
Changes to legislation: Energy Act 2004, Cross Heading: Protection on a transfer in accordance with transfer arrangements is up to date with all changes known to be in force on or before 27 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

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 4

OTHER TRANSFERS

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
 - (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—

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- (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—

- [^{F1}(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 [^{F2}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—

- [^{F3}(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 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

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- (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

- F1** 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)**
- F2** 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)**
- F3** 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

- I1** Sch. 8 para. 11 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), **Sch. 1**

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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\(2\)\(b\)](#)