
STATUTORY INSTRUMENTS

1994 No. 1432

TRANSPORT

The Railway Pensions (Protection and Designation of Schemes) Order 1994

Made - - - - 27th May 1994
Coming into force - - 31st May 1994

Whereas a draft of this Order was laid before Parliament and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Transport, in exercise of the powers conferred on him by section 143(3) and (4) of, and paragraphs 1(1), 5(b)(iii), 6(1), (2), (4)(b), (6), (8) and (9), 7(1) and (3) and 8(1), (2)(b)(iii), and (6) to (11) of Schedule 11 to, the Railways Act 1993⁽¹⁾ and of all other powers enabling him in that behalf, hereby makes the following Order:

PART I

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Railway Pensions (Protection and Designation of Schemes) Order 1994 and shall come into force on 31st May 1994.

(2) In this Order—

“the Act” means the Railways Act 1993;

“associated employer” has the same meaning as in section 153(4) of the Employment Protection (Consolidation) Act 1978⁽²⁾;

“continuity of employment” means the continuity of a period of employment of a person, as determined in accordance with paragraph 6(10) of Schedule 11 and article 9, and cognate expressions shall be construed accordingly;

“designated scheme”—

(1) 1993 c. 43; see the definitions of “existing scheme” and “prescribed” in paragraph 1(1) of Schedule 11.

(2) 1978 c. 44.

- (a) in relation to a person, means the occupational pension scheme which is designated as an existing scheme by article 15, and is listed in the Schedule to this Order, which is the last such scheme in which that person participated before the coming into force of this Order; and
- (b) any reference to the relevant pension rights of the person in question under such a scheme is a reference to the relevant pension rights to which that person is entitled when this Order comes into force (whether that scheme is subsequently amended or not);

“protected employee” means a person who is a protected person by virtue of paragraph 5(a) or (b) (meaning of protected person) of Schedule 11;

“relevant date” in relation to an occupational pension scheme means the first date on which relevant pension rights are acquired under, or transferred to, that scheme;

“relevant employment” means employment as an employee of—

- (a) the Board or any subsidiary of the Board;
- (b) any person who has acquired an undertaking, or part of an undertaking, which was carried on by the Board, or a subsidiary of the Board, immediately before the passing of the Act; or
- (c) a company which was a subsidiary of the Board immediately before the passing of the Act;

“relevant pension rights” has the same meaning as in paragraph 6(3) of Schedule 11;

“relevant scheme” means an occupational pension scheme which relates to relevant employment;

“replacement arrangement” means—

- (a) a replacement scheme; or
- (b) an appropriately secured policy of insurance, an appropriately secured annuity contract, or more than one such policy or contract, within the meaning of section 19 (liability secured by insurance or annuity contracts) of the Pensions Schemes Act 1993⁽³⁾ or section 15 (liability secured by insurance or annuity contracts) of the Pension Schemes (Northern Ireland) Act 1993⁽⁴⁾;

“replacement scheme” means an occupational pension scheme which is—

- (a) a scheme, or a section of a scheme, which is approved by the Board of Inland Revenue for the purposes of Chapter I or Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988⁽⁵⁾ or is capable of being so approved; or
- (b) a statutory scheme as defined in section 612(1) of that Act;

“Schedule 11” means Schedule 11 to the Act;

“scheme actuary” in relation to a scheme, or a section of a scheme, means an actuary who—

- (a) is a person who, or an employee of a firm or company which, or a partner in a firm which, has been appointed by the trustees of that scheme or section to perform the functions of a scheme actuary for which provision is made in this Order; and
- (b) who is—
 - (i) a Fellow of the Institute of Actuaries;
 - (ii) a Fellow of the Faculty of Actuaries; or

⁽³⁾ 1993 c. 48.
⁽⁴⁾ 1993 c. 49.
⁽⁵⁾ 1988 c. 1.

- (iii) a person who holds a qualification, obtained outside the United Kingdom, which is recognised by that Institute or Faculty as being adequate for the performance of those functions;

“transfer value” means a transfer value calculated under article 6.

(3) Subject to paragraph 1(2) of Schedule 11 and to paragraph (2), expressions used in this Order and in Part I or II of the Act have the same meaning in this Order as they have in that Part.

(4) Section 149 of the Act shall apply to any notice given under this Order as it applies to any document required or authorised to be served by virtue of the Act.

(5) Except so far as the context otherwise requires, any reference in this Order—

- (a) to a numbered article is to the article in this Order which bears that number;
- (b) in an article to a numbered paragraph is to the paragraph of that article which bears that number; and
- (c) in a paragraph to a lettered sub-paragraph is to the sub-paragraph of that paragraph which bears that letter.

PART II

Protected Persons

Protected persons — conditions

2. The conditions specified in this article are the conditions prescribed for the purposes of paragraph 5(b) (meaning of “protected person”) of Schedule 11—

- (a) the person in question was not participating in an existing scheme immediately after the passing of the Act but had not voluntarily withdrawn or transferred from the existing scheme in which he had last participated;
- (b) where the person in question was not an employee of the Board or of a subsidiary of the Board immediately after the passing of the Act, he has thereafter entered relevant employment—
 - (i) under a statutory or contractual right, which had subsisted before the passing of the Act, to return to relevant employment;
 - (ii) pursuant to a representation which had been made before the passing of the Act to the effect that he could return to relevant employment made by the Board or a subsidiary of the Board, whether or not he returns to the relevant employment mentioned in that representation; or
 - (iii) in circumstances in which his period of continuous employment began before the passing of the Act; and
- (c) the person in question—
 - (i) has participated, or within 6 months of returning to relevant employment or by 31st March 1995, if later, has applied to participate, in a relevant scheme from the first day after the passing of the Act on which he became entitled to participate in it; or
 - (ii) where there is no relevant scheme in which he is entitled to participate, has given notice to his employer within 6 months of his returning to relevant employment or 31st March 1995, if later, of his wish to participate in a relevant scheme from a date no later than the date of his return to that employment.

Commencement of protected period where person not participating immediately before the passing of the Act

3. The time prescribed for the purposes of paragraph 6(4)(b) of Schedule 11 (time at which the protected period begins for protected employees who fall within paragraph 5(b) of that Schedule) is the beginning of the first day after the passing of the Act in respect of which the person in question is, by virtue of his participation in a relevant scheme, regarded as a participant under the provisions of that scheme.

Obligation to provide a scheme

4.—(1) Any person who employs a protected employee shall provide an occupational pension scheme in which that employee may participate and to which the transfer value in respect of his relevant pension rights which he has acquired, other than any relevant pension rights acquired on the death of a protected person, may be transferred.

(2) An occupational pension scheme which is provided in accordance with paragraph (1) shall include provision under which—

(a) a protected employee may acquire—

(i) relevant pension rights in respect of any transfer value paid to that scheme, which are no less favourable than his relevant pension rights in the scheme from which he is transferring in respect of which that transfer value has been paid; and

(ii) relevant pension rights in respect of any participation by that employee in that scheme which are no less favourable than the relevant pension rights which he had under his designated scheme;

(b) the trustees are required to obtain, at intervals of not more than 18 months calculated from the relevant date in relation to that scheme, accounts which show a true and fair view of the financial transactions of the scheme and which have been audited by a person who has been appointed by the trustees and who is eligible for appointment as a company auditor under section 25 of the Companies Act 1989⁽⁶⁾ or a person who holds a qualification, obtained outside the United Kingdom, which is recognised by the Secretary of State as being adequate for the performance of that function.

(3) For the purposes of this article, and articles 5 and 6, in making any determination as to whether any relevant pension rights in an occupational pension scheme are more or less favourable than any such rights in the designated pension scheme of the protected person in question (or, where the context requires, any other scheme) regard shall be had to the provisions of the schemes as a whole and the circumstances and manner in which that designated scheme permitted (or the other scheme in question permits or permitted) increases in contributions or reductions in accrued or accruing benefits.

Participation and acquisition of relevant pension rights

5. None of the persons mentioned in paragraph 7(2) (protection — supplementary provisions) of Schedule 11 nor any servant or agent of any such person nor, where any such person is a body corporate, any person who controls that body corporate, shall prevent a protected employee from—

(a) participating in, or transferring the transfer value in respect of such of his relevant pension rights, other than any relevant pension rights acquired on the death of a protected person to, an occupational pension scheme provided by his employer in accordance with article 4;

(b) acquiring relevant pension rights in that scheme which are no less favourable than the relevant pension rights which he had under his designated scheme.

(6) 1989 c. 40.

Scheme amendment, transfer and winding up

6.—(1) Any amendment of an occupational pension scheme which would otherwise have the effect of making the relevant pension rights of a protected person less favourable than the relevant pension rights in his designated scheme shall have no effect in relation to those rights.

(2) Any transfer of the relevant pension rights of a protected person from one occupational pension scheme to another such scheme shall have no effect until the trustees of the scheme from which those rights are to be transferred have, wholly or to the extent that they are able—

- (a) under the provisions of that scheme; and
- (b) from the share of the fund of that scheme, as determined by the trustees, which is in the opinion of the scheme actuary attributable to the protected person whose rights are to be transferred;

paid a transfer value in respect of those rights which is not less than the higher of the amounts for which provision is made in paragraph (3) or (4), as calculated by the scheme actuary of the scheme from which those rights are to be transferred.

(3) The transfer value calculated under this paragraph shall be the amount which is necessary to provide the benefits to which that protected person would have been entitled under the occupational pension scheme from which he is to transfer and, for the purposes of this determination, the scheme actuary shall have regard to all relevant matters including—

- (a) the relevant pension rights which the protected person in question has acquired in the transferor scheme; and
- (b) any increase in the value of those rights which is attributable to any increase in the final earnings of that person which, but for the transfer, would have been expected.

(4) The transfer value calculated under this paragraph shall be of such an amount as, in the case of the protected person in question, is equal to the cash equivalent, calculated in accordance with the provisions of Chapter IV of Part IV of the Pensions Schemes Act 1993(7) or, where it applies, Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993(8).

(5) The trustees of a scheme to which a transfer value is paid in accordance with this Order shall provide, to or in respect of the person for whom it was paid, relevant pension rights which—

- (a) as respects such rights which accrued up to the date of the transfer, are no less favourable than the relevant pension rights which were the relevant pension rights of the protected person in question immediately before his transfer under the scheme from which he transferred; and
- (b) as respects the accrual of relevant pension rights after that date, are no less favourable than the relevant pension rights which he had under his designated scheme.

(6) No person mentioned in paragraph 7(2) of Schedule 11 shall wind up an occupational pension scheme, or part of such a scheme, in which a protected person has relevant pension rights unless the steps set out in paragraph (7) or (8) have first been taken and any such steps which are taken without first complying with those requirements, as the circumstances may require, shall have no effect.

(7) Where the protected person in question is a protected employee, his employer has—

- (a) provided a replacement scheme to which relevant pension rights may be transferred; and
- (b) taken all reasonable steps to ensure that the relevant pension rights of the person in question shall be no less favourable than—

(7) 1993 c. 48.

(8) 1993 c. 49.

- (i) as respects relevant pension rights accrued up to the date of the transfer, the relevant pension rights of the protected person in question immediately before his transfer under the scheme from which he is to transfer; and
- (ii) as respects the accrual of relevant pension rights after that date, the relevant pension rights which he had under his designated scheme.

(8) In any case to which paragraph (7) does not apply, the person who has power to pay the transfer value in respect of the relevant pension rights of the protected person in question has paid an amount into a replacement arrangement which is sufficient to secure relevant pension rights which, in the opinion of the scheme actuary, immediately before the transfer are no less favourable than that person's relevant pension rights were under the scheme from which he is to be transferred.

Contributions

7.—(1) Subject to the following paragraphs of this article, where any person mentioned in paragraph 7(2) (protection: supplementary provisions) of Schedule 11 is under a duty to contribute to—

- (a) a section of an occupational pension scheme in which a protected person has relevant pension rights; or
- (b) where sub-paragraph (a) does not apply, an occupational pension scheme in which a protected person has relevant pension rights;

the contributions which that person shall make under that duty shall be not less than such amount as, in the opinion of the scheme actuary, shall be sufficient to make provision in respect of the rights specified in paragraph (2) after having taken into account all of the relevant matters, including the resources of the occupational pension scheme or the relevant section of it and any employee contributions.

- (2) The following rights are specified for the purposes of paragraph (1)—
 - (a) the pension rights which, at the date in respect of which the scheme actuary gives that opinion, have been accrued under that scheme or section or been transferred to it in accordance with article 6;
 - (b) any pension rights which are accruing in respect of current participation in that scheme or section; and
 - (c) where provision is made in the rules of the scheme or section for the future enhancement of those rights in consequence of increases in remuneration, any such enhancement of those rights.

(3) No obligation to make contributions arises under paragraph (1) in any case where, in the opinion of the scheme actuary, the funds of the occupational pension scheme or section in question are sufficient for the purpose mentioned in that paragraph.

(4) Where relevant pension rights are transferred from one occupational pension scheme to another such scheme and the transfer value paid by the trustees of the transferring scheme under article 6(2) in respect of those relevant pension rights is less than the amount which, in the opinion of the scheme actuary of the transferring scheme, would have been required to provide no less favourable relevant pension rights under the transferring scheme as required under article 6(5)—

- (a) the person who is required under article 4 to provide the scheme from which those rights are transferred shall pay or secure the payment to the trustees of the scheme to which those rights are transferred the difference (if any) between the amounts calculated under article 6(2) and 6(5)(a); and
- (b) without prejudice to the obligation imposed by sub-paragraph (a), the person who is required under article 4 to provide the scheme to which those rights are transferred shall

pay or secure the payment to the trustees of that scheme of such part of any difference between the amounts calculated under article 6(2) and 6(5)(a) as is not paid to the trustees of that scheme under that sub-paragraph.

(5) The trustees of any occupational pension scheme, or any section of such a scheme, in which there are relevant pension rights shall not exercise any of their powers so as to—

- (a) increase any contributions which are payable to that scheme or section by a protected employee; nor
- (b) reduce any benefits which are payable in respect of any protected person;

unless that increase, or as the case may be reduction, is made in the circumstances and manner in which it could have been made under the designated scheme of the person in question and the scheme actuary has, within the period of 6 months which immediately precedes any such increase or reduction, advised the trustees that it may or should be made.

(6) The trustees of any occupational pension scheme, or any section of such a scheme, in which there are relevant pension rights shall obtain an opinion from the scheme actuary for the purposes of paragraph (1) where—

- (a) a period of 3 and a half years has elapsed since an opinion has been obtained in accordance with this paragraph or paragraph (5);
- (b) a period of 3 and a half years has elapsed since the relevant date in relation to that scheme and no opinion has been obtained in accordance with this paragraph or paragraph (5) since that date;
- (c) circumstances have arisen in which it is appropriate for the scheme actuary to give a further opinion for the purposes of Part III of the Pension Schemes Act 1993⁽⁹⁾ or Part III of the Pension Schemes (Northern Ireland) Act 1993⁽¹⁰⁾, or in which it would be appropriate for the scheme actuary to give such an opinion if the scheme in question were contracted-out within the meaning of either of those Acts; or
- (d) the scheme or section in question is to be wound-up in whole or in part.

(7) Where the opinion or advice of the scheme actuary has been given under this article, he shall (as soon as is reasonably practical) provide to the trustees of the scheme or section in question a schedule which specifies the contributions which are required, and the dates on which they are required, in order to meet the liabilities of that scheme or section.

Circumstances in which Part II of this Order ceases to have effect

8.—(1) Subject to article 9, Part II of this Order shall cease to have effect in relation to a protected employee where his continuity of employment is broken, except in relation to any relevant pension rights which he acquired before the break in that continuity.

(2) Subject to article 10, Part II of this Order shall cease to have effect in relation to a protected employee where he voluntarily withdraws from an occupational pension scheme, except in relation to any relevant pension rights which he acquired before that withdrawal.

(3) Where a protected person requests that his relevant pension rights be transferred from an occupational pension scheme by a written request addressed to a trustee of that scheme, Part II of this Order shall cease to have effect in relation to that protected person except to the extent that any of his relevant pension rights are not transferred pursuant to that request.

⁽⁹⁾ 1993 c. 48.

⁽¹⁰⁾ 1993 c. 49.

Circumstances in which breaks in continuity of employment are disregarded

9.—(1) For the purposes of articles 3 to 8, and for all other purposes of paragraph 6 (the powers of protection) of Schedule 11, there shall be disregarded, except to the extent specified in paragraph (3)

- (a) any break in the continuity of employment of a person who has re-entered relevant employment pursuant to a statutory or contractual right to return to relevant employment which existed before that break;
- (b) any period which falls between the ceasing of employment with one former employer who was participating in the joint industry scheme and the entering into employment with an associated employer of that former employer who is also participating in that scheme, where that period would have been disregarded in determining continuity of employment of the person in question if it had occurred whilst that person was employed by the same employer or an employer who is an associated employer of that employer; or
- (c) any period which falls between the ceasing of employment with one employer who is engaged in the railway industry and the beginning of a further period of employment with another employer who is engaged in that industry which—
 - (i) would have been disregarded in determining continuity of employment of the person in question if it had occurred whilst that person was employed by the same employer or an associated employer of that employer;
 - (ii) begins after the passing of the Act; and
 - (iii) ends no later than 1st October 1994;

and for the purposes of this sub-paragraph “engaged in the railway industry” shall be construed in accordance with paragraph 8(7) (employers who are to be regarded as engaged in the railway industry) of Schedule 11 and article 11(4) (which specifies activities for the purposes of that paragraph).

(2) For the purposes mentioned in paragraph (1) there shall also be disregarded, except to the extent specified in paragraph (3), any break in the continuity of employment of a person where—

- (a) he has been in relevant employment as an employee of one employer;
- (b) he is taken into relevant employment as an employee of another employer;
- (c) he has not initiated that change of employment nor has he actively sought to be taken into the employment of that other employer; and
- (d) the employer mentioned in sub-paragraph (a) is an associated employer of the employer mentioned in sub-paragraph (b).

(3) Where a break in the continuity of employment is disregarded under this article, the period during which the person in question was not in relevant employment shall not be included as part of that period of that employment.

Circumstances in which voluntary withdrawals are disregarded

10. For the purposes of articles 3 to 8 and for all other purposes of paragraph 6 of Schedule 11, any voluntary withdrawal from an occupational pension scheme by a protected person shall be disregarded where the protected person in question has ceased to participate in an occupational pension scheme by reason of—

- (a) a break in his continuity of employment which is disregarded under article 9 provided that he begins to participate in an existing scheme or a new scheme as soon as it is reasonably practicable after he becomes eligible so to do; or

- (b) a transfer from one occupational pension scheme to another occupational scheme where, at the time of the transfer, he is eligible to participate in either of those schemes by virtue of his employment or, where a new employer has taken over the business in which that person was employed, by virtue of his employment with his former or new employer.

PART III

Participation in the joint industry scheme

Entitlement to participate

11.—(1) Subject to the following paragraphs of this article, any person to whom paragraph 8(1) (entitlement to participate in the joint industry scheme) of Schedule 11 applies shall have the right to continue to participate in the joint industry scheme in accordance with the rules of that scheme unless and until the termination conditions to which reference is made in paragraph 8(5) of that Schedule become fulfilled in his case.

(2) The conditions which are prescribed for the purposes of paragraph 8(2)(b)(iii) (conditions required to be fulfilled if that paragraph is to apply to certain persons) of Schedule 11 are—

- (a) the person in question was not participating in an existing scheme immediately after the passing of the Act but he had not voluntarily withdrawn or transferred from the existing scheme in which he had last participated;
- (b) where the person in question was not an employee of the Board or of a subsidiary of the Board immediately after the passing of the Act, he has thereafter entered the employment of an employer who is engaged in the railway industry—
 - (i) pursuant to a statutory or contractual right to return to such employment or to a representation to the effect that he could return to such employment made by the Board or a subsidiary of the Board and that right has subsisted or, as the case may be, that representation had been made before the passing of the Act; or
 - (ii) in circumstances in which his period of continuous employment began before the passing of the Act; and
- (c) the person in question either—
 - (i) has participated, or within 6 months of returning to relevant employment or by 31st March 1995, if later, has applied to participate, in the joint industry scheme from the first day after the passing of the Act on which he became entitled to participate in it; or
 - (ii) where there is no section of the joint industry scheme in which he is entitled to participate, has given notice to his employer within 6 months of his returning to relevant employment or by 31st March 1995, if later, of his wish to participate in that scheme from a date no later than the date of his return to that employment.

(3) There shall be disregarded for the purpose of determining whether a person fulfils the qualifying conditions or whether the termination conditions have become fulfilled in his case—

- (a) any break in his continuity of employment where—
 - (i) until that break begins he is employed by an employer who is engaged in the railway industry;
 - (ii) within 6 months of the beginning of that break he begins a new period of employment with an employer who is engaged in that industry; and
 - (iii) during that break he is not at any time employed by an employer who is not engaged in that industry;

- (b) a voluntary withdrawal from an occupational pension scheme where a person withdraws from such a scheme in consequence of his change from employment with one employer engaged in the railway industry to employment with an associated employer who is so engaged provided that he participates in an occupational pension scheme which relates to his new employment within 6 months of that voluntary withdrawal; and
 - (c) any period not exceeding 12 months during which he is not in the employment of an employer engaged in the railway industry where, throughout the period in question, either—
 - (i) he remains in relevant employment; or
 - (ii) any break in his continuity of employment is disregarded for the purposes of any provision of this Order.
- (4) The activities specified for the purposes of paragraph 8(7) (activities to be regarded as the railway industry) of Schedule 11 are—
- (a) the provision of any railway services;
 - (b) the operation of any railway assets;
 - (c) the manufacture, supply (whether by way of sale, lease or otherwise) or maintenance of goods used or to be used in the provision of railway services or the operation of railway assets;
 - (d) the supply (whether by way of sale, lease or otherwise) of goods or the provision of services or facilities for any purpose ancillary or related to, or connected with, an activity specified in sub-paragraph (a), (b) or (c)
- provided that, in each case, the activity is carried on—
- (i) by the Board or a subsidiary of the Board;
 - (ii) in the course of an undertaking, being an undertaking derived (wholly or partly, directly or indirectly) from, or from some part of, an undertaking carried on by the Board or a subsidiary of the Board after the commencement of the Act; or
 - (iii) in the course of an undertaking the property, rights or liabilities of which were acquired (wholly or partly, directly or indirectly) from the Board or a subsidiary of the Board and which were disposed of by the Board or such subsidiary after the commencement of the Act.
- (5) The employer of a person for the time being entitled to the right conferred by paragraph (1) shall, so far as he is able, provide a section of the joint industry scheme which is a shared cost arrangement within the meaning of the Railway Pension Scheme Order 1994⁽¹¹⁾ —
- (a) to which any pension rights of that person which have been derived from employment with an employer who is engaged in the railway industry may be transferred; and
 - (b) under which that person may acquire further pension rights by virtue of his employment with that employer.
- (6) Where a person who has the right to participate in the joint industry scheme under paragraph (1) participates in that scheme, his employer for the time being shall pay any contributions which are required of the employer of that person under that scheme.
- (7) Where the approval or consent of a person is necessary in connection with the doing of anything which is required to be done under this article, that person shall give his approval or consent.
- (8) A person who would otherwise be entitled to the right conferred by virtue of paragraph (1) may be prevented from continuing to participate in the joint industry scheme in circumstances where his continued participation in that scheme would in the opinion of the trustees of that scheme—

(11) S.I.1994/1433.

- (a) prejudice any approval of that scheme for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (retirement benefit schemes); or
- (b) prevent the scheme from being a contracted-out scheme for the purposes of Part III of the Pension Schemes Act 1993 or Part III of the Pension Schemes (Northern Ireland) Act 1993.

PART IV

Election, arbitration and enforcement

Elections

- 12.—(1) Subject to the following provisions of this article—
- (a) a protected person may elect that Part II of this Order shall not have effect with respect to him or his surviving dependants by giving written notice of his election to the trustees of the scheme in which he has relevant pension rights;
 - (b) a person with the right to continue to participate in the joint industry scheme under article 11 may elect that Part III of this Order shall not have effect with respect to him by giving written notice of his election to the trustees of the joint industry scheme.
- (2) Where a notice of election is given to the trustees of an occupational pension scheme under paragraph (1)—
- (a) by a protected person, Part II of this Order shall cease to have effect in relation to any of his rights as such a person to the extent that those rights are specified in that notice;
 - (b) by a person with the right to participate in the railway industry under article 11, Part III of this Order shall cease to have effect in relation to any of his rights as such a person to the extent that those rights are specified in that notice.
- (3) An election under this article shall have effect—
- (a) where a person is to enter employment with a new employer after he has given notice under paragraph (1) but before the trustees to whom he has given that notice have selected a date under this paragraph, immediately before he enters employment with that new employer; and
 - (b) in any other case, on such date as those trustees shall select which falls—
 - (i) not less than 30 days after; but
 - (ii) during the second month after the month in which;that notice is given.
- (4) Where the trustees have received a notice which has been given under paragraph (1), they shall within 21 days give to the person who gave that notice a written acknowledgment that it has been received and notice of the date which they propose to select as the date on which Part II, Part III or both of those Parts of this Order, as the case may be, shall cease to have effect in relation to the rights in question.
- (5) A notice of election given under paragraph (1) may be withdrawn if the person who gave it gives a written notice of the withdrawal to the trustees of the scheme in question—
- (a) before the expiry of 30 days from the date on which the notice was given; or, if earlier
 - (b) before he enters into employment with a new employer.
- (6) Subject to paragraph (5), an election given under paragraph (1) shall be irrevocable.

Arbitration

13.—(1) Any dispute arising under Parts I to IV of this Order between—

- (a) a protected person, or a person with the right to continue to participate in the joint industry scheme under article 11, and a person falling within paragraph 7(2) (employers, persons contributing as employers, trustees and persons with power to amend or wind up the scheme) of Schedule 11; or
- (b) more than one person who falls within paragraph 7(2) of that Schedule;

shall be referred to arbitration under the provisions of this article.

(2) Where a dispute arises between two or more of the persons mentioned in paragraph (1), any of those persons shall give to the other or others a notice in writing which—

- (a) specifies the matters in dispute;
- (b) refers to this article; and
- (c) nominates a person who is willing to act as arbitrator of the dispute;

and for the purposes of this article a person who gives a notice under this paragraph shall be “the applicant” and the person or persons to whom it is given shall be “the defendant”.

(3) The defendant may, within 28 days of a notice being given to him under paragraph (2), give to the applicant a notice in writing which—

- (a) states that he approves as the arbitrator of the dispute the person nominated by the applicant; or
- (b) nominates an alternative person who is willing to act as arbitrator of the dispute;

and if the defendant fails to give such notice within that period the arbitrator nominated by the applicant shall act as the arbitrator of the dispute in question.

(4) If, within 56 days of the notice being given under paragraph (2), the applicant and the defendant have not agreed who should be nominated as the arbitrator of the dispute and no arbitrator has been appointed under paragraph (3), either of them may request the person prescribed by paragraph (5) or (6) to appoint the person who is to act as the arbitrator of the dispute.

(5) Subject to paragraph (6), the person prescribed for the purposes of paragraph (4) shall be—

- (a) where the principal residence of the applicant is in Scotland, the President of the Law Society of Scotland;
- (b) where the principal residence of the applicant is in Northern Ireland, the President of the Law Society of Northern Ireland; and
- (c) in any other case, the President of the Law Society of England and Wales.

(6) Where more than one request is made under paragraph (4) in relation to a dispute between the same parties which concerns the same, or substantially the same, issues—

- (a) if those requests are made to the President of one Law Society, the prescribed person shall be the President of that Law Society; and
- (b) if those requests are made to the Presidents of more than one Law Society, the prescribed person shall be the first of those Presidents to receive one of those requests.

(7) If after applying the provisions of paragraphs (5) and (6) there remains doubt as to who is the prescribed person, the prescribed person shall be the President of the Law Society of England and Wales.

(8) Where in relation to any dispute the President of a Law Society is the prescribed person by virtue of paragraph (6)(b) or (7), before selecting the arbitrator who is to act in relation to the dispute in question he shall consult each other President of a Law Society who has received a request which relates to the same dispute.

(9) Where an arbitrator has been appointed to determine more than one dispute which relates to the same issue (whether those disputes are between the same or different parties) he may, if all of those parties consent, hear and determine those disputes together as if they were a single reference.

(10) In the application of this article to Scotland, references to an “arbitrator” shall be construed as references to an “arbiter”.

Enforcement

14.—(1) Where a dispute which has been referred to an arbitrator appointed under article 13 has not been resolved because the arbitrator has—

- (a) failed to take any steps to determine it within 3 months of his appointment;
- (b) failed to determine it within 2 years; or
- (c) become unable to act;

or where there is no dispute for the purposes of article 13, any of the persons mentioned in paragraph (2) may apply to the court for an order which requires any other of those persons to comply with any provision of Parts I to IV of this Order.

(2) The persons mentioned for the purposes of paragraph (1) are—

- (a) the Secretary of State;
- (b) any person who has been, or is likely to be, affected by a failure to comply with Parts I to IV of this Order or who has a duty under any of those Parts who is—
 - (i) a protected person; or
 - (ii) a person mentioned in paragraph 7(2) of Schedule 11; or
- (c) in respect of Part III of this Order, a person who has the right to continue to participate in the joint industry scheme under article 11.

(3) In this article “the court” means—

- (a) where the principal residence of the person who makes an application under paragraph (1) is in Scotland, the Court of Session or the Sheriff;
- (b) where the principal residence of the person who makes an application under paragraph (1) is in Northern Ireland, the High Court or a County court in Northern Ireland;

and in any other case, the High Court or a County court in England and Wales.

PART V

Designation

Designation of existing schemes

15. The occupational pension schemes listed in the Schedule to this Order are designated as existing schemes for the purposes of Schedule 11.

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Signed by authority of the Secretary of State for Transport

27th May 1994

Roger Freeman
Minister of State,
Department of Transport

THE SCHEDULE

Article 15

Occupational pension schemes designated as existing schemes

Associated British Ports (Wages Grades) Pension Scheme
B.R. (1974) Pension Fund
BR (1984) Retirement Benefit Plan
BR Pension Scheme
British Railways Additional Superannuation Scheme
British Railways Additional Superannuation Scheme for Senior Officers
British Railways Death Benefit Scheme for Senior Officers
British Railways Superannuation Fund
British Transport Police Force Superannuation Fund
Great Northern Railway Superannuation Fund
Great Western Railway Inspectors and Foremen's Special Pension Fund
Great Western Railway Salaried Staff Supplemental Pension Fund
Great Western Railway Salaried Staff Widows' and Orphans' Pension Society
Great Western Railway Supplemental Pensions Reserve Fund
The London and North Western Railway Provident Society for providing pensions for widows and orphans of the salaried staff
London Brighton and South Coast Railway Company Pension Fund
NFC Retirement Plan
Southern Railway (South Eastern and Chatham Section) Enginemen & Motormen's Pension Fund Society
British Railways Board Supplementary Pension Scheme for D H Jones
Thomas Bantock & Co Superannuation Fund

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the protection of the relevant pension rights of protected persons for the purposes of Schedule 11 to the Railways Act 1993 ("Schedule 11"). That Act was passed on 5th November 1993.

Article 1 defines certain expressions which are used in this Order but are not defined in Schedule 11.

Article 2 sets out conditions which a person who was not participating in an occupational pension scheme as a British Rail employee immediately before 5th November 1993 must satisfy in order to qualify as a protected person under paragraph 5(b) of Schedule 11.

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Article 3 provides that the protected period for a person who satisfies the conditions set out in article 2 is to begin when, as an employee in the railway industry, he re-joins an occupational pension scheme.

Article 4 requires the employer of a protected employee to provide an occupational pension scheme in which that employee may acquire relevant pension rights which are no less favourable than the relevant pension rights which were provided under his designated scheme.

Article 5 provides that the persons specified in that article shall not prevent a protected employee from joining an occupational pension scheme provided by his employer.

Article 6 provides that any amendment of an occupational pension scheme which would make the relevant pension rights of protected persons (both pensioners and participants) less favourable to them, and any transfer of such rights which would make them less favourable to the persons transferred, shall have no effect. It also provides that an occupational pension scheme in which a protected person is participating may not be wound up unless replacement arrangements are made which are no less favourable than the provision made by the scheme which is to be wound up.

Article 7 requires that the employer's contribution to an occupational pension scheme in which a protected person is a member must be sufficient, in the opinion of the scheme actuary, to meet the cost of providing pensions to the members of that scheme, having taken into account the resources of the scheme — including employee contributions.

Article 8 makes provision, subject to exceptions, for this Order to cease to apply where the continuity of the period of employment of a protected employee is broken, a protected person voluntarily withdraws from an occupational pension scheme or a protected person requests that his relevant pension rights be transferred from an occupational pension scheme.

Article 9 makes provision for disregarding certain breaks in the continuity of employment so that, for example, the right to protection would not be lost because of a break in that continuity where a person has the right to return to employment in the railway industry.

Article 10 makes provision for disregarding voluntary withdrawal from an occupational pension scheme in certain circumstances.

Article 11 confers on certain persons whose employers are engaged in the railway industry the right to participate in the joint industry scheme.

Article 12 makes provision for a person to elect that this Order shall not apply to him.

Article 13 makes provision for disputes which arise under this Order to be referred to arbitration.

Article 14 makes provision for the enforcement of the Order by the courts.

Article 15 and the Schedule to this Order designate as "existing schemes" certain occupational pension schemes which provide pensions for, or in respect of, persons with service in the railway industry.

Compliance Costs

The provision made by this Order will impose a cost on the railway industry but the size of that cost is impossible to quantify. In order to protect the pensions of persons engaged in that industry it is necessary to ensure that the cost of providing pensions which is borne by the industry broadly reflects those which would have been incurred but for the changes pursuant to the Railways Act 1993. However, to some extent those costs would be incurred in any event because of the existing contractual entitlements of the persons engaged in the industry. Moreover, the costs falling on employers as a consequence of this Order will also depend to a large measure on the actions taken by the employer, as well as on general economic conditions.

Nevertheless, it is anticipated that no direct cost will arise until September 1996 and that, thereafter, the maximum cost is likely to be a percentage of that part of gross earnings which reckons for pension purposes under the relevant pension scheme established by the employer to comply with

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this Order. On that basis, the maximum average cost of compliance is, on the information at present available, assessed as 4.5% of pay reckoning for pension purposes from October 1996, increasing from October 2003 to 10.8% of the pay which is taken into account for pension purposes. These figures are net of the current contracted-out rebate for employers but include an allowance for administration expenses.