
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 393

The Teachers' Superannuation (Scotland) Regulations 2005

PART A

PRELIMINARY

Citation, commencement and extent

A1.—(1) These Regulations may be cited as the Teachers' Superannuation (Scotland) Regulations 2005, shall come into force on 1st October 2005 and shall have effect as follows:—

- (a) regulations B6(1), C1(1), C2(1) and (9) D1(4), E24(1), E29(1), E34(7), J4(1) and Schedule 1 on 6th April 2003 but only insofar as those provisions apply to paternity or adoption leave; and
 - (b) for all other purposes, on 1st October 2005.
- (2) These Regulations extend to Scotland only.

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—
- (a) 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 teacher in respect of a period during which that teacher was not in pensionable employment;
 - (b) any reference to contributions and benefits payable in respect of a teacher is to be construed as including a reference to contributions paid by and benefits paid to that teacher; and
 - (c) any reference to a transfer value paid or accepted is to be construed as including a reference to a transfer value which would have been paid or accepted 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 teacher'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.
- (5) Expressions used in these Regulations to which meanings are assigned by the Education (Scotland) Act 1980(1) shall have the same meanings in these Regulations as in that Act.
- (6) In this regulation, "Ministers" includes the Scottish Ministers.

PART B

PENSIONABLE EMPLOYMENT

Full-time service

B1. Subject to regulations B6 to B9, a teacher is in pensionable employment where he or she is in full-time service in an employment specified in Schedule 2.

Part-time service

B2.—(1) Subject to paragraphs (2) and (3) and regulations B6 to B9, a part time teacher is in pensionable employment where he or she is in part time service in an employment specified in Schedule 2.

(2) A teacher is not in pensionable employment by virtue of paragraph (1) if, in respect of that employment, he or she is eligible to be an active member in accordance with the Local Government Pension Scheme (Scotland) Regulations 1998(2).

(3) A part time teacher who, immediately before 1st April 1999 was in part time service in an employment specified in Schedule 2 and had not made an election for the purposes of regulation B2 of the 1992 Regulations(3) (as in force before that date) in relation to that employment shall not be in pensionable employment unless he or she makes an election for the purposes of this regulation or enters a new employment specified in Schedule 2.

(4) An election for the purpose of this regulation may be made at any time by giving written notice to the Scottish Ministers and, unless paragraph (5) applies, shall have effect from the first day of the month after that in which the notice was given.

(5) If the Scottish Ministers so specify, the election shall have effect from an earlier date provided that the contributions payable under regulations C4(2) and H5(1) are paid to the Scottish Ministers by the date 6 weeks after the date of the demand under regulation C15(5) or H5(2), as the case may be.

(6) In these Regulations, “the back period” means the period between the date specified by the Scottish Ministers as the date from which the election shall have effect and the first day of the month after that in which the notice was given.

Concurrent full-time and part-time service

B3.—(1) Notwithstanding anything in regulation B2, a teacher is not in pensionable employment in respect of any part time service on or after 20th November 2000 which is additional to concurrent full time service unless—

- (a) he or she was in part time service additional to concurrent full time service immediately prior to 20th November 2000; and
- (b) he or she has continued in such part time service additional to concurrent full time service.

(2) A teacher to whom paragraph (1) applies may elect that such part time service shall cease to be treated as pensionable employment, and an election for this purpose may be made at any time by giving written notice to the Scottish Ministers and shall have effect from the first day of the month after that in which it was given.

(2) [S.I. 1998/366](#) to which there are amendments not relevant to these Regulations.

(3) [S.I. 1992/280](#) (“the 1992 Regulations”). Regulation B2 was amended by [S.I. 1999/446](#) and [S.S.I. 2003/423](#). The 1992 Regulations are revoked in their entirety by these Regulations (see Schedule 1 to these Regulations).

Continuing employment

B4. Subject to regulations B6 to B9, a teacher who immediately before the date on which these Regulations come into force was in employment (“the first employment”) which was reckonable service by virtue of regulation B3 of the 1992 Regulations shall be treated as being in pensionable employment—

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

Accepted school

B5.—(1) In pursuance of paragraph 2 of Schedule 2, subject to paragraph (6) and regulations B6 to B9, a teacher is in pensionable employment while employed in a school which is an accepted school for the purposes of this regulation.

(2) For the purpose of this regulation—

- (a) “accepted school” means an independent school which—
 - (i) immediately before the date on which these Regulations come into force was accepted under regulation B4 of the 1992 Regulations⁽⁴⁾; or
 - (ii) being registered, and being the subject of a relevant application by its governing body or proprietor, is accepted by the Scottish Ministers as able to meet the requirements placed upon an employer under Part H to pay employers' contributions;
- (b) “registered” means registered in the register of independent schools in accordance with Part V of the Education (Scotland) Act 1980; and
- (c) “proprietor” has the meaning assigned to it by section 135 of the Education (Scotland) Act 1980 and includes a person who, by reason of holding any office or having any interest in a company by which the school is conducted, is substantially in the position of a proprietor.

(3) Notwithstanding the provisions of paragraph (2) the Scottish Ministers may, in such case as they think appropriate, accept under the provisions of this regulation an independent school which is for the time being only provisionally registered.

(4) The date on which an independent school becomes an accepted school under paragraph (2) (a)(ii) shall, unless an alternative date is agreed by the Scottish Ministers and the governing body or proprietor thereof, be the 1st September preceding acceptance of the application.

(5) An accepted school shall cease to be an accepted school on such a day as is specified in a notice in writing sent by the Scottish Ministers to the governing body or proprietor of the school on or after any of the following events—

- (a) the receipt by the Scottish Ministers of an application by the governing body or proprietor that the school shall cease to be an accepted school;
- (b) the school ceasing to be registered;
- (c) any default by the governing body or proprietor in the payment of contributions, whether under these Regulations or under the Teachers' Superannuation (Additional Voluntary Contributions) (Scotland) Regulations 1995⁽⁵⁾;
- (d) failure by the governing body or proprietor to comply within one month with any requirement of the Scottish Ministers to make any report or return, give any information or produce any document, under regulation J4;

(4) Regulation B4 was amended by [S.I. 1997/676](#) and [1999/446](#).

(5) [S.I. 1995/2814](#), to which there are amendments not relevant to these Regulations.

- (e) failure by the governing body or proprietor to comply with any other provision of the Regulations relating to the employment of teachers in reckonable service;
 - (f) the closure of the school.
- (6) The service of a teacher in an accepted school shall not be pensionable employment if—
- (a) the teacher is a proprietor thereof; or
 - (b) paragraph (2)(a)(i) applies to the school and the teacher’s employment therein immediately before the date on which these Regulations come into force was not reckonable service.

Employment not pensionable

- B6.**—(1) A teacher is not in pensionable employment unless aged at least 16 and under 70 and—
- (a) entitled to be paid his or her salary in full;
 - (b) on sick leave and entitled to be paid not less than half his or her salary; or
 - (c) on maternity, paternity or adoption leave and entitled to be paid any contractual remuneration or receive statutory maternity, paternity or adoption pay (whether as a constituent part of or as the teacher’s sole income).

(2) A teacher is not in pensionable employment while he or she is in an employment which immediately before the date on which these Regulations come into force was, by virtue of regulation B5(2) of the 1992 Regulations, not pensionable employment.

- (3) Subject to paragraph (4), a teacher who—
- (a) immediately before the date on which these Regulations come into force was in; or
 - (b) not more than 12 months before that date had ceased to hold,

an employment which by virtue of regulation B5(3) of the 1992 Regulations was not pensionable employment and who has made no election under regulation B5(4) of the 1992 Regulations, is not in pensionable employment.

(4) Within 3 months after the start of an employment to which paragraph (2) applies the teacher may, by giving written notice to the Scottish Ministers and to the appropriate administering authority within the meaning of the Local Government Pension Scheme (Scotland) Regulations 1998⁽⁶⁾, elect that paragraph (3) is to cease to apply.

(5) Subject to regulation B9, a teacher is not in pensionable employment in respect of any employment which commenced on or after 1st April 1997 while he or she is entitled to be paid a teacher’s pension, including cases where the annual rate of the pension has been reduced to zero in accordance with regulation E18.

Election for employment not to be pensionable

- B7.**—(1) A teacher who—
- (a) is employed in pensionable employment; or
 - (b) is not so employed but expects to enter an employment in which he or she would be so employed,

may at any time, by giving written notice to the Scottish Ministers, make an election under this regulation.

(2) As from the date from which the election has effect, the employment referred to in paragraph (1) and any subsequent periods of employment which would otherwise be pensionable employment shall, subject to regulation B8 below, cease to be pensionable employment, and

(6) [S.I. 1998/366](#), to which there are amendments not relevant to these Regulations.

employment where this paragraph applies is in these Regulations referred to as “excluded employment”.

- (3) Where paragraph (1)(a) applies, an election under this regulation has effect—
- (a) if the notice is received by the Scottish Ministers during the first pay period after commencing pensionable employment, from the date on which the teacher became so employed; and
 - (b) in any other case, from the first day of the pay period following that in which the notice was received by the Scottish Ministers.

(4) Where paragraph (1)(b) applies, an election under this regulation, if the notice is received by the Scottish Ministers before or during the first pay period after commencing pensionable employment, has effect from the date on which the teacher became so employed.

Resumption of pensionable status

B8.—(1) Subject to paragraph (5), a teacher who has made an election under regulation B7, who has since been in excluded employment and who—

- (a) is in excluded employment; or
- (b) is not in, but expects to enter, employment which is excluded employment by virtue of an election previously made under regulation B7,

may, at any time, by giving written notice to the Scottish Ministers, make an election under this regulation.

(2) As from the date on which the election has effect, subject to regulation B7, any excluded employment on or after that date is pensionable employment.

(3) Where paragraph (1)(a) applies, an election under this regulation has effect from the first day of the pay period following that in which the notice was received by the Scottish Ministers.

- (4) Where paragraph (1)(b) applies, an election under this regulation has effect—
- (a) if the notice is received by the Scottish Ministers before or during the first pay period after commencing employment, from the date on which the teacher became so employed; and
 - (b) in any other case, from the first day of the pay period following that in which the notice was received by the Scottish Ministers.

(5) For the purposes of this regulation the Scottish Ministers may in a particular case refuse to accept an election where the teacher is on sick leave.

Further employment

B9.—(1) Subject to paragraph (2) and regulations B6 to B8, a teacher who is already in receipt of a teacher’s pension, including cases where the annual rate of pension has been reduced to zero in accordance with regulation E18, is in pensionable employment where on or after 1st October 2001 he or she enters into full time or part time service in an employment specified in Schedule 2.

(2) A teacher who is excluded from pensionable employment by virtue of regulation B6(5) of the 1992 Regulations shall not be in pensionable employment unless he or she makes an election under regulation B8.

PART C

TEACHERS' CONTRIBUTIONS

Salary on which contributions are payable

C1.—(1) Subject to paragraphs (2) to (9) and regulation C2, a teacher's contributable salary shall, for the purpose of these Regulations, be the aggregate of the amounts payable by his or her employer in respect of their pensionable employment—

- (a) whether by way of salary or in kind; and
- (b) in satisfaction of any contractual or statutory liability arising out of sickness leave or maternity, paternity or adoption leave.

(2) The following payments or allowances shall not be treated as part of the teacher's contributable salary—

- (a) payments in respect of overtime, special services or extra duties;
- (b) any emoluments receivable from or out of an educational endowment or bequest;
- (c) any additional allowance paid to a teacher serving outside the British Islands under arrangements approved by the Scottish Ministers for the interchange of teachers;
- (d) payments by way of travelling or expense allowances;
- (e) any sums chargeable to tax under section 148 of the Taxes Act(7);
- (f) subject to paragraph (9), the equivalent money value to the teacher of the provision of a motor vehicle by or on behalf of his or her employer;
- (g) any compensation paid under the Local Government (Compensation for Reduction of Remuneration on Reorganisation) (Scotland) Regulations 1995(8).

(3) The Scottish Ministers may make a direction, in such cases as they think appropriate, disapplying any exclusion under paragraph (2) from the salary of a teacher.

(4) In determining the contributable salary to which a teacher is entitled for the purposes of abatement of annual pension under regulation E18, the following payments to that teacher shall be disregarded—

- (a) any payments in respect of employment in connection with education which, while employed in pensionable employment or comparable British service, the teacher undertook in addition to such service and which he or she continues after ceasing such service, not exceeding, when expressed as an annual rate, the average annual rate of such payments for the last 3 years of employment in pensionable employment or comparable British service;
- (b) any payments in respect of employment in connection with education outside the British Islands, being employment in which, in the opinion of the Scottish Ministers, it is expedient to facilitate the employment of teachers from Scotland; and
- (c) any fees in respect of employment for the purposes of the Scottish Certificate of Education or the General Certificate of Secondary Education.

(5) Subject to paragraphs (6) and (7), in relation to a teacher who enters pensionable employment on or after 1st June 1989, where his or her salary, calculated in terms of paragraph (1), exceeds the

(7) 1988 c. 1. Section 148 is repealed by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 8, Part 1.

(8) S.I. 1995/2865 as amended by S.I. 1997/720.

permitted maximum in terms of section 590C of the Taxes Act(9), the excess over that permitted amount shall not be treated as contributable salary for the purpose of these Regulations.

(6) Paragraph (5) shall not apply to a teacher who was in pensionable employment before 1st June 1989 and who resumes pensionable employment following—

- (a) an absence on maternity leave in respect of which she enjoyed a right to return to work under Part VIII of the Employment Rights Act 1996 and regulations made thereunder(10);
- (b) a period of secondment or additional period of absence necessarily attributable to that secondment; or
- (c) in any other case, a break in teaching employment not exceeding one year.

(7) Paragraph (5) shall not apply to a teacher who was in comparable British service before 1st June 1989 who enters pensionable employment, provided there has not been a period of more than one year between cessation of employment in comparable British service and entering pensionable employment.

(8) For the purposes of paragraph (7) “comparable British service” does not include service which is pensionable under a superannuation scheme for teachers in public employment in the Channel Islands and the Isle of Man.

(9) Notwithstanding paragraph (2)(f), where on 15th November 1993 a teacher was paying contributions on a sum which represents the equivalent money value to him or her of the provision of a motor vehicle, the equivalent money value to him or her of the provision of a motor vehicle provided from time to time by or on behalf of the employer shall be treated as salary on which contributions will continue to be payable until the earlier of the date on which—

- (a) a motor vehicle as no longer provided for him or her; or
- (b) he or she ceases to be employed by the employer employing him or her on 15th November 1993.

Salary on which contributions are payable – election

C2.—(1) Subject to paragraph (12), a teacher who—

- (a) continues in pensionable employment but whose contributable salary is reduced, otherwise than by reason of sick leave or maternity, paternity or adoption leave, and who satisfies the conditions in paragraph (2); or
- (b) leaves pensionable employment with one employer (“employer A”) and—
 - (i) takes up employment again with employer A, or
 - (ii) takes up employment with another employer (“employer B”),at a lower contributable salary and who satisfies the conditions in paragraph (3),

may make an election that his or her salary is to be treated as having continued at the rate specified in paragraph (4).

(2) The conditions referred to in paragraph (1)(a) are—

- (a) that on the date when the contributable salary was reduced the teacher had attained the age of 50;

(9) 1988 c. 1. Section 590C was inserted by the Finance Act 1989 (c. 26), section 75 and Schedule 6, paragraph 4, is amended by the Finance Act 1993 (c. 34), section 107 and is prospectively repealed by the Finance Act 2004 (c. 12), Schedule 42, Part 3. See S.I. 2004/773 for the current permitted maximum.

(10) 1996 c. 18. Part VIII (sections 71–80) of the 1996 Act were substituted by the Employment Relations Act 1999 (c. 26) section 7 and Schedule 4, Part I and to which there are amendments not relevant to these Regulations. The current Regulations are the Maternity and Paternal Leave etc. Regulations 1999 (S.I. 1999/3312).

- (b) that on that date he or she had been in pensionable employment or excluded employment for at least 5 years; and
 - (c) that the responsibility of that teacher's post after the reduction in contributable salary is lower than the responsibility of any of the posts which he or she had held during the period of 5 years immediately preceding the date of the reduction in contributable salary.
- (3) The conditions referred to in paragraph (1)(b) are–
- (a) that on the date of leaving pensionable employment with employer A the teacher had attained the age of 50;
 - (b) that on that date he or she had been in pensionable employment or excluded employment for at least 5 years;
 - (c) that the responsibility of the teacher's new post with employer A or, as the case may be, the teacher's post with employer B is lower than the responsibility of any of the posts which he or she had held during the period of 5 years immediately preceding the date on which he or she left employment with employer A as described in paragraph (1);
 - (d) that employer A notifies the Scottish Ministers that the teacher has provided satisfactory service during the period of 5 years referred to in sub paragraph (c) or, where he or she has been employed by employer A for less than 5 years, during the period when he or she was employed by employer A; and
 - (e) that no more than one year had elapsed between leaving pensionable employment with employer A as described in paragraph (1) and taking up pensionable employment again with employer A or, as the case may be, taking up pensionable employment with employer B.
- (4) The rate of salary referred to in paragraph (1) is–
- (a) where the teacher falls within paragraph (1)(a) and is employed in full time service after the reduction in contributable salary, the rate applicable immediately before the reduction;
 - (b) where the teacher falls within paragraph (1)(b) and is re employed in full time service with employer A, or is employed in full time service with employer B, the rate applicable immediately before he or she left employment with employer A as described in paragraph (1);
 - (c) where the teacher falls within paragraph (1)(a) and is employed in part time service after the reduction in contributable salary, the rate which would have been applicable immediately before the reduction if he or she had been employed for the same number of hours or for the same proportion of the year, term, month or week, as the case may be, as he or she is employed immediately after the reduction; and
 - (d) where the teacher falls within paragraph (1)(b) and is employed in part time service at the start of their re employment with employer A or their employment with employer B, the rate which would have been applicable immediately the teacher left their employment with employer A as described in paragraph (1) if the teacher had been employed for the same number of hours or for the same proportion of the year, term, month or week, as the case may be, as he or she is employed at the start of his or her re employment with employer A or, as the case may be, his or her employment with employer B,
- increased, in each case, on each increase day by–

$$\frac{(RI - RE)}{RF}$$

where–

RI is the retail prices index for the month in which the increase day occurs; and

RE is the retail prices index for the month in which the election was made.

(5) For the purposes of paragraph (4) the “increase day” is the first day of the month in each year following the month in which—

- (a) the salary was reduced, in a case where the teacher falls within paragraph (1)(a), or
- (b) the teacher left his or her employment with employer A as described in paragraph (1) in a case where the teacher falls within paragraph (1)(b),

and the first increase day is that falling in the year after the year in which the salary was reduced or the teacher left his or her employment with employer A, as the case may be.

(6) An election for the purposes of paragraph (1)—

- (a) must be made by giving written notice to the Scottish Ministers before the date which is 3 months after—

- (i) the reduction in salary, in a case where the teacher falls within paragraph (1)(a); or
- (ii) taking up employment again with employer A or, as the case may be, taking up employment with employer B, in a case where the teacher falls within paragraph (1)(b);

(b) has effect from—

- (i) the day after the last day on which the teacher’s salary was payable at the rate applicable immediately before the reduction in contributable salary, in a case where the teacher falls within paragraph (1)(a); or
- (ii) the day on which the teacher takes up employment again with employer A or, as the case may be, takes up employment with employer B, in a case where the teacher falls within paragraph (1)(b); and

(c) subject to paragraph (7), continues to have effect until the teacher ceases to be in pensionable employment unless he or she—

- (i) elects to pay additional contributions under regulation C8 or C9; or
- (ii) takes up pensionable employment with another employer (“employer C”) within 6 months of ceasing to be in pensionable employment.

(7) An election for the purposes of paragraph (1) may be cancelled by giving written notice to the Scottish Ministers at any time.

(8) Notice of cancellation—

- (a) has effect from the first day of the month following that in which it was received; and
- (b) is irrevocable.

(9) If, while an election made for the purposes of paragraph (1) has effect, there is any further reduction in salary during a period of sick leave or maternity, paternity or adoption leave, the rate of salary specified in paragraph (4) is, during that period, to be treated as having been reduced in the same proportion as the actual rate.

(10) In paragraphs (1)(a) and (1)(b) the reference to contributable salary is, in the case of a teacher employed in part-time service, a reference to the salary which would have been the teacher’s contributable salary if the teacher had been in full-time service.

(11) In this regulation “the retail prices index” means the index of retail prices published by the Office for National Statistics.

(12) Paragraph (1) shall not apply where a teacher is in pensionable employment by virtue of regulation B9.

Ordinary contributions

C3.—(1) Subject to paragraph (2), a teacher who is in pensionable employment is to pay contributions of 6 per cent of contributable salary for the time being.

(2) A teacher who has made an election under regulation C2(1) shall, in addition to the contributions referred to in paragraph (1), pay contributions of the required percentage of the difference between the teacher's actual contributable salary and the contributable salary at the rate referred to in regulation C2(4) to the extent that such contributions are not paid by any employer referred to in regulation H4 under an election mentioned in that regulation.

(3) No contributions are to be paid by a teacher in respect of any reckonable service beyond a total of 45 years.

Contributions where an election under regulation B2(4) has been made

C4.—(1) This regulation applies where—

- (a) a teacher has elected under regulation B2(4) that his or her part time employment should be pensionable; and
- (b) the Scottish Ministers have specified that the election shall have effect from an earlier date than the first day of the month after that in which the notice is given.

(2) Where this regulation applies the teacher shall—

- (a) pay the contributions calculated in accordance with regulation C3 referable to the back period; and
 - (b) unless the Scottish Ministers determine otherwise, pay interest on such contributions which have accrued on each reference date, at 7 per cent per annum compounded with yearly rests from the reference date in question to the date of payment of the contributions.
- (3) For the purposes of this regulation—
- (a) the first reference date is the date a year after the end of the month in which the beginning of the back period falls;
 - (b) the next reference date is the date a year after the first reference date and each subsequent reference date is the date a year after the previous reference date; and
 - (c) the contributions which have accrued on a reference date are the contributions which would be outstanding on that date if the teacher had been in pensionable employment during the back period and if contributions had not been paid in accordance with regulation C15.

Additional contributions to purchase past added years

C5.—(1) This regulation applies to a teacher who—

- (a) is in pensionable employment otherwise than by virtue of regulation B9; 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 or she attained the age of 55; and
- (c) has not become entitled to payment of retirement benefits under regulation E6(1)(a) or (b).

(2) Subject to paragraphs (4) to (9), a teacher to whom this regulation applies may elect to pay additional contributions in accordance with—

- (a) Part I of Schedule 4 (“Method A”); or
- (b) Part II of Schedule 4 (“Method B”),

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

(3) Subject to paragraphs (4), (5), (7) and (10), the employer of a teacher to whom this regulation applies may elect to pay additional contributions in respect of the teacher in accordance with Part II of Schedule 4 (“Method B”).

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

- (a) must have begun after the teacher attained the age of 20;
- (b) must have ended—
 - (i) before the teacher attained the age of 60;
 - (ii) before the date of the election; and
 - (iii) if the teacher has become entitled to payment of retirement benefits by virtue of regulation E6(1)(d), before the relevant termination of employment;
- (c) must be one during which the teacher 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; and
- (e) unless 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, must be a period of not less than 30 days.

(5) If the teacher 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 reduced by the length of that service.

(6) Where payment is to be made by Method A, the period during which additional contributions are to be paid (“the contribution period”) must satisfy paragraph 2 of Schedule 4.

(7) Subject to paragraph (8), an election under this regulation may be made at any time.

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

(9) An election under paragraph (2) must be made by giving written notice to the Scottish Ministers, 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, is to specify the length of the contribution period; and
- (d) where payment is to be made by Method A, is to contain a declaration that the teacher has no reason to believe that his or her health may prevent them from continuing in pensionable employment until payment has been completed.

(10) An election under paragraph (3) must be made by giving written notice to the Scottish Ministers which—

- (a) is to specify the teacher in respect of whom it is made; and
- (b) is to specify the past period.

(11) An election under this regulation shall be revoked only where a written request seeking revocation has been accepted in writing by the Scottish Ministers but any additional contributions paid to the date of such acceptance shall not be refunded.

- (12) Where payment is to be made by Method A and—
- (a) within 12 months after the date of the election the teacher becomes incapacitated; and
 - (b) the declaration required by paragraph (9)(d) 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.

Additional contributions to purchase past added years in the case of a deceased teacher

- C6.**—(1) This regulation applies where a teacher dies in circumstances where—
- (a) had he or she ceased to be in pensionable employment on the date of death, he or she would have become entitled under regulation E6 to payment of retirement benefits; and
 - (b) in respect of whom another person is entitled under regulation E30 to a long term pension.
- (2) Where this regulation applies, the person, or in the case of a child, a person acting on the child's behalf, may by giving written notice to the Scottish Ministers within 3 months after the death make any election which, on the hypothesis stated in paragraph (1)(a), the deceased teacher could have made under regulation C5.
- (3) Subject to paragraph (4), an election under this regulation has effect as if it had been made under regulation C5 by the deceased teacher.
- (4) The additional contributions except to the extent that they are, with the consent of any person entitled to it, met out of a terminal sum, payable by the person referred to in sub-paragraph (1)(b).
- (5) This regulation does not apply to a teacher who at the date of his or her death was in pensionable employment by virtue of regulation B9.

Additional contributions to purchase past added years under earlier provisions

- C7.**—(1) Part I of Schedule 5 has effect where immediately before the date on which these Regulations come into force additional contributions remained to be paid by virtue of regulations 22 to 25 of the 1977 Regulations⁽¹¹⁾.
- (2) Part II of Schedule 5 has effect where immediately before the date on which these Regulations come into force additional contributions remained to be paid by virtue of regulation 26 of the 1977 Regulations.

Additional contributions to purchase current added years

- C8.**—(1) Subject to paragraphs (11) to (14), this regulation applies to a teacher who—
- (a) before attaining the age of 60 has ceased to be in pensionable employment, otherwise than by virtue of an election under regulation B7;
 - (b) was not then incapacitated;
 - (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 teacher 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—

⁽¹¹⁾ S.I. 1977/1360. Regulation 22 was substituted by and Regulation 23 amended by S.I. 1983/1431. Regulation 25 was amended by S.I. 1980/344. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

- (a) must end before the teacher's 60th birthday;
 - (b) must not in any case exceed the maximum calculated in accordance with Schedule 3;
 - (c) if the teacher has become employed—
 - (i) as a teacher in any school outside the British Islands in which, in the opinion of the Scottish Ministers, it is expedient to facilitate the employment of teachers from Scotland; or
 - (ii) in an educational service outside the British Islands in employment which to a substantial extent involves the control or supervision of teachers in such schools, must not exceed 6 years; and
 - (d) in any case to which paragraph (c) does not apply, must not exceed 3 years.
- (4) If the teacher has paid additional contributions under this regulation for an earlier period and—
- (a) has not since the end of that period been in pensionable employment; or
 - (b) 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)(b).
- (5) If before the end of the period the teacher—
- (a) becomes entitled to payment of retirement benefits;
 - (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 the teacher 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) For the purposes of paragraph (6)—
- (a) the notional salary is an amount notified by the former employer, or (where no such notification is given) estimated by the Scottish Ministers, as being what the teacher's contributable salary would have been if pensionable employment had not ceased and the teacher had continued to be employed in the same post and on the same terms taking into account, where appropriate, any election under regulation C2(1); and
 - (b) the percentage is $(A + B)$ where A is the percentage specified in regulation C3 and B is the required percentage which is to be applied to contributable salary to determine employers' contributions under Part H.
- (8) The additional contribution for a financial year is to be paid directly to the Scottish Ministers—
- (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 Scottish Ministers that payment is due, whichever is the later.
- (9) A late payment of a contribution may for special reasons be accepted by the Scottish Ministers; but if it is accepted the teacher 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 Scottish Ministers, 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 the teacher's pensionable employment or, if later, the end of a previous period for which he or she has paid additional contributions under this regulation.

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

(12) Paragraph (11) applies—

- (a) even if the teacher was not participating in or financing or otherwise directly interested in the trade dispute; and
- (b) even if the teacher's employer was not a party to the trade dispute.

(13) In this regulation, "trade dispute" has the meaning given by section 244 of the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹²⁾.

(14) This regulation does not apply to a teacher in relation to pensionable employment by virtue of regulation B9.

Additional contributions for current period: service in a reserve force

C9.—(1) This regulation applies to a teacher who ceases to be in pensionable employment by virtue of being called out or recalled for permanent service in Her Majesty's armed forces in pursuance of a call out notice or call out order or a recall order made under the Reserve Forces Act 1996⁽¹³⁾, provided that—

- (a) the teacher does not apply for payment of any retirement benefits to which he or she would otherwise be entitled on ceasing to be in such employment; and
- (b) he or she does not accrue any reckonable service in the Armed Forces Pension Scheme or become a member of any other occupational pension scheme during his or her period of permanent service.

(2) Subject to paragraphs (10) and (11), a teacher 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 and ending with the date on which he or she is released from permanent service or discharged.

(3) An additional contribution is payable for each financial year and is—

- (a) 6 per cent of the notional salary for so much of the period as falls within that financial year; and
- (b) where an election has been made under regulation C2(1), an amount equivalent to any contributions which would have been paid under regulation C3(2) for so much of the period as falls within that financial year taking the reference in that regulation to the teacher's actual contributable salary as a reference to the notional salary disregarding the election under regulation C2(1).

(4) The notional salary is the salary that would have been payable if pensionable employment had not ceased and the teacher had continued to be employed in the same post and on the same terms taking into account, where appropriate, any election under regulation C2(1).

(5) Subject to paragraphs (7) and (8), an election under this regulation must be made in writing to the Scottish Ministers at any time between the cessation of pensionable employment and 6 months after the return to pensionable employment following service in a reserve force.

(6) An election has effect only if the teacher pays—

⁽¹²⁾ 1992 c. 52.

⁽¹³⁾ 1996 c. 14.

- (a) any contribution under this regulation within 3 months of the date of a written notification by the Scottish Ministers that payment is due; and
 - (b) all contributions and payments due by him or her in respect of the period by virtue of any election made under regulation C5, C10 or C14.
- (7) An election made before the end of the period must specify the day on which the period begins; and an election made after the end of the period must specify the period.
- (8) Subject to paragraph (10), where the teacher dies during service in a reserve force without having made an election under this regulation, such an election shall be deemed to have been made so that the period beginning on the day after the cessation of the pensionable employment and ending with the date of his or her death shall count as reckonable service.
- (9) Any contribution due under this regulation at the date of a teacher's death during his or her service in a reserve force shall be deducted from any benefits payable under these Regulations.
- (10) Notwithstanding that a teacher to whom this regulation applies has not made an election under this regulation, he or she shall be entitled to count the period as reckonable service where during the period his or her service pay, when aggregated with any payments under Part V of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(14), is less than the remuneration he or she would have received if he or she had during the period continued in the pensionable employment in which he or she was employed immediately before being called into service in a reserve force.
- (11) For the purposes of paragraph (10), "service pay" means the pay for performing service in a reserve force, and includes marriage, family and other similar allowances.

Additional contributions for family benefits

- C10.**—(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 1st 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.

Return of contributions

- C11.**—(1) Subject to paragraph (3), this regulation applies where a teacher has ceased to be in pensionable employment and—
- (a) he or she is not qualified for retirement benefits; and
 - (b) no transfer value under regulation G1 has since been paid or become payable in respect of the teacher; and
 - (c) he or she did not within the relevant period re-enter pensionable employment; and
 - (d) the relevant period is not a period, or part of a period, for which the teacher has elected to pay additional contributions under regulation C8 or C9.
- (2) The relevant period is the period of one month beginning when the teacher ceased to be in pensionable employment.
- (3) This regulation shall not apply if part of the teacher's reckonable service is attributable to a transfer value paid in respect of him or her to the Scottish Ministers by the trustees or managers of a personal pension scheme, notwithstanding that the teacher has less than 2 years' service.
- (4) 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 Part VIII of the Employment Rights Act 1996⁽¹⁵⁾; and
 - (b) if she has exercised that right, as not having ceased to be in pensionable employment.
- (5) Where this regulation applies the teacher is entitled to have returned the balance of his or her contributions, calculated in accordance with regulation C12.
- (6) The entitlement takes effect at the end of the relevant period, or on the teacher's 70th birthday if earlier.

Calculation for the purposes of regulation C11

C12.—(1) The balance of contributions referred to in regulation C11(5) is to be calculated as at the date of the calculation, or the teacher'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 Taxes Act⁽¹⁶⁾.

(3) The amounts are those of—

(a) all contributions paid, under regulations C3, C5 and C8 to C10 except—

(i) any treated as employer's contributions; and

(ii) any paid in respect of a period of employment for which an incapacity gratuity under regulation E21 has been received;

(b) contributions paid in respect of any comparable British service in respect of which the teacher is entitled to count reckonable service by virtue of the acceptance of a transfer value;

(c) if the teacher was entitled to count any reckonable service by virtue of the acceptance 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 or she would otherwise have been entitled to receive under the rules of the pension scheme to which he or she was subject in the employment; or

(ii) if that scheme made no provision for the repayment of contributions, the contributions he or she 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 Scottish Ministers have made a payment in lieu of contributions or the teacher 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

⁽¹⁵⁾ 1996 c. 18. Part VIII (sections 71-80) of the 1996 Act were substituted by the Employment Relations Act 1999 (c. 26), section 7 and Schedule 4, Part I, to which there are amendments not relevant to these Regulations.

⁽¹⁶⁾ 1988 c. 1. Section 595 is amended by the Finance Act 1989 (c. 26), Schedule 6 and is prospectively repealed by the Finance Act 2004 (c. 12) Schedule 42, Part 3.

- (c) if the Scottish Ministers have paid a contributions equivalent premium, the amount recoverable by them under sections 61 to 63 of the 1993 Act⁽¹⁷⁾.

Return of certain contributions paid for family benefits

C13.—(1) This paragraph applies where a member who has made no election under paragraph 2 of Schedule 6—

- (a) becomes entitled under regulation C11 to the return of the balance of his contributions; or
- (b) becomes entitled to payment of retirement benefits, unless on his death family benefits would become payable.

(2) 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 the member's 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 the member's 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 the member's death,

whichever is the earliest.

(6) There is to be deducted from the amount the tax chargeable on it under section 598 of the Taxes Act.

(7) Where a member who has made no election under paragraph 3 of Schedule 6 dies and—

- (a) he was entitled under regulation C11 to be repaid the balance of his contributions; or
- (b) a death grant is payable under regulation E24 and no family benefit other than a children's pension is payable,

the member's 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 the member's death.

Repayment of returned contributions

C14.—(1) A teacher to whom contributions were returned before 1st June 1973—

- (a) who is in pensionable employment; or

(17) 1993 c. 48. Section 61 is amended and repealed in part by the Pensions Act 1995 (c. 26) ("the 1995 Act"), Schedules 5 and 7 respectively; section 62 is repealed in part by the 1995 Act, Schedule 7; section 63 is amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) section 1 and Schedule 1 and repealed in part by the 1995 Act, Schedule 1.

(b) who is in comparable British service and in respect of whom no transfer value has been paid since the end of his or her last pensionable employment, may at any time, by giving written notice to the Scottish Ministers, elect to repay the contributions, with interest, to them.

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

(a) where the repayment 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 repayment is made by instalments, is payable on the balance for the time being outstanding and is compounded with yearly rests on 31st March.

(3) While a teacher is in pensionable employment, payments under this regulation shall be made in instalments and are, subject to paragraph (5), payable—

(a) at equal intervals, of not more than 6 months; and

(b) for a whole number of years not exceeding 5 and ending before his or her 60th birthday.

(4) Instalments are of equal amounts unless in any year the payment of an instalment of an amount equal to that paid in previous years would exceed the limit specified in paragraph (5) and in that event the instalments (and the corresponding period over which they are payable) shall be recalculated so that they do not exceed that limit.

(5) The annual amount of instalments paid under paragraph (3) is to be such that $(A + B)$ does not exceed 15 per cent of the annual rate of the teacher's contributable salary in the year where—

A is the annual amount of the instalments; and

B is the annual amount of other contributions paid under Part C (except any treated as employer's contributions) or towards the provision of a pension otherwise than under these Regulations.

(6) If a teacher has commenced payment of instalments in accordance with this regulation and before they have all been repaid—

(a) he or she becomes entitled to payment of retirement benefits; or

(b) a death grant becomes payable in respect of him or her,

the balance outstanding, less any interest previously calculated but which relates to a future period of repayment, is to be deducted from the appropriate terminal sum and the repayment of contributions is to be treated as having been completed.

(7) If, in a case not falling within paragraph (6), a teacher who has commenced payment of instalments in accordance with this regulation ceases to be employed in pensionable employment before completing payment, he or she shall make a single payment of the balance outstanding, less any interest previously calculated but which relates to a future period of repayment.

(8) For the purposes of this regulation, a teacher is to be treated as being in pensionable employment if he or she is paying additional contributions under regulation C8 or under regulation C9.

(9) This regulation does not apply to a teacher who is in pensionable employment by virtue of regulation B9.

Deduction, payment and recovery of contributions

C15.—(1) The employer of a teacher in pensionable employment is to deduct from the teacher's salary each month—

(a) the contributions payable under regulation C3(1);

- (b) any contributions payable under regulation C3(2);
- (c) any additional contributions payable in accordance with Part I of Schedule 4 as a result of an election under regulation C5;
- (d) any additional contributions payable by virtue of regulation C7 or C10; and
- (e) any instalments payable under regulation C14(3),

and any amount not so deducted in any month is to be deducted from the teacher'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 teacher to the Scottish Ministers 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 Scottish Ministers under paragraph (2) or (3) may be recovered by deducting it from any benefits payable under Part E.

(5) Any sum which is due under regulation C4(2)(a) shall be paid to the Scottish Ministers on receipt of a written demand (without prejudice to the obligation to pay the sums referred to in regulation C4(2)(b)).

(6) Amounts due from a teacher under this Part which are not deductible under paragraph (1) are to be paid by the teacher to the Scottish Ministers.

(7) If any amount to which paragraph (6) applies, except one due under regulation C4, C8 or C14, 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 teacher is entitled to count as reckonable service any period—

- (a) subject to paragraph (3), during which he or she was employed in pensionable employment;
- (b) counting as reckonable service by virtue of regulations D3, D4 or G2;
- (c) which does not count by virtue of sub-paragraph (a) or (b) but which immediately before 31st March 1992 counted as reckonable service under regulation 4(1) of the 1977 Regulations⁽¹⁸⁾; and
- (d) subject to the payment of requisite contributions under Part C, counting as reckonable service by virtue of regulation C9.

(2) In aggregating the total reckonable service of any teacher—

- (a) the amount in any financial year shall not exceed 365 days;
- (b) all periods of reckonable service shall be aggregated and where 2 or more periods total 365 days or more each period of 365 days shall be reckoned as one year, service on the 29th February in a leap year being disregarded; and

⁽¹⁸⁾ S.I. 1977/1360. Regulation 4(1) was amended by S.I.s 1983/639 and 1984/2028. The 1997 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

(c) a half or greater fraction of a day shall be reckoned as a day and a smaller fraction shall be disregarded.

(3) Subject to paragraph (5), where during a financial year a teacher has spent one or more periods in part time service, each such period counts as—

$$365 \times \frac{A}{B} \text{ days of reckonable service}$$

where—

A is the number of hours worked by the teacher; and

B is the number of hours which would have been worked if the employment had been full-time and had continued throughout the year.

(4) For the purposes of paragraph (3)—

(a) any reduction of contributable salary during a period of absence from pensionable employment on sick leave or maternity, paternity or adoption leave shall be disregarded; and

(b) a period of part time employment ends, and another such period begins, when any change occurs in the rate of the teacher's contributable salary.

(5) Where a teacher commences winding down employment by virtue of regulation J2 the period of part time service under the winding down employment shall count as if it had been full time service.

(6) Paragraph (5) above shall not apply if the teacher ceases to be in winding down employment and—

(a) returns to teaching service; and

(b) is not entitled to payment of retirement benefits by virtue of regulation E6(1).

(7) In calculating the length of reckonable service—

(a) no account shall be taken of a leap year day (29th February), except as provided in sub paragraph (b); but

(b) where total reckonable service which includes part of a year ends in a leap year on or after the leap year day, that day shall be included in the number of days of reckonable service.

Exclusion from reckonable service

D2. The following periods do not count as reckonable service—

(a) any period in respect of which contributions made by the teacher have been returned and not repaid to the Scottish Ministers in pursuance of regulation C14;

(b) any period in respect of which contributions have not been paid by the teacher unless the Scottish Ministers direct otherwise; and

(c) any period in respect of which a transfer value has been paid under regulation G1.

Past added years for which additional contributions have been paid

D3.—(1) A teacher—

(a) who has completed payment of additional contributions in accordance with Part I of Schedule 4, or Schedule 5; or

(b) who has paid additional contributions for a past period in accordance with Part II of Schedule 4; or

(c) in respect of whom payment of additional contributions for a past period in accordance with Part II of Schedule 4 has been made, is entitled to count the past period as reckonable service.

(2) For the purposes of paragraph (1), a teacher who has at any time during the contribution period been in part time pensionable employment shall not be treated as having completed the payment of additional contributions in accordance with Part I of Schedule 4 unless (in addition to the payments in accordance with that Part) he or she pays a lump sum determined in accordance with paragraph (3).

(3) The lump sum referred to in paragraph (2) is such sum as would be payable under Part I of Schedule 4 in order to count as reckonable service a period equivalent to the difference between the length of reckonable service which arises from the contribution period and the length of such service if the teacher had been in full time pensionable employment throughout the contribution period.

(4) In paragraphs (2) and (3), “the contribution period” means the period during which additional contributions in accordance with Part I of Schedule 4 were paid.

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

Current added years for which additional contributions have been paid

D4. A teacher who has paid additional contributions for a period under regulation C8 or C9, is entitled to count the following periods as reckonable service:—

- (a) where the contributions are paid under regulation C8, the period in respect of which they are paid; and
- (b) where the contributions are paid under regulation C9, the period specified in regulation C9(2).

PART E

BENEFITS

Overriding provisions as to guaranteed minimum pension

E1.—(1) This regulation shall override any other provisions of these Regulations which are inconsistent with it, except the provisions of regulations E18 and E22.

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

- (a) he or she shall be entitled to receive from state pension age an annual pension payable at a rate equivalent to a weekly rate of not less than the guaranteed minimum;
- (b) if that teacher attains state pensionable age while in pensionable employment, continues in the same employment for a further period of 5 years and does not then cease to hold it, he or she is (unless he or she consents to a postponement of his or her entitlement) entitled from the end of that period to so much of his or her retirement pension as equals his or her guaranteed minimum;
- (c) in the case of a man who dies at any time leaving a widow, in relation to the weekly rate of widow’s pension provided for her under these Regulations, she shall be entitled, during any

such period as is mentioned in section 17(5) of the 1993 Act⁽¹⁹⁾, to a long term pension which shall not be less than half his guaranteed minimum; and

- (d) in the case of a woman who dies on or after 6th April 1989 leaving a widower, in relation to the weekly rate of the pension provided for him under these Regulations, he shall be entitled to a long term pension which shall not be less than half of that part of the member's guaranteed minimum which is attributable to earnings factors for the tax year 1988/89 and subsequent tax years.

(3) The guaranteed minimum pensions referred to in paragraph (2) shall, insofar as they are attributable to earnings factors for the period beginning with the tax year 1988 89 and ending with the tax year 1996 97, be increased in accordance with the requirements of section 109 of the 1993 Act⁽²⁰⁾.

(4) If the commencement of any teacher's guaranteed minimum pension is postponed for any period, the guaranteed minimum pension shall be increased to the extent, if any, specified in section 15 of the 1993 Act.

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

E2.—(1) This regulation applies where—

- (a) a teacher has exercised his or her right to a cash equivalent;
- (b) the other occupational pension scheme or personal pension scheme into which he or she has transferred or is in the course of transferring his or her cash equivalent is not willing or able to accept the cash equivalent of his or her guaranteed minimum pension or section 9(2B) rights; and
- (c) that teacher has not transferred the cash equivalent of his or her guaranteed minimum pension or section 9(2B) pension rights into a policy described in section 19(4)(a)⁽²¹⁾ of the 1993 Act or a separate personal pension scheme.

(2) Where this regulation applies, the teacher is entitled—

- (a) to a pension at a weekly rate equal to his or her guaranteed minimum from the date on which he or she attains state pensionable age; or
- (b) to a lump sum and a pension in respect of his or her section 9(2B) rights from the date on which he or she attains the age of 60,

or to both.

Revaluation of guaranteed minimum in certain cases

E3.—(1) This regulation applies where—

- (a) a teacher has ceased to be employed in reckonable service; and
- (b) the guaranteed minimum in relation to his or her pension is appropriately secured (within the meaning of section 19 of the 1993 Act).

(2) The earnings factors of such a teacher shall be determined for the purposes of section 14(2) of that Act—

⁽¹⁹⁾ 1993 c. 48. Section 17(5) is amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) Schedule 5, paragraph 1 and Schedule 9, Part III(4).

⁽²⁰⁾ Section 109 is amended by the Pensions Act 1995 (c. 26), section 55.

⁽²¹⁾ Section 19(4)(a) is amended by S.I. 2001/3649, article 116.

- (a) by reference to the last order under section 21 of the Pensions Act(22) or section 148 of the Social Security Administration Act 1992(23) to come into force before the end of the tax year in which he or she ceased to be a pensionable employee; and
- (b) without reference to the last such order to come into force before the end of the final relevant year.

(3) The weekly equivalent mentioned in section 14(2) of the 1993 Act shall be increased by at least the prescribed percentage for each relevant year after the end of the tax year in which he or she ceased to be a pensionable employee and in accordance with such additional requirements as may be prescribed for the purposes of section 16(3)(24) of that Act.

(4) In this regulation—

“relevant year” and “final relevant year” have the meanings given respectively in sections 14(8) and 16(5) of the 1993 Act(25); and

“prescribed percentage” has the meaning given in regulation 62 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(26).

Nature of retirement benefits

E4. Retirement benefits consist of—

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

calculated in accordance with this Part.

Qualification for retirement benefits

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

- (a) immediately before 6th April 1988 that teacher would but for his or her age have been entitled under regulation 46 of the 1977 Regulations(27) to payment of retirement benefits;
- (b) immediately before the date these Regulations come into force, regulation E4(5) of the 1992 Regulations(28) applied to that teacher; or
- (c) he or she has completed an appropriate qualifying period.

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

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

(22) 1975 c. 60; section 21 was repealed by the Social Security (Consequential Provisions) Act 1992 (c. 6), section 3(1) and Schedule 1.

(23) 1992 c. 5 as amended by the Pension Schemes Act 1993 (c. 48), Schedule 8, the Pension Act 1995 (c. 26), section 128 and the Child Support, Pensions and Social Security Act 2000 (c. 19), sections 33 and 37.

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

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

(26) S.I. 1996/1172, as amended by S.I. 2002/681.

(27) Regulation 46 was amended by S.I. 1978/1507, 1980/344, 1983/639, 1988/1618 and 1989/666 (and revoked by S.I. 1992/280).

(28) S.I. 1992/280 (“the 1992 Regulations”). The 1992 Regulations are revoked in their entirety by these Regulations (see Schedule 1 to these Regulations).

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

(5) If paragraph (4) does not apply, a qualifying period of 2 years beginning after 5th April 1988 shall be an appropriate one; and any period of the kind described in paragraph 4 of Schedule 8 shall be treated for the purposes of this paragraph as having begun after 5th April 1988.

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

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

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

Entitlement to payment of retirement benefits

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

- (a) has attained the age of 60 and has ceased to be in pensionable employment;
- (b) has attained the age of 70 and is in employment which would be pensionable employment but for regulation B6(1);
- (c) —
 - (i) has not attained the age of 60;
 - (ii) has ceased after 31st March 1972 to be in pensionable employment;
 - (iii) has become incapacitated;
 - (iv) in the case of a teacher registered or formerly registered with the General Teaching Council for Scotland and who has ceased after 31st March 1997 to be in pensionable employment, has not had his or her name removed from the Council's register following a direction by the Council's Disciplinary Committee and is not under an investigation which might result in such removal; and
 - (v) in any other case, where he or she has ceased after 31st March 1997 to be in pensionable employment, and has not ceased to be in pensionable employment as a result of dismissal on grounds of misconduct;
- (d) —
 - (i) has not attained the age of 60;
 - (ii) has attained the age of 50;
 - (iii) has ceased after attaining that age to be in pensionable employment, or in excluded employment, or in employment which would have been pensionable employment had an election been made under regulation B2, and that teacher's employer has certified in writing to the Scottish Ministers that his or her employment has been terminated as a result of their redundancy or in the interests of the efficient exercise of the employer's functions; and
 - (iv) has not received, and is not to receive, compensation under Part IIIA of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations

1996(29) and that teacher's employer has agreed that he or she should become entitled to retirement benefits under this paragraph; or

- (e) –
- (i) has attained the age of 55;
 - (ii) has ceased on or after 30th June 2002 and before attaining the age of 60 to be in pensionable employment or excluded employment; and
 - (iii) is not entitled to payment of retirement benefits by virtue of paragraph (1)(c) or (1)(d),
- and the conditions specified in paragraph (4) are satisfied.

(2) Entitlement under–

- (a) paragraph (1)(a) and (b) takes effect as soon as the teacher meets the conditions prescribed therein;
- (b) paragraph (1)(c) takes effect–
 - (i) as from the day after the end of pensionable employment; or
 - (ii) if the date of the teacher's application for payment of retirement benefits on grounds of incapacity is later, that date or such other date as the Scottish Ministers, having regard to all the circumstances, think appropriate; and
- (c) paragraph (1)(d) takes effect, unless the teacher entitled to receive payment has waived his or her right to such payment in terms of paragraph (3), as from the day after the end of the employment;
- (d) paragraph (1)(e) takes effect–
 - (i) where, at the time of the application for benefits under regulation E36, the teacher was in pensionable employment or excluded employment, as from the day after the end of the employment; and
 - (ii) in any other case on a date determined by the teacher making the application for benefits under regulation E36 being a date no earlier than 6 weeks after the date of such application.

(3) A teacher entitled to payment of retirement benefits by virtue of paragraph (1)(d), who is also a teacher to whom the provisions of regulation 7 of the Local Government (Education Administration) (Compensation for Redundancy or Premature Retirement on Reorganisation) (Scotland) Regulations 1995(30) applies, may waive his or her entitlement to such payment under paragraph (1)(d) by notice in writing to their employer, but such waiver shall not prejudice his or her entitlement to benefit under any other provision of this regulation.

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

- (a) where the teacher has a guaranteed minimum pension in respect of employment before 6th April 1997, or an equivalent pension benefit relating to employment undertaken during the period starting on 3rd April 1961 and ending on 5th April 1975 (or both) that the annual rate of the teacher's retirement benefits in the opinion of the Government Actuary is equal to or exceeds the equivalent pension benefit or the value of the guaranteed minimum pension (or if both the aggregate); and
- (b) where, at the time of the application for payment of benefits under regulation E36, the teacher was in pensionable employment (otherwise than by virtue of regulation B9) or excluded employment that–
 - (i) his or her employer has consented to the application; or

(29) S.I. 1996/2317; Part IIIA was inserted by S.I. 1997/675, regulation 7.

(30) S.I. 1995/840.

- (ii) 6 months have elapsed since the date on which the teacher requested his or her employer to give consent and such consent has not been given.

Amount of retirement pension

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

(2) If—

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

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

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

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

(5) Subject to sub paragraph (b), paragraph (4) applies where—

- (a) a teacher is entitled to payment of retirement benefits under regulation E6(1)(d) and ceased to be in pensionable employment or in excluded employment on or after 1st September 1997; or
- (b) a teacher has become entitled to payment of retirement benefits by virtue of regulation E6(1)(e).

(6) For the avoidance of doubt, references in regulations E9 to E11 to "retirement benefits" and "retirement pension" are references to such benefits as calculated before any actuarial reduction required by paragraph (4).

Amount of retirement lump sum

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

A is 3/80ths of the teacher's pensionable salary;

B is his or her effective reckonable service (except any falling within C); and

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

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

(3) Subject to paragraph (4), where—

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

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

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

Limitation of retirement benefits in certain cases

E9.—(1) Paragraphs (2) to (5) apply to a teacher who has made an election—

- (a) under regulation C1(8) of the 1992 Regulations⁽³¹⁾ and whose pensionable salary falls to be calculated by reference to the notional rate as described in that provision; or
- (b) under regulation C2(1) and whose pensionable salary falls to be calculated by reference to regulation C2(4).

(2) The annual rate of the teacher's retirement pension is not to exceed the fraction of the appropriate sum ascertained, by reference to the relevant age, from Table 1 below.

TABLE 1

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

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

TABLE 2

<i>Years in pensionable employment</i>	<i>Period in years</i>
19	17
18	15
17	13
16	11
15	9

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

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

(4) Where the teacher has been in pensionable employment for 20 years or more his or her retirement lump sum is not to exceed the appropriate sum multiplied by 1½.

(5) The appropriate sum is the greater of—

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

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

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

Enhancement of retirement benefits in case of incapacity

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

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

(2) In relation to a teacher who was in part time service which was pensionable employment, this regulation shall not apply unless the aggregate of the periods of contract of employment during which the part time service was given and the period of full time service, if any, extends to at least 5 years, where pensionable employment terminates before 1st October 2001 and 2 years where pensionable employment terminates after that date.

(3) Subject to regulation E35(2), for the purpose of calculating his or her retirement benefits the effective reckonable service of a teacher to whom this regulation applies shall be treated as having been increased by the appropriate period.

(4) If the teacher's relevant service amounts to at least 2 years but less than 10 years, the appropriate period is the shorter of—

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

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

(6) Period A is the shortest of—

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

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

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

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

Avoidance of duplicate pensions

E11.—(1) Subject to paragraph (2), this regulation applies where a teacher's effective reckonable service includes a period that also counts towards another pension payable directly or indirectly out of monies provided by Parliament or paid out of the Scottish Consolidated Fund or the non domestic rates and council tax levied by local authorities ("the double period").

(2) This regulation does not apply where the other pension is subject to reduction under regulation 33 of the Local Government Pension Scheme (Scotland) Regulations 1998(**32**) or where the other pension is payable under regulation 16C of the Teachers (Compensation for Premature Retirement and Redundancy) (Scotland) Regulations 1996(**33**).

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

- A is the actuarial value of the retirement benefits in respect of the double period; and
- B is the actuarial value of the other pension in respect of that period.

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

- C is the contributions paid by the teacher in respect of the double period, including any paid under regulation C8; and

(32) [S.I. 1998/366](#).

(33) [S.I. 1996/2317](#). Regulation 16C was added by [S.I. 1997/675](#).

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

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

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

Modification for national insurance

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

Pension debit member

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

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

Allocation of part of retirement pension

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

(2) The alternative benefit may be either—

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

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

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

(5) Further provisions as to allocations under this regulation are contained in Schedule 11.

Duration of retirement pension

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

Suspension and resumption of incapacity pensions

E16.—(1) This regulation applies where a teacher who became entitled to payment of a pension on or before 31st March 1997 by virtue of regulation E5(1)(e) of the 1992 Regulations⁽³⁴⁾ ceases to be incapacitated.

(2) On the teacher ceasing to be incapacitated the pension may be suspended from such date as the Scottish Ministers think appropriate, but any equivalent pension benefits continue to be payable.

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

(a) from the date the teacher attains age 60; or

(b) if earlier, and the Scottish Ministers are satisfied that he or she has again become incapacitated, from the date on which application for resumption of payment is received.

(4) A pension shall not be resumed under paragraph (3)(b) if the teacher has been in pensionable employment at any time after he or she first became entitled to payment of the pension, unless he or she became so employed in the period of 12 months immediately preceding the date of application for resumption of payment.

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

(6) If a pension becomes payable again under paragraph (3)(a), it shall be treated for the purposes of regulation E18 as one to the payment of which he or she has become entitled by virtue of regulation E6(1)(a).

Withdrawal of incapacity pensions

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

Abatement of retirement pension

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

(a) in pensionable employment, comparable British service or employment which would be pensionable employment or comparable British service but for his or her having made an election under regulation B7 or but for regulation B6(5) or other provisions to the like effect; or

(b) as a teacher in part time service in an employment specified in Schedule 2,

and has not attained the age of 70 or had 45 years' reckonable service.

(2) Where this regulation applies, the annual rate of the retirement pension shall be reduced—

(a) if A equals or exceeds $(C + D E)$, to zero; and

(b) in any other case, and subject to paragraph (6), by the amount (if any) which is necessary to secure that $(A + B)$ does exceed $(C + D E)$.

(3) In paragraph (2)—

⁽³⁴⁾ S.I. 1992/280 ("the 1992 Regulations"). Regulation E5(1)(e) was amended by S.I. 1993/2513 and 1997/676. The 1992 Regulations are revoked in their entirety by these Regulations (see Schedule 1 to these Regulations).

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

B is the reduced annual rate of the retirement pension, disregarding any actuarial reduction required by regulation E7(4), as increased under the 1971 Act⁽³⁵⁾;

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

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

E is any part of the retirement pension allocated under regulation E14, and

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

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

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

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

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

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

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

E19.—(1) This regulation applies to a teacher who—

- (a) became entitled to payment of a retirement pension ("the first pension");
- (b) was subsequently in pensionable employment which began on or before 30th September 2001 ("the further employment") (other than further employment to which regulation B9(1) applies); and
- (c) has ceased to be in the further employment.

(2) Subject to paragraph (3), if the first pension was not enhanced under regulation E9 of the 1992 Regulations⁽³⁶⁾ the teacher—

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

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

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

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

(5) The additional retirement benefits shall be calculated—

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

but the additional retirement lump sum shall be subject to reduction under paragraph (9).

(6) For the purposes of paragraphs (2)(b) and (3)(a), the amount of any retirement pension shall be taken to be the amount before any allocation under regulation E14.

(7) If, in the application of regulation E9 of the 1992 Regulations to the calculation of the first pension, the appropriate period was Period B, paragraph (5)(a) applies with the substitution for “60” of “65”.

(8) If the teacher ceased to be in the further employment before attaining the age of 60 and neither regulation E6(1)(c) nor regulation E6(1)(d) applied, he or she shall not become entitled to payment of retirement benefits under paragraph (3)(b) or (4) until he or she attains that age, save that where the teacher ceases to be in further employment on or after 30th June 2002 and is entitled to payment of retirement benefits under sub paragraph 3(b), he or she shall upon attaining the age of 55 become entitled to retirement benefits multiplied by the appropriate factor.

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

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

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

⁽³⁶⁾ Regulation E9 was amended by [S.I. 2001/291](#) and [2002/288](#).

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

E20.—(1) This regulation applies—

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

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

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

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

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

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

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

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

Grants on grounds of incapacity

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

- (a) is not entitled to payment of retirement benefits under this Part; and
- (b) before attaining the age of 70 became incapacitated; and
- (c) has been employed in pensionable employment for at least one year; and
- (d) has been so employed within the 12 months immediately preceding an application for a grant under this regulation,

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

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

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

Forfeiture of benefits

E22.—(1) This regulation applies where a teacher is convicted of—

- (a) an offence of treason; or

- (b) one or more offences under the Official Secrets Acts 1911 to 1989⁽³⁷⁾ for which he or she has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in aggregate to, at least 10 years; or
- (c) an offence in connection with pensionable employment or excluded employment which is certified by the Scottish Ministers either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service,

and any benefit under regulations E1 to E21 becomes payable to him or her after the offence was committed.

(2) Subject to paragraph (3), the Scottish Ministers may—

- (a) defer or as the case may be suspend payment of the benefit for so long; or
- (b) reduce its amount or rate by so much,

as they may determine.

(3) If—

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

a determination under paragraph (2) may not deprive that teacher of his or her guaranteed minimum pension after he or she attains state pensionable age.

Commutation: exceptional circumstances of ill-health

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

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

Death grants

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

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

a death grant may be paid.

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

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

⁽³⁷⁾ 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

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

a death grant may be paid under this paragraph.

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

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

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

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

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

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

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

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

Deficiency grants

E25.—(1) Subject to paragraph (7), this regulation applies where a teacher dies who—

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

(2) If—

- (a) the teacher became entitled to retirement benefits before 1st October 2001;
- (b) at least 10 years' reckonable service was taken into account in calculating his or her retirement benefits; and
- (c) the total of the amounts paid in respect of these benefits is less than the pensionable salary,

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

(3) If—

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

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

(4) If—

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

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

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

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

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

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

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

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

Family benefits generally

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

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

(3) Subject to paragraph (4), references in regulations E28 to E33 to a surviving spouse are references to a widow or widower, but in the case of—

- (a) a male teacher who has not been in pensionable employment, or paying additional contributions to purchase current added years under regulation C8 or C9, at any time after 5th April 1978; or
- (b) a female teacher who has not been in pensionable employment, or paying additional contributions to purchase current added years under regulation C8 or C9, at any time after 5th April 1988,

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

(4) References to a widower in regulation E28 to E33 do not include a widower of a teacher who was, before 6th April 1988, nominated by her as a beneficiary under regulation 65 of the 1977 Regulations⁽³⁸⁾.

⁽³⁸⁾ *S.I. 1977/1360* ("the 1977 Regulations"). Regulation 65 was substituted by *S.I. 1989/666*. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

(5) Where regulations E28 to E33 provide for a pension to be payable to a widow and there are two or more widows, the widows shall be entitled to an equal share of the pension; and where the death of one or more widows occurs, the survivor shall be entitled in full to the pension payable under those regulations, or, in the case of survivors, they shall be entitled to an equal share.

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

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

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

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

- (a) he or she has not attained the age of 17;
- (b) having attained that age, he or she is receiving full-time education or attending a course of not less than 2 years' full-time training for a trade, profession or calling and he or she has been receiving full-time education or attending such course of training or both continuously since having attained that age without a break at any one time of longer than 18 months;
- (c) having not attained the age of 19, he or she is not in remunerative full-time work and is not entitled to income support by reason that he or she is receiving education for the purposes of section 142 of the Social Security Contributions and Benefits Act 1992⁽³⁹⁾; or
- (d) having ceased while incapacitated to fall within sub-paragraph (a), (b) or (c), he or she continues to be incapacitated.

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

(9) Disqualifying income is remuneration at a rate not less than the annual rate at which an official pension, within the meaning of the 1971 Act⁽⁴⁰⁾, 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.

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

Nomination of beneficiaries

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

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

(3) The eligible persons are—

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

⁽³⁹⁾ 1992 c. 4.

⁽⁴⁰⁾ 1971 c. 56.

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

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

Entitlement to short-term family benefits

E28.—(1) Subject to paragraphs (3) and (4), a short-term pension shall be payable from the day after that of his or her death, in respect of a teacher who, on or after the date on which these Regulations come into force, dies—

- (a) while in pensionable employment;
- (b) during a period for which he or she is paying additional contributions under regulation C8 or C9;
- (c) within 12 months after ceasing to be in pensionable employment, or within 12 months of ceasing to pay contributions referred to in sub-paragraph (b), by reason of incapacity, but before becoming entitled to payment of retirement benefits; or
- (d) having become entitled after the date on which these Regulations come into force, to receive payment of retirement benefits.

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

- (a) subject to paragraph (4)(a), to any surviving spouse, or, if a nomination under regulation E27 has effect at the time of his or her death, to the nominated beneficiary; and
- (b) if the deceased is survived by a child or children to or for the benefit of the child or, as the case may be, the children jointly.

(3) Where two or more teachers confer on the same child or, as the case may be, children, entitlement to a short-term pension, regulation E30(12) shall apply in a like manner to short-term pensions payable by virtue of this regulation.

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

- (a) to a widower if one is payable to another person as nominated beneficiary;
- (b) to a nominated beneficiary who, at the date of the deceased's death, was not wholly or mainly financially dependent on the deceased;
- (c) if there is no surviving spouse, nominated beneficiary or surviving child; or
- (d) where paragraph (1)(d) applies, to a person who is not entitled to a long-term pension under regulation E30.

Amount and duration of short-term family benefits

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

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

(d) if regulation E28(1)(a) and (d) both apply, the total of the rates specified in sub paragraphs (a) and (c).

(2) Where the annual rate of a short-term pension payable to a surviving spouse, nominated beneficiary or child calculated in accordance with paragraph (1) is less than that of a long-term pension to which those persons are prospectively entitled under regulation E30, the annual rate of the short-term pension is the same as that of the long-term pension.

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

TABLE

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

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

Entitlement to long-term family benefits

E30.—(1) Long-term pensions are payable in accordance with paragraphs (5) and (6) if a teacher dies who—

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

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

(2) Relevant service does not include any period in respect of which contributions made by the teacher have been returned and not repaid to the Scottish Ministers in pursuance of regulation C14.

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

- (a) any period of pensionable employment after 31st March 1972;
- (b) any period beginning after that date for which additional contributions have been paid under regulation C8 or C9;
- (c) any period for which additional contributions have been paid under regulation C5 or C7(1) in accordance with an election made after 31st March 1974;
- (d) if a transfer value has been accepted in respect of comparable British service, the period that would, immediately before its acceptance, have counted for family benefits in the relevant pension scheme;

- (e) any period counting as reckonable service by virtue of the receipt of any other transfer value under regulation G2 or under the Teachers Superannuation (Added Years and Interchange) (Scotland) Regulations 1974(41);
 - (f) any period counting as reckonable service by virtue of regulation 6A of the 1977 Regulations(42);
 - (g) any period counting as reckonable service by virtue of regulation 29 of the 1977 Regulations;
 - (h) any period in respect of which family benefit contributions have, or are to be treated as having, been paid under Part I of Schedule 6; and
 - (i) in the case of a member, so much of that member's credited service as does not exceed the total of his normal service and any additional period, and in addition any period that fell to be calculated in accordance with paragraph 6(3) of Schedule 6.
- (4) In relation to a woman not falling within paragraph (3), relevant service comprises, subject to paragraph (2)–
- (a) so much of the periods described in paragraph (3)(a), (b) and (d) as consists of, or is attributable to, service after 5th April 1988;
 - (b) any period for which additional contributions have been paid under regulation C5 or C7(1) in accordance with an election made after 5th April 1988;
 - (c) any period in respect of which family benefit contributions have, or are to be treated as having, been paid under Part II of Schedule 6; and
 - (d) if she entered pensionable employment after 5th April 1988, and a transfer value offered in respect of her was accepted under regulation G2, any period counting as reckonable service by virtue of receipt of the transfer value.
- (5) If paragraph (1) applies–
- (a) subject to paragraph (7) a long-term pension shall be payable to any surviving spouse;
 - (b) if a nomination under regulation E27 had effect at the date of death, a long term pension shall be payable to the nominated beneficiary provided that he or she was wholly or mainly financially dependent on the deceased at that date; and
 - (c) if a pension is payable under sub-paragraph (a) or (b) and the deceased is survived by his or her child or children, a long term pension shall be payable to or for the benefit of the child or, as the case may be, the children jointly.
- (6) If when a teacher dies paragraph (5) does not apply but he or she–
- (a) has been in pensionable employment at any time after 31st March 1972; and
 - (b) qualifies for retirement benefits; and
 - (c) is survived by his or her child or children,
- a long term pension shall be payable to or for the benefit of the child or, as the case may be, the children jointly.

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

(8) Where the person was nominated as a beneficiary under regulation 65 of the 1977 Regulations(43) by a teacher who is a married woman and she has not revoked that nomination, in addition to the long-term pension payable to that person under paragraph (5)(b) there shall be payable to the widower a long-term pension calculated in accordance with regulation E31(7).

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

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

(43) Regulation 65 was substituted by S.I. 1989/666.

(9) Subject to paragraph (10) and regulation E31(7), if neither paragraph (5) nor paragraph (8) applies but the deceased had a guaranteed minimum in relation to benefits under these Regulations and leaves a surviving spouse, subject to regulation E1(2)(c) or (d) a long-term pension shall be payable.

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

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

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

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

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

(2) If—

- (a) paragraph 15 of Schedule 6 applies; and
- (b) a person entitled to limit the amount of the deduction or lump sum has done so,

the retrospective salary increase is not to be taken into account in calculating the deceased's pensionable salary.

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

(4) Family benefit service does not include any period in respect of which contributions made by a teacher have been returned and not repaid to the Scottish Ministers in pursuance of regulation C14.

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

- (a) any period falling within regulation E30(3)(a) to (h) and;
- (b) in the case of a member, his credited service and any period that fell to be calculated in accordance with paragraph 6(3) of Schedule 6.

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

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

(8) Notwithstanding anything in paragraphs (1), (5), (6), (7) and (9) to (11), the pension payable to a widower of a teacher who had in effect at the date of death a nomination in respect of another person under regulation 65 of the 1977 Regulations shall be the aggregate of the following amounts—

- (a) a pension equal to one half of that part of the teacher's guaranteed minimum which is attributable to earnings for the tax years 1988/89 to 1996/97 inclusive; and

- (b) a pension calculated by multiplying 1/160th of the deceased teacher's pensionable salary by the period in respect of which family benefit contributions have been paid under Part II of Schedule 6.

(9) This paragraph applies if the deceased died—

- (a) while in pensionable employment;
- (b) during a period for which he or she was paying additional contributions under regulation C8 or C9;
- (c) within 12 months after ceasing to be in pensionable employment as a result of ill-health but before becoming entitled to payment of retirement benefits; or
- (d) after becoming entitled to payment of retirement benefits, if they fell to be enhanced under regulation E10, and

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

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

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

where—

A is the family benefit service calculated in accordance with paragraphs (4) to (7);

B is his or her effective reckonable service apart from C; and

C is the period which was, or would if regulation E10 had applied have been, the appropriate period within the meaning of regulation E10.

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

(12) If the deceased had been in pensionable employment after 5th April 1978 and the pension is payable to a woman whom he first married after his last day in pensionable employment, his family benefit service comprises, subject to paragraph (4)—

- (a) any period of pensionable employment after 5th April 1978;
- (b) any period for which additional contributions have been paid under regulation C5 in accordance with an election made after that date;
- (c) any period beginning after that date for which additional contributions have been paid under regulation C8 or C9;
- (d) if a transfer value has been received after that date in respect of comparable British service, any period of reckonable service attributable to comparable British service after that date;
- (e) any period counting as reckonable service by virtue of the receipt after that date of any other transfer value; and
- (f) so much of any period counting as reckonable service by virtue of regulation 6A of the 1977 Regulations⁽⁴⁴⁾ as is attributable to service after that date.

Amounts of children's long-term pensions

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

- (a) to a surviving spouse or a nominated beneficiary (an “adult pension”); and

⁽⁴⁴⁾ *S.I. 1977/1360* (“the 1977 Regulations”). Regulation 6A was substituted by *S.I. 1989/666*. The 1977 Regulations were revoked in their entirety (see Schedule 1 to these Regulations).

(b) to or for the benefit of a child or children (a “children’s pension”), the annual rate of the children’s pension is the appropriate fraction of the deceased’s pensionable salary multiplied by A or, where regulation E31(7) applies, B, where—

A is in all cases the length of what would have been the deceased’s family benefit service if regulation E31(5) had applied; and

B is the number of years on which A is calculated increased in like proportion as if it were service to which regulation E31(10) or, as the case may be, regulation E31(11) had applied.

(2) The appropriate fraction—

(a) while a children’s pension is payable to or for the benefit of 2 or more children, is 1/160th; and

(b) while a children’s pension is payable to or for the benefit of one child, is 1/320th.

(3) If—

(a) no adult pension becomes payable; or

(b) an adult pension ceases to be payable,

the annual rate of a children’s pension is the applicable fraction of the deceased’s pensionable salary multiplied by C or, where regulation E31(9) applies, C + D, where—

C is the deceased’s effective reckonable service apart from D; and

D is the period which was, or would if regulation E10 had applied have been, the appropriate period within the meaning of regulation E10.

(4) The applicable fraction—

(a) while a children’s pension is payable to or for the benefit of 2 or more children, is 1/120th; and

(b) while a children’s pension is payable to or for the benefit of one child, is 1/240th.

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

Commencement and duration of long-term family pensions

E33.—(1) A pension under regulation E30 payable to a surviving spouse or a nominated beneficiary (“an adult pension”) shall be paid—

(a) from the day on which any short-term pension that became so payable under regulation E28 ceases to be payable; or

(b) if no short-term pension became payable, from the day after that of the death.

(2) Subject to paragraph (3), an adult pension shall be payable for life.

(3) Subject to regulation E1(2)(c) and (d), an adult pension—

(a) shall not, unless the Scottish Ministers determine otherwise in the particular case, be payable during any subsequent marriage or any period of cohabitation outside the marriage; and

(b) if the Scottish Ministers so decide, may be payable upon the former recipient again becoming a widow or widower or on the termination of any such marriage or, as the case may be, of the period of cohabitation.

(4) A pension under regulation E30 payable to or for the benefit of a child or children (“a children’s pension”) shall be paid—

(a) from the day on which any short-term pension that became so payable, or payable to a surviving spouse or a nominated beneficiary, under regulation E28 ceases to be payable; or

(b) if no short-term pension became payable, from the day after that of the death.

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

Pensionable salary

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

(a) where the material part of that teacher's terminal service is one year or more, is his or her full salary for the best consecutive 365 days of that part; and

(b) in any other case, is the average annual rate of his or her full salary for that part.

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

(3) Terminal service comprises—

(a) any period spent by the teacher in pensionable employment;

(b) any period counting as reckonable service by virtue of regulation D4;

(c) any period of comparable British service which began before 1st April 1974 and has not been followed by a period of pensionable employment and for which a transfer value has been accepted;

(d) subject to paragraph (4), any period of a kind described in Schedule 8; and

(e) any period counting as reckonable service by virtue of regulation C8.

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

(a) where he or she has less than 3 years of such service, the whole of it; or

(b) in any other case, the last 3 years of it.

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

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

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

(a) for a period falling within paragraph (3)(a), is his or her contributable salary for the period of pensionable employment, disregarding any reduction during sick leave or maternity, paternity or adoption leave;

(b) for a period falling within paragraph (3)(b), is the notional salary by reference to which the additional contributions paid under regulation C8 or C9 were calculated; and

(c) for a period falling within paragraph (3)(c), is what would have been his or her salary for the purpose of calculating benefits under the pension scheme to which he or she was subject in the relevant employment;

(d) for a period falling within paragraph (3)(d), is what would have been his or her salary for the purpose of calculating benefits under the pension scheme to which he or she was subject in the relevant employment; and

(e) for the period falling within paragraph (3)(e), is the notional salary by reference to which the additional contributions paid under regulation C9 were calculated.

(8) For—

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

beginning after 31st July 1975 and ending before 1st August 1978, a teacher's full salary includes any sums that would have been payable to him or her if payment of them had not been withheld, whether by virtue of an enactment or otherwise, in order to comply with limits referred to in section 1 of the Remuneration, Charges and Grants Act 1975⁽⁴⁵⁾.

(9) For—

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

beginning after 31st March 1979 and ending before 1st September 1980, a teacher's full salary is the notional salary resulting from the application to him or her of the Teachers' Superannuation (Notional Salaries) (Scotland) Regulations 1982⁽⁴⁶⁾.

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

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

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

is greater than zero where—

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

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

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

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

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

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

(12) Paragraph (11) does not apply—

- (a) in relation to a teacher who becomes entitled to the payment of retirement benefits by virtue of regulation E6(1)(c);
- (b) for the purpose of calculating—
 - (i) a death grant under regulation E24, or

⁽⁴⁵⁾ 1975 c. 57; section 1 was amended, and the period for which it had effect extended to end on 31st July 1978, by the Price Commission Act 1977 (c. 33), section 17; references to limits set out in documents laid before Parliament in 1976 and 1977 were added by S.I. 1976/1097, 1977/1294. Section 1 was repealed by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part II.

⁽⁴⁶⁾ S.I. 1982/1302.

- (ii) a pension payable under regulation E31 or E32 in relation to a teacher who died while in pensionable employment;
 - (c) to any increase in contributable salary which was received while the teacher was employed by an employer other than the body which was the teacher's employer immediately before he or she became entitled to the payment of retirement benefits, or
 - (d) where the Scottish Ministers are satisfied that the increase in contributable salary was agreed on or before 5th October 1998.
- (13) For the purposes of paragraph (11), paragraph (12) and this paragraph—
- (a) where a teacher receives more than one increase in salary in a financial year the increases taken together shall be treated as one increase and accordingly, in paragraph (11), A is the teacher's salary before the first increase and B is the teacher's salary after the last increase;
 - (b) the material date is the date on which the increase of salary took effect;
 - (c) the standard increase of salary is the average percentage of the increases, if any, that would have been received on the material date by persons ("the comparable employees") who were employed at the school or establishment where the teacher in question was employed and whose circumstances corresponded most closely to those of that teacher or, if there were no comparable employees, by persons who were employed as teachers at that school or establishment or, if the comparable employees or the persons so employed as teachers (as the case may be) would have received no increases on that date, the next increases they would have received; and
 - (d) where a body becomes a teacher's employer by virtue of any enactment regarding the transfer of staff or the transfer of rights and liabilities under a contract of employment that body and the teacher's previous employer shall be taken to be the same employer.
- (14) Where an election under regulation H6(5) is made after the teacher becomes entitled to payment of retirement benefits the teacher shall, until the date on which the election is received by the Scottish Ministers, be entitled to retirement benefits calculated on the basis only of the contributable salary he or she is treated as receiving in the absence of such an election and accordingly as from the date on which the election is received by the Scottish Ministers the person shall become entitled to—
- (a) a lump sum payment equal to the difference between the retirement lump sum to which the teacher is entitled taking into account the election and the retirement lump sum previously paid to the teacher; and
 - (b) a retirement pension taking into account the election.
- (15) Where a teacher has spent the material part of his or her terminal service employed in part-time service under regulation J2, that teacher's pensionable salary shall be calculated by reference to his or her salary for the last consecutive 365 days prior to commencement of his or her winding down employment under regulation J2 taking into account prospective increases under the 1971 Act⁽⁴⁷⁾.

Effective reckonable service

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

- (2) Subject to paragraph (3), effective reckonable service does not include—
 - (a) any reckonable service in excess of 45 years; or
 - (b) any reckonable service in excess of 40 years before attaining age 60.
- (3) In respect of a teacher employed in part-time service under contracts of employment concurrently in force who ceases to be employed under any of those contracts in circumstances

⁽⁴⁷⁾ 1971 c. 56.

by virtue of which he or she becomes entitled to retirement benefits under regulation E6(1)(d), effective reckonable service does not include any reckonable service recorded whether before or after cessation of the said contract of employment in respect of any contracts of employment under which he or she continues to be employed.

- (4) In relation to a retirement lump sum, if the teacher's relevant service, that is to say the total of—
- (a) the time he or she has spent in pensionable employment;
 - (b) any comparable British service counting as reckonable service by virtue of the acceptance of a transfer value; and
 - (c) any period counting as reckonable service by virtue of regulation 6A of the 1977 Regulations⁽⁴⁸⁾,

is less than 20 years, his or her effective reckonable service does not include so much of any period counting as reckonable service by virtue of regulation D3 as exceeds the maximum ascertained from the Table below.

TABLE

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

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

Payment of benefits

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

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

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

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

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

⁽⁴⁸⁾ *S.I. 1977/1360* (“the 1977 Regulations”). Regulation 6A was inserted by *S.I. 1977/1808*. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

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

where—

A is the annual rate of the benefit;

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

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

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

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

Interest on late payment of certain benefits

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

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

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

- (a) in the case of a death grant under regulation E24 or a deficiency grant under regulation E25, the day after the date on which the Scottish Ministers have become satisfied that the benefit may be paid; and
- (b) in any other case, the date on which the person becomes entitled to the benefit.

(4) For the purposes of paragraph (1) the due date, in a case where a benefit does not consist of a single payment, is the last day of the month in which entitlement to the benefit took effect.

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

- (a) “the base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of four, is the first in the sequence; and
- (b) “the reference banks” means the four largest persons for the time being who—
 - (i) have permission under Part 4 of the Financial Services and Markets Act 2000⁽⁴⁹⁾ to accept deposits;
 - (ii) are incorporated in and carrying on in the United Kingdom a regulated activity of accepting deposits; and
 - (iii) quote a base rate applicable to sterling deposits,

and in this definition the reference to accepting deposits must be read with section 22 of the Financial Services and Markets Act 2000, any relevant order under that section and Schedule 2 to that Act.

⁽⁴⁹⁾ 2000 c. 8, to which there are amendments not relevant to these Regulations.

Benefits not assignable

E38.—(1) Any assignation of or charge on, or agreement to assign or charge, any benefit under this Part shall be void.

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

(3) Nothing in paragraph (2) shall affect the powers of the Court under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985⁽⁵⁰⁾ or under section 310 of the Insolvency Act 1986⁽⁵¹⁾, as the case may be.

PART F

PENSION SHARING

Pension sharing mechanism in the Scheme

F1.—(1) Pension sharing is available under the Scheme in respect of any of a person’s shareable rights under the Scheme except as otherwise provided in this regulation.

(2) Excluded from shareable rights for the purposes of this Part of the Regulations are any rights under the Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependant of a deceased member with pension rights under the Scheme.

Pension sharing order activates pension sharing creating pension debits and credits

F2. On the coming into effect of a pension sharing order—

- (a) the transferor’s shareable rights under the Scheme become subject to a debit of the appropriate amount (“pension debit”) as defined in regulation F3; and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”) as against the Scottish Ministers.

Calculation of the appropriate amount

F3.—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, “appropriate amount” for the purposes of regulation F2 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of regulation F2 is the lesser of—

- (a) the specified amount; and
- (b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under the Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which he or she would be entitled under the Scheme by virtue of his or her shareable rights under it had his or her pensionable service terminated immediately before that day.

⁽⁵⁰⁾ 1985 c. 66. Section 32(2) is amended by the Pensions Act 1995 (c. 26), Schedule 3 and its effect modified by the Welfare and Pensions Reform Act 1999 (c. 30), Schedule 2, paragraph 1.

⁽⁵¹⁾ 1986 c. 45. Section 310 is amended by the Pensions Act 1995 (c. 26), Schedule 3, the Welfare and Pensions Reform Act 1999 (c. 30) Schedule 2, paragraph 2 and the Enterprise Act 2002 (c. 40), section 259(4) and Schedule 26.

(4) Otherwise, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the Scheme by virtue of his or her shareable rights under it.

(5) For the purposes of this regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation F2(b) as the Scottish Ministers may specify by notice in writing to the transferor and transferee.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order takes effect.

Pension debits and reduction of benefit

F4.—(1) Subject to paragraph (2), where a member’s shareable rights are subject to a pension debit, each benefit or future benefit—

- (a) to which he or she is entitled under the Scheme by virtue of those rights; and
- (b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under the Scheme of a member who is in pensionable service under the Scheme on the transfer day, each benefit or future benefit—

- (a) to which the person is entitled under the Scheme by virtue of those rights; and
- (b) which corresponds to a qualifying benefit,

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) In this regulation—

“appropriate percentage”, in relation to a pension debit, means—

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
- (b) if the relevant order or provision specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the 1999 Act⁽⁵²⁾ represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order on which the debit depends; and

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

Effect of pension sharing on protected rights and guaranteed minimum pension

F5. Where a member has protected rights or a guaranteed minimum in relation to a pension provided by the Scheme, these shall in the case of a pension debit in relation to the member’s rights under the Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the 1993 Act⁽⁵³⁾.

⁽⁵²⁾ 1999 c. 30.

⁽⁵³⁾ 1993 c. 48. Subsections 10(4) and (5) and section 15A were inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 32.

Discharge of pension credit liability

F6.—(1) The Scottish Ministers in relation to a pension credit derived from the Scheme may discharge their liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse.

(2) If the Scheme becomes closed to new members, the liability in respect of any pension credit derived from the Scheme may be discharged in accordance with paragraphs 2(3) to (5) of Schedule 5 to the 1999 Act and in accordance with regulations made under paragraph 2(3) of Schedule 5 to that Act.

(3) For the purposes of this regulation, rights conferred on the ex-spouse are appropriate if—

- (a) they are conferred with effect from, and including, the day on which the pension sharing order, under which the credit arises, takes effect; and
- (b) their value, when calculated in accordance with regulations made by the Secretary of State under section 30(1) of the 1999 Act in relation to the calculation of cash equivalents, equals the amount of the credit.

Adjustment of the amount of the pension credit – payments made without the knowledge of the pension debit

F7. If—

- (a) a person’s shareable rights under the Scheme have become subject to a pension debit;
- (b) the Scottish Ministers make a payment which is referable to those rights without knowing of the pension debit; and
- (c) the cash equivalent of the member’s shareable rights after deduction of the payment is less than the amount of the pension debit,

the pension credit shall be reduced to that lesser amount.

Implementation period for discharge of pension credit

F8.—(1) The Scottish Ministers shall discharge their liability in respect of a pension credit within the implementation period, which for a pension credit is the period of 4 months beginning with the later of—

- (a) the day on which the relevant pension sharing order takes effect; and
- (b) the first day on which the Scottish Ministers in relation to the relevant pension sharing order are in receipt of—
 - (i) the relevant matrimonial documents; and
 - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations made under section 34(1)(b)(ii) of the 1999 Act⁽⁵⁴⁾.

(2) The reference in paragraph (1)(b)(i) to the relevant matrimonial documents is to copies of—

- (a) the relevant pension sharing order; and
- (b) the order, decree or declarator responsible for the divorce or annulment to which it relates,

and, if the pension credit depends on provision falling within subsection (1)(f) of section 28 of the 1999 Act, to documentary evidence that the agreement containing the provision is one to which subsection (3)(a) of that section applies.

(3) Paragraph (1) is subject to any provision made by regulations under section 41(2)(a) of the 1999 Act.

(54) 1999 c. 30.

(4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under section 34(4)(a) and (c) of the 1999 Act which—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;
- (b) provide for that section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time.

Failure to discharge liability in respect of pension credit within the implementation period – death of ex spouse within period

F9.—(1) Where the Scottish Ministers have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) they shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act, notify the Pensions Regulator of that fact within such period as the Secretary of State may so prescribe; and
- (b) section 10 of the 1995 Act⁽⁵⁵⁾ shall apply where the Scottish Ministers have failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(2) If the Scottish Ministers fail to perform the obligation imposed by paragraph (1)(a) above, section 10 of the 1995 Act shall apply.

(3) Where the Scottish Ministers are subject to liability in respect of a pension credit, the Pensions Regulator may on the application of the Scottish Ministers extend the implementation period for the credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations made under section 33(4) of the 1999 Act.

(4) Where an ex-spouse dies before the Scottish Ministers have discharged their liability in respect of the pension credit, that liability may be discharged by the payment of a lump sum in accordance with paragraph (6).

(5) Upon the death of a pension credit member, a death grant shall be paid if, at the time of the member's death, he or she has not received any pension credit benefits or if he or she has received a pension for less than 5 years. The amount of the death grant to be paid is—

- (a) if the pension credit member was already entitled to payment of pension credit benefits, a lump sum equal to 5 times the amount of the pension which would otherwise have been payable less any amount which has already been paid; or
- (b) if the pension credit member was not entitled to pension credit benefits, a lump sum equal to that to which the member would have been entitled if, on the date of his or her death, he or she had attained the age of 60.

(6) Any death grant referred to in paragraph (5) shall be paid to the individual nominated by the deceased to receive the grant or, in the absence of such a nomination, to the deceased's spouse, whom failing, to his or her legal personal representative. Any nomination for the purposes of this paragraph shall be made by giving written notice to the Scottish Ministers.

⁽⁵⁵⁾ 1995 c. 26, as amended by the Welfare Reform and Pensions Act 1999 (c. 30) section 18 and Schedule 2, paragraph 11 and the Pensions Act 2004 (c. 35), Schedule 12, paragraph 38 and Schedule 13, Part 1.

Appropriate rights and pension credit benefits under the Scheme

F10.—(1) Except as referred to in this regulation or otherwise in this Part, the appropriate rights under the Scheme to which a pension credit member shall be entitled shall consist only of a pension, a lump sum on retirement and rights in relation to a lump sum on death as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

(3) The amount of the lump sum on retirement to which a pension credit member shall be entitled shall be calculated on the same basis as if his or her pension were a deferred pension under the Scheme, except that no lump sum on retirement shall be paid to the pension credit member if the corresponding pension debit has already received a lump sum from the Scheme before the date of the implementation of the pension sharing order.

(4) A pension credit member is entitled to his or her pension credit benefits on reaching his or her normal retirement age.

(5) The pension credit benefits are payable immediately on reaching normal retirement age and may not be deferred.

Additional contributions and additional periods

F11.—(1) Subject to paragraph (2), an active member, whose benefits have been made subject to a pension sharing order, shall not be allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made.

(2) The provisions of paragraph (1) shall be relaxed if in line with any tax exception or concession, which the Inland Revenue may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999 and any modifications thereto made by the Inland Revenue from time to time under paragraph 18(10) and (11) of that Schedule(56), or otherwise.

Commutation: small pensions

F12.—(1) Regulation J9 shall apply, if as a result of a pension sharing order the annual rate of the retirement pension, which a member who has attained state pensionable age is entitled to be paid, falls below the sum mentioned in that regulation.

(2) Regulation J9 shall apply in respect of the retirement pension payable to a pension credit member in respect of a pension credit and the amount of that pension shall for the purpose of this regulation be aggregated with any other pension payable to that member under the Scheme.

Commutation: exceptional ill-health

F13.—(1) The whole of the pension element payable in respect of a pension credit benefit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal retirement age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

(56) 1999 c. 16, Schedule 10, paragraph 18 is amended by S.I. 2000/1085 and is prospectively repealed by the Finance Act 2004 (c. 12), Schedule 42, Part 3.

(3) The lump sum shall be equal to five times the annual rate of the pension to which the pension credit member would have been entitled if on the date of commutation he had already reached the normal retirement age.

Transfer values

F14. The Scottish Ministers shall not pay or accept a transfer value within the meaning of regulations G1 and G2 in respect of any pension credit rights or pension credit benefits.

Charges in respect of pension sharing costs

F15.—(1) The Scottish Ministers may recover from the parties involved in pension sharing charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the Scottish Ministers in connection with pension sharing activity other than those costs specified in paragraph (3).

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case.

(4) The Scottish Ministers shall, before a pension sharing order is made, inform the member, or his or her spouse as the case may be, in writing of their intention to recover costs incurred with any description of pension sharing activity and provide the member or his or her spouse, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act⁽⁵⁷⁾.

Excluded membership

F16.—(1) Pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member, he or she may not count any period which may count for any purpose in connection with his or her pension credit benefit towards any membership period required under the Scheme.

Assignment

F17. Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of the Scheme, pension credit benefits under the Scheme may not be assigned, charged or otherwise made subject to a security.

Payment of benefits/Interest on late payment of certain benefits

F18. The provisions of regulations E36 and E37 shall apply to the pension credit member.

(57) 1999 c. 30.

PART G

TRANSFER VALUES

Payment of transfer values

G1.—(1) Subject to paragraphs (2) to (14), where a teacher has, after 31st December 1985, ceased to be in pensionable employment, or has, after 5th April 1988, entered excluded employment by virtue of an election made under regulation B7, the Scottish Ministers shall in respect of that teacher pay a transfer value, calculated in accordance with Part I of Schedule 12, to be used in accordance with section 94 of the 1993 Act⁽⁵⁸⁾ at the person's option in one or more of the ways set out in sub paragraph (2) of that paragraph.

(2) A transfer value is not to be paid unless the teacher ceased to be employed in pensionable employment, or entered excluded employment, before attaining the age of 60 years or, where paragraph (5) applies, the age of 59 years.

(3) A transfer value is not to be paid where a teacher has been in pensionable employment for less than 2 years unless—

- (a) on ceasing to be employed in pensionable employment and taking up employment in which he or she participates in an approved superannuation scheme, personal pension scheme or self employed pension arrangement; or
- (b) on entering excluded employment in which he or she participates in a personal pension scheme,

he or she has, within 12 months after taking up that employment or beginning so to participate, made an application such as is mentioned in paragraph (4) for payment of a transfer value.

(4) The teacher must before—

- (a) attaining the age of 60 years; or
- (b) where paragraph (5) applies, attaining the age of 59 years, or 6 months after the date he or she ceased to be employed in pensionable employment or entered excluded employment, whichever is later,

have made an application in writing to the Scottish Ministers for payment of a transfer value and not subsequently withdrawn it in accordance with paragraph (9).

(5) This paragraph applies where a teacher opts to have payment of his or her transfer value, or any portion of it, made to one or more insurance companies to purchase an appropriate policy.

(6) Where paragraph (5) applies, a transfer value is not to be paid unless the teacher has been in pensionable employment for at least 2 years.

(7) A transfer value is not to be paid in respect of a teacher to whom benefits under these Regulations have been paid, other than—

- (a) a benefit consisting of a return of contributions in respect of part only of the teacher's pensionable employment (whether or not repaid to the Scottish Ministers); or
- (b) a benefit consisting of a return of contributions in respect of all of the teacher's pensionable employment under regulation 17(2) or 45(1) of the 1977 Regulations⁽⁵⁹⁾ where an amount equal to the sum received by him or her has subsequently been repaid to the Scottish Ministers.

⁽⁵⁸⁾ 1993 c. 48. Section 94 is amended by the Pensions Act 1995 (c. 26), section 154, the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 12 and is prospectively repealed by the Pensions Act 2004 (c. 35), Schedule 12.

⁽⁵⁹⁾ S.I. 1977/1360 ("the 1977 Regulations"). Regulation 45 was renumbered Regulation 45(1) by S.I. 1978/1507. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

(8) In the case of a teacher taking up employment in comparable British service, the time limit prescribed in paragraph (3) for making an application such as is mentioned in paragraph (4) shall not apply.

(9) An application for payment of a transfer value may be withdrawn by a teacher by giving notice in writing to the Scottish Ministers, but such notice will be of no effect if prior to the date of receiving it the Scottish Ministers have entered into an agreement with a third party to use the whole or any part of the teacher's transfer value pursuant to section 95 of the 1993 Act⁽⁶⁰⁾.

(10) A teacher who withdraws an application in terms of paragraph (9) may make another.

(11) Subject to paragraph (12), the Scottish Ministers shall, on receipt of the teacher's application under paragraph (4), pay a transfer value by whichever is the earlier of the following:—

- (a) the date 6 months after the guarantee date; or
- (b) the date on which the teacher attains the age of 60 years where—
 - (i) he or she ceased to be employed in pensionable employment or entered excluded employment on a date prior to his or her attaining the age of 59 years; and
 - (ii) he or she made his or her application for payment of a transfer value within 6 months of that date.

(12) Where proceedings before a court have been commenced against a teacher at any time before the expiry of the period of 12 months beginning with the date on which his pensionable employment terminates and it appears to the Scottish Ministers that the proceedings may lead to any retirement benefits or grant payable under these Regulations to the teacher being reduced or withheld under regulation E22, the date by which the Scottish Ministers shall pay a transfer value shall be—

- (a) the date before which he or she would be required to do so under paragraph (11); or
- (b) the end of the period of 3 months after the conclusion of the court proceedings (including any proceedings on appeal),

whichever is the later.

(13) When the payment of a transfer value is made, the teacher's accrued rights, within the meaning given in Schedule 12, to which it relates shall cease to be treated as such for all purposes of these Regulations.

(14) Where a body administering a pension or superannuation scheme waives payment of a transfer value which would otherwise have been paid by the Scottish Ministers under this regulation, such a payment will be deemed to have been made for all purposes of these Regulations.

Acceptance of transfer values

G2.—(1) A teacher who has entered pensionable employment and has, in consequence of previous employment, accrued rights to benefit under—

- (a) an approved superannuation scheme;
- (b) a personal pension scheme; or
- (c) a self employed pension arrangement,

may give written notice to the Scottish Ministers that he or she wishes them to accept a transfer value in respect of those accrued rights, or any part of them.

(2) Subject to paragraphs (4) and (5), the Scottish Ministers on receipt of the notice from the teacher may accept from—

⁽⁶⁰⁾ 1993 c. 48. Section 95 is amended by the Pensions Act 1995 (c. 26), Schedule 6 and the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedules 5 and 9 and S.I. 2001/3649.

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

- (a) the trustees or managers of the approved superannuation scheme, personal pension scheme or self employed pension arrangement in which his or her accrued rights are preserved (hereinafter in the regulation referred to as “the previous scheme”); or
 - (b) the trustees or managers of the superannuation scheme or the insurance company to which a payment in respect of his or her accrued rights or any part thereof has been made,
- a transfer value in respect of all, or part, of those accrued rights.

(3) Unless while the teacher was subject to the previous scheme, he or she was employed in comparable British service, the written notice must have been given within 12 months after the day on which the teacher entered pensionable employment.

(4) A transfer value shall not be accepted in respect of a teacher who—

- (a) is a re-employed teacher to whom regulation E18 applies; or
- (b) has become entitled to payment of benefits under a provision of a statutory scheme corresponding to regulation E6.

(5) Subject to paragraph (6), where notice is given and the transfer value is accepted by the Scottish Ministers—

- (a) an additional period of reckonable service will be credited to the teacher in respect of the transfer value calculated in accordance with Part II of Schedule 12; and
- (b) the period of service in respect of which the transfer value is made, as certified by the trustees or managers of the previous scheme, shall be taken into account in determining whether any benefit is payable to or in respect of the teacher under these Regulations.

(6) A transfer value shall not be accepted unless it exceeds the annual amount of the guaranteed minimum pension which the Scottish Ministers would have been liable to provide as a result of accepting it, multiplied by the factor appropriate to that person, as set out in column 2 of the Table below opposite the person’s age, as at the date when the Scottish Ministers are requested to accept the transfer value, as set out in column 1.

TABLE

<i>(Column 1)</i> <i>Age</i>	<i>(Column 2)</i> <i>Appropriate factor</i>
29 or under	8
30 to 39	9
40 to 49	10
50 or over	12

(7) For the purposes of this regulation, “employment” shall not be construed only as employment under a contract of service.

PART H

FINANCE

Teachers' superannuation account

H1.—(1) The Scottish Ministers shall keep accounts of the scheme in a form approved by the Treasury.

(2) The accounts shall be open to examination by the Auditor General.

Actuarial review

H2.—(1) The Government Actuary shall, from time to time, make an actuarial review on the position in relation to the account as at the date determined by the Scottish Ministers (“the review date”).

(2) In making a determination for the purposes of paragraph (1) the Scottish Ministers shall secure that—

- (a) the next review date is no later than 31st March 2006; and
- (b) the review date for each subsequent report is no later than 5 years after the previous review date.

(3) The Government Actuary, with the agreement of the Scottish Ministers, shall specify the funding methodology to be used in making the actuarial review.

(4) Any determination in relation to an actuarial inquiry made by the Scottish Ministers under paragraph (1) before 1st October 2003 shall have effect as if it were a determination in relation to an actuarial review.

(5) The Government Actuary shall make a report on the review to the Scottish Ministers as soon as practicable after the review date and the Scottish Ministers shall lay the report before the Scottish Parliament.

(6) The report shall specify the standard contribution rate (expressed as a percentage) at which contributions should be paid during the period beginning and ending on days (following the date of the report) determined by the Scottish Ministers (“the relevant period”).

(7) The report is to state the amount by which, at the review date, the value of the scheme assets exceeded or fell short of that of the scheme liabilities.

(8) Subjects to paragraph (9), the scheme assets and the scheme liabilities shall be determined in accordance with the funding methodology specified in paragraph (3).

(9) For the purposes of the actuarial review reporting on the position in relation to the account as at 31st March 2001, the value of the scheme assets shall equal the value of the scheme liabilities.

(10) If the report states that the value 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 15 years beginning on the first day of the relevant period.

(11) If the report states that the value of the scheme assets exceeded that of the scheme liabilities, it is to specify a rate at which, during the relevant period, the employers of persons in pensionable employment should receive a contribution rebate so as to remove the surplus within the period of 15 years beginning on the first day of the relevant period.

(12) The rate referred to in paragraphs (10) and (11) is to be expressed as a percentage of the contributable salaries from time to time of persons in pensionable employment; the percentage must be a multiple of 0.05.

(13) Any determination made by the Scottish Ministers for the purposes of this regulation shall be made with the consent of the Treasury.

Employers' contributions

H3.—(1) Subject to paragraph (3), the employer of a teacher in pensionable employment shall during every relevant period beginning with the relevant period starting on 1st October 2003 pay contributions of the required percentage of the teacher’s contributable salary for the time being.

(2) The required percentage is—

$$(A - 6) + (B - C), \text{ or}$$

if the result would be less than zero, zero, where—

A is the percentage specified for the relevant period under regulation H2(6);

B is any percentage specified for the relevant period under regulation H2(10) and (12); and

C is any percentage specified for the relevant period under regulation H2(11) and (12).

(3) No contributions are to be paid in respect of anyone to whom regulation E35(2)(a) has become applicable.

(4) Where a teacher commences employment by virtue of regulation J2 and that teacher either simultaneously or subsequently commences employment at reduced salary by virtue of regulation J1 the employer of that teacher shall pay the contributions payable under paragraphs (1) and (2) and regulation C3 on the amount determined by paragraph (5).

(5) The amount referred to under paragraph (4) shall be the difference between—

(a) the contributable salary which would be payable under regulation J2 if employment at reduced salary by virtue of regulation J1 had not been commenced; and

(b) the contributable salary payable where employment has been commenced under both regulation J1 and J2.

(6) For the purposes of this regulation—

(a) an education authority is deemed to be the employer of every person employed in or in connection with a school under their management, other than of a person who is in the employment of an employment business; and

(b) “relevant period” is to be construed in accordance with regulation H2(6).

(7) In this regulation, “employment business” has the meaning assigned to it by section 13(3) of the Employment Agencies Act 1973(61).

Employers' contributions – employers' elections under regulation C2

H4.—(1) In this regulation, “employer A”, “employer B” and “employer C” have the same meaning as in regulation C2(1)(b) and 6(c).

(2) Where a teacher who falls within regulation C2(1)(a) has made an election under regulation C2(1), the teacher’s employer may elect that the contribution deficit, or such part of it as is specified in the election, is to be paid by that employer.

(3) Where a teacher who falls within regulation C2(1)(b) has made an election under regulation C2(1), either employer A or employer B may elect that the contribution deficit, or such part of it as is specified in the election, is to be paid by employer A or employer B, as the case may be.

(4) Where a teacher who has made an election under regulation C2(1) ceases to be in pensionable employment in circumstances where—

(a) his or her election continues to have effect by virtue of regulation C2(6)(c)(ii); and

(b) an election has been made under paragraph (2) or under paragraph (3) by employer B; and

(c) the employer who made the election does not confirm that election under paragraph (7) (a)(ii),

employer C may elect that the contribution deficit, or such part of it as is specified in the election, is to be paid by employer C.

(5) In paragraphs (2) and (3) “the contribution deficit” means contributions of the required percentage of the difference between the teacher’s actual contributable salary and his or her contributable salary at the rate referred to in regulation C2(4).

(6) An election for the purposes of paragraph (2), (3) or (4)–

(a) must be made by giving written notice to the Scottish Ministers;

(b) has effect–

(i) in the case of an election under paragraph (2) or (3), from the date on which the teacher’s election under regulation C2(1) has effect, or from the end of the month in which the election was made, whichever is the later; and

(ii) in the case of an election under paragraph (4), from the date on which the teacher takes up employment with employer C or from the end of the month in which the election was made, whichever is the later;

(c) shall state whether the employer elects to pay the whole of the contribution deficit or a proportion of it and if so what that proportion is; and

(d) is irrevocable.

(7) An election made under paragraph (2), under paragraph (3) by employer B or under paragraph (4) ceases to have effect–

(a) in the case of an election under paragraph (2) or (3), if the teacher ceases to be employed by the employer who made the election unless–

(i) the teacher elects to pay additional contributions under C9; or

(ii) by virtue of regulation C2(6)(c)(ii) the teacher’s election does not cease to have effect and the employer confirms the election before the date on which the teacher takes up employment with the new employer; and

(b) in the case of an election under paragraph (4), if the teacher ceases to be employed by the employer who made the election unless he or she elects to pay additional contributions under regulation C9.

(8) An election made under paragraph (3) by employer A ceases to have effect if the teacher ceases to be in pensionable employment unless he or she–

(a) elects to pay additional contributions under regulation C9; or

(b) takes up employment with another employer within 6 months of ceasing to be in pensionable employment.

(9) Where, in relation to a teacher who falls within regulation C2(1)(b)–

(a) there are at any time elections by both employer A and employer B, or, as the case may be, employer A and employer C; and

(b) if both elections were fully effective their combined effect would be that more than the contribution deficit would be paid to the Scottish Ministers,

the election by employer B or, as the case may be, employer C shall have full effect but the election by employer A shall have effect only to the extent of the difference (if any) between the contribution deficit and the amount which is the subject of the election by employer B or employer C.

Employers' contributions – part time elections

H5.—(1) Where regulation C4 applies, the employer of the teacher in pensionable employment shall–

(a) pay contributions calculated in accordance with regulation H3 referable to the back period; and

- (b) unless the Scottish Ministers determine otherwise, pay interest on such contributions which have accrued on each reference date at 7 per cent per annum, compounded with yearly rests from the reference date in question to the date of payment of the contributions, and in this paragraph expressions which are used also in regulation C4 have the same meaning as in that regulation.

(2) Any sum which is due under paragraph (1)(a) shall be paid to the Scottish Ministers on receipt of a written demand (without prejudice to the obligation to pay the sums referred to in paragraph (1)(b)).

Payment by employers to Scottish Ministers

H6.—(1) The employer of a teacher in pensionable employment shall pay to the Scottish Ministers, within 7 days after the end of each month—

- (a) all amounts due from the teacher that are deductible from his or her salary under regulation C15(1);
- (b) the contributions payable under regulation H3; and
- (c) the contributions payable in pursuance of an election under regulation H4,

in respect of the teacher's contributable salary for that month.

(2) Where the former employer (referred to in regulations C2(1) and H4 as "employer A") of a teacher in pensionable employment has made an election under regulation H4(3), that employer shall pay to the Scottish Ministers within 7 days after the end of each month the contributions payable in pursuance of the election.

(3) Where an employer has elected under regulation C5(3) to pay additional contributions in respect of a teacher, payment to the Scottish Ministers of the lump sum referred to in paragraph 10(1) of Schedule 4 shall be made within the period referred to in paragraph 10(2) of that Schedule.

(4) Where a teacher receives such an increase in contributable salary as is mentioned in regulation E34(13), the teacher's last employer before he or she became entitled to payment of retirement benefits ("the former employer") may make an election under paragraph (5).

(5) An election under this paragraph is an election to pay an additional contribution of A – B – C where—

A is the actuarial value of the retirement benefits to which the teacher would be entitled calculated by reference to the salary he or she received;

B is the actuarial value of the retirement benefits to which the teacher would be entitled if he or she was treated as receiving the increase in his or her contributable salary referred to in regulation E34(11); and

C is the aggregate of contributions which would be repaid under regulation J6 if no election had been made.

(6) An election under paragraph (5) may be made by giving written notice to the Scottish Ministers no later than 6 weeks after the date on which the teacher became entitled to payment of retirement benefits.

(7) Where an election is made under paragraph (5) the payment to the Scottish Ministers under the election shall be made within 7 days after the date of the election.

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

- (a) all salaries shall be treated as being payable monthly in arrears;
- (b) any arrears payable by reason of a retrospective increase in contributable salary shall be treated as having become payable in the month in which they were paid.

(9) If the full amount of any payment required under paragraphs (1) or (2) or under an election under paragraph (5) is not paid by the end of the period referred to in the relevant paragraph, interest shall be payable by the employer or former employer, as the case may be, on the amount outstanding at the interest rate specified in paragraph (10) compounded with monthly rests from the day after the end of the relevant period to the date of payment; but the Scottish Ministers may in any particular case waive the payment of interest.

(10) For the purposes of paragraph (9) the interest rate is—

- (a) 12 per cent per annum in relation to all amounts and contributions payable in relation to pensionable employment before 1st October 2003; and
- (b) 8 per cent per annum in relation to all amounts and contributions payable in relation to pensionable employment on or after 1st October 2003.

PART J

MISCELLANEOUS AND SUPPLEMENTAL

Modified application in case of employment at reduced salary

J1.—(1) If—

- (a) a teacher who has been in pensionable employment either—
 - (i) continues to be employed by the same employer; or
 - (ii) ceases to be employed and is re employed within 6 months (whether by the same or a different employer),at a reduced rate of contributable salary;
- (b) where he or she continues to be employed by the same employer, is employed in a different post;
- (c) he or she does not make an election under regulation C2(1) that his or her contributable salary is to be treated as having continued at the previous rate;
- (d) the relevant employer notifies the Scottish Ministers in writing of the matters specified in paragraph (2) before the date which is 3 months after the first day of his or her employment at the reduced rate;
- (e) the application to him or her of this paragraph would, taking into account prospective increases under the 1971 Act(62) of benefits under Part E, be beneficial; and
- (f) where he or she is not now in pensionable employment by virtue of regulation B9,

these regulations have effect in relation to him or her with the modifications set out in Part II of Schedule 9.

(2) For the purposes of paragraph (1)(d) the matters which are to be notified to the Scottish Ministers are—

- (a) where the teacher continues to be employed with the same employer or ceases to be employed and is re-employed by the same employer, that the teacher's employment at a reduced rate of contributable salary is in the interests of the efficient discharge of the employer's functions; and
- (b) where the teacher ceases to be employed by one employer and is re-employed by a different employer—

- (i) that the teacher had provided satisfactory service throughout the period of the teacher's employment with the relevant employer; and
 - (ii) that the teacher has ceased employment with the relevant employer with the intention of seeking employment in a new post with less responsibility.
- (3) For the purposes of this regulation—
- (a) the contributable salary of a teacher in part time service is to be taken to be what it would have been if he or she had been employed in full-time service; and
 - (b) the “relevant employer” is—
 - (i) where the teacher ceases to be employed by one employer and takes up employment with a different employer, the teacher's former employer; and
 - (ii) in any other case, the person's employer.
- (4) A second or subsequent application of paragraph (1) does not affect its previous operation.

Winding down employment

- J2.**—(1) To participate in winding down employment a teacher must—
- (a) have attained the age of 56;
 - (b) have been in full-time service for a period of 10 years immediately prior to commencing winding down employment;
 - (c) subject to sub-paragraph (b) have a minimum of 25 years' teaching service immediately prior to commencing winding down employment, which period may include a break or breaks in teaching service not exceeding 5 years in total; and
 - (d) have the consent of his or her employer.
- (2) Where the employer consents to the teacher participating in the winding down employment the employer shall notify the Scottish Ministers in writing before the date which is 3 months after the first day of the teacher's winding down employment of the matters specified in paragraph (3).
- (3) For the purposes of paragraph (2) the matters which are to be notified to the Scottish Ministers are—
- (a) that the teacher's winding down employment is part-time service which is equal to or more than 50 per cent of full-time service;
 - (b) that the teacher's full-time service equivalent contributable salary rate is not less than the teacher's salary rate prior to commencing the winding down employment; and
 - (c) that the employer has consented to the teacher participating in the winding down employment.
- (4) For the purposes of this regulation winding down employment is—
- (a) part-time service which is equal to or more than 50 per cent full-time service; and
 - (b) for a maximum of 4 years.

Modified application in certain other cases

J3.—(1) In relation to a teacher who made an election under regulation 6A(1) of the 1977 Regulations⁽⁶³⁾, these Regulations have effect with the modifications set out in Part III of Schedule 9.

⁽⁶³⁾ *S.I. 1977/1360* (“the 1977 Regulations”). Regulation 6A was inserted by *S.I. 1977/1808*. The 1977 Regulations are revoked in their entirety (see Schedule 1 to these Regulations).

(2) In relation to a teacher who has been in pensionable employment with specified country service, these Regulations have effect with the modifications set out in Part IV of Schedule 9.

(3) In relation to certain persons who were formerly members of the National Health Service Pension Scheme, these Regulations have effect with the modifications set out in Part V of Schedule 9.

Records and information

J4.—(1) The employer of a teacher in pensionable employment shall record for each financial year—

- (a) the rate of the teacher’s salary;
- (b) the amount of the teacher’s contributable salary;
- (c) the value of any emoluments in kind treated as forming part of the salary of the teacher by virtue of regulation C1(1)(a);
- (d) the contributions deducted under regulation C15(1);
- (e) the period during which the teacher was in pensionable employment; and
- (f) the dates of any absence on sick leave or maternity, paternity or adoption leave, and the amount of salary paid during it.

(2) Employers shall, within such reasonable time as they may require, make to the Scottish Ministers such reports and returns, and give to them such information about teachers who are or have been in pensionable employment as they may reasonably require for the purposes of their functions under these Regulations; and such teachers, and their personal representatives, shall give them such information and produce such documents as they may reasonably require for those purposes.

(3) Without prejudice to paragraph (2) and subject to paragraph (4), a teacher who has become entitled to payment of retirement benefits and who takes up employment such as is described in regulation E18(1) shall—

- (a) within 7 days of taking up such employment notify the Scottish Ministers of that fact giving details of the salary in the employment; and
- (b) within 7 days of any change in salary notify the Scottish Ministers of that change.

(4) Paragraph (3) shall not apply where the teacher has attained the age of 70 or has had 45 years reckonable service.

Payments in respect of deceased persons

J5.—(1) This regulation applies where a teacher dies and the total of—

- (a) any sums that were due to the teacher under these Regulations; and
- (b) any sums payable under these Regulations to the teacher’s 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(64) and applying in relation to the death.

(2) Where this regulation applies, the Scottish Ministers may, without requiring confirmation 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 them to be beneficially entitled to the estate.

(64) 1965 c. 32, to which there are amendments not relevant to these Regulations.

Repayment of contributions where an election is not made under regulation H6(5)

J6.—(1) This regulation applies where—

- (a) a teacher receives such an increase in contributable salary as is mentioned in regulation E34(11); but
- (b) no election under regulation H6(5) has been made.

(2) Where this regulation applies the Scottish Ministers shall repay—

- (a) to the teacher who was in pensionable employment a sum equivalent to A – B; and
- (b) to that teacher’s last employer before he or she became entitled to retirement benefits a sum equivalent to C D.

(3) In paragraph (2) above—

A is the aggregate of the contributions paid by the teacher under regulation C3, C5, C7 or C10 during the relevant period;

B is the aggregate of the contributions which would have been paid under regulation C3, C5, C7 or C10 during the relevant period if the teacher had actually received the salary which he or she was treated as having received under regulation E34(11);

C is the aggregate of contributions paid by the teacher’s employer under regulation H3 during the relevant period; and

D is the aggregate of the contributions which would have been paid by the teacher’s employer under regulation H3 during the relevant period if the teacher had actually received the salary which he or she was treated as having received under regulation E34(11),

and in this paragraph the “relevant period” is the period which started when the teacher received the increase in contributable salary as mentioned in regulation E34(11) and ended when the teacher became entitled to the payment of retirement benefits.

Extension of time

J7. The Scottish Ministers 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

J8. All questions arising under these Regulations are to be determined by the Scottish Ministers.

Commutation of benefits

J9.—(1) Subject to paragraph (2), where the aggregate of the retirement benefits (retirement pensions and actuarial equivalent as an annual pension of the retirement lump sum) and any benefits payable to a teacher under any additional voluntary contributions scheme to which section 591(2)(h) or section 592(1)(b) of the Taxes Act(65) applies is an annual amount not exceeding the permitted maximum, the Scottish Ministers may discharge their liability in respect of—

- (a) those retirement benefits; and
- (b) any family benefits which might otherwise become payable on the teacher’s death under these Regulations if the annual amount of the family benefits do not exceed the permitted maximum,

by payment of a lump sum representing the capital value of the retirement benefits and family benefits.

(65) 1988 c. 1. Sections 591 and 592 are prospectively repealed by the Finance Act 2004, Schedule 42, Part 3.

(2) Paragraph (1) shall not apply unless the teacher became entitled to receive payment of the retirement benefits on or after attaining state pensionable age.

(3) Where a teacher has died and the aggregate of any family benefits, and like benefits provided under an additional voluntary contributions scheme, payable in respect of the person is an annual amount not exceeding the permitted maximum, the Scottish Ministers may discharge their liability in respect of the family benefits by the payment of a lump sum representing their capital value.

(4) The lump sum payable under paragraph (1) or (3) shall be determined by, or in accordance with tables prepared by, the Government Actuary.

(5) In this regulation, the permitted maximum is £260 or such higher amount as may be prescribed from time to time by Regulations made under section 21(1) of the 1993 Act⁽⁶⁶⁾

(6) In this regulation, “additional voluntary contributions scheme” means an approved scheme which falls within section 591(2)(h) of the Taxes Act⁽⁶⁷⁾.

Revocations, savings and transitional provisions

J10.—(1) The Regulations specified in column 1 of Part I of Schedule 13 are revoked to the extent specified in column 3 of that Part.

(2) The revocations have effect subject to the savings in Part II of Schedule 13.

(3) The provisions of Part II of Schedule 13 do not affect the general operation of section 16 of the Interpretation Act 1978⁽⁶⁸⁾.

(4) Part III of Schedule 13 has effect with respect to transitional matters in connection with the coming into force of these Regulations.

St Andrew’s House, Edinburgh
29th June 2005

GEORGE LYON
Authorised to sign by the Scottish Ministers

We consent.

21st July 2005

VERNON COAKER
DAVE WATTS
Two of the Lords Commissioners of Her
Majesty’s Treasury

⁽⁶⁶⁾ 1993 c. 48, as amended by the Pensions Act 2004 (c. 35) section 284.

⁽⁶⁷⁾ 1988 c. 1. Section 591 is prospectively repealed by the Finance Act 2004 (c. 12), Schedule 42, Part 3.

⁽⁶⁸⁾ 1978 c. 30.