

## SCHEDULES

### SCHEDULE 11

Article 89.

#### PENSIONS

##### *Interpretation*

1.—(1) In this Schedule—

“employer”, in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;

“existing employee” means any person who, immediately before the transfer date, is employed by Northern Ireland Electricity;

“former participant” means any person who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme by virtue of his having been such a participant;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

“pension rights”, in relation to any person, includes—

(a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and

(b) any expectation of the accruer of a pension to or in respect of him;

and includes a right of allocation in respect of the present or future payment of a pension;

“the relevant statutory provisions” means Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (retirement benefit schemes) and Part IV of the Social Security Pensions (Northern Ireland) Order 1975 (contracting-out);

“relevant scheme” has the meaning given by paragraph 4(1);

“the scheme” means the Northern Ireland Electricity Superannuation Scheme;

“wholly-owned subsidiary” has the same meaning as in the Companies (Northern Ireland) Order 1986.

(2) For the purposes of this Schedule, a company is wholly owned by one or more other companies if it has no members except—

(a) that other or those others and its or their nominees; and

(b) wholly-owned subsidiaries of that other or those others and their nominees.

(3) Subject to sub-paragraph (1), expressions used in this Schedule which are also used in Part II or III have the same meanings as in that Part.

##### *Power to amend scheme*

2.—(1) Regulations may make provision amending—

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- (a) the trust deed of the scheme for the purpose of enabling the trustees to amend any provision of that trust deed, subject to such consents and conditions as may be prescribed;
  - (b) the scheme for the efficient and proper beneficial operation and management of the scheme.
- (2) Without prejudice to the generality of sub-paragraph (1) (b), regulations under this paragraph may amend the scheme for any of the following purposes, namely—
- (a) for enabling persons whose participation in the scheme will not prejudice its approval for the purposes of the relevant statutory provisions, and employees of such persons, to participate in or acquire pension rights under the scheme on such terms and conditions as may be prescribed;
  - (b) for enabling the scheme to be extended on such terms and conditions as may be prescribed to persons with pension rights other than under the scheme in so far as any such extension of the scheme will not prejudice its approval for the purposes of the relevant statutory provisions;
  - (c) for requiring any persons (including persons not participating in the scheme) to make payments to the trustees of the scheme in such circumstances as may be prescribed;
  - (d) for requiring or enabling any functions exercisable under the scheme by Northern Ireland Electricity to be exercisable by such persons, and in such circumstances, as may be prescribed;
  - (e) for enabling the scheme to be wound up (in whole or in part) in such circumstances as may be prescribed; and
  - (f) for securing that the scheme continues to be approved for the purposes of the relevant statutory provisions, notwithstanding the transfers made by this Order and the repeal of paragraph 10 of Schedule 1 to the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14.
- (3) Regulations under this paragraph may be made so as to have effect from a date prior to their making, so however that so much of any regulations as provides that any provision of regulations shall have effect from a date prior to their making shall not place any person other than Northern Ireland Electricity, or its successor companies, in a worse position than he would have been in if the regulations had been made to have effect only from the date of their making.
- (4) Regulations under this paragraph shall not be made at any time after any successor company has ceased to be wholly owned by the Crown.

*Transfer to successor companies' schemes*

**3.—**(1) Regulations may make provision, in respect of such persons, or class of persons, formerly employed by Northern Ireland Electricity or employed or to be employed by successor companies, for securing the transfer of accrued rights and other liabilities under the scheme and such of the assets of the scheme calculated on such basis as may be prescribed, to such superannuation fund or other scheme as may be specified in the regulations.

(2) Paragraph 2(4) shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

*Protection for certain persons*

**4.—**(1) Regulations may make provision for the purpose of securing that—

- (a) no person to whom paragraph 5(1) or (2) applies is placed in any worse position by reason of—

- (i) any winding up, in whole or in part, of a relevant scheme, that is to say, the scheme, a scheme provided by a successor company or any other scheme which is provided or amended in pursuance of the regulations; or
  - (ii) any amendment of a relevant scheme which results in benefits under that scheme being reduced, or contributions by employees being increased, and is made otherwise than in such circumstances as may be prescribed;
- (b) no person to whom paragraph 5(1) applies is prevented from continuing to participate in or acquire pension rights under a relevant scheme by reason of any change of employer—
- (i) which does not affect his continuity of employment and is made otherwise than in such circumstances as may be prescribed; and
  - (ii) in the case of which his new employer either is a participant in a relevant scheme or is wholly owned by one or more companies which or each of which is such a participant; and
- (c) no person to whom paragraph 5(1) applies is placed in any worse position by reason of any change of employer which does not affect his continuity of employment but prevents him from continuing to participate in or acquire pension rights under a relevant scheme;

and the references in heads (a) and (c) to any worse position shall be construed, in relation to a person to whom paragraph 5(1) applies who, after the transfer date, ceases to participate in or acquire pension rights under the scheme, as references to a position which is any worse than his position immediately before he so ceases.

(2) Regulations under this paragraph may impose duties (whether as to the amendment of the scheme, the provision or amendment of other schemes, the purchase of annuities, the making of payments or otherwise) on persons who are or have been employers of persons to whom paragraph 5(1) or (2) applies; and duties so imposed on any person may include duties owed to persons of whom he is not and has not been an employer.

(3) Regulations under this paragraph may also provide for any dispute arising under them to be referred to arbitration.

(4) Paragraph 2(4) shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

**5.—(1)** Subject to sub-paragraph (3), this sub-paragraph applies to—

- (a) any existing employee who, immediately before the transfer date, is a participant in the scheme;
- (b) any existing employee who, after that date, participates in a relevant scheme within 3 months of his attaining the minimum age for such participation; and
- (c) any former participant who, after that date, participates in or acquires pension rights under a relevant scheme in such circumstances as may be prescribed by regulations under paragraph 4.

(2) Subject to sub-paragraph (3), this sub-paragraph applies to—

- (a) any person not falling within sub paragraph (1)(c) who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme; and
- (b) any person who, after that date, acquires pension rights under a relevant scheme by reason of the death of a person falling within sub-paragraph (1) or head (a),

but only as respects the pension rights by virtue of which he falls within head (a) or (b).

(3) Any person to whom sub-paragraph (1) or (2) applies may elect in such manner as may be prescribed by regulations under paragraph 4 that that sub-paragraph shall cease to apply to him; and if any person to whom sub-paragraph (1) applies—

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- (a) ceases to be in continuous employment; or
- (b) voluntarily withdraws from a relevant scheme,

otherwise than in such circumstances as may be so prescribed, that sub-paragraph shall cease to apply to him except as respects pension rights which have accrued to him before that time.

**6.—(1)** So much of Schedule 1 to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 as has effect for the purpose of ascertaining whether any employment is continuous shall apply for the purposes of paragraphs 4 and 5 as if—

- (a) those paragraphs were contained in that Act; and
- (b) in that Schedule “associated employer”, in relation to a company participating in a relevant scheme, included any other company participating in such a scheme and any other company of which a company so participating has control, or 2 or more companies so participating together have control;

but regulations under paragraph 4 may provide that no account shall be taken for those purposes of any person ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed by the regulations.

(2) For the purposes of sub-paragraph (1), a company has control, or 2 or more companies together have control, of another company (“the other company”) if—

- (a) that company, or each of those companies, is a member of the other company and that company controls, or those companies together control, the composition of the other company’s board of directors;
- (b) that company holds, or those companies together hold, more than half in nominal value of the other company’s equity share capital;
- (c) a company of which the company has control, or those companies together have control, has control of the other company; or
- (d) 2 or more companies of which that company has control, or those companies together have control, together have control of the other company;

and Article 4(2) to (4) of the Companies (Northern Ireland) Order 1986 (as originally made and not as substituted by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990) shall, with any necessary modifications, apply for the purposes of this sub-paragraph as it applies for purposes of paragraph (1) of that Article.

#### *Other pensions*

- 7.** Regulations may make provision for requiring successor companies—
- (a) to make payments by way of re-imbursement to any persons who, on behalf of the successor companies, have made payments to any persons with pension rights acquired other than under the scheme; and
  - (b) to make payments to any persons with pension rights acquired other than under the scheme in such circumstances as may be prescribed.

#### *Supplemental*

**8.** Regulations under paragraphs 2, 3, 4 and 7 may contain such supplemental, consequential and transitional provisions as the Department considers appropriate.