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STATUTORY INSTRUMENTS

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**1994 No. 1432**

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

**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question was not participating in an existing scheme immediately after the passing of the Act but had not voluntarily withdrawn or transferred from the existing scheme in which he had last participated;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<sup>(1)</sup> 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.

### **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.

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(1) 1989 c. 40.

(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<sup>(2)</sup> or, where it applies, Chapter IV of Part IV of the Pension Schemes (Northern Ireland) Act 1993<sup>(3)</sup>.

(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—
  - (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.

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(2) 1993 c. 48.  
(3) 1993 c. 49.

(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(4) or Part III of the Pension Schemes (Northern Ireland) Act 1993(5), 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.

### **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;

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(4) 1993 c. 48.

(5) 1993 c. 49.

- (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.