1992 No. 93

ELECTRICITY

Electricity (Protected Persons) Pensions Regulations (Northern Ireland) 1992

Made	*5th March 1992*
Coming into operation . .	*1st April 1992*

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The Department of Economic Development, in exercise of the powers conferred on it by Article 89 of, and paragraphs 4(1) to (3), 5(3), 6(1) and 8 of

Schedule 11 to, the Electricity (Northern Ireland) Order 1992(**a**) and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Electricity (Protected Persons) Pensions Regulations (Northern Ireland) 1992 and shall come into operation on 1st April 1992.

Interpretation

2.—(1) In these Regulations—

"accrue" means to become entitled to pension rights in respect of employment while a member of a relevant scheme, including increases in accrued pension rights under the relevant scheme arising pursuant to increases in remuneration;

"accrued pension rights" means the pension rights, other than future pension rights and (except where the context otherwise requires) any pension rights provided by a state pension scheme, to which a protected person is entitled;

"alternative scheme" means a scheme to which regulation 8 applies;

"company group" means any holding company and its subsidiaries which are treated as a group for the purposes of Part VII of Schedule 4 to the Companies (Northern Ireland) Order 1986(**b**) as originally enacted;

"employer" includes, in respect of a protected beneficiary, the person to whom the protected beneficiary is treated as allocated for the purpose of valuing the accrued pension rights of that beneficiary;

"the Original Schemes" means the scheme and the pension schemes established by the successor companies with effect from the transfer date for the provision of benefits for (inter alia) protected employees;

"future pension rights" means the pension rights referred to in regulation 7;

"the Order" means the Electricity (Northern Ireland) Order 1992;

"parent company" means, in respect of a company which is wholly owned by any other company, that other company;

"participate" means—

(*a*) in respect of a protected employee, being a member of a relevant scheme for the purpose of accruing pension rights;

(*b*) in respect of a protected beneficiary, being entitled either prospectively or contingently (otherwise than as a result of the death of another protected person) or currently to a pension under a relevant scheme; and

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(a) S.I. 1992/231 (N.I. 1)
(b) S.I. 1986/1032 (N.I. 6)

(*c*) in respect of an employer, adhering to a relevant scheme for the purpose of providing pension rights;

"protected beneficiary" means any person to whom regulation 4 applies;

"protected employee" means any person to whom regulation 3 applies;

"protected person" means any person who is a protected beneficiary or a protected employee;

"relevant scheme" means the Original Schemes or an alternative scheme;

"the Taxes Act" means the Income and Corporation Taxes Act 1988(**a**);

"transfer date rights" means the future pension rights provided by the Original Schemes in the form in which they respectively were on the transfer date, together with all amendments to the scheme which are made—

(*a*) before the transfer date (regardless of the date on which the amendments take effect); or

(*b*) by regulations under the Order,

but excluding any amendments made otherwise and expressed to take effect before or on the transfer date;

"transfer payment" means a transfer of cash or assets, with the approval of the Board of Inland Revenue either to a retirement benefits scheme within the meaning of section 611 of the Taxes Act or to a personal pension scheme within the meaning of section 630 of that Act.

(2) Where a relevant scheme provides different benefits for different categories of protected persons, any reference in these Regulations to that scheme shall be construed as a reference to that part of that scheme which relates to the category of which the protected person is a member or, in the case of a person transferring to that scheme, would be entitled to be a member.

Protected employee

3.—(1) Subject to paragraph (2), this regulation applies to any person who—

(*a*) is an existing employee and immediately before the transfer date is a participant in the scheme;

(*b*) is an existing employee and, on or after that date, participates in a relevant scheme within three months of his attaining the minimum age for such participation;

(*c*) (i) was formerly a member of the scheme; and

(ii) on or after the transfer date participates in or accrues pension rights under a relevant scheme (irrespective of whether or not that relevant scheme is the same one as the one of which he was formerly a member) in circumstances which, if the date upon which he had ceased to accrue pension rights in the scheme had been after the transfer date, would not have been treated as a break in his continuity of employment under regulation 5; or

(a) 1988 c. 1

(*d*) is a person who participates in the scheme in pursuance of regulations made under paragraph 2 of Schedule 11 to the Order.

(2) Paragraph (1) shall cease to apply to any person who—

(*a*) elects under regulation 15(1)(*a*) or (*b*) to cease to be a protected person or a protected employee;

(*b*) ceases to be in continuous employment for the purposes of regulation 5; or

(*c*) ceases, other than at the requirement of his employer, to participate in a relevant scheme (except as provided in paragraph (3)(*b*) or (*c*)).

(3) A person shall not cease to be a protected employee—

(*a*) if, after ceasing to participate in a relevant scheme as a protected employee, he subsequently participates in another relevant scheme as a protected employee and has not, during the period in which he did not participate, ceased to be in continuous employment;

(*b*) if he would have ceased to be a protected employee as a result of a representation by or on behalf of his employer or prospective employer that the action by that person, which would but for this sub-paragraph have caused him to cease to be a protected employee, would not have that effect; or

(*c*) if, following any resolution to wind up the relevant scheme in which that person participates, he transfers to the relevant scheme provided under regulation 10.

Protected beneficiary

4.—(1) Subject to paragraph (2), this regulation applies to any person—

(*a*) who immediately before the transfer date is entitled to accrued pension rights under the scheme but does not otherwise participate in the scheme;

(*b*) to whom regulation 3 has ceased to apply pursuant to paragraph (2) of that regulation but who is entitled to accrued pension rights under a relevant scheme;

(*c*) who on or after the transfer date acquires pension rights under a relevant scheme by reason of the death of a person who was at the date of his death—

(i) a protected employee; or

(ii) a person falling within sub-paragraph (*a*) or (*b*); or

(*d*) who became a beneficiary of the scheme by virtue of the Electricity (Eligible Persons) Pensions Regulations (Northern Ireland) 1992(**a**).

(2) Paragraph (1) shall cease to apply to any person who—

(*a*) elects under regulation 15(1) to cease to be a protected beneficiary; or

(*b*) withdraws or requires a transfer payment to be made in respect of all or any part of his accrued pension rights from a relevant scheme otherwise than by way of a transfer to another relevant scheme provided by his employer, except in respect of the accrued pension rights not so withdrawn or transferred.

(**a**) S.R. 1992 No. 91

Continuity of employment

5.—(1) Subject to paragraph (2), references in these Regulations to a protected employee being in continuous employment shall be construed in accordance with paragraph 6 of Schedule 11 to the Order.

(2) For the purpose of paragraph (1) no account shall be taken of any period—

(*a*) not exceeding six months during which a protected employee is not employed by a person who would be treated as an associated employer of the last person who employed him and would have been so treated; or

(*b*) (i) prior to the commencement of which the employer (''employer A'') of the protected employee agreed that if the employee took up employment with another employer (''employer B'') that employee would, upon the termination of his employment with employer B, be expected to return to employment with employer A;

(ii) which does not include employment by employer B for more than 10 years, or such longer period as may be approved by the Board of the Inland Revenue;

(iii) during which the protected employee was not employed by any other employer;

(iv) during which employer B was not an associated employer of employer A; and

(v) during which the protected employee was not a member of any approved retirement benefits scheme of an employer other than employer A or an associated employer of employer A, or a member of any approved personal pension scheme.

(3) During any period referred to in paragraph (2)(*a*), a protected employee shall not be entitled to accrue future pension rights under a relevant scheme.

(4) In paragraph (2)(*b*)(v)—

''approved retirement benefits scheme'' has the same meaning as in Chapter I of Part XIV of the Taxes Act;

''approved personal pension scheme'' has the same meaning as in Chapter IV of that Part of that Act.

Accrued pension rights

6.—(1) Subject to paragraphs (2) and (3), the employer of a protected person shall at all times ensure that, in respect of each protected person in his employment, the assets of the relevant scheme provided by the employer in respect of that person are such that, in the event of the winding up of that scheme, there would be available to provide accrued pension rights for such protected person a sum equal to or exceeding the liability of that scheme in respect of those accrued pension rights.

(2) It shall not be a breach of the employer's duty under paragraph (1) if the assets of the relevant scheme mentioned in that paragraph at any time do not equal or exceed that liability where—