

**Changes to legislation:** Energy Act 2004, SCHEDULE 8 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 8

Section 46

#### PENSIONS

##### **Modifications etc. (not altering text)**

**C1** Sch. 8: power to amend conferred (26.10.2023) by [Energy Act 2023 \(c. 52\)](#), ss. 315, 334(2)(o)

#### **PART 1**

##### PRELIMINARY

##### *Interpretation*

1 (1) In this Schedule—

“BNFL company” means BNFL or a subsidiary of BNFL;

“the designated date” means such date as the Secretary of State may by order designate for the purposes of this Schedule;

“NDA pension scheme” means a pension scheme maintained by or on behalf of the NDA under or by virtue of section 8(1)(a) or (b);

“non-nuclear pension scheme” means a pension scheme that is not a nuclear pension scheme;

“nuclear pension scheme” means—

- (a) a UKAEA pension scheme;
- (b) an NDA pension scheme;
- (c) a pension scheme maintained by or on behalf of a nuclear company which is wholly-owned by the Crown; or
- (d) a pension scheme designated for the purposes of this Schedule by an order made by the Secretary of State;

“pension scheme authority”, in relation to a nuclear pension scheme, means, according to whether the scheme falls within paragraph (a), (b), (c) or (d) of the preceding definition—

- (a) the UKAEA;
- (b) the NDA;
- (c) the nuclear company in question; or
- (d) the person specified in the order designating the scheme;

“private sector employer” means a person who is not a relevant public sector employer;

“public sector employee” means a person who is—

- (a) an employee of the UKAEA;
- (b) an employee of a subsidiary of the UKAEA; or

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- (c) an employee of, or a director or other officer of, a BNFL company that is publicly controlled;
    - “relevant public sector employer” means any of the following—
      - (a) the UKAEA;
      - (b) the NDA;
      - (c) the Civil Nuclear Police Authority;
      - (d) a publicly controlled company;
    - “transfer arrangements” means arrangements for the transfer of any of the following otherwise than in accordance with a nuclear transfer scheme—
      - (a) securities of, or voting rights in, a company; or
      - (b) a business, or a part of a business;
    - “UKAEA pension scheme” means a pension scheme maintained by the UKAEA under paragraph 7(2)(b) of Schedule 1 to the Atomic Energy Authority Act 1954 (c. 32).
- (2) References in this Schedule to the modification of a pension scheme include references to the modification of any one or more of the following—
- (a) the trust deed of the scheme, if there is one;
  - (b) rules of the scheme; or
  - (c) any other instrument relating to the constitution, management or operation of the scheme.
- (3) For the purposes of this Schedule a body corporate is wholly-owned by the Crown if it is a company limited by shares and that company is one in which—
- (a) a person specified in sub-paragraph (4) holds all the shares; or
  - (b) two or more persons so specified, taken together, hold all the shares.
- (4) Those persons are—
- (a) the Treasury;
  - (b) a Minister of the Crown;
  - (c) another company which is wholly-owned by the Crown; or
  - (d) a nominee of a person falling within paragraphs (a) to (c).
- (5) A reference in this Schedule to a nuclear transfer scheme includes a reference to a modification agreement (within the meaning of Schedule 5).
- (6) References in this Schedule to a person being eligible to become a participant in a pension scheme if he fulfils a condition—
- (a) do not include references to his being eligible to become a participant in a scheme if a different person becomes his employer or if his employer becomes the subsidiary of a particular body corporate; but
  - (b) do include references, in the case of a person whose participation in the scheme is temporarily suspended (whether by reason of a secondment or loan of his service or otherwise), to fulfilment of the conditions that would bring the suspension to an end.
- (7) In this paragraph “company” [<sup>F1</sup>means a company as defined in section 1(1) of the Companies Act 2006].

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### Textual Amendments

- F1** Words in Sch. 8 para. 1(7) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 220\(10\)](#) (with art. 10)

### Commencement Information

- II** Sch. 8 para. 1 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## PART 2

### EXTENSIONS OF CERTAIN PENSION SCHEMES

- 2 (1) The NDA may, by direction, make such modifications of a relevant pension scheme as it considers appropriate for purposes connected with extending the groups of persons who may participate in the scheme to—
- employees of a qualifying employer;
  - directors or other officers of a qualifying employer who are not employees of the employer.
- (2) The NDA may also, by direction, make such further modifications of a relevant pension scheme that has been modified by a direction under sub-paragraph (1) as it considers appropriate for purposes connected with conferring functions in relation to the scheme's operation or management on the NDA.
- (3) For the purposes of this paragraph a person is a qualifying employer in relation to a relevant pension scheme if—
- a transfer is made in accordance with a nuclear transfer scheme; and
  - in consequence of that transfer persons falling within sub-paragraph (4) become employees, or directors or other officers, of that person.
- (4) A person falls within this sub-paragraph if immediately before the transfer in question takes effect, he—
- is a participant in the relevant pension scheme in question;
  - is eligible to become such a participant; or
  - would be eligible to become such a participant had he attained an age, or fulfilled a condition, specified in that scheme.
- (5) Where employees, or directors or other officers, of a qualifying employer participate in a pension scheme by virtue of a direction under this paragraph, the employer must pay to the trustee of the scheme in respect of that participation—
- such amounts as may be determined in accordance with the rules of the scheme; or
  - such higher amounts as may be determined by the Secretary of State.
- (6) The modifications of a pension scheme that may be made under this paragraph include modifications that make supplemental, consequential or transitional provision.
- (7) The modifications of a pension scheme that may be made under this paragraph do not include modifications that would, to any extent, deprive a member of the scheme

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of pension rights that accrued to him under the scheme before the coming into force of the modification.

- (8) Before making a modification of a pension scheme under this paragraph the NDA must consult—
- (a) the trustee of the scheme; and
  - (b) such persons as appear to the NDA to represent the employees, or directors or other officers, likely to be affected by the modification.
- (9) The consent of the Secretary of State is required for the giving of a direction under this paragraph.
- (10) In this paragraph “relevant pension scheme” means—
- (a) a nuclear pension scheme maintained by or on behalf of a nuclear company which is wholly-owned by the Crown;
  - (b) a nuclear pension scheme designated as a relevant pension scheme for the purposes of this paragraph by an order made by the Secretary of State.

#### Commencement Information

**I2** Sch. 8 para. 2 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### PART 3

#### PUBLIC SECTOR TRANSFERS OF UKAEA PENSION SCHEME MEMBERS

##### *Transfers of employment for NDA purposes*

- 3 For the purposes of this Part of this Schedule a transfer of a person’s employment is made for NDA purposes if his employment immediately after the transfer takes effect is—
- (a) employment with the NDA or a subsidiary of the NDA; or
  - (b) other employment the duties of which consist wholly or mainly of duties relating to matters connected with the carrying out by the NDA of its functions.

#### Commencement Information

**I3** Sch. 8 para. 3 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

##### *Application of UKAEA pension scheme*

- 4 (1) A person who—
- (a) in accordance with a nuclear transfer scheme, or with any transfer arrangements, becomes an employee of a relevant public sector employer, and
  - (b) immediately before the transfer of his employment takes effect, is a participant in a UKAEA pension scheme,
- is not to cease to be a participant in that pension scheme by reason only that he has ceased to be employed by the transferor.

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- (2) A person falling within sub-paragraph (1)(a) but not within sub-paragraph (1)(b) who, immediately before the transfer of his employment takes effect—
- (a) is eligible to become a participant in a UKAEA pension scheme, or
  - (b) would be eligible to become such a participant had he attained an age, or fulfilled a condition, specified in the pension scheme,
- is not precluded from being, or becoming, eligible to participate in that pension scheme by reason only that he has ceased to be employed by the transferor.
- (3) Sub-paragraphs (1) and (2) do not apply in relation to the transfer of a person's employment unless—
- (a) the transfer is made for NDA purposes; or
  - (b) the transfer is a transfer to the Civil Nuclear Police Authority.
- (4) Sub-paragraphs (1) and (2) do not apply in relation to the transfer of a person's employment that takes effect on or after the designated date unless—
- (a) that person has satisfied the qualification requirement throughout the period beginning immediately before that date and ending immediately before the transfer takes effect; or
  - (b) the transfer is a transfer to the Civil Nuclear Police Authority.
- (5) The qualification requirement is satisfied by a person for the purposes of sub-paragraph (4) at any time when—
- (a) he is a participant in a UKAEA pension scheme;
  - (b) he is eligible to become such a participant; or
  - (c) he would be eligible to become such a participant had he attained an age, or fulfilled a condition, specified in the pension scheme;
- and it is immaterial for the purposes of that sub-paragraph that the requirement is satisfied at different times in the period in question by reference to different paragraphs of this sub-paragraph.
- (6) A UKAEA pension scheme may apply to persons who are—
- (a) persons to whom it would not otherwise apply, and
  - (b) entitled to participate in that pension scheme by virtue of sub-paragraph (1) or (2),
- as it applies to persons to whom it applies apart from this paragraph.
- (7) A UKAEA pension scheme may also apply to persons who (without being persons to whom it would apply apart from this sub-paragraph) are employees of a publicly controlled company in a case in which—
- (a) that company is a company to which employees have been transferred in accordance with a nuclear transfer scheme or with transfer arrangements;
  - (b) those transfers, if they were made in accordance with transfer arrangements, were made for NDA purposes;
  - (c) the employees transferred were or included employees who, immediately after the transfer, were entitled by virtue of sub-paragraph (1) or (2) to participate in a UKAEA pension scheme or to an actual or potential eligibility to participate; and
  - (d) the employees to whom the scheme is applied do not include persons who were employees of the company immediately before the occasion or (as the case may be) first occasion on which a transfer of the employment of a person

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so entitled was made in accordance with a nuclear transfer scheme or transfer arrangements.

- (8) A person is not entitled to participate in a UKAEA pension scheme by virtue of any of sub-paragraphs (1) to (7) at any time after he has ceased to be able to remain, or to become, a participant in that scheme as a consequence of having agreed to become a participant in—
- (a) a pension scheme maintained by the relevant public sector employer to whom his employment was transferred; or
  - (b) a pension scheme maintained by another person in which he is able to become a participant by reference to his employment with that employer.
- (9) If a relevant public sector employer to which the employment of any person is transferred in accordance with a nuclear transfer scheme or with transfer arrangements—
- (a) is a publicly controlled company at the time when the employment is transferred, but
  - (b) subsequently ceases to be a publicly controlled company,
- then, from the time when it so ceases, no person employed by that company shall be entitled, by virtue of that employment, to participate in a UKAEA pension scheme or to be or to become eligible to participate in such a scheme.
- (10) In this paragraph “transferor”, in relation to a transfer of employment, means the person by whom the transferred employee was employed immediately before the transfer takes effect.

#### Commencement Information

**I4** Sch. 8 para. 4 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Modification of UKAEA pension scheme*

- 5 (1) The Secretary of State may direct the UKAEA to make such modifications of a UKAEA pension scheme for the purpose of giving effect to paragraph 4 as may be specified in the direction.
- (2) He may also direct the UKAEA to make such modifications as may be so specified for either or both of the following purposes—
- (a) applying provisions of a UKAEA pension scheme that apply to employees of a publicly controlled company to the case of a person falling within sub-paragraph (3) who becomes a director or other officer of that company; and
  - (b) modifying those provisions in their application to such a case.
- (3) A person falls within this sub-paragraph if, immediately before becoming a director or other officer of the company in question, he—
- (a) is a participant in a UKAEA pension scheme;
  - (b) is eligible to become such a participant; or
  - (c) would be eligible to be such a participant had he attained an age, or fulfilled a condition, specified in such a scheme.

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#### Commencement Information

**I5** Sch. 8 para. 5 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Transfer of funds from UKAEA pension scheme*

- 6 (1) The Secretary of State may direct the UKAEA to make such modifications of a UKAEA pension scheme as may be specified in the direction for the purpose of requiring or enabling the transfer of funds and liabilities arising under the scheme in a case falling within sub-paragraph (2).
- (2) That case is where a person ceases to be a participant in the scheme in consequence of—
- (a) a transfer of his employment in accordance with a nuclear transfer scheme or transfer arrangements; or
  - (b) a transfer, in accordance with such a scheme or such arrangements, of securities of, or voting rights in, a company by which he is employed or a company of which such a company is a subsidiary.
- (3) A direction by the Secretary of State under this paragraph may prescribe—
- (a) the method of determining what is to be transferred; and
  - (b) the assumptions to be used in making that determination.

#### Commencement Information

**I6** Sch. 8 para. 6 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Exercise of powers of Secretary of State*

- 7 (1) A direction under paragraph 5 or 6 may require the UKAEA to make such supplemental, consequential and transitional provision modifying a UKAEA pension scheme as the Secretary of State considers appropriate.
- (2) Before giving a direction under paragraph 5 or 6, the Secretary of State must consult—
- (a) the UKAEA;
  - (b) the Treasury; and
  - (c) such persons as appear to him to represent the employees, or directors or other officers, likely to be affected by the direction.
- (3) The power to give a direction under paragraph 5 affecting persons who become employees, or directors or other officers, of a publicly controlled company is not exercisable after the company has ceased to be a publicly controlled company.
- (4) The provisions of paragraphs 5 and 6—
- (a) are in addition to the powers of the Secretary of State to give directions to the UKAEA under paragraph 13 of this Schedule, paragraph 7 of Schedule 10 to this Act or section 3 of the Atomic Energy Authority Act 1954 (c. 32); and
  - (b) are to be disregarded in construing those powers.

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#### Commencement Information

**I7** Sch. 8 para. 7 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *Payments to UKAEA by relevant public sector employer*

- 8 Where employees, or directors or other officers, of a relevant public sector employer to whom employees are transferred in accordance with a nuclear transfer scheme or transfer arrangements participate in a UKAEA pension scheme by virtue of paragraph 4 or 5, the employer must pay to the UKAEA such amounts in respect of that participation as are—
- (a) agreed between the relevant public sector employer and the UKAEA; or
  - (b) in the absence of such agreement, determined in relation to that employer by the Secretary of State.

#### Commencement Information

**I8** Sch. 8 para. 8 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## PART 4

### OTHER TRANSFERS

#### *Persons entitled to pension protection under paragraphs 10 and 11*

- 9 (1) For the purposes of this Part of this Schedule a person is entitled to pension protection in relation to a nuclear transfer scheme or any transfer arrangements if—
- (a) sub-paragraph (2) applies to him; and
  - (b) he is a person falling within sub-paragraph (5).
- (2) This sub-paragraph applies to a person if—
- (a) in accordance with the scheme or arrangements, a transfer mentioned in sub-paragraph (3) occurs; and
  - (b) immediately after the time at which that transfer takes effect, the person's employment is for NDA purposes.
- (3) The transfers referred to in sub-paragraph (2) are—
- (a) a transfer of the person's employment to the UKAEA, the NDA, a publicly controlled company or a private sector employer;
  - (b) where his employment is not so transferred, a transfer of securities of, or voting rights in, a company by which he is employed or a company of which such a company is a subsidiary.
- (4) For the purposes of sub-paragraph (2) a person's employment is for NDA purposes if it is—
- (a) employment with the NDA or a subsidiary of the NDA; or
  - (b) other employment the duties of which consist wholly or mainly of duties relating to matters connected with the carrying out by the NDA of its functions.



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- (5) A person falls within this sub-paragraph if—
- (a) he is a person to whom sub-paragraph (7) applies immediately before the relevant time;
  - (b) he is (in a case where the relevant time is on or after the designated date) a person to whom that sub-paragraph has applied throughout the period beginning immediately before the designated date and ending immediately before the relevant time;
  - (c) he satisfies the employment condition at the relevant time; and
  - (d) in consequence of the transfer scheme or transfer arrangements—
    - (i) he is precluded from being, or becoming, eligible to participate in the nuclear pension scheme by reference to which that sub-paragraph applies to him immediately before the relevant time; or
    - (ii) his employer is entitled to do something the effect of which will be so to preclude him.
- (6) For the purposes of sub-paragraph (5) it is immaterial that the condition in paragraph (b) of that sub-paragraph is satisfied at different times in the period by reference to different schemes or different paragraphs of sub-paragraph (7) or both.
- (7) This sub-paragraph applies to a person if—
- (a) he is a participant in a nuclear pension scheme;
  - (b) he is eligible to become such a participant; or
  - (c) he would be eligible to become such a participant had he attained an age, or fulfilled a condition, specified in the pension scheme.
- (8) For the purposes of sub-paragraph (5) the employment condition is satisfied by a person at the relevant time if, and only if, his employment throughout the relevant period has been for NDA purposes (within the meaning of sub-paragraph (4)).
- (9) For the purposes of sub-paragraph (8) the relevant period in the case of a person to whom sub-paragraph (2) applies is whichever is the shorter of—
- (a) the period of six months ending with the relevant time; and
  - (b) the period up to the relevant time since the last occasion prior to the present case on which sub-paragraph (2) applied to him.
- (10) For the purpose of a person being entitled to pension protection in relation to a nuclear transfer scheme or any transfer arrangements on the first occasion on which sub-paragraph (2) applies to him, this paragraph shall have effect with the omission of sub-paragraph (5)(c).
- (11) A person is not entitled to pension protection in relation to a nuclear transfer scheme or any transfer arrangements—
- (a) at a time before the designated date unless he is a public sector employee immediately before that time; or
  - (b) at a time on or after the designated date unless he was a public sector employee at the time immediately before that date.
- (12) In this paragraph “the relevant time”, in relation to a person to whom sub-paragraph (2) applies, means—
- (a) the time when, in accordance with the scheme or arrangements, the transfer of his employment to the UKAEA, the NDA, a publicly controlled company or a private sector employer takes effect; or

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- (b) in relation to a person whose employment is not so transferred, the time when, in accordance with the scheme or arrangements, the transfer of securities of, or voting rights in, the company by which he is employed or the company of which it is a subsidiary takes effect.

#### Commencement Information

**I9** Sch. 8 para. 9 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### *<sup>F2</sup>Persons entitled to reformed protection under paragraphs 10 and 11*

#### Textual Amendments

**F2** Sch. 8 para. 9A and cross-heading inserted (27.2.2024) by The Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 (S.I. 2024/219), regs. 1(1), 5(2)

- 9A. (1) For the purposes of this Part of the Schedule, a person is entitled to reformed protection in relation to a nuclear transfer scheme or any transfer arrangements if the person is entitled to pension protection in relation to the scheme or arrangements, and—
- (a) either—
- (i) paragraph 9(7) applies to the person by reference to a relevant Section of the CNPP, or
- (ii) that is not the case but the person has been a participant in a relevant Section of the CNPP,
- and the benefits which the person is accruing or would accrue or has accrued under that Section are, or include, reformed benefits, or
- (b) either—
- (i) paragraph 9(7) applies to the person by reference to the SLC Section of the ME Group of the ESPS, or
- (ii) that is not the case but the person has been a participant in that Section,
- and the benefits which the person is accruing or would accrue or has accrued under that Section are, or include, reformed benefits.
- (2) In this paragraph—
- (a) “the CNPP” means the Combined Nuclear Pension Plan constituted by the deed made on 28 March 2012 by the NDA and the deeds supplemental to that deed;
- (b) “the ESPS” means the Electricity Supply Pension Scheme established by a resolution of the Electricity Council passed on 20 January 1983, as amended from time to time;
- (c) “the ME Group” means the Magnox Electric Group of the ESPS, being one of the groups into which the ESPS is divided under the provisions of the ESPS;
- (d) “reformed benefits” means defined benefits under a structure that, as a result of amendments made in pursuance of regulations under section 311 of the Energy Act 2023, is a career average revalued earnings structure;

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- (e) “relevant Section of the CNPP” means any of the following Sections into which the CNPP is divided (under clause 7 of the deed made on 28 March 2012 as it stood on 1 May 2022)—
  - (i) Closed;
  - (ii) DSRL;
  - (iii) GPS DRS;
  - (iv) GPS SLC;
  - (v) LLWR;
  - (vi) Magnox;
  - (vii) Nirex;
  - (viii) Sellafield;
- (f) “the SLC Section of the ME Group of the ESPS” means the SLC Section of the ME Group, being one of the Sections into which the ME Group is divided under the provisions of the ESPS.

(3) Where—

- (a) at any time after 1 May 2022, any of the Sections named in sub-paragraph (2) (e)(i) to (viii) is re-named, or has merged with another of those Sections (including by a transfer of the Section and another of those Sections to a new Section), a reference in sub-paragraph (2)(e) to that Section is to be read as, or as including, a reference to the re-named or merged Section;
- (b) at any time after the day on which the Nuclear Decommissioning Authority (Pension Scheme Amendment) Regulations 2024 come into force, the SLC Section of the ME Group of the ESPS is re-named, or has merged with another Section (including by transfer of that Section to a new Section), then a reference to that Section is to be read as, or as including, a reference to the re-named or merged Section.]

*Protection on transfer in accordance with a nuclear transfer scheme*

- 10 (1) Before the coming into force of a nuclear transfer scheme in relation to which persons are entitled to pension protection the Secretary of State must consult—
- (a) the appropriate pension scheme authority;
  - (b) the Treasury; and
  - (c) such persons as appear to him to represent the persons who will be entitled to pension protection in relation to the scheme.
- (2) Before the coming into force of such a transfer scheme, the Secretary of State must satisfy himself that every person entitled to pension protection in relation to the scheme will be entitled, by virtue of the employment that he will hold after the relevant time—
- (a) to exercise an option of becoming a participant in an appropriate pension scheme; or
  - (b) in the case of a person to whom paragraph 9(7)(c) will apply immediately before the relevant time, to exercise such an option on or before attaining the age or fulfilling the condition in question.
- (3) The Secretary of State’s duty under sub-paragraph (2) is owed to every person who is entitled to pension protection in relation to the transfer scheme.

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(4) In the case of a person to whom paragraph 9(5)(d)(ii) applies, the references in sub-paragraph (2) to a person being entitled to exercise an option are to be construed as references to a person being entitled to exercise an option if his employer exercises the entitlement mentioned in paragraph 9(5)(d)(ii).

(5) For the purposes of sub-paragraph (2), a pension scheme is an appropriate pension scheme in relation to a person if the Secretary of State is satisfied that—

- (a) taking into account the other benefits (if any) that are conferred on or made available to that person as a result of the employment that he will hold after the relevant time, and
- (b) taking the benefits that are available under the provisions of that pension scheme as a whole,

the benefits that are available under those provisions are no less favourable than the benefits available under the provisions (taken as a whole) of the nuclear pension scheme in respect of which he is entitled to protection under this Part of this Schedule.

(6) In sub-paragraph (5) the reference to the scheme in respect of which a person is entitled to protection under this Part of this Schedule is a reference to—

- [<sup>F3</sup>(za) in the case of a person entitled to reformed protection in relation to the nuclear transfer scheme who falls within paragraph 9A(1)(a), the Section mentioned in paragraph 9A(1)(a);
- (zb) in the case of a person entitled to reformed protection in relation to the nuclear transfer scheme who falls within paragraph 9A(1)(b), the Section mentioned in paragraph 9A(1)(b);]
- (a) in the case of a person [<sup>F4</sup>who is not entitled to reformed protection in relation to the nuclear transfer scheme and] who has not previously been owed a duty under either sub-paragraph (2) or paragraph 11(3), the scheme by reference to which paragraph 9(7) will apply to him immediately before the relevant time; and
- (b) in other cases, the scheme by reference to which paragraph 9(7) applied to him immediately before the time that was the relevant time in relation to him on the first occasion on which he was owed such a duty;

and the reference, in relation to such a person, to the provisions of that scheme is a reference to its provisions as in force immediately before the time specified in sub-paragraph (7).

(7) That time is—

- [<sup>F5</sup>(za) in a case falling within sub-paragraph (6)(za), the relevant time in relation to the person on the first occasion on which the person was owed a duty under either sub-paragraph (2) or paragraph 11(3) after the making of amendments to the Section mentioned in paragraph 9A(1)(a) in pursuance of regulations under section 311 of the Energy Act 2023;
- (zb) in a case falling within sub-paragraph (6)(zb), the relevant time in relation to the person on the first occasion on which the person was owed a duty under either sub-paragraph (2) or paragraph 11(3) after the making of amendments to the Section mentioned in paragraph 9A(1)(b) in pursuance of regulations under section 311 of the Energy Act 2023;]
- (a) in a case falling within sub-paragraph (6)(a), the relevant time; or
- (b) in a case falling within sub-paragraph (6)(b), the relevant time in relation to the person on the first occasion on which he was owed a duty under either sub-paragraph (2) or paragraph 11(3).

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- (8) Where a person—
- (a) is a participant in a non-nuclear pension scheme by virtue of the exercise of an option in a case in which the Secretary of State discharged his duty to that person under sub-paragraph (2) by reference to that option, or
  - (b) is or will become entitled to exercise an option to become a participant in such a pension scheme in a case in which the Secretary of State discharged his duty to that person under sub-paragraph (2) by reference to that entitlement,
- this Part of this Schedule shall have effect in relation to that person as if that scheme were a nuclear pension scheme.
- (9) Sub-paragraph (8) does not apply in relation to a person to whom paragraph 9(5)(d)(ii) applied when the Secretary of State discharged his duty to that person under sub-paragraph (2) unless the person's employer exercises the entitlement mentioned in paragraph 9(5)(d)(ii).
- (10) In this paragraph “relevant time” has the same meaning as in paragraph 9.

#### Textual Amendments

- F3** Sch. 8 para. 10(6)(za)(zb) inserted (27.2.2024) by [The Nuclear Decommissioning Authority \(Pension Scheme Amendment\) Regulations 2024 \(S.I. 2024/219\)](#), regs. 1(1), **5(3)(a)(i)**
- F4** Words in Sch. 8 para. 10(6)(a) inserted (27.2.2024) by [The Nuclear Decommissioning Authority \(Pension Scheme Amendment\) Regulations 2024 \(S.I. 2024/219\)](#), regs. 1(1), **5(3)(a)(ii)**
- F5** Sch. 8 para. 10(7)(za)(zb) inserted (27.2.2024) by [The Nuclear Decommissioning Authority \(Pension Scheme Amendment\) Regulations 2024 \(S.I. 2024/219\)](#), regs. 1(1), **5(3)(b)**

#### Commencement Information

- I10** Sch. 8 para. 10 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

#### *Protection on a transfer in accordance with transfer arrangements*

- 11 (1) It shall be the duty of the NDA to secure that provision is made for ensuring that consultation with the persons specified in sub-paragraph (2) takes place before any transfer arrangements in relation to which persons are entitled to pension protection take effect.
- (2) Those persons are—
- (a) the NDA itself;
  - (b) the Secretary of State;
  - (c) the Treasury;
  - (d) persons appearing to the NDA to represent persons who will be entitled to pension protection in relation to the arrangements.
- (3) Before such transfer arrangements take effect, the NDA must satisfy itself that every person entitled to pension protection in relation to the arrangements will be entitled, by virtue of the employment that he will hold after the relevant time—
- (a) to exercise an option of becoming a participant in an appropriate pension scheme; or

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- (b) in the case of a person to whom paragraph 9(7)(c) will apply immediately before the relevant time, to exercise such an option on or before attaining the age or fulfilling the condition in question.
- (4) The NDA's duty under sub-paragraph (3) is owed to every person who is entitled to pension protection in relation to the transfer arrangements.
- (5) In the case of a person to whom paragraph 9(5)(d)(ii) applies, the references in sub-paragraph (3) to a person being entitled to exercise an option are to be construed as references to a person being entitled to exercise an option if his employer exercises the entitlement mentioned in paragraph 9(5)(d)(ii).
- (6) For the purposes of sub-paragraph (3), a pension scheme is an appropriate pension scheme in relation to a person if the NDA is satisfied that—
- (a) taking into account the other benefits (if any) that are conferred on or made available to him as a result of the employment that he will hold after the relevant time, and
  - (b) taking the benefits that are available under the provisions of that pension scheme as a whole,
- the benefits that are available under those provisions are no less favourable than the benefits available under the provisions (taken as a whole) of the nuclear pension scheme in respect of which he is entitled to protection under this Part of this Schedule.
- (7) In sub-paragraph (6) the reference to the scheme in respect of which a person is entitled to protection under this Part of this Schedule is a reference to—
- [<sup>F6</sup>(za) in the case of a person entitled to reformed protection in relation to the transfer arrangements who falls within paragraph 9A(1)(a), the Section mentioned in paragraph 9A(1)(a);
  - (zb) in the case of a person entitled to reformed protection in relation to the transfer arrangements who falls within paragraph 9A(1)(b), the Section mentioned in paragraph 9A(1)(b);]
  - (a) in the case of a person [<sup>F7</sup>who is not entitled to reformed protection in relation to the transfer arrangements and] who has not previously been owed a duty under either sub-paragraph (3) or paragraph 10(2), the scheme by reference to which paragraph 9(7) will apply to him immediately before the relevant time; and
  - (b) in other cases, the scheme by reference to which paragraph 9(7) applied to him immediately before the time that was the relevant time in relation to him on the first occasion on which he was owed such a duty;
- and the reference, in relation to such a person, to the provisions of that scheme is a reference to its provisions as in force immediately before the time specified in sub-paragraph (8).
- (8) That time is—
- [<sup>F8</sup>(za) in a case falling within sub-paragraph (7)(za), the relevant time in relation to the person on the first occasion on which the person was owed a duty under either sub-paragraph (3) or paragraph 10(2) after the making of amendments to the Section mentioned in paragraph 9A(1)(a) in pursuance of regulations under section 311 of the Energy Act 2023;
  - (zb) in a case falling within sub-paragraph (7)(zb), the relevant time in relation to the person on the first occasion on which the person was owed a duty under either sub-paragraph (3) or paragraph 10(2) after the making of amendments

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- to the Section mentioned in paragraph 9A(1)(b) in pursuance of regulations under section 311 of the Energy Act 2023;]
- (a) in a case falling within sub-paragraph (7)(a), the relevant time; or
- (b) in a case falling within sub-paragraph (7)(b), the relevant time in relation to the person on the first occasion on which he was owed a duty under either sub-paragraph (3) or paragraph 10(2).
- (9) Where a person—
- (a) is a participant in a non-nuclear pension scheme by virtue of the exercise of an option in a case in which the NDA discharged its duty to that person under sub-paragraph (3) by reference to that option, or
- (b) is or will become entitled to exercise an option to become a participant in such a pension scheme in a case in which the NDA discharged its duty to that person under sub-paragraph (3) by reference to that entitlement,
- this Part of this Schedule shall have effect in relation to that person as if that scheme were a nuclear pension scheme.
- (10) Sub-paragraph (9) does not apply in relation to a person to whom paragraph 9(5)(d) (ii) applied when the NDA discharged its duty to that person under sub-paragraph (3) unless the person’s employer exercises the entitlement mentioned in paragraph 9(5) (d)(ii).
- (11) In this paragraph “relevant time” has the same meaning as in paragraph 9.

#### Textual Amendments

- F6** Sch. 8 para. 11(7)(za)(zb) inserted (27.2.2024) by [The Nuclear Decommissioning Authority \(Pension Scheme Amendment\) Regulations 2024 \(S.I. 2024/219\)](#), regs. 1(1), **5(4)(a)(i)**
- F7** Words in Sch. 8 para. 11(7)(a) inserted (27.2.2024) by [The Nuclear Decommissioning Authority \(Pension Scheme Amendment\) Regulations 2024 \(S.I. 2024/219\)](#), regs. 1(1), **5(4)(a)(ii)**
- F8** Sch. 8 para. 11(8)(za)(zb) inserted (27.2.2024) by [The Nuclear Decommissioning Authority \(Pension Scheme Amendment\) Regulations 2024 \(S.I. 2024/219\)](#), regs. 1(1), **5(4)(b)**

#### Commencement Information

- I11** Sch. 8 para. 11 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), **Sch. 1**

#### *Modification of NDA schemes*

- 12 (1) The Secretary of State shall have power by direction to make such modifications of an NDA pension scheme as he considers appropriate for the purpose of securing—
- (a) in relation to any proposed transfer, or
- (b) in relation to transfers that he considers may occur,
- that the scheme will be an appropriate pension scheme for the purposes of paragraph 10 or 11.
- (2) The NDA shall also have power by direction to make such modifications of an NDA pension scheme as it considers appropriate for the purpose of securing—
- (a) in relation to any proposed transfer, or
- (b) in relation to transfers that it considers may occur,
- that the scheme will be an appropriate pension scheme for the purposes of paragraph 10 or 11.

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- (3) Before making a modification under this paragraph the Secretary of State must consult—
  - (a) the NDA; and
  - (b) such persons as appear to him to represent the employees likely to be affected by the modification.
- (4) Before making a modification under this paragraph the NDA must—
  - (a) consult such persons as appear to it to represent the employees likely to be affected by the modification; and
  - (b) obtain the consent of the Secretary of State to the modification.

#### Commencement Information

**I12** Sch. 8 para. 12 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### PART 5

#### UKAEA PENSIONS FOR EMPLOYEES OF DESIGNATED BNFL COMPANIES

- 13 (1) A UKAEA pension scheme may apply to employees of a designated BNFL company which is publicly controlled as it applies to persons to whom it applies apart from this paragraph.
- (2) The Secretary of State may, by direction, require the UKAEA to make such modifications of a UKAEA pension scheme as the Secretary of State considers appropriate in respect of the participation in such a scheme of employees of a designated BNFL company which is publicly controlled.
- (3) The Secretary of State may also, by direction, require the UKAEA to make such modifications of a UKAEA pension scheme as the Secretary of State considers appropriate for applying the provisions of such a scheme to persons—
  - (a) who are directors, or other officers, of a designated BNFL company which is publicly controlled; and
  - (b) who are not employees of that company.
- (4) A direction under this paragraph may require the UKAEA to make such supplemental, consequential and transitional provision modifying a UKAEA pension scheme as the Secretary of State considers appropriate.
- (5) Before giving a direction under this paragraph, the Secretary of State must consult—
  - (a) the UKAEA;
  - (b) the designated BNFL company in question;
  - (c) the Treasury; and
  - (d) such persons as appear to him to represent the employees, or directors or other officers, likely to be affected by the direction.
- (6) The power of the Secretary of State to give directions under this paragraph—
  - (a) is in addition to the powers of the Secretary of State to give directions to the UKAEA under paragraphs 5 and 6 of this Schedule or section 3 of the Atomic Energy Authority Act 1954 (c. 32); and
  - (b) is to be disregarded in construing those powers.



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- (7) A designated BNFL company must pay such amounts to the UKAEA in respect of the participation in a pension scheme by virtue of this paragraph of employees of the company, or of any of its directors or other officers, as are—
- (a) agreed between the company and the UKAEA; or
  - (b) in the absence of such agreement, determined by the Secretary of State.
- (8) In this paragraph “designated BNFL company” has the same meaning as in Schedule 7.

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**Commencement Information**

**I13** Sch. 8 para. 13 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 137(3)(c)-(e) inserted by [2011 c. 16 s. 117\(b\)](#)
- s. 173(2C) inserted by [2023 c. 52 Sch. 14 para. 10](#)
- Sch. 22 para. 4(1A) inserted by [2023 c. 52 Sch. 14 para. 11\(2\)\(b\)](#)