
STATUTORY INSTRUMENTS

1990 No. 318

ELECTRICITY

**The Electricity Supply Pension Scheme
(Transfer Date Amendments) Regulations 1990**

<i>Made</i>	- - - -	<i>21st February 1990</i>
<i>Laid before Parliament</i>		<i>26th February 1990</i>
<i>Coming into force</i>		
<i>regulations 1 to 5</i>		<i>30th March 1990</i>
<i>regulation 6</i>		<i>31st March 1990</i>

The Secretary of State, in exercise of the powers conferred by section 104 of, and paragraphs 1 and 5(3)(1) of Schedule 14 to, the Electricity Act 1989(2), and of all other enabling powers, hereby makes the following Regulations:—

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Supply Pension Scheme (Transfer Date Amendments) Regulations 1990.

(2) Regulations 1 to 5 shall come into force on 30th March 1990 and regulation 6 shall come into force on 31st March 1990.

Interpretation

2.—(1) In these Regulations “the Pension Scheme” means the Electricity Supply Pension Scheme.

(2) Words and phrases defined in the Pension Scheme shall have the same meaning in these Regulations.

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or to a Schedule is a reference to the regulation bearing that number in or to the Schedule to these Regulations; and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

(1) See the definition of “prescribed” in section 64(1).
(2) 1989 c. 29.

Responsibility for contributions

3.—(1) Immediately prior to the transfer date, each Board(3) shall be liable (to the exclusion of every other Board) for the contributions and payments to the Pension Scheme in respect of or in relation to each of the Members(4) (including Special Members(5) and persons entitled to Frozen Benefits(5)) and Former Members(5) who is or at the date he ceased to be in Service(5) was—

- (i) the Employee(5) of that Board;
- (ii) in respect of each Area Board, an officer of the Consultative Council(5) established for the area of that Board;
- (iii) in respect of the Council(5), an officer of the Electricity Consumers' Council; or
- (iv) any other person for whom the Board shall have assumed that liability under the Electricity Act 1989 or under any scheme made in relation to any transfer to be effected by that Act.

(2) Prior to the transfer date, the Council shall exercise its powers under the Pension Scheme to adopt provisions to take effect on the transfer date for the purpose of determining the Group Assets(6) to be attributed to each Board in respect of all persons for which the Board shall have assumed liability under paragraph (1) or for which an Employer(6) may assume liability in respect of a person joining the Pension Scheme thereafter, including provisions relating to management and administration.

Amendments to the Pension Scheme

4. The amendments to the Pension Scheme specified in Part I of the Schedule shall have effect.

Transfer of functions

5.—(1) Immediately prior to the transfer date—

- (a) each of the Functions(6) of the Council under the Pension Scheme shall be transferred to the Co-ordinator(6) in accordance with the amendments to the Pension Scheme made by paragraph (2); and
- (b) the Council shall be discharged from its obligations in respect of the future exercise and performance of the Functions.

(2) Immediately prior to the transfer date, for the expression “the Council” wherever the same occurs in the Pension Scheme (including any provision of a Former Scheme(5) incorporated by reference into the Pension Scheme) there shall be substituted the expression “the Co-ordinator”.

(3) This word is defined in clause 46 of the Pension Scheme, as amended by the Electricity Supply Pension Scheme (Eligible Persons) Regulations 1990 (S.I. 1990/164), regulation 11(2) and Part II of the Schedule.

(4) This word is defined in clause 46 of the Pension Scheme.

(5) These words and phrases are defined in clause 46 of the Pension Scheme.

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(5) These words and phrases are defined in clause 46 of the Pension Scheme.

Transfer date amendments to the Pension Scheme

6.—(1) The amendments to the Pension Scheme specified in Part II of the Schedule shall have effect.

(2) In the Clauses, Rules and Appendix referred to in the first column of Part III of the Schedule the expression appearing opposite that Clause, Rule or Appendix in the second column of that Part of the Schedule shall be substituted for the expression “the Co-ordinator”.

(3) Each Original Principal Employer(6) shall participate in and be bound by the terms of the Pension Scheme for the benefit of and in relation to the Members (including Special Members and persons entitled to Frozen Benefits) and Former Members associated with its Group(6).

Dated 21st February 1990

John Wakeham
Secretary of State for Energy

(6) Definitions of these expressions are inserted into clause 46 of the Pension Scheme by these Regulations (see Part I of the Schedule).

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THE SCHEDULE

AMENDMENTS TO THE ELECTRICITY SUPPLY PENSION SCHEME

Regulation 4

PART I

AMENDMENTS MADE WITH EFFECT FROM 30th MARCH 1990

In Clause 46, the following definitions of terms shall be inserted in alphabetical sequence and the existing definitions (if any) of the like terms shall be deleted:—

““Co-ordinator” means:

- (i) in respect of any period prior to the Transfer Date, the Council;
- (ii) subject to sub-paragraph (iii), in respect of any period on or after the Transfer Date, Electricity Pensions Limited (registered number 2416242); and
- (iii) in respect of any period commencing on or after the effective date of any transfer of Functions pursuant to paragraph (2) of Clause 2A, the person referred to therein to which the responsibility for the exercise and performance of such Functions shall have been transferred;

“the Electricity Act” means the Electricity Act 1989;

“Employer” means a Principal Employer, a Participating Subsidiary and (in relation to any period prior to the Transfer Date where the context so requires) a Board;

“Functions” means prior to the Transfer Date the fiduciary and other powers and duties of the Council under the Scheme and on or after the Transfer Date the fiduciary and other powers and duties of the Co-ordinator and the Principal Employers under the Scheme, other than the duty to contribute to the Fund;

“Group” means a group of Employers consisting of one Principal Employer together with its Participating Subsidiaries from time to time (if any), which group of Employers is treated as a separate entity for the purpose of the determination of Group Assets and Group Liabilities;

“Group Assets” means, in relation to a Group, the proportion or part of the Fund in respect of or relating to the Members and Former Members associated with such Group;

“Group Liabilities” means, in relation to a Group, the liabilities of the Scheme in respect of or relating to the Members and Former Members associated with such Group;

“Members and Former Members associated with a Group” means:

- (i) the Members and Former Members in respect of or in relation to whom the Employers of that Group shall have liability for contributions or deficiencies under the Scheme, whether pursuant to the Electricity Act or otherwise (save in respect of those whom or in relation to whom such liability arises solely by virtue of the Electricity (Protected Persons) Pension Regulations 1990); and
- (ii) the Members and Former Members who from time to time are, or who immediately prior to the date they last ceased to be in Service were, Employees of one of the Employers in such Group;

and cognate expressions, including but not limited to “Members and Former Members associated with any Group”, “Members, Beneficiaries and Dependants associated with such Group”, “Members associated with a Group” and “Protected Members associated with such Group” shall be construed accordingly;

“Original Principal Employer” means each of the companies nominated for the purposes of Section 65 or 66 of the Electricity Act;

“Participating Subsidiary” means an Employer which is participating in the Scheme and is not the Principal Employer of its Group;

“Principal Employer” means an Employer which from time to time is participating in the Scheme with responsibility for the exercise and performance of the Functions in respect of its Group, including with effect from the Transfer Date each of the Original Principal Employers;

“Transfer Date” means the transfer date appointed by the Secretary of State pursuant to Section 65(1) of the Electricity Act;”.

Regulation 6(1)

PART II

AMENDMENTS MADE WITH EFFECT FROM 31st MARCH 1990

1. Clause 2 of the Scheme shall be deleted and the following clause substituted therefor:

“Nature of the Scheme

2.—(1) The Scheme shall be a contributory scheme providing Benefits for and in respect of Members and Former Members, in accordance with its terms from time to time in effect.

(2) The Group Assets in respect of each Group shall be applied solely for the discharge of the Group Liabilities in respect of such Group, to the effect that no Principal Employer or Participating Subsidiary in any Group nor the Group Assets in respect of any Group shall be liable for any obligation or be entitled to or receive any benefit arising out of or pursuant to any deficiency or surplus respectively in relation to the Group Liabilities in respect of any other Group, either prior to or pursuant to the discontinuance of the Scheme.

(3) The provisions of paragraph (2) shall be without prejudice to any arrangements for the transfer of Group Assets made pursuant to or in consequence of the merging or subdivision of any Group or Groups or the withdrawal from any Group of any Employer or any transfer of Group Assets in respect of or in relation to any Member or Former Member.”

2. The following clause shall be inserted immediately following Clause 2, as Clause 2A:

“Transfers of Functions

2A.—(1) Subject to the prior approval of the Board of Inland Revenue, the Co-ordinator and all the Principal Employers shall have power together to procure that some or all of the Functions from time to time vested in any of them are exercisable by any other of them in such circumstances as they may determine and in such event each party which relinquishes Functions shall be discharged from its future obligations under the Scheme in respect thereof and each party which assumes Functions shall undertake responsibility for the future exercise and performance of the Functions so vested in it. Such power shall be exercised by all the Principal Employers and the Co-ordinator entering into a deed to such effect. The Co-ordinator shall give notice of such deed to the Trustees forthwith.

(2) Subject to the prior approval of the Board of Inland Revenue and the consent of all the Principal Employers, the Co-ordinator shall have power to transfer to another person all (but not some only) of the Functions as are then vested in it; Provided That such person shall agree to undertake responsibility for the exercise and performance thereof. Such power shall be exercised by the Co-ordinator, all the Principal Employers and such person entering into a deed to such effect. The said person shall give notice of such deed to the Trustees

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forthwith. As from the date specified in such deed, the expression “the Co-ordinator”, as used in the Scheme (including this Clause), shall thereafter mean such person.

(3) If any Principal Employer wishes to be discharged from the exercise of its Functions and other liabilities, rights and duties as a Principal Employer and another Employer (whether or not in its Group) wishes to undertake responsibility for the exercise of those Functions, liabilities, rights and duties in succession thereto then, provided that the transfer thereof will not prejudice Approval, the two Employers may by deed transfer the said Functions, liabilities, rights and duties so that the transferor shall be discharged from its future obligations under the Scheme in respect thereof and the transferee shall undertake responsibility for the future exercise and performance thereof and shall thereafter be the Principal Employer of the Group of the former Principal Employer. The new Principal Employer shall give notice of such deed to the Co-ordinator and the Trustees forthwith.”

3. The following clause shall be inserted immediately following Clause 2A, as Clause 2B:

“Participation of New Employers

2B.—(1) If any Original Principal Employer shall amalgamate with any other Original Principal Employer (whether or not such amalgamation involves the winding up of either or both of such Employers) then, notwithstanding the provisions of Clause 42(1), the Co-ordinator and such Employers and/or their successor, if any, shall make such arrangements or enter into such agreements (not being arrangements or agreements incompatible with the manner in which the Fund is invested or of such a kind as to prejudice Approval) as they shall think fit for the continuance of the Scheme or any part thereof and the transfer of the obligations and liabilities of such Employers under the Scheme.

(2) If, pursuant to the provisions of paragraph (1), any company shall be obliged to become a Principal Employer, such company shall forthwith enter into a deed with the Co-ordinator whereby it shall undertake to participate in the Scheme and to comply with and be bound by the terms of the Scheme from time to time in effect and to exercise the Functions thereof. The Co-ordinator shall thereupon give notice of such deed to the Trustees.

(3) Subject to paragraph (1) and subject in each case to the approval of the Board of Inland Revenue and the consent of the Co-ordinator, (and, in the event of the winding up of any Employer for the purpose of reconstruction or amalgamation, notwithstanding the provisions of Clause 42(1)) any company or firm may become a Principal Employer and any Financial Group Company may become a Participating Subsidiary and (in each case) participate in the Scheme upon such terms and subject to such conditions as the Co-ordinator may determine. Such company or firm shall forthwith enter into a deed with the Co-ordinator and with the Principal Employer whose Participating Subsidiary it is to be (if appropriate) whereby it shall undertake to participate in the Scheme as a Principal Employer or a Participating Subsidiary (as the case may be) and to comply with and be bound by its terms from time to time in effect and, in the case of a new Principal Employer, to exercise the Functions thereof. The Co-ordinator shall thereupon give notice of such deed to the Trustees.

(4) Subject in each case to the approval of the Board of Inland Revenue and the consent of the Principal Employer, any subsidiary of a Principal Employer may become its Participating Subsidiary and participate in the Scheme upon such terms and subject to such conditions (consistent with the terms and conditions of participation in the Scheme of such Principal Employer) as such Principal Employer may determine. In such event such subsidiary shall forthwith enter into a deed with such Principal Employer agreeing to participate in the Scheme as its Participating Subsidiary upon such terms and subject to such conditions as so determined and to comply with and be bound by the terms thereof from

time to time in effect. Such Principal Employer shall thereupon give notice of such deed to the Co-ordinator and to the Trustees.

(5) With effect from the Transfer Date, each of the Original Principal Employers shall apply to become a member of the Co-ordinator and upon its participation in the Scheme each company or firm that becomes a Principal Employer shall apply to become a member of the Co-ordinator, in each case in accordance with the terms of the memorandum and articles of association of the Co-ordinator. Each Original Principal Employer and each company or firm that becomes a Principal Employer shall by virtue of this paragraph be deemed to have appointed and authorised the Secretary to be its agent for the purpose of making such application.”

4. In Clause 13, sub-paragraph (1)(g) and the proviso to paragraph (1) shall be deleted and the following shall be substituted therefor:

“(g) such further contributions as may from time to time be payable pursuant to the provisions of Clause 14(4) or may otherwise be determined by each Principal Employer for itself and its Participating Subsidiaries;

Provided That the contributions (whether due and payable or prospectively payable) by an Employer under sub-paragraphs (a) to (f) of this paragraph shall be reduced or suspended (whether with retrospective effect or otherwise) to the extent of:

- (i) any overpayment made by an Employer pursuant to the proviso to paragraph (3) of Rule 44 as compared with the amount subsequently determined by the Trustees thereunder in such a manner as shall be agreed between the Trustees and the Employer having regard to the advice of the Actuary unless the Trustees otherwise determine; and
- (ii) any surplus certified by the Actuary pursuant to paragraph (2) of Rule 45 in such a manner as shall be agreed between the Co-ordinator and the Employer having regard to the advice of the Actuary unless the Co-ordinator otherwise determines.”

5. Clause 14 shall be deleted and the following clause shall be substituted therefor:

“Valuation of the Scheme

14.—(1) At the end of each period as the Co-ordinator shall from time to time determine, but not exceeding three years and six months from the date of the most recent valuation of the Fund, the Co-ordinator shall instruct the Actuary to prepare an actuarial valuation of the Fund and of the liabilities of the Scheme as a whole, in such form as shall enable the Group Assets and Group Liabilities in respect of each Group to be considered separately, and for such purpose to consult as he thinks fit with the Principal Employers. The Trustees shall use their best endeavours to provide promptly all information requested by the Actuary for the purpose of preparing the said valuation. The fees and expenses of the Actuary in connection with the preparation of such valuation shall be treated as expenses of administering the Scheme.

(2) The Actuary shall deliver the said valuation to the Trustees, the Co-ordinator and each of the Principal Employers. The Trustees shall be entitled to give to the Co-ordinator and each Principal Employer any recommendations they may wish to make in regard thereto insofar as it relates to the Group Assets and Group Liabilities in respect of its Group.

(3) Without prejudice to the foregoing provisions of this Clause, any Principal Employer shall be entitled at any time to instruct the Actuary to prepare a valuation as at the date specified in such instructions solely in relation to the Group Assets and Group Liabilities in respect of its Group, on such appropriate bases and assumptions as may be agreed between such Principal Employer and the Actuary, and for such purpose the Actuary shall consult with such Principal Employer. Upon delivery of the said valuation to such Principal Employer, the Actuary shall provide a copy to the Trustees and to the Co-ordinator. The

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Trustees shall be entitled to give to the Co-ordinator and the Principal Employer any recommendations they may wish to make in regard thereto. The fees and expenses of the Actuary in connection with the preparation of any such valuation shall be paid by such Principal Employer.

(4) Where in any valuation prepared pursuant to paragraph (1) or (3) the Actuary certifies that a deficiency in respect of the Benefits (whether in payment or prospectively or contingently payable) accrued to the effective date of such valuation (making no allowance for projected increases in salaries) is disclosed as between the Group Assets and the Group Liabilities in respect of any Group, the Principal Employer of such Group shall, as soon as practicable and in any event within 6 months from the date of delivery of such valuation, make arrangements, certified by the Actuary as reasonable, providing for the payment by itself and its Participating Subsidiaries (if any) of additional contributions of an amount and within a timetable as shall make good such deficiency and it shall give notice of such arrangements to the Trustees and the Co-ordinator; Provided That if no such payment arrangements are made within the said period of 6 months the Co-ordinator, acting on the advice of the Actuary, shall give notice to the said Principal Employer (for itself and as agent for its Participating Subsidiaries) and to the Trustees of such payment arrangements as it may consider necessary to make good such deficiency. Save in the case of manifest error, the provisions of any such notice (whether given by the Principal Employer or by the Co-ordinator) shall be binding on the said Principal Employer and its Participating Subsidiaries unless and until such Principal Employer (for itself and its Participating Subsidiaries) shall thereafter implement alternative payment arrangements certified by the Actuary as reasonable and shall notify such alternative arrangements to the Trustees and the Co-ordinator.

(5) Where in any valuation prepared pursuant to paragraph (1) or (3) the Actuary certifies that a surplus in respect of the Benefits (whether in payment or prospectively or contingently payable) accrued to the effective date of such valuation (making allowance for projected increases in salaries of Contributors in accordance with the relevant assumptions utilised in such valuation) is disclosed as between the Group Assets and the Group Liabilities in respect of any Group, the Principal Employer of such Group shall make arrangements, certified by the Actuary as reasonable, to deal with such surplus and shall give notice of such arrangements to the Trustees and the Co-ordinator; Provided That if no such arrangements are made as aforesaid and any tax exemption or relief in respect of the Scheme is lost in whole or in part pursuant to the provisions of Section 603 of and Schedule 22 to the Taxes Act 1988 then, subject to paragraph (6), the amount of any tax payable or not recoverable by the Scheme pursuant to such loss of tax exemption or relief shall be added to and treated as part of the Group Liabilities in respect of such Group.

(6) In the event that any valuation prepared pursuant to paragraph (1) discloses a surplus as aforesaid in respect of more than one Group, the proviso to paragraph (5) shall apply to each such Group which shall not have made arrangements certified by the Actuary as reasonable as therein provided, and the amount of any tax so payable or not recoverable by the Scheme pursuant to such loss of tax exemption or relief shall be added to and treated as part of the Group Liabilities in respect of each such Group which shall not have made such arrangements, in such proportions as the Actuary shall certify as reasonable.”

6. Clause 41 shall be deleted and the following clause shall be substituted therefor:

“Amendment of the Scheme

41.—(1) Any provision of the Scheme (including this Clause) may be amended (whether by alteration, deletion or addition and whether prospectively or retrospectively) in accordance with and subject to the following provisions of this Clause; Provided That

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no amendment shall be made which would affect its Approval or prevent such further amendment of the Scheme as may be required to maintain its Approval and Status.

(2) Any amendment to the Scheme shall be void to the extent to which it would otherwise have the effect of:

- (a) altering the main purpose of the Scheme from that of providing Benefits for Members on Retirement;
- (b) save as authorised or required by enactment from time to time, making any of the moneys of the Scheme payable to any of the Employers;
- (c) reducing any Benefit payable to a Member or payable or prospectively payable to a Beneficiary;
- (d) in relation to any Group, increasing the contributions of or reducing the prospective Benefits to or in respect of any then existing Protected Member associated with such Group (other than a Protected Member entitled to Frozen Benefits) unless such increase or reduction is approved by a resolution passed by a majority of not less than two-thirds of the Protected Members associated with such Group who are concerned and who shall vote on the matter, either personally or by proxy, at a meeting of the Protected Members associated with such Group who are so concerned, due notice of such meeting having been given specifying the intention to propose such increase or reduction;
- (e) in relation to any Group, increasing the contributions of or reducing the prospective Benefits to or in respect of any then existing Member (not being a Protected Member) associated with such Group (other than such a Member entitled to Frozen Benefits) unless such increase or reduction is approved by a resolution passed by a majority of not less than two-thirds of the Members (other than Protected Members) associated with such Group who are concerned and who shall vote on the matter, either personally or by proxy, at a meeting of the Members (other than Protected Members) associated with such Group who are so concerned, due notice of such meeting having been given specifying the intention to propose such increase or reduction; or
- (f) reducing any Benefit payable or prospectively payable to or in respect of a Member entitled to Frozen Benefits;

Provided That:

- (i) the references to Benefits and Frozen Benefits in sub-paragraphs (a) to (f) of this paragraph shall be deemed to include the right to indexation thereof in accordance with the provisions of Rule 26 as at the effective date of such alteration, deletion or addition;
- (ii) in the event of any alteration of the Benefits under Rule 14 altering the ratio previously prevailing between the lump sum and the annual pension, such alteration shall not be binding upon any Member who is in Service at the date of the meeting at which such alteration is approved as aforesaid, if, within three months after that date, he shall give notice in writing to the Secretary requiring the continuation in his case of the right to Benefits in the form of a lump sum and pension bearing to one another the ratio previously prevailing; but in that event the amount of such lump sum and pension shall be fixed by the Actuary so as, to the extent possible, to preserve the said ratio without Prejudicing the Scheme while at the same time being equivalent in total value to the Benefits which would otherwise be payable; and

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- (iii) with the consent of the Trustees, a joint meeting of Protected Members and of Members other than Protected Members may be convened and held to consider any such proposed amendment, without prejudice to the provisions of sub-paragraphs (d) and (e) regarding the separate voting of and approval by Protected Members and by Members other than Protected Members in respect of such proposals.

(3) Subject to paragraphs (1) and (2), all the Principal Employers together may amend any provision of the Scheme (including this Clause) or may in writing authorise the Co-ordinator to do so on their joint behalf and in such event the amendment shall be made by a deed executed by each Principal Employer or by the Co-ordinator (as the case may be).

- (a) (4) Subject to and in accordance with paragraphs (1), (2) and (5), each Principal Employer may amend any provision of the Scheme except this Clause, other than paragraph (2) thereof, by a deed executed by that Principal Employer (and, for the avoidance of doubt, any amendment to paragraph (2) shall be subject to the terms thereof from time to time in effect); Provided That no such amendment:
 - (i) shall amend the Scheme with retrospective effect unless the deed by which it is made expressly so provides;
 - (ii) shall take effect insofar as it purports to affect the rights and obligations of the Members, Former Members or Beneficiaries associated with the Group of any other Principal Employer;
 - (iii) shall take effect insofar as it purports to affect the rights and obligations of another Principal Employer and its Participating Subsidiaries, unless the written consent of that other Principal Employer is given prior to or contained in the deed by which the amendment is made, notwithstanding any express or implied provision to the contrary contained in such deed; or
 - (iv) shall amend any provision of the Scheme in so far as it provides for the exercise or performance of:
 - (I) any Function by the Co-ordinator (whether or not with Consent);
 - (II) any trust, power, duty or authority by the Trustees; or
 - (III) any obligation by the Actuary.
- (b) A Principal Employer which has executed a deed for the purpose of amending any provision of the Scheme pursuant to sub-paragraph (a) of this paragraph shall promptly supply a certified copy of the deed to the Secretary and, without prejudice to the foregoing provisions of this Clause, no such amendment shall have effect until a clearance notice shall have been issued or deemed to have been issued in accordance with the following provisions of this paragraph.
- (c) Within 28 days of being supplied with such copy the Secretary shall:-
 - (i) if he considers that the amendment will neither Prejudice the Scheme nor be in breach of the terms of this Clause, give the Principal Employer a notice (hereinafter called a "clearance notice") stating that he does not seek to prevent the amendment from taking effect; and/or
 - (ii) if he considers that the amendment would or might Prejudice the Scheme or be in breach of the terms of this Clause, give the Principal Employer a notice (hereinafter called a "counter notice") stating that the amendment shall not take effect unless and until a clearance notice is issued or deemed to have been issued in accordance with the following provisions of this paragraph.

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- (d) If the Secretary shall not have given the Principal Employer a clearance notice by the expiry of the said 28 day period he shall be deemed to have given a counter notice.
 - (e) If the Secretary shall have or shall be deemed to have given a counter notice pursuant to sub-paragraph (c) or (d) of this paragraph respectively, the Principal Employer shall thereafter be entitled to give the Co-ordinator a notice (hereinafter called a “determination notice”) requiring the Co-ordinator within 28 days thereof either to give a clearance notice or:
 - (i) to inform the Principal Employer in writing of its objections to the intended amendment;
 - (ii) if such objections relate (in whole or in part) to the possibility that the proposed amendment would Prejudice the Scheme, to submit such amendment to the Inland Revenue Superannuation Funds Office and the Occupational Pensions Board to determine whether such amendment would Prejudice the Scheme; and
 - (iii) if such objections relate (in whole or in part) to the possibility that the proposed amendment would be in breach of the terms of this Clause, to submit such amendment to a sole arbitrator for such determination, being a Queen’s Counsel appointed by agreement between the Principal Employer and the Co-ordinator or, failing agreement within 28 days of the determination notice, then (at the instance of either the Principal Employer or the Co-ordinator) appointed by the President for the time being of the Law Society.
 - (f) Any determination made pursuant to sub-paragraph (ii) or (iii) of paragraph (e) shall, for the purposes of this Clause, be binding on the Principal Employer and the Co-ordinator and, if made in favour of the Principal Employer, shall be deemed to constitute a clearance notice in respect of the relevant sub-paragraph given to the Principal Employer.
- (5) The Scheme shall contain a separate numbered Schedule in respect of each Group. Any amendment made to the Scheme by a Principal Employer pursuant to paragraph (4) shall take effect by way of amendment to its Group’s Schedule (but not otherwise). In relation to any Group and the Members and Former Members associated with such Group, in the event of any conflict between the provisions of the Schedule in respect of such Group and of the Scheme (apart from the Schedules in respect of the other Groups) the provisions of the first-mentioned Schedule shall supersede and over-ride the provisions of the Scheme.
- (6) As soon as he becomes aware that circumstances will or may arise or occur which might Prejudice the Scheme if an amendment is not made, the Secretary shall advise the Co-ordinator and each Principal Employer affected that it is necessary for that Principal Employer pursuant to its powers under paragraph (3) or (4) (as the case may be) to make an amendment to avoid the risk of Prejudicing the Scheme.
- (7) If, by the date which is 28 days (or such lesser period as the Secretary may notify to the Principal Employers) before that on which the Secretary reasonably believes the Scheme will be Prejudiced if an amendment is not made pursuant to paragraph (6), an affected Principal Employer has not or all the Principal Employers together have not made an appropriate amendment under paragraph (4) or (3) respectively and provided a certified copy of the relevant deed to the Secretary, or if each of the Principal Employers has not given its written authority under paragraph (3), the Co-ordinator shall exercise the power of each Principal Employer which has not made or authorised an appropriate amendment as aforesaid to make such appropriate amendment and shall do so by executing a deed.

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(8) A person who has by deed amended any provision of the Scheme shall forthwith supply a certified copy of such deed:

- (a) if such person is a Principal Employer, to its Participating Subsidiaries, the other Principal Employers, the Co-ordinator and the Trustees; or
- (b) if such person is the Co-ordinator, to each Principal Employer, each Participating Subsidiary and the Trustees.”

7. Clause 44 shall be renumbered as Clause 49 and Clause 42 shall be renumbered as Clause 44.

8. The following clause shall be inserted as Clause 42:

“Initiation of Partial Discontinuance Provisions

42.—(1) The Trustees shall by written notice (which they shall give as soon as is practicable in the particular circumstances) require an Employer to cease participating in the Scheme:

- (a) in the event of the liquidation of such Employer otherwise than for the purposes of reconstruction or amalgamation; or
- (b) if the continued participation of such Employer would prejudice Approval;

Provided That, save in the case of the liquidation of such Employer otherwise than for the purposes of reconstruction or amalgamation, such period of notice shall not expire before the earlier of:

- (i) 180 days from the date of such notice; and
- (ii) the date (“the Approval Date”) which the Inland Revenue Superannuation Funds Office notifies the Trustees as being that on which it intends to withdraw Approval unless such Employer ceases to participate prior thereto,

and shall not expire after the Approval Date.

(2) If pursuant to paragraph (1) the Principal Employer of a Group ceases to participate in the Scheme, any Participating Subsidiary within its Group which does not become either a Principal Employer or the Participating Subsidiary of another Principal Employer shall also thereupon cease to participate. As regards such Principal Employer and its said Participating Subsidiaries the Scheme shall forthwith be discontinued and the provisions of Clause 43 shall thereafter have effect.

(3) If pursuant to paragraph (1) any Participating Subsidiary ceases to participate in the Scheme otherwise than in circumstances in which its Principal Employer ceases to participate, as regards such Participating Subsidiary the Scheme shall forthwith be discontinued and the provisions of Clause 43 shall thereafter have effect; Provided That, if such Principal Employer so elects by notice to the Trustees given prior to the date of such discontinuance, it shall with effect from the date of such discontinuance be deemed to have become the last Employer of those of the Members and Former Members associated with its Group who immediately prior to the date of such discontinuance or (if earlier) when they last ceased to be in Service were Employees of such Participating Subsidiary (save for those who continue in employment with such Participating Subsidiary or remain in Service with any other Employer which continues to participate in the Scheme) and such Members and Former Members (other than those who immediately prior to such date were in receipt of a pension under the Scheme or entitled to Frozen Benefits) shall thereupon become entitled to Frozen Benefits.

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(4) No discontinuance pursuant to this Clause shall affect the liability of any Employer to contribute to the Scheme in accordance with its terms in respect of the period prior to the date of such discontinuance.”

9. The following clause shall be inserted immediately following Clause 42, as Clause 42A:

“Initiation of Total Discontinuance Provisions

42A.—(1) All (but not some only) of such of the Original Principal Employers other than Association Services which at any time and from time to time participate in the Scheme shall together be entitled to give written notice to the Trustees terminating their liability (and that of all other Employers) to pay contributions under the Scheme with effect from midnight on the next following 31 March which is not less than 180 days from the date of such notice.

(2) In such event, immediately following such 31 March the Scheme shall forthwith be discontinued and the provisions of Clause 43 shall thereafter have effect.

(3) No discontinuance pursuant to this Clause shall affect the liability of any Employer to contribute to the Scheme in accordance with its terms in respect of the period prior to the date of such discontinuance.”

10. In Clause 46, the following definitions of terms shall be inserted in alphabetical sequence and the existing definitions (if any) of the like terms shall be deleted:

“Approval” means the approval of the Scheme as an exempt approved scheme for the purposes of Chapter I of Part XIV of the Taxes Act 1988;

“Association Services” means Electricity Association Services Limited (registered number 2366837);

“Consent” means the written consent of all the Principal Employers;

“Financial Group Company” has the meaning ascribed to the term “group company” by Part VII of Schedule 4 to the Companies Act 1985;

“Prejudice the Scheme” means prejudice the Approval or Status of the Scheme; and cognate expressions, including but not limited to “Prejudicing the Scheme” and “the Scheme will be Prejudiced”, shall be construed accordingly;

“Protected Member” means a Member to whom the provisions of sub-paragraph (1) of paragraph 3 of Schedule 14 to the Electricity Act apply from time to time and to whom that sub-paragraph shall not have ceased to apply pursuant to sub-paragraph (3) of such paragraph (to the extent therein provided);

“Schedule” means a schedule to the Scheme;

“Status” means the status of the Scheme as a contracted-out scheme for the purposes of the Pensions Act;

“subsidiary” shall have the meaning ascribed to such expression by Section 736 of the Companies Act 1985;”.

11. Throughout the Clauses, Rules and Appendices of the Scheme and the marginal and descriptive notes thereto, the expressions “Employer” and “Employers” shall be substituted for the expressions “Board” and “Boards” respectively; Provided That in Clause 46 the definition of the latter expression shall not be amended and that in the definitions of the terms referred to in column A below the expressions appearing in column B below shall be substituted therefor:

A	B
“Medical Adviser of the Scheme”	Principal Employers

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A	B
“Salary” (second reference)	Principal Employer

Regulation 6(2)

PART III

FURTHER AMENDMENTS MADE WITH EFFECT FROM 31st MARCH 1990

(1)	(2)
Clause 13(1)(e)	the Principal Employer
Clause 16(2)	the Co-ordinator with Consent
Clause 25	the Principal Employer
Clause 43(4)	the Principal Employers
Clause 44(1) and (4)	the Co-ordinator or the Principal Employer (as the case may be)
Clause 46 definitions of:	
“Approved National Service”	the Principal Employer
“the Boards”	the Council
“the Council”	the Council
“Salary”	the Principal Employer
“Staff Employee”	the Principal Employer
Clause 49	the Original Principal Employers
Rule 1(3)	the Principal Employer
Rule 16(3)	the Principal Employer
Rule 17(4)	the Principal Employer
Rule 26(2)	the Principal Employer
Rule 26(5) and (6)	the Council or the Principal Employer (as the case may be)
Rule 29(3)	the Principal Employer
Rule 32	the Principal Employer
Appendix A (Paragraph 1)	the Council

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations—

- (a) define certain responsibilities of the constituent bodies of the electricity supply industry in England and Wales in relation to the Electricity Supply Pension Scheme (“the Scheme”), and make certain amendments to the Scheme, with effect before the transfer date (as defined in section 95(1) of the Electricity Act 1989, and as appointed by order under section 65(1) of that Act); and
- (b) make further amendments to the Scheme with effect from the transfer day, and require successor companies (being the companies nominated by order under sections 65(2) and 66(3) of the 1989 Act) to participate in and be bound by the terms of the Scheme.

Regulations 1 to 5 come into force on 30th March 1990. Regulation 1 provides for the citation and commencement of the Regulations, and regulation 2 provides for interpretation. Words and phrases which are defined in the Scheme (subject in certain cases to the amendments made by the Electricity Supply Pension Scheme (Eligible Persons) Regulations 1990 S.I.1990/164) have the same meaning when used in the Regulations. Regulation 3(1) defines the responsibilities of the existing constituent bodies of the electricity supply industry for contributions and payments to the Scheme in respect of the persons therein mentioned, and regulation 3(2) requires the Electricity Council to take the steps therein set out to attribute to those bodies the appropriate proportion of the Scheme’s fund in respect of those persons.

Regulation 4 introduces the amendments to the Scheme set out in Part I of the Schedule. The amendments insert a number of new definitions into the Scheme.

Regulation 5(1) provides for the functions of the Electricity Council under the Scheme to be transferred to the Co-ordinator (as defined in Part I of the Schedule), and regulation 5(2) makes a consequential amendment to the Scheme.

Regulation 6 comes into force on 31st March 1990. Regulation 6(1) and (2) introduces the amendments to the Scheme set out in Parts II and III of the Schedule, and regulation 6(3) obliges each Original Principal Employer (as defined in Part I of the Schedule) to participate in and be bound by the terms of the Scheme.

The effect of the amendments to the Scheme set out in Parts II and III of the Schedule is as follows—

- (a) paragraph 1 of Part II substitutes a new Clause 2 (“Nature of the Scheme”) for the previous Clause 2 of the Scheme. This new clause sets out the basic nature of the Scheme as a contributory pension scheme; provides that each Group stands alone in relation to its contributions and benefits; and prevents cross-subsidies and cross-guarantees as between Groups;
- (b) paragraph 2 introduces a new Clause 2A (“Transfer of Functions”) which enables the Co-ordinator and the Principal Employers to transfer their respective functions to each other from time to time; enables another corporate body to be substituted as the Co-ordinator from time to time; and permits a Principal Employer to transfer its functions under the Scheme to another Employer;
- (c) paragraph 3 introduces a new Clause 2B (“Participation of New Employers”). Sub-clauses (1) and (2) provide that on an amalgamation of Original Principal Employers their successor or successors are obliged to participate or continue participating in the

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Scheme. Sub-clause (3) enables a new employer to participate in the Scheme as a Principal Employer or, if it is in the same financial group as an existing Principal Employer, as its Participating Subsidiary; and sub-clause (4) enables a subsidiary of an existing Principal Employer to participate in the Scheme as its Participating Subsidiary. Sub-clause (5) provides that as from the transfer date each Original Principal Employer will apply to become a member of the Co-ordinator and that any person who subsequently becomes a Principal Employer shall so apply. In each case, participation is subject to the approval of the Board of Inland Revenue and, in certain cases, to the consent of other parties;

- (d) paragraph 4 introduces an amendment to Clause 13(1) which gives responsibility to Principal Employers to set the level of additional contributions which may be payable under the Scheme by themselves and their Participating Subsidiaries;
- (e) paragraph 5 substitutes a new Clause 14, (“Valuation of the Scheme”) for the existing Clause 14. Sub-clause (1) provides that an actuarial valuation should be carried out at least every three-and-a-half years, valuing the assets and liabilities in respect of the Members and Former Members associated with each Group separately; and sub-clause (2) provides that the valuation should be delivered to the Co-ordinator, the Principal Employers and the Trustees, who may make recommendations thereon if they so wish. Sub-clause (3) permits any Principal Employer at any time to instruct the Scheme’s actuary to prepare a separate valuation in respect of its own Group. Sub-clause (4) provides that if a deficit arises in relation to any Group, the relevant Principal Employer and its Participating Subsidiaries will be liable to make good such deficit on a basis acceptable to the Co-ordinator, acting on the advice of the Scheme’s actuary; and sub-clauses (5) and (6) provide that if a surplus arises in relation to any Group or Groups and this ultimately gives rise to any loss of tax relief to the Fund, the tax relief so lost will be set against the part of the Fund associated with the Principal Employer or Principal Employers concerned;
- (f) paragraph 6 substitutes a new Clause 41 (“Amendment of the Scheme”) for the existing Clause 41. Sub-clause (1) provides that the Scheme may be amended by deed subject to the limitations set out in the Clause; and sub-clause (2) sets out certain limitations governing all amendments to the Scheme. Sub-clause (3) provides that all the Principal Employers can together amend or authorise the Co-ordinator to amend the Scheme as applicable to each of them. Sub-clauses (4) and (5) provide that each Principal Employer can amend the Scheme insofar as it relates to its own Group, subject to certain additional limitations as regards the scope of such amendments; sub-clause (4) also sets out a mechanism and timetable for Principal Employers’ proposed amendments to be submitted to and approved by the Secretary (as defined in the Scheme) or challenged by the Co-ordinator as falling outside the scope of permitted amendments. Sub-clauses (6) and (7) require the Secretary to notify the Co-ordinator and all the Principal Employers of any amendment he considers should be made to avoid the Scheme losing its Inland Revenue approval or contracted-out status and provide that the Co-ordinator has power to make such amendments on behalf of any Principal Employer which fails to do so; and sub-clause (8) provides for certified copies of any deed amending the Scheme to be delivered to the appropriate persons;
- (g) paragraph 7 effects a renumbering of existing Clauses to facilitate the introduction of new Clauses 42 and 42A. Paragraph 8 introduces a new Clause 42 (“Initiation of Partial Discontinuance Provisions”) which sets out the provisions regarding the initiation of partial discontinuance of the Scheme. Sub-clause (1) provides for partial discontinuance of the Scheme to be commenced only by a notice to be given to an Employer by the Trustees, and only in circumstances where that Employer is in liquidation (otherwise than for reconstruction or amalgamation) or where its continued participation in the Scheme would prejudice Inland Revenue approval of the Scheme. Sub-clause (2) provides that where the Employer in respect of which the partial discontinuance is to take place is a Principal Employer, the Scheme will also be discontinued as regards that

Principal Employer's Participating Subsidiaries unless they themselves become Principal Employers or Participating Subsidiaries of other Principal Employers; and sub-clause (3) provides that where the Employer in respect of which the partial discontinuance is taking place is a Participating Subsidiary, its Principal Employer may elect to be treated for the purposes of the Scheme as the last employer of the members and former members concerned. Sub-clause (4) provides that such a partial discontinuance will not affect any pre-existing liabilities to the Scheme of the Employer concerned;

- (h) paragraph 9 introduces a new Clause 42A ("Initiation of Total Discontinuance Provisions"). Sub-clauses (1) and (2) provide that all (but not some only) of the Original Principal Employers participating in the Scheme can together resolve to wind up the Scheme totally, by giving notice to the Trustees of not less than 180 days expiring on a 31st March; and sub-clause (3) is in similar terms to Clause 42(4);
- (i) paragraphs 10 and 11 introduce a number of new definitions into the Scheme and effect substitutions for the existing defined terms "Board" and "Boards", which appear throughout the Scheme; and
- (j) Part III of the Schedule effects certain substitutions for the term "the Co-ordinator" as inserted throughout the Scheme by regulation 5(2).

The Scheme, and information about the Scheme, is available in accordance with the provisions of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986 (S.I. [1986/1046](#)).