
STATUTORY INSTRUMENTS

1988 No. 1652

The Teachers' Superannuation (Consolidation) Regulations 1988

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(1), 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(2) 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

(1) 1975 c. 60; section 36(6) was repealed in part by the Social Security Act 1986 (c. 50), Schedule 11.

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

(b) a retirement lump sum,
calculated in accordance with this Part.

Qualification for retirement benefits

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

- (a) immediately before 6th April 1988 he would but for his age have been entitled under regulation 53 of the 1976 Regulations to payment of an annual allowance and an additional allowance, 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.

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 $1\frac{1}{2}$.

(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) $\frac{1}{3}$ rd of his aggregate contributable salary for his best 3 consecutive years in pensionable employment within the 10 years ending with its cessation,

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

Enhancement of 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(3).

(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.

(3) [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(4),

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⁽⁵⁾ 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,

(5) 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(6), 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—

(6) 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(7),
- (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(8) 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)—

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

(8) 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(9) 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(10).
- (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(11).
- (9) In the case of a person to whom the Teachers' Pay and Conditions Act 1987(12) ("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.

(10) 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.

(11) S.I. 1981/934.

(12) 1987 c. 1.

(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(13),

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(14) 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.

(13) S.I. 1979/47.

(14) 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(15) (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⁽¹⁶⁾.

⁽¹⁶⁾ 1985 c. 65.