
STATUTORY INSTRUMENTS

1990 No. 346

ELECTRICITY

**The Electricity (Protected Persons) (England
and Wales) Pension Regulations 1990**

Made - - - - 24th February 1990
Laid before Parliament 1st March 1990
Coming into force - - 31st March 1990

The Secretary of State, in exercise of the powers conferred by section 104 of, and paragraphs 2, 3(3), 4(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. These Regulations may be cited as the Electricity (Protected Persons) (England and Wales) Pension Regulations 1990 and shall come into force on 31st March 1990.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Electricity Act 1989;

“accrue” means to become entitled to pension rights in respect of employment while a member of a relevant scheme, including increases in accrued pension rights under that relevant scheme arising pursuant to increases in remuneration;

“accrued pension rights” means the pension rights, other than future pension rights and (except where the context otherwise requires) any pension rights provided by a state pension scheme, to which a protected person is from time to time entitled;

“alternative scheme” means a scheme to which regulation 8 applies;

“company group” means any holding company and its subsidiaries which are treated as a group for the purposes of Part VII of Schedule 4 to the Companies Act 1985(3) as originally enacted;

“employer” includes, in respect of a protected beneficiary, the person within a pension group to whom the protected beneficiary is treated as allocated for the purpose of valuing the accrued pension rights of that beneficiary within that group, and “employment” shall be construed accordingly;

(1) See the definition of “prescribed” in section 64(1).
(2) 1989 c. 29.
(3) 1985 c. 6.

“future pension rights” means the pension rights referred to in regulation 7;

“parent company” means, in respect of a company which is wholly owned by any other company, that other company;

“participate” means—

- (a) in respect of a protected employee, being a member of a relevant scheme for the purpose of accruing pension rights;
- (b) in respect of a protected beneficiary, being entitled either prospectively or contingently (otherwise than as a result of the death of another protected person) or currently to a pension under a relevant scheme; and
- (c) in respect of an employer, adhering to a relevant scheme for the purpose of providing pension rights,

and cognate expressions shall be construed accordingly;

“pension group” means a company, or two or more companies, which are required to be treated as a single entity within a relevant scheme for the purpose of valuing the assets and liabilities of that scheme;

“the Pension Scheme” means the Electricity Supply Pension Scheme;

“protected beneficiary” means any person to whom regulation 4 applies;

“protected employee” means any person to whom regulation 3 applies;

“protected person” means any person who is a protected beneficiary or a protected employee;

“relevant scheme” means the Pension Scheme or an alternative scheme;

“successor company” means a company nominated for the purposes of section 65(1) or 66(1) or (2) of the Act;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(4);

“transfer date rights” means the future pension rights provided by the Pension Scheme in the form in which it is on the transfer date, together with all amendments to the Pension Scheme which are made—

- (a) by the Electricity Council before the transfer date (regardless of the date on which the amendments take effect); or
- (b) by regulations under the Act,

but excluding any amendments made otherwise and expressed to take effect before or on the transfer date.

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

(3) Where an employer is a member of a pension group in a relevant scheme, any reference in these Regulations to that scheme shall be construed as a reference to the provisions of that scheme which relate to that pension group and any reference in these Regulations to protected persons in, the accrued pension rights under or the future pension rights provided by that scheme shall be construed as a reference to protected persons in, the accrued pension rights under or the future pension rights provided by that scheme in respect of the pension group of which that employer is a member.

(4) Where a relevant scheme provides different benefits for different categories of protected persons, any reference in these Regulations to that scheme shall be construed as a reference to that

(4) 1988 c. 1.

part of that scheme which relates to the category of which the protected person is a member or (in the case of a person transferring to that scheme) would be entitled to be a member.

Protected employee

- 3.—(1) Subject to paragraph (2), this regulation applies to any person who—
- (a) is an existing employee and immediately before the transfer date is a participant in the Pension Scheme;
 - (b) is an existing employee and, on or after that date, participates in the Pension Scheme within three months of his attaining the minimum age for such participation;
 - (c) was formerly a member of the Pension Scheme and, on or after that date, participates in or accrues pension rights under that Scheme in circumstances which, if the date upon which he had ceased to accrue pension rights in that Scheme had been after the transfer date, would not have been treated as a break in his continuity of employment under regulation 5; or
 - (d) is a person who participates in the Pension Scheme in pursuance of regulations made under paragraph 1(1)(a)(i) or (ii) of Schedule 14 to the Act.
- (2) Paragraph (1) shall cease to apply to any person who—
- (a) elects under regulation 17(1)(a) or (b) to cease to be a protected person or a protected employee;
 - (b) ceases to be in continuous employment for the purposes of regulation 5; or
 - (c) ceases, other than at the requirement of his employer, to participate in a relevant scheme (except as provided in paragraph (3)(b) or (c)).
- (3) A person shall not cease to be a protected employee—
- (a) if, after ceasing to participate in a relevant scheme as a protected employee, he subsequently participates in another relevant scheme as a protected employee and has not, during the period in which he did not participate, ceased to be in continuous employment;
 - (b) if he would have ceased to be a protected employee as a result of a representation by or on behalf of his employer or prospective employer that the action by that person which would but for this sub-paragraph have caused him to cease to be a protected employee would not have that effect; or
 - (c) if, following any resolution to wind up the relevant scheme in which that person participates, he transfers to the relevant scheme provided under regulation 10, 11 or 12.

Protected beneficiary

- 4.—(1) Subject to paragraph (2), this regulation applies to any person—
- (a) who immediately before the transfer date is entitled to accrued pension rights under the Pension Scheme but does not otherwise participate in that Scheme;
 - (b) to whom regulation 3 has ceased to apply pursuant to paragraph (2) of that regulation but who is entitled to accrued pension rights under a relevant scheme; or
 - (c) who, on or after the transfer date, acquires pension rights under a relevant scheme by reason of the death of a person who was at the date of his death—
 - (i) a protected employee; or
 - (ii) a person falling within sub-paragraphs (a) or (b) of this paragraph.
- (2) Paragraph (1) shall cease to apply to any person who—
- (a) elects under regulation 17 to cease to be a protected beneficiary; or

- (b) withdraws or requires a transfer payment to be made in respect of all or any part of his accrued pension rights from a relevant scheme otherwise than by way of a transfer to another relevant scheme provided by his employer, except in respect of the accrued pension rights not so withdrawn or transferred.

Continuity of employment

5.—(1) Subject to paragraph (2), references in these Regulations to a protected employee being in continuous employment shall be construed in accordance with paragraph 4 of Schedule 14 to the Act.

(2) No account shall be taken for the purpose of paragraph (1) of any period—

- (a) not exceeding six months during which a protected employee is not employed by a person who would be treated as an associated employer of the last person who employed him and would have been so treated; or
- (b) (i) prior to the commencement of which the employer (“employer A”) of the protected employee agreed that if he took up employment with another employer (“employer B”) he would, upon the termination of the employment with employer B, be expected to return to employment with employer A;
- (ii) which would not include employment by employer B for more than 3 years or such longer period as may be approved by the Inland Revenue;
- (iii) during which the protected employee was not employed by any other employer;
- (iv) during which employer B was not an associated employer of employer A; and
- (v) during which the protected employee was not a member of any approved retirement benefits scheme of an employer other than employer A or an associated employer of employer A or of any approved personal pension scheme.

(3) During any period referred to in paragraph (2)(a), a protected employee shall not be entitled to accrue future pension rights under a relevant scheme.

(4) In sub-paragraph (v) of paragraph (2)(b)—

“approved retirement benefits scheme” has the same meaning as in Chapter I of Part XIV of the Taxes Act;

“approved personal pension scheme” has the same meaning as in Chapter IV of that Part of that Act.

Accrued pension rights

6.—(1) Subject to paragraphs (2) and (3), the employer of a protected person shall at all times ensure that, in respect of each protected person in his employment, the assets of the relevant scheme provided by the employer in respect of that person are such that, in the event of the winding up of that scheme, there would be available to provide accrued pension rights for such protected person a sum equal to or exceeding the liability of that scheme in respect of those accrued pension rights.

(2) It shall not be a breach of the employer’s duty under paragraph (1) if the assets of the relevant scheme mentioned in that paragraph at any time do not equal or exceed that liability where—

- (a) a valuation of that scheme has been produced by a Fellow of the Institute of Actuaries or the Faculty of Actuaries having its effective date within the previous three and one half years or such lesser period (if any) as may be prescribed under sections 56A and 56E of the Social Security Pensions Act 1975(5) (disclosure of information about schemes to members); and

(5) 1975 c. 60; sections 56A and 56E were inserted by the Social Security Act 1985 (c. 53), section 3 and Schedule 2.

- (b) the employer has taken and continues to take such steps as are reasonable in all the circumstances (having regard to good actuarial practice) to make good any deficiency in respect of the accrued pension rights of that protected person (calculated on the same basis as that applicable under paragraph (1)) stated, whether expressly or by implication, in that valuation.

(3) In the event of the total or partial winding up of a relevant scheme, each employer who will, as a result of that total or partial winding up, cease to participate in that scheme, shall cause a valuation to be made by a Fellow of the Institute of Actuaries or the Faculty of Actuaries of the assets and liabilities of that scheme in respect of the protected persons in his employment and if—

- (a) the accrued pension rights of any protected person in that scheme shall not be transferred to a relevant scheme; or
- (b) the rules of the relevant scheme to which such rights are transferred do not require such a valuation to be produced within the period specified in paragraph (2)(a), calculated from the effective date of the last such valuation of the scheme being wound up (unless the employer procures a valuation of that scheme within that period),

and if the valuation required under this paragraph shall indicate that the assets held to provide the accrued pension rights are insufficient to meet the liabilities of that scheme in respect of those accrued pension rights, the employer shall forthwith apply a sum equal to the amount of the deficit in respect of each protected person to the purchase of an annuity or the provision of other suitable means in accordance with regulation 9 for the benefit of such person.

(4) If a protected person shall transfer or be transferred to a relevant scheme, and if a transfer payment shall be made in respect of his accrued pension rights to that scheme, the employer providing that scheme shall procure that the rules of that scheme will secure accrued pension rights which, on the basis of good actuarial practice, are at least equivalent in value to his accrued pension rights so transferred from the former scheme.

(5) Any new employer shall also procure that if the protected person notifies or is deemed to have notified his new employer in accordance with the terms (if any) of the relevant scheme provided by the new employer, and otherwise within two years of transferring to the new employer, that he desires to transfer his accrued pension rights to the relevant scheme provided by the new employer, he shall be entitled to transfer to that relevant scheme in accordance with paragraph (4) any accrued pension rights which are capable of being transferred.

(6) To the extent that an employer is unable to provide a relevant scheme which satisfies paragraphs (4) and (5), he shall ensure that the accrued pension rights of each protected person in his employment are secured by other suitable means in accordance with regulation 9 to the same extent and at the same level as such rights would have been secured if he had provided a relevant scheme.

Future pension rights

7.—(1) The rights described in paragraphs (2) and (3) are the future pension rights for the purpose of these Regulations.

(2) The right of a protected employee to participate in a relevant scheme and (subject to paragraph (5))—

- (a) where that scheme is the Pension Scheme, to accrue pension rights in accordance with the rules from time to time of that Scheme;
- (b) where that scheme is an alternative scheme, to accrue pension rights on the same basis as that applicable to other protected employees in that scheme;
- (c) in the event of a change of employer to an employer who participates in the Pension Scheme, to accrue pension rights in accordance with the rules applicable to protected employees in that Scheme; and

- (d) in the event of a change of employer to an employer who participates in an alternative scheme, to accrue pension rights on the same basis as that applicable to protected employees in that scheme,

and in each case, where any pension rights are provided by other suitable means under regulation 9 to protected employees in that relevant scheme, to accrue such pension rights:

Provided that the pension rights referred to in sub-paragraphs (b) and (d) of this paragraph do not include any addition to or improvement of the pension rights provided by the alternative scheme in question which is made after the date upon which it is provided pursuant to these Regulations.

(3) Subject to paragraph (4), the right of a protected employee, who is participating in a relevant scheme and who changes employer to an employer who provides a relevant scheme in which no protected employees are then participating, to accrue pension rights which are no worse than transfer date rights.

(4) Where an employer has no protected employees participating in a relevant scheme which he provides to a protected employee pursuant to these Regulations at any time after the date of commencement of the total winding up of the Pension Scheme and—

- (a) he has at any time since that winding up provided a relevant scheme for protected employees who participated in the Pension Scheme on that date; or
- (b) he has not provided such a scheme but is a wholly owned subsidiary of a parent company which has provided such a scheme,

there shall be substituted in paragraph (3) for the reference to transfer date rights a reference to the rights so provided.

(5) Where the pension rights of protected employees in a relevant scheme are worse than the transfer date rights, any reference in these Regulations, in relation to a protected employee joining that scheme, to the pension rights of protected employees in that scheme shall be construed as a reference to the transfer date rights.

Alternative scheme

8.—(1) This regulation applies to any retirement benefits scheme which—

- (a) is provided pursuant to these Regulations;
- (b) is approved or designed so as to be capable of being approved by the Inland Revenue for the purposes of Chapter I of Part XIV of the Taxes Act;
- (c) provides at the request or with the consent of the protected person for the receipt of any transfer payment in respect of accrued pension rights in accordance with regulation 6(4);
- (d) contains provision for payment of contributions by protected employees and for valuations of the scheme on a basis both as to the amount of such contributions and as to valuation, frequency and funding of deficits or disposal of surpluses which would not cause the protected person to be in any worse position than under the corresponding provisions contained in the Pension Scheme at the time the scheme became a relevant scheme or, if that occurred after the date of commencement of the total winding up of the Pension Scheme, immediately prior to such winding up;
- (e) provides future pension rights in accordance with regulation 7;
- (f) may provide benefits for persons other than protected persons upon such terms (not being terms which prejudice sub-paragraph (b) of this paragraph) as the employer or other person having the right to make or change the rules of the scheme may determine and may include additional benefits for the benefit of any one or more of the protected persons who participate in the scheme with or without any obligation to pay additional contributions

but so that it cannot be a condition of membership of that scheme that a protected person shall be obliged to accept such additional benefits and make additional contributions; and

- (g) is nominated by the employer as an alternative scheme for the purpose of this regulation by notice to any protected person for whom the employer is required to provide an alternative scheme.

(2) Subject to regulation 9, any scheme which ceases to satisfy the provisions of any sub-paragraph of paragraph (1) shall cease to be an alternative scheme for the purposes of these Regulations.

Other suitable means

9.—(1) Where an employer is required by any provision of these Regulations to provide a relevant scheme and—

- (a) (i) it is not reasonably practicable to provide the relevant scheme required in the circumstances specified in that provision; and
 - (ii) the employer complies with paragraphs (2) and (3); or
- (b) the circumstances specified in paragraph (6) apply,

he shall be deemed to have fulfilled the duty imposed by the provision in question.

(2) The employer shall—

- (a) provide a retirement benefits scheme which satisfies the obligations contained in the provision in question to the extent that it is reasonably practicable to do so; and
- (b) satisfy the remainder of those obligations, which are not included in the scheme provided under sub-paragraph (a) of this paragraph, by other suitable means which will secure for the benefit of the protected person concerned pension rights at least equivalent to those which would have been provided by the relevant scheme.

(3) If it shall subsequently become reasonably practicable for the requirements mentioned in paragraph (2)(b) to be satisfied by the scheme referred to in paragraph (2)(a) or another relevant scheme, the employer may arrange that they are so satisfied.

(4) During any period in which the employer complies with this regulation, any scheme provided under paragraph (2)(a) and any relevant scheme in replacement thereof or provided pursuant to regulation 11 or 12 shall be deemed to be a relevant scheme for the purposes of the provision referred to in paragraph (1).

(5) Where on a total or partial winding up of a relevant scheme—

- (a) the employer has made any payment required under regulation 6(3); and
- (b) in respect of the accrued pension rights of the protected beneficiaries under that relevant scheme, the trustees of that scheme have applied the assets of the scheme in accordance with the rules for the distribution of the assets of the scheme in the winding up,

the employer shall be deemed to have fulfilled his obligation in respect of those accrued pension rights under these Regulations, except to the extent that those accrued pension rights are either secured by assets retained under the control of the trustees or are transferred to a new relevant scheme provided by the employer.

(6) The circumstances specified are that—

- (a) the whole or a part of either or both of the accrued pension rights of the protected person are, or of the future pension rights of the protected employee will be, provided by the earnings related component of any pension provided by a state pension scheme;
- (b) to the extent (if any) that the accrued pension rights or future pension rights referred to in sub-paragraph (a) of this paragraph are not provided on a basis equivalent to that

mentioned in that sub-paragraph, the employer complies with paragraph (2) in respect of the balance of those pension rights; and

- (c) the contributions payable by the protected employee under any scheme required to be provided by the employer make due allowance for the amount which the protected employee is required to pay in order to accrue those future pension rights under that state scheme.

Partial winding up of the Pension Scheme

10.—(1) If the employer of a protected employee shall be given notice under the rules of the Pension Scheme that he is not permitted to continue to be a participating employer in that Scheme (except by reason of his liquidation otherwise than for the purposes of reconstruction or amalgamation), he shall forthwith, and in any event prior to the expiry of that notice, provide an alternative scheme and enable each protected employee to participate in that scheme with effect from a date not later than the expiry date of the notice.

(2) For the purposes of paragraph (1), the future pension rights to be provided by the alternative scheme for protected employees shall be no worse than the future pension rights provided for those employees under the Pension Scheme immediately prior to the date upon which they cease to participate in that Scheme.

Total winding up of the Pension Scheme

11.—(1) If any action is taken under the rules of the Pension Scheme to cause the total winding up of that Scheme, each employer who—

- (a) participates in that Scheme; and
- (b) employs a protected employee who participates in that Scheme,

shall forthwith notify each of his protected employees of the alternative arrangements he proposes to make and as soon as practicable provide an alternative scheme.

(2) Any employer who has provided an alternative scheme for the purpose of paragraph (1) may at any time thereafter and shall upon the total winding up of the Pension Scheme enable all protected employees in his employment to participate in the alternative scheme which he has provided.

(3) For the purpose of this regulation the future pension rights to be provided by the alternative scheme of each employer for his protected employees shall be no worse than the future pension rights provided for those employees under the Pension Scheme immediately prior to the date upon which they cease to participate in that Scheme.

Total or partial winding up of an alternative scheme

12.—(1) If an alternative scheme is partially or totally wound up, each employer of protected employees who participates in that scheme shall forthwith notify each of his protected employees of the alternative arrangements he proposes to make and shall as soon as practicable provide a relevant scheme and enable such employees to participate in that scheme.

(2) Subject to paragraph (3), the future pension rights to be provided by the relevant scheme provided under paragraph (1) shall be no worse than those required to be provided by these Regulations under the scheme which the relevant scheme is provided to replace.

(3) If—

- (a) the relevant scheme provided under paragraph (1) is the Pension Scheme; and
- (b) the employer joins a pension group, other participants in which employ protected employees, the future pension rights of the persons for whom the scheme is provided under

this regulation shall be no worse than those provided for the existing protected employees of that pension group in the Pension Scheme.

Change of employer

13.—(1) This regulation shall apply for the benefit of any protected employee who, prior to the total winding up of the Pension Scheme—

- (a) is a participant in the Pension Scheme;
- (b) changes his employer otherwise than in the circumstances specified in paragraph (5); and
- (c) whose new employer is a participant in the Pension Scheme or is wholly owned by one or more companies which or each of which is such a participant.

(2) A new employer to whom this regulation applies who is not a participant in the Pension Scheme shall forthwith make application to join that Scheme and shall carry out the procedural requirements of that Scheme to enable such an application to be accepted, and—

- (a) any parent company of the employer; and
- (b) any two or more successor companies which together control the employer,

which, in either case, participates or participate in the Pension Scheme shall use its or their best endeavours to procure that such application shall be accepted.

(3) If the application under paragraph (2) is accepted, and the new employer forms a pension group or joins an existing pension group or joins with any other employers to form a pension group in the Pension Scheme, he shall provide or procure the provision of future pension rights to the protected employee which—

- (a) if the pension group already contains protected employees, are the same as the future pension rights of those employees; or
- (b) if the pension group contains no protected employees, are no worse than the transfer date rights.

(4) If the new employer is already a participant in the Pension Scheme, he shall provide or procure the provision of future pension rights which would have satisfied the requirements of paragraph (3) if that paragraph had applied to him.

(5) This regulation shall not apply in respect of any change of employment which is made, other than at the requirement of the employer, to a new employer which is not a company in the same company group as the former employer.

Provision of alternative scheme

14.—(1) If the application of the new employer under paragraph (2) of regulation 13 to participate in the Pension Scheme is refused, the new employer shall, so far as reasonably practicable, provide an alternative scheme for the benefit of the protected employee.

(2) For the purpose of paragraph (1) the future pension rights to be provided by the alternative scheme shall be—

- (a) those provided by an existing alternative scheme of the new employer previously provided by that employer pursuant to these Regulations; or
- (b) if no such scheme shall have been provided, no worse than the transfer date rights.

(3) If it shall not be reasonably practicable for the new employer to provide an alternative scheme under paragraph (1), he shall secure by other suitable means in accordance with regulation 9 that the protected employee continues to be able to acquire future pension rights at least equivalent to those required under paragraph (2).

Provision of relevant scheme

15.—(1) This regulation applies where a protected employee changes his employer—

- (a) in the circumstances referred to in paragraph (5) of regulation 13; or
- (b) in any other circumstances not falling within paragraph (1) of regulation 13 or within regulation 14.

(2) If his new employer participates in a relevant scheme, he shall enable the protected employee to participate in that scheme and shall provide future pension rights for the protected employee in accordance with paragraph (4) of regulation 13.

(3) If his new employer does not participate in a relevant scheme, the new employer shall so far as reasonably practicable provide an alternative scheme.

(4) The future pension rights to be provided by any scheme required under this regulation shall be no worse than transfer date rights.

Amendment of relevant scheme rules

16.—(1) Subject to paragraph (2), no amendment shall be made to a relevant scheme which would result in the accrued pension rights or future pension rights of protected persons in that scheme being reduced or the contributions to that scheme to be made by protected employees being increased.

(2) Paragraph (1) shall not apply to an amendment to the Pension Scheme affecting only the interests of protected employees (including any interests contingent upon their death) if—

- (a) the person entitled to amend the Pension Scheme has given notice to all those protected employees who would be affected by the amendment of a meeting to consider the amendment;
- (b) that notice specifies the proposed amendment, states the effect of that amendment and gives not less than 21 days notice of the meeting specifying the time and place at which it will be held and the arrangements by which any person who is unable to attend can register a vote by proxy; and
- (c) the amendment is approved at that meeting by a majority of not less than two thirds of those persons to whom notice of the meeting has been given under sub-paragraph (a) of this paragraph who vote, whether in person or by proxy, on the resolution in respect of that amendment.

Termination of protection

17.—(1) A protected employee may at any time elect—

- (a) that he does not wish to be a protected person; or
- (b) that he does not wish to be a protected employee,

and a protected beneficiary may at any time elect that he does not wish to be a protected beneficiary.

(2) Any person who wishes to make an election under paragraph (1) (“the elector”) shall complete a notice in the form set out in Schedule 1 and shall serve it on his employer.

(3) Subject to paragraph (4), an election under paragraph (1) shall have effect from the date specified in the notice served under paragraph (2), and thereafter the elector shall cease to be a protected employee, a protected beneficiary or a protected person (as the case may be) for the purpose of these Regulations.

(4) Upon receipt of any notice served under paragraph (2), the employer shall within 21 days send to the elector an acknowledgement in the form set out in Schedule 2.

(5) Unless the elector, within 21 days of the receipt of such acknowledgement, notifies the employer in writing that he wishes to withdraw the notice served under paragraph (2) (in which event that notice shall be deemed never to have been given) such notice shall take effect upon the date stated therein and shall thereafter be irrevocable.

Methods of providing a relevant scheme

18. Any duty imposed by these Regulations to provide a relevant scheme for a protected person may be satisfied by the employer as soon as reasonably practicable—

- (a) participating in the Pension Scheme; or
- (b) (i) amending or procuring the amendment of an existing retirement benefits scheme to the extent (if any) necessary to cause that scheme to be a relevant scheme; or
(ii) establishing a new relevant scheme, and in either case being or becoming a participant in that scheme,

and, in any such case, enabling the protected person to participate in that scheme with effect, whether actual or deemed, from the date upon which the duty to provide that scheme arose.

Persons owing a duty

19.—(1) Any duty imposed by these Regulations on the employer of a protected person shall also be a duty owed by—

- (a) the parent company (if any) of the employer of the protected person;
- (b) if neither the employer nor the parent company is a successor company, the last successor company before that duty arose to have been the employer (or the parent company of the employer) of that person;
- (c) if the employer (or the parent company of the employer) is a company which immediately after the transfer date was wholly or partly owned by two or more successor companies, such successor companies jointly but, in respect of any monetary obligation of the employer, severally divided in the proportions which the aggregate number of protected employees and protected beneficiaries in receipt of a pension in respect of each such company on the transfer date bears to the aggregate number of such persons in respect of all of those successor companies (but excluding all such persons who are entitled solely to equivalent pension benefits within the meaning of subsections (5) to (7) of section 33 of the Social Security Pensions Act 1975(6));
- (d) any parent company of a successor company within sub-paragraph (b) or (c) of this paragraph in respect only of the liability of that successor company under those sub-paragraphs; and
- (e) any two or more successor companies which together own the whole of the ordinary issued share capital of a successor company within sub-paragraph (b) or (c) of this paragraph (“company A”), in respect only of the liability of company A under those sub-paragraphs jointly but, in respect of any monetary obligation of the employer, severally divided in the proportions which the ordinary issued share capital in company A of each such successor company bears to the aggregate ordinary issued share capital of company A upon the date on which those companies become the owners of the whole of the ordinary issued share capital of company A.

(2) If a protected employee changes his employer and does not require the accrued pension rights to which he is entitled immediately before the change to be transferred to the relevant scheme

provided by his new employer in accordance with these Regulations, any former employer of whose relevant scheme those rights remain a liability shall be treated as the employer of that person for the purposes of these Regulations in respect of those rights until they are transferred to another relevant scheme.

Indemnities in relation to breaches of duty

20.—(1) The following provisions of this regulation shall have effect in the event of any employer of a protected person being in breach of any duty imposed by these Regulations.

(2) In this regulation—

“relevant duty” means a duty imposed by these Regulations; and

“relevant employer” means an employer who is in breach of a relevant duty.

(3) If any parent company mentioned in paragraph (1)(a) of regulation 19 is required to fulfill a relevant duty, that parent company shall be entitled to an indemnity from the relevant employer.

(4) If any successor company mentioned in paragraph (1)(b) or (c) of regulation 19 is required to fulfill a relevant duty, that successor company shall be entitled to a joint and several indemnity from the relevant employer and the parent company (if any) of that employer.

(5) If any parent company of a successor company mentioned in paragraph (1)(d) of regulation 19 is required to fulfill a relevant duty, that parent company shall be entitled to a joint and several indemnity from the relevant employer, the parent company (if any) of that employer and any successor company mentioned in paragraph (1)(b) or (c) of that regulation.

(6) If any successor company mentioned in paragraph (1)(e) of regulation 19 is required to fulfill a relevant duty, that successor company shall be entitled to a joint and several indemnity from the relevant employer, the parent company (if any) of that employer, any successor company mentioned in paragraph (1)(b) or (c) of that regulation and any parent company of any such successor company.

Arbitration

21.—(1) Any dispute arising under these Regulations between a protected person and the employer of that protected person or a person owing a duty to that protected person under regulation 19, or between the persons referred to in regulation 19, shall be referred to arbitration in accordance with the provisions of this regulation.

(2) Any party to a dispute (“the applicant”) may serve notice on the other party (“the defendant”)—

(a) specifying the nature of the dispute;

(b) referring to this regulation; and

(c) nominating a person who is willing to act as arbitrator of the dispute.

(3) The defendant shall within 28 days of the serving of any notice under the preceding paragraph notify the applicant in writing either that he approves the person nominated as arbitrator or that he wishes to nominate an alternative arbitrator who is willing to act, specifying that person.

(4) If the applicant and the defendant have not agreed the person to be appointed as arbitrator within 56 days of the serving of notice under paragraph (2), either party may request the President of the Law Society to appoint a person to act as arbitrator of the dispute.

(5) Any person to whom regulation 19 applies who gives or receives a notice under this regulation shall as soon as reasonably practicable thereafter send a copy of any such notice to any other person to whom regulation 19 applies.

(6) Any notice given by a protected person shall, in addition to any other matter required by this regulation, specify the successor company referred to in regulation 19(1)(b).

24th February 1990

John Wakeham
Secretary of State for Energy

*Status: This is the original version (as it was originally made). UK
Statutory Instruments are not carried in their revised form on this site.*

SCHEDULE 1

Regulation 17(2)

NOTICE OF ELECTION

To
(Name of Employer–Note 1)

.....
(Address of Employer–Note 2)

1. I of
(Full Name) (Address)

.....
am a protected person under the Electricity (Protected Persons) (England and Wales) Pension Regulations 1990 (“the 1990 Regulations”).

2. I give you notice under regulation 17(2) of the 1990 Regulations that I elect to cease to be
.....
(Note 3)

3. This election shall take effect on.....
(Note 4)

SIGNED..... DATE.....
(Note 5)

NOTES

1. A protected employee should insert the name of his or her employer at the date of the notice. A protected beneficiary should insert the name of the person satisfying the definition of employer in Regulation 2(1) of the 1990 Regulations.
2. Insert the address of the principal office or the registered office in the United Kingdom of the employer.
3. Insert whichever of the following categories applies, namely “protected person”, “protected employee” and “protected beneficiary”. These terms are defined in Regulations 2(1), 3 and 4 of the 1990 Regulations.
4. This date should be not less than 60 days after the date upon which the notice is sent to the employer.
5. A NOTICE, ONCE GIVEN, MAY BE WITHDRAWN IN ACCORDANCE WITH REGULATION 17(5) OF THE 1990 REGULATIONS BUT OTHERWISE IS IRREVOCABLE.

SCHEDULE 2

Regulation 17(4)

NOTICE OF ACKNOWLEDGEMENT

To: [name of person giving notice under regulation 17(2)]
[address shown in that notice]

I/We, [name of person to whom that notice was given], acknowledge receipt of the notice dated [insert date] given by you under regulation 17(2) of the Electricity (Protected Persons) (England and Wales) Pension Regulations 1990 and received by me/us on [insert date].

Unless you notify me/us within 21 days of receipt of this acknowledgement that you wish to withdraw your election it will take effect upon the date which you have specified and will thereafter be irrevocable.

Signed

Date.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the protection of the pension rights of existing and former employees and Board Members in the electricity supply industry in England and Wales on the transfer date as defined in section 95(1) of the Electricity Act 1989 (and which will be 31st March 1990), and their dependants (“protected persons”), who are or were participants in the Electricity Supply Pension Scheme (“the Pension Scheme”).

The pension rights protected fall into two categories:

- accrued pension rights; and
- future pension rights.

The Regulations lay a duty on employers to ensure the protection of the pension rights of protected persons in the event of:

- the partial or total winding up of the Pension Scheme or any alternative scheme;
- the restructuring or change of ownership of the participating employers; or
- the transfer of employees (whether at the requirement of the employer or on a voluntary basis) from one employer to another within the electricity supply industry.

The Regulations provide that, as far as possible, a protected employee shall be enabled to remain a member of the Pension Scheme. If this is not possible (eg. in the case of a partial or total winding up of the Pension Scheme), the employer is required to provide his protected employees with an alternative scheme which offers future pension rights which are no worse than those they enjoyed immediately before ceasing to participate in the Pension Scheme. The protection extends to circumstances where an alternative scheme is wound up. There is also a duty on employers to protect the accrued pension rights of protected persons, including benefits in payment to pensioners and dependants.

The protection continues to apply when a protected employee moves within the industry and the Regulations set out the level of pension rights to be provided on transfers between companies in different circumstances. The protection will cease to apply if continuity of employment in the industry is broken.

The Regulations come into force on 31st March 1990. Regulation 1 provides for the citation and commencement of the Regulations, and regulation 2 provides for interpretation.

Regulation 3 defines who is a “protected employee” and specifies the circumstances in which he ceases to enjoy that status (in particular at the employee’s request, if he leaves the Pension Scheme or an “alternative scheme” to make his own arrangements, or if he ceases to be in continuous employment). Regulation 4 defines who is a “protected beneficiary” and specifies the circumstances in which he ceases to enjoy that status (in particular at the beneficiary’s request, or if he withdraws his accrued pension rights in certain circumstances from the relevant scheme). A protected employee and a protected beneficiary are both “protected persons”. Regulation 5 defines “continuous employment”. Broadly, any change of employment between successor companies (as defined in regulation 2) or their subsidiaries will, for this purpose, be treated as continuous.

Regulation 6 deals with “accrued pension rights” of protected persons; it sets out the employer’s duties to ensure that these rights are funded by the scheme in which they are at any time, and provides for the rights to be secured in the event of the total or partial winding up of a scheme and for their transferability if an employee changes employer.

Regulation 7 prescribes the rights which a protected employee will have to accrue future pension rights. It provides that, subject to specified qualifications, while the protected employee is a member of the Pension Scheme, the rights will accrue on the same basis as for other protected employees employed by the same employer, from time to time, and that they may be improved, or reduced (but only if the procedure in regulation 16 is followed). The regulation provides that, if the Pension Scheme is wound up, the basis for each employer will be “frozen” at the level applying at the time of the winding up. Additional benefits may be provided, but will not be subject to protection under the Regulations. If a protected employee transfers to an employer whose protected employees have pension rights worse than transfer date rights or who has no other protected employees, the minimum level of pension rights he can offer are those which applied in the Pension Scheme on the transfer date.

Regulation 8 defines an “alternative scheme”. It sets out the criteria that must be met by a scheme if it is to be regarded as an alternative scheme for the purpose of these Regulations (see also regulations 11, 12 and 14).

Regulation 9 provides that where an employer is required by any regulation to provide a “relevant scheme” (either the Pension Scheme or an alternative scheme) and it is not reasonably practicable for him to do so, he shall provide the relevant pension rights by other suitable means.

Regulation 10 provides that where an employer is no longer permitted to continue to participate in the Pension Scheme (otherwise than by reason of his liquidation) he shall provide an alternative scheme for the protected employees in his employment. The alternative pension rights thus provided are to be no worse than the pension rights previously enjoyed by those employees immediately before ceasing to participate in the Pension Scheme.

Regulation 11 provides that in the event of the Pension Scheme being totally wound up, each participating employer shall provide an alternative scheme as soon as practicable and enable all the protected employees in his employment to participate in it. The alternative pension rights to be provided are to be no worse than those enjoyed by the employees immediately before ceasing to participate in the Pension Scheme.

Regulation 12 provides that if an alternative scheme is partially or totally wound up, each participating employer shall as soon as practicable provide a relevant scheme to replace it and shall enable his protected employees to participate in it. The new scheme shall provide future pension rights no worse than the protected rights required to be provided under regulation 10 or 11.

Regulation 13 provides that where a protected employee who is a member of the Pension Scheme moves to an employer who already participates in the Pension Scheme, his new employer shall allow him to remain in the scheme with the same pension rights as those applying to the employer's existing protected employees or, if their pension rights are worse than those applying on the transfer date or there are no other such protected employees, with pension rights no worse than those applying on the transfer date. If the new employer is not in the Pension Scheme, but is a wholly owned subsidiary of a company which is, the employer must apply to join for the benefit of the protected employee concerned. This does not apply in the case of voluntary transfers where the new employer does not participate in the Pension Scheme and is in a different group of companies.

Regulation 14 provides that if the new employer's application to join the Pension Scheme under regulation 13 is refused, he shall, so far as reasonably practicable, provide an alternative scheme for the benefit of his new protected employee. The future pension rights to be provided shall be no worse than those already applying to protected employees of the employer under an existing alternative scheme or, if the pension rights of his existing protected employees are worse than those applying on the transfer date or there are no such protected employees, no worse than the transfer date rights.

Regulation 15 applies in any circumstances not falling within regulation 13 or 14 where a protected employee changes employment. It provides that where the new employer participates in a relevant scheme he shall enable the new employee to join that scheme, which shall offer future pension rights in accordance with regulation 13(4), and that where the new employer does not participate in a relevant scheme he shall provide an alternative scheme offering future pension rights no worse than transfer date rights.

Regulation 16 provides that the Pension Scheme may reduce the level of protected benefits or increase contributions in respect of protected employees only if two-thirds of those employees concerned who vote on the question vote in favour of the change. This provision does not apply to a relevant scheme other than the Pension Scheme; such schemes may not be amended so as to reduce the benefits or increase the contributions of protected employees.

Regulation 17 permits a protected person to elect to surrender his protected rights. The form of the notice of such an election to be served on the employer is set out in Schedule 1. The elector is allowed a period of 21 days from receiving the employer's acknowledgement (in the form set out in Schedule 2) to change his mind and withdraw the notice.

Regulation 18 sets out the ways in which a duty to provide a relevant scheme under the Regulations may be met. This may be by participating in the Pension Scheme, amending an existing scheme where necessary, or establishing a new scheme.

Regulation 19 provides that a duty imposed by the Regulations on the employer of a protected person shall also be a duty owed by other specified persons (who thus act as guarantors of the employer). The other persons owing a duty are (inter alia) the parent company (if the employer is a wholly-owned subsidiary); and, if neither the employer nor the parent company is a successor company (as defined in regulation 2), the last successor company to employ the protected person or the parent company of such a successor company. The regulation provides for the appropriate apportionment of the duty where there are two or more previous successor companies involved. By virtue of the definition of "employer" in regulation 2, the duty in respect of a protected beneficiary is owed by the employer to whom the beneficiary concerned is allocated for pension purposes.

Regulation 20 sets out the rights of indemnity between the guarantors where any employer is in breach of a duty imposed by the Regulations.

Regulation 21 provides that any dispute arising under the Regulations shall be referred to arbitration, and sets out the procedure to be followed.