nominated beneficiary who has the care of the child or children,

the short-term pension is to be paid for 4½ months if there is one child and for 6 months if there are 2 or more children.

(5) If the short-term pension is payable to or for the benefit of one child, it is to be paid for 2 months; if it is payable to or for the benefit of 2 or more children, it is to be paid for 4 months.

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

**E25.**—(1) Long-term pensions are payable in accordance with paragraph (5) if a person 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 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) Relevant service does not include any contributions refund period.

(3) 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 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,
- (c) any period for which additional contributions have been paid under regulation C3 or C5(1) in accordance with an election made after 31st March 1974,
- (d) if a transfer value has been received in respect of comparable British service, the period that would, immediately before its receipt, have counted for family benefits in the relevant superannuation scheme,
- (e) any period counting as reckonable service by virtue of the receipt of any other transfer value under regulation F5 or under the Teachers' Superannuation (Added Years and Interchange) Regulations 1974(27),
- (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(28) 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 and any additional period, and in addition any period that fell to be calculated in accordance with paragraph 7(3) of Schedule 6.

(4) In relation to a widower who is not a nominated beneficiary and is not a person on whose marriage to the deceased a nomination ceased to have effect, the deceased's relevant service comprises, subject to paragraph (2)—

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(27) S.I. 1974/260, revoked by S.I. 1976/1987.

(28) S.I. 1979/47.

- (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, and
  - (b) any period for which additional contributions have been paid under regulation C3 in accordance with an election made after 31st May 1988, and
  - (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, any period falling within paragraph (3)(e).
- (5) If paragraph (1) applies—
- (a) subject to paragraph (6) a long-term pension is payable to any surviving spouse,
  - (b) if a nomination under regulation E22 had effect at the time of the death, a long-term pension is payable to the nominated beneficiary, and
  - (c) if a pension is payable under sub-paragraph (a) or (b) and the deceased is survived by a child or children of his, a long-term pension is payable to or for the benefit of the child or, as the case may be, the children jointly.
- (6) Subject to paragraph (8), no long-term pension is payable to a widower if one is payable to another person as a nominated beneficiary.
- (7) If when a person dies paragraph (5) does not apply but he—
- (a) has been in pensionable employment at any time after 31st March 1972, and
  - (b) is qualified for 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.
- (8) Subject to paragraph (9), if neither paragraph (5) nor paragraph (7) 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.
- (9) If a contributions equivalent premium is paid by the Secretary of State, paragraph (8) is to be treated as not having applied.
- (10) Notwithstanding anything in paragraphs (1) to (7), only one pension is payable to or for the benefit of a child or children at any one time; and where more than one such pension would otherwise be payable the one to be paid is the largest of them.

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

**E26.**—(1) Subject to paragraph (2), the annual rate of a pension payable under regulation E25 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 has 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) and (5) to (8), 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 E25(3)(a) to (h),
  - (b) in the case of a member, his credited service and any period that fell to be calculated in accordance with paragraph 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 C7(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 #th of the excess.
- (6) This paragraph applies if the deceased died—
- (a) while in pensionable employment, or
  - (b) during a period for which he was paying additional contributions under regulation C8, 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 (incapacity).
- (7) If paragraph (6) applies and the family benefit service calculated in accordance with paragraphs (3) to (5) is less than his effective reckonable service, his family benefit service is increased by—

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

where—

A is the family benefit service calculated in accordance with paragraphs (3) to (5),

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.

- (8) If paragraph (6) applies and A is not less than B, his family benefit service is increased by C.
- (9) If the deceased had been in pensionable employment after 5th April 1978 and the pension is payable to a woman whom he first married after his last day in pensionable employment, his family benefit service comprises, subject to paragraph (3)—
- (a) any period of pensionable employment after 5th April 1978,
  - (b) any period for which additional contributions have been paid under regulation C3 in accordance with an election made after that date,
  - (c) any period beginning after that date for which additional contributions have been paid under regulation C8,
  - (d) if a transfer value has been received after that date in respect of comparable British service, any period of reckonable service attributable to comparable British service after that date,
  - (e) any period counting as reckonable service by virtue of the receipt after that date of any other transfer value, and
  - (f) so much of any period counting as reckonable service by virtue of an election under regulation 4 of the Teachers' Superannuation (Policy Schemes) Regulations 1979(29) as is attributable to service after that date.

(10) If the pension is payable to a widower who is not a nominated beneficiary and is not a person on whose marriage to the deceased a nomination ceased to have effect, the deceased's family benefit service comprises, subject to paragraph (3), the relevant service described in regulation E25(4).

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

**E27.**—(1) Subject to paragraphs (3) to (6), if long-term pensions become payable under regulation E25—

- (a) to a surviving spouse or a nominated beneficiary (an "adult pension"), and
- (b) to or for the benefit of a child or children (a "children's pension"),

the annual rate of the children's pension is the appropriate fraction of the deceased's 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 E26(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 1/320th of his average salary multiplied by the length of the notional family benefit service, and

B is 1/320th 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 E26(6) 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 1/120th, and
- (b) while a children's pension is payable to or for the benefit of one child, is 1/240th.

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

**E28.**—(1) A pension under regulation E25 payable to a surviving spouse or a nominated beneficiary (“an adult pension”) is to be paid—

- (a) from the day on which any short-term pension that became so payable under regulation E23 ceases to be payable, or
- (b) if no short term pension became payable, from the day after that of the death.

(2) Subject to paragraph (3), an adult pension 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 E25 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 E23 ceases to be payable, or
- (b) if no short-term pension became payable, from the day after that of the death.

(5) A children's pension ceases to be payable to a person or for his benefit when he ceases to be a child.

### **Average salary**

**E29.**—(1) Subject to paragraph (9), 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) Average salary service comprises—

- (a) any period counting as reckonable service by virtue of regulation D1(1)(a) (pensionable employment), and
- (b) any period counting as reckonable service by virtue of regulations D1(1)(b) and D4 (current period purchased by additional contributions), and
- (c) subject to paragraph (3), any period of a kind described in paragraphs 5 to 8 of Schedule 9 (certain periods of employment counting towards qualification for benefits), and
- (d) 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 received.

(3) A person who is in an employment falling within paragraphs 5 to 8 of Schedule 9 may, by giving written notice to the Secretary of State, elect that from the date from which the election takes effect the employment is not to constitute average salary service.

(4) An election under paragraph (3)—

- (a) if the notice is received before the person attains the age of 60, takes effect from his 60th birthday, and



- (b) in any other case, takes effect from the first day of the month following that in which the notice was received.
- (5) The material part of a person's average salary service is—
  - (a) where he has less than 3 years of such service, the whole of it, or
  - (b) in any other case, the last 3 years of it.
- (6) Subject to paragraphs (7) and (8), a person's full salary—
  - (a) for a period falling within paragraph (2)(a), is his contributable salary for the period of pensionable employment, disregarding any reduction during sick leave or maternity leave,
  - (b) for a period falling within paragraph (2)(b), is the notional salary by reference to which the additional contributions paid under regulation C8 were calculated, and
  - (c) for a period falling within paragraph (2)(c) or (d), is what would have been his salary for the purpose of calculating benefits under the superannuation scheme to which he was subject in the relevant employment.
- (7) For—
  - (a) a period of pensionable employment, or
  - (b) a period counting as reckonable service by virtue of regulations D1(1)(b) and D4,beginning after 31st July 1975 and ending before 1st August 1978, a person's full salary includes any sums that would have been payable to him if payment of them had not been withheld, whether by virtue of an enactment or otherwise, in order to comply with limits referred to in section 1 of the Remuneration, Charges and Grants Act 1975(30).
- (8) For—
  - (a) a period of pensionable employment, or
  - (b) a period counting as reckonable service by virtue of regulations D1(1)(b) and D4,beginning after 31st March 1979 and ending before 1st September 1980, a person's full salary is the notional salary resulting from the application to him of the Teachers' Superannuation (Notional Salaries) Regulations 1981(31).
- (9) In the case of a person to whom the Teachers' Pay and Conditions Act 1987(32) ("the 1987 Act") does not apply, an increase of salary the main object, or one of the main objects, of which was to increase his average salary (and accordingly his retirement benefits) is to be treated as having increased his average salary by no more than the amount by which it would have been increased if the increase of salary had been a standard one.
- (10) A standard increase of salary is one which would, in the circumstances, have occurred if the 1987 Act had applied to the person.

### Effective reckonable service

- E30.**—(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 E25.
- (2) Subject to paragraph (3), effective reckonable service does not include—
    - (a) any reckonable service in excess of 45 years, or
    - (b) any reckonable service in excess of 40 years before attaining the age of 60.

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(30) 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.

(31) S.I. 1981/934.

(32) 1987 c. 1.

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

- (a) any reckonable service excluded by paragraph (2)(a) is to be taken from the beginning of his reckonable service, and
- (b) paragraph (2)(b) does not apply.

(4) In 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 receipt 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>(33)</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 purchased by additional contributions) as exceeds the maximum ascertained from the Table below.

**TABLE**

Relevant service in years	Maximum
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

(5) For the purposes of paragraph (4) a person who becomes entitled to payment of retirement benefits by virtue of regulation E4(6) or (7) (incapacity or redundancy before attaining the age of 60) is to be treated as having continued in pensionable employment up to that age.

(6) 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>(34)</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

**E31.**—(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.

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<sup>(33)</sup> S.I. 1979/47.

<sup>(34)</sup> 1937 c. 68; section 17 was repealed, with savings, by the Superannuation Act 1972 (c. 11), section 29 and Schedule 8.

(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 birth date of the person entitled to payment.

(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 a day other than the date 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 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 day before the next due date, 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(35) (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.

### **Benefits not assignable**

**E32.**—(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) 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 156 of the Insolvency Act 1985<sup>(36)</sup>.

## PART F

### TRANSFER VALUES

#### Payment of transfer values

**F1.**—(1) Subject to paragraphs (2) to (7), a transfer value is to be paid in respect of a person who has ceased to be in pensionable employment and has become subject to an approved superannuation scheme or, if he ceased to be in pensionable employment after 31st December 1985, a personal pension scheme (“the receiving scheme”).

(2) The person must have made a written application to the Secretary of State, within 12 months after the day on which he became subject to the receiving scheme, for the transfer value to be paid.

(3) A transfer value is not to be paid if one was paid before 1st November 1988 in relation to the same transfer.

(4) A transfer value is not to be paid in respect of a person who, when the application was received, had become entitled under regulation E4 to payment of retirement benefits or under regulation E16 or E17 to a short service annuity or incapacity grant, unless the employment in which he has become subject to the receiving scheme is comparable British service and he entered it—

- (a) immediately after ceasing to be in pensionable employment, or
- (b) on or before his 60th birthday,

and has not applied for payment of any benefit.

(5) A transfer value is not to be paid if the receiving scheme is an approved superannuation scheme which is administered wholly or primarily in the United Kingdom and is not a contracted-out scheme, unless the person—

- (a) has been in pensionable employment for less than 2 years or is not qualified for retirement benefits, or
- (b) ceased to be in pensionable employment before 6th April 1978, or
- (c) is a married woman or widow who, by virtue of an election made or treated as made under regulations under section 3 of the Pensions Act, either is liable to pay primary Class 1 contributions or Class 2 contributions at a reduced rate or is under no liability to pay Class 2 contributions.

(6) A transfer value is not to be paid if the person has acquired a right to a cash equivalent, unless—

- (a) the service to which the cash equivalent relates includes service before 1st September 1988, and
- (b) the right has been exercised by requiring the whole of the cash equivalent to be paid to the scheme managers of an approved superannuation scheme which is not a club scheme.

(7) A transfer value is not to be paid if the person—

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(36) 1985 c. 65.

- (a) has acquired a right to a part cash equivalent, and
- (b) would on taking that right remain qualified for retirement benefits.

### **Payment of additional transfer values in respect of war service**

**F2.**—(1) Subject to paragraph (2), this regulation applies to a person—

- (a) to whom regulation 7 (war service) of the 1976 Regulations applied,
- (b) who was alive on 1st September 1974,
- (c) who last ceased to be in pensionable employment before that date,
- (d) in respect of whom a transfer value became payable, by reason of that cessation, to the scheme managers of a qualifying public service scheme (“the new scheme”), and
- (e) who by virtue of that transfer value was on 1st April 1978 entitled to reckon service for the purposes of the new scheme.

(2) This regulation does not apply if, after the end of his war service and before entering pensionable employment, the person was in service or employment in which he was subject to a superannuation scheme and in consequence of which he is, or is likely to become, entitled to reckon service for superannuation purposes by reason of war service.

(3) Subject to paragraph (4), if this regulation applies to a person an additional transfer value is to be paid in respect of him to the scheme managers of the new scheme.

(4) The scheme managers must have applied to the Secretary of State for the additional transfer value to be paid, and have certified to him—

- (a) that the person was alive on 1st September 1974,
- (b) that on payment of the additional transfer value he will be entitled to reckon service for the purposes of the new scheme by virtue of the war service by virtue of which regulation 7 of the 1976 Regulations applied to him, and
- (c) the amount of his pensionable emoluments for the purpose of calculating the additional transfer value.

### **Amounts of transfer values and additional transfer values**

**F3.**—(1) Part I of Schedule 12 has effect, subject to paragraphs (2) and (3), for determining the amounts of transfer values payable under regulation F1.

(2) Unless the receiving scheme is a club scheme, where—

- (a) the person in respect of whom a transfer value is payable had become entitled to count reckonable service under regulation F5(7) (receipt of transfer value), and
- (b) the amount determined in accordance with Part I of Schedule 12, together with that of any cash equivalent paid on the transfer, is less than the appropriate amount,

a transfer value of the appropriate amount is to be paid.

(3) The appropriate amount is  $A+B-C$ , where—

A is the transfer value received under regulation F5,

B is the total of the contributions paid by the person under Part C, except any that fell to be treated for the purposes of regulation G2 as employer’s contributions, and

C is any cash equivalent paid on the transfer.

(4) The amount of an additional transfer value payable under regulation F2 is to be calculated in accordance with Part II of Schedule 12.

### **Termination of right to count reckonable service**

**F4.** A person—

- (a) in respect of whom a transfer value has been paid under regulation F1, or
- (b) who has acquired a right to a cash equivalent and exercised the option to take that right,

ceases to be entitled to count as reckonable service, or as part of a qualifying period within the meaning of regulation E3, any period to which the transfer value or cash equivalent related.

### **Receipt of transfer values**

**F5.**—(1) Subject to paragraphs (2) to (6), a transfer value offered to the Secretary of State by the scheme managers of an approved superannuation scheme or personal pension scheme (“the previous scheme”) in respect of a person who has entered pensionable employment may be accepted.

(2) The person must have made a written request to the Secretary of State for the transfer value to be accepted.

(3) Unless the employment in which the person was subject to the previous scheme was comparable British service, the request must have been made within 12 months after the day on which he entered pensionable employment.

(4) A transfer value is not to be accepted if one was accepted before 1st November 1988 in relation to the same transfer.

(5) Subject to paragraph (6), a transfer value is not to be accepted if—

- (a) before the end of the employment in which he was subject to the previous scheme the person became entitled under regulation E4 to payment of retirement benefits, or
- (b) he has become entitled to payment of benefits under a provision of a statutory scheme corresponding to regulation E4.

(6) Paragraph (5) does not apply if the employment in which he was subject to the previous scheme was comparable British service and he entered pensionable employment—

- (a) immediately after the end of the employment, or
- (b) on or before his 60th birthday.

(7) A person in respect of whom a transfer value has been accepted is entitled to count reckonable service in accordance with Part III of Schedule 12.

## **PART G**

### **FINANCE**

#### **Teachers' superannuation account**

**G1.** Subject to the transitional provisions in Part I of Schedule 13, an account substantially in the form set out in Part II of Schedule 13 is to be prepared by the Secretary of State for every financial year.

#### **Receipts, etc., to be credited**

**G2.**—(1) Employees' and employers' contributions received during the financial year are to be credited to the account.

(2) Employees' contributions comprise—

- (a) all contributions payable under regulations C2(1), C3, C4, C5, C7 and C9,

- (b) so much of the contributions payable by services education officers under regulation C2(2) as falls within regulation C2(2)(a),
  - (c) so much of any additional contributions payable under regulation C8 as would have been payable under regulation C2(1) if pensionable employments had continued, and
  - (d) all amounts payable under regulations C14 and C15 (return of repaid contributions).
- (3) Employers' contributions comprise—
- (a) the contributions payable under regulation G5,
  - (b) so much of the contributions payable by services education officers under regulation C2(2) as falls within regulation C2(2)(b), and
  - (c) so much of any additional contributions payable under regulation C8 as would have been payable under regulation G5 if pensionable employments had continued.
- (4) There are also to be credited to the account—
- (a) the closing balance in the account for the preceding financial year,
  - (b) all transfer values under regulation F5 and additional transfer values under regulation D6 (war service) received during the financial year,
  - (c) all contributions equivalent premiums refunded, or recovered under section 47 of the Pensions Act(37), during the financial year,
  - (d) any interest and other payments under these Regulations received during the financial year, and
  - (e) the notional interest for the financial year described in Part III of Schedule 13.

### **Payments to be debited**

- G3.** There are to be debited to the account all sums paid during the financial year by way of—
- (a) benefits under Part E, so far as not attributable to service before 1st June 1922,
  - (b) payments under paragraph 12 of Schedule 10 (equivalent pension benefits),
  - (c) repayment of contributions (including interest) under regulations C10 and C12,
  - (d) transfer values under regulation F1 and additional transfer values under regulation F2 (war service), and
  - (e) contributions equivalent premiums.

### **Actuarial inquiries**

**G4.**—(1) The Government Actuary is to make an actuarial inquiry at the end of the financial year ending with 31st March 1991 and at the end of every fifth subsequent financial year.

(2) A report on the inquiry is to be made to the Secretary of State and is to be laid by him before each House of Parliament.

(3) The report is to specify the percentage of the contributable salaries of persons entering pensionable employment on the first day of the next financial year at which contributions should be paid, during the period beginning on 1st April next following the date of the report and ending with 31st March next following the date of the next report (“the relevant period”), so as to defray the cost of the payments of the kinds described in regulation G3(a) to (e) that are likely to be made in respect of them.

(4) The report is to state the amount by which, at the end of the financial year, the amount of the scheme assets exceeded or fell short of that of the scheme liabilities.

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(37) 1975 c. 60; section 47 was amended by the Social Security Act 1985 (c. 53), Schedule 5, paragraphs 29 and 30.

(5) The scheme assets are—

- (a) the employees' contributions receivable after the end of the financial year in respect of persons who at the end of that year were or had been in pensionable employment,
- (b) the employers' contributions in respect of such persons receivable after the end of the financial year, except any such supplementary contributions as are mentioned in paragraph (7),
- (c) payments that would fall to be credited under regulation G2(4)(d) and (e) to the accounts for subsequent financial years, and
- (d) the actuarial value at the end of the financial year of the notional and assumed investments described in paragraph 5 of Schedule 13.

(6) The scheme liabilities are the payments to be made under these Regulations after the end of the financial year in respect of persons who at the end of that year were or had been in pensionable employment, except payments attributable to service before 1st June 1922.

(7) If the report states that the amount of the scheme liabilities exceeded that of the scheme assets, it is to specify a rate at which, during the relevant period, supplementary contributions should be paid by employers of persons in pensionable employment so as to remove the deficiency within the period of 40 years beginning at the same time as the relevant period.

(8) The rate is to be expressed as a percentage of the contributable salaries from time to time of persons in pensionable employment; the percentage must either be or be a multiple of 0.25.

(9) In this regulation “employees' contributions” and “employers' contributions” are to be construed in accordance with regulation G2(2) and (3).

### **Employers' contributions**

**G5.**—(1) Subject to paragraph (3), the employer of a person in pensionable employment, other than a services education officer, is during every relevant period to pay contributions of the required percentage of his contributable salary for the time being.

(2) The required percentage is  $(A-6)+B$ , where—

- A is the percentage specified for the relevant period under regulation G4(3), and
- B is any percentage specified for the relevant period under regulation G4(7) and (8).

(3) No contributions are to be paid in respect of anyone to whom regulation E30(2)(a) (restriction of reckonable service to 45 years) has become applicable.

(4) For the purposes of this regulation—

- (a) a local education authority is deemed to be the employer of every person employed in or in connection with a school maintained by it, and
- (b) “relevant period” is to be construed in accordance with regulation G4(3).

### **Payment by employers to Secretary of State**

**G6.**—(1) The employer of a person in pensionable employment is to pay to the Secretary of State, within 14 days after the end of each month—

- (a) all amounts due from the person that are deductible from his salary under regulation C16(1), and
- (b) the contributions payable under regulation G5,

in respect of his contributable salary for that month.

(2) For the purposes of paragraph (1)—



- (a) all salaries are to be treated as being payable monthly in arrear, and
  - (b) any arrears payable by reason of a retrospective increase in contributable salary are to be treated as having become payable in the month in which they were paid.
- (3) If the full amount of any payment required by paragraph (1) is not received by the Secretary of State within 14 days after the end of the month interest is payable by the employer on the amount outstanding at 12 per cent per annum, compounded with monthly rests, from the 15th day to the date of payment; but the Secretary of State may in any particular case waive the payment of interest.

## PART H

### MISCELLANEOUS AND SUPPLEMENTAL

#### **Modified application in case of employment at reduced salary**

**H1.**—(1) If—

- (a) a person who has been in pensionable employment either—
  - (i) continues to be employed, or
  - (ii) ceases to be employed and is re-employed within 6 months, by the same employer at a reduced rate of contributable salary, and
- (b) he does not elect under regulation C1(6) that his contributable salary is to be treated as having continued at the previous rate, and
- (c) his employer notifies the Secretary of State in writing, within 13 weeks after the first day of his employment at the reduced rate, that his employment at that rate is in the interests of the efficient discharge of the employer's functions, and
- (d) the application to him of this paragraph would, taking into account prospective increases under the Pensions (Increase) Act 1971(38) of benefits under Part E, be beneficial,

these Regulations have effect in relation to him with the modifications set out in Part II of Schedule 10.

(2) For the purposes of paragraph (1)—

- (a) the contributable salary of a person in part-time employment is to be taken to be what it would have been if the employment had been full-time, and
- (b) a local education authority and the governors of the schools maintained by it are to be taken to be the same employer,

but where the employers at the previous rate and at the reduced rate were in fact different, the former is the employer for the purposes of notification under paragraph (1)(c).

(3) A second or subsequent application of paragraph (1) does not affect its previous operation.

#### **Modified application in certain other cases**

**H2.**—(1) In relation to a person who made an election under regulation 4 of the Teachers' Superannuation (Policy Schemes) Regulations 1979(39) these Regulations have effect with the modifications set out in Part III of Schedule 10.

(2) In relation to a person with admitted service these Regulations have effect with the modifications set out in Part IV of Schedule 10.

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(38) 1971 c. 56.

(39) S.I. 1979/47.

(3) In relation to a person with specified country service these Regulations have effect with the modifications set out in Part V of Schedule 10.

(4) Part VI of Schedule 10 has effect for enabling certain persons in pensionable employment to secure that these Regulations have effect in relation to them as if a period of service before 1st April 1945 had been a period of pensionable employment.

### Records and information

**H3.**—(1) The employer of a person in pensionable employment is to record for each financial year—

- (a) the rate of the person’s salary,
- (b) the amount of his contributable salary,
- (c) any money value forming part of his contributable salary by virtue of regulation C1(1)(b) (accommodation and related services),
- (d) the contributions deducted under regulation C16(1),
- (e) the period during which he was in pensionable employment, and
- (f) the dates of any absence on sick leave or maternity leave, and the amount of salary paid during it.

(2) Employers are, within such reasonable time as he may require, to make to the Secretary of State such reports and returns, and to give him such information about persons who are or have been in pensionable employment, as he may reasonably require for the purposes of his functions under these Regulations; and such persons, and their personal representatives, are to give him such information and to produce such documents as he may reasonably require for those purposes.

### Payments in respect of deceased persons

**H4.**—(1) This regulation applies where a person dies and the total of—

- (a) any sums that were due to him under these Regulations, and
- (b) any sums payable under these Regulations to his personal representatives,

(“the amount due”) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965<sup>(40)</sup> and applying in relation to the death.

(2) Where this regulation applies the Secretary of State may, without requiring the production of probate or other proof of title, pay the amount due—

- (a) to the personal representatives, or
- (b) to the person, or to or among any one or more of any persons, appearing to him to be beneficially entitled to the estate.

### Revaluation of guaranteed minimum in certain cases

**H5.**—(1) This regulation applies where a person has ceased to be in pensionable employment and has taken a right to a cash equivalent by exercising the option conferred by paragraph 13(2) of Schedule 1A to the Pensions Act<sup>(41)</sup> wholly or partly in the way specified in paragraph 13(2)(b) (purchase of annuity).

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<sup>(40)</sup> 1965 c. 32; the amount specified in S.I. 1984/539 is £5,000.

<sup>(41)</sup> 1975 c. 60; Schedule 1A was inserted by the Social Security Act 1985 (c. 53), Schedule 1, paragraph 3, and amended by the Social Security Act 1986 (c. 50), Schedule 10, paragraphs 29 and 30.

(2) Where this regulation applies, to the extent that the person's guaranteed minimum is otherwise appropriately secured within the meaning of section 52C(4) of the Pensions Act<sup>(42)</sup>—

(a) for the purposes of section 35(2) of that Act (amount of guaranteed minimum) the person's earnings factors shall be determined by reference to the last order under section 21 of that Act to come into force before the end of the tax year in which his service was terminated and without reference to the last such order to come into force before the end of the final relevant year, and

(b) the weekly equivalent mentioned in section 35(2) of that Act shall be increased in accordance with any additional requirements for the time being prescribed for the purposes of section 45(1)(b) (exclusion from liability to pay a limited revaluation premium).

(3) In this regulation "tax year" means the 12 months beginning with 6th April in any year and "final relevant year" has the meaning given in section 35(9) of the Pensions Act.

### **Extension of time**

**H6.** The Secretary of State may in any particular case extend, or treat as having been extended, the time within which anything is required or authorised to be done under these Regulations.

### **Determination of questions**

**H7.** All questions arising under these Regulations are to be determined by the Secretary of State and a determination by him is final.

### **Revocations, savings and transitional provisions**

**H8.**—(1) The Regulations specified in Part I of Schedule 14 are revoked to the extent specified.

(2) The revocations have effect subject to the savings in Part II of Schedule 14.

(3) The provisions of Part II of Schedule 14 do not affect the general operation of section 16 of the Interpretation Act 1978<sup>(43)</sup> (general savings to be implied on a revocation).

(4) Part III of Schedule 14 has effect with respect to transitional matters in connection with the coming into force of these Regulations.

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<sup>(42)</sup> Section 52C was inserted by the Social Security Act 1985, Schedule 1, paragraph 2, and amended by the Social Security Act 1986, Schedule 10, paragraph 26.

<sup>(43)</sup> 1978 c. 30.