1992 No. 90

ELECTRICITY

Electricity (Transfer of Assets and Liabilities) Pensions Regulations (Northern Ireland) 1992

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

The Department of Economic Development, in exercise of the powers conferred on it by Article 89 of, and paragraphs 3 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 (Transfer of Assets and Liabilities) Pensions Regulations (Northern Ireland) 1992 and shall come into operation on 1st April 1992.

Interpretation

2.—(1) In these Regulations—

"the 1975 Order" means the Social Security Pensions (Northern Ireland) Order 1975(**b**);

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

"accrued rights" means the rights to which an employee has become entitled while a member of, or as a consequence of membership of, the scheme immediately prior to the transfer date;

"contracted out" means the subject of a contracting-out certificate issued under regulations made under Article 33 of the 1975 Order;

"guaranteed minimum pension" has the meaning given in the 1975 Order;

"receiving scheme" means a retirement benefits scheme which is established at the direction of the Department by either—

(*a*) a successor company other than Northern Ireland Electricity plc which employs one or more transferring employees ("Company A"); or

(*b*) another successor company other than Northern Ireland Electricity plc with which Company A is associated;

"retirement benefits scheme" has the meaning given to it by section 611 of the Income and Corporation Taxes Act 1988(**c**);

(a) S.I. 1991/231 (N.I. 1)
(b) S.I. 1975/1503 (N.I. 15)
(c) 1988 c. 1

"transferring employee" means a person who becomes employed by a successor company other than Northern Ireland Electricity plc in pursuance of Article 69(4) of the 1992 Order.

(2) For the purposes of these Regulations one body corporate shall be treated as associated with another if—

(*a*) one of them is a subsidiary of the other; or

(*b*) both of them are subsidiaries of the same holding company;

and "holding company" and "subsidiary" shall have the same meaning as in Article 4 of the Companies (Northern Ireland) Order 1986(**a**).

Transfer of members

3.—(1) The provisions of these Regulations shall apply in respect of transferring employees.

(2) Subject to paragraph (3) each transferring employee shall on the transfer date cease to be a member of the scheme and shall forthwith become a member of a receiving scheme and thereupon—

(*a*) the trustees of the receiving scheme shall in lieu of the trustees of the scheme be liable to the transferring employee in respect of accrued rights; and

(*b*) the trustees and the Committee of Management of the scheme shall be discharged from all and any liability in respect of the accrued rights for the transferring employee.

(3) The provisions of paragraph (2) shall not apply in respect of guaranteed minimum pensions until the receiving scheme to which the transfer is to be made is contracted out.

Division of the assets of the scheme

4.—(1) Subject to paragraphs (2) and (4) the transfer amount to be made to each receiving scheme in accordance with regulation 5 shall be calculated as at the transfer date by applying the ratio $\frac{TA}{TL}$ to the market value of the assets of the scheme at 31st March 1992 as stated in audited accounts of the scheme for the period ending 31st March 1992 where—

(*a*) TA is the value at the transfer date of the accrued rights (other than those relating to voluntary contributions) in the scheme of the members whose accrued rights are to be transferred into the receiving scheme by virtue of regulation 3; and

(*b*) TL is the value at the transfer date of the total of the liabilities of the scheme (other than those relating to voluntary contributions) including, without prejudice to the generality of the foregoing, the value of—

(i) the accrued rights for all employees who are members of the scheme at the transfer date;

(ii) the liability to continue paying all pensions in payment at the transfer date; and

(**a**) S.I. 1986/1032 (N.I. 6); Article 4 was substituted by Article 62(1) of S.I. 1990/1504 (N.I. 10)

(iii) the liability at the transfer date to make any payment at a future date in respect of accrued service whether or not contingently upon the happening of any event.

(2) The transfer amount obtained under paragraph (1) shall be adjusted—

(*a*) so that the costs of carrying out the apportionment shall be borne by the scheme and the receiving schemes in proportion to the division of assets; and

(*b*) to take account of payments due from debtors or due to creditors at the transfer date.

(3) The value of the accrued rights and the liabilities referred to in paragraph (1) is to be calculated in accordance with the methods and assumptions set out in Schedule 1.

(4) For the purposes of the calculation to be made under paragraph (1) voluntary contributions and the investments or monies representing such contributions and any income derived therefrom shall—

(i) be disregarded; and

(ii) in so far as they relate to any person not be divided in accordance with this regulation but shall be transferred to the trustees of the receiving scheme to which that person's accrued rights are transferred pursuant to regulation 3 as voluntary contributions of that person.

Transfer of assets from the scheme

5.—(1) Subject to paragraph (3) the trustees of the scheme shall before the specified date transfer to the trustees of the receiving scheme assets determined in accordance with paragraph (2).

(2) The assets to be transferred to the trustees of a receiving scheme shall comprise either—

(*a*) an equal proportion of each of the assets of the scheme at the transfer date (excluding real property); or

(*b*) such assets of the scheme (including without limitation cash) as the trustees of that receiving scheme may agree with the trustees of the scheme,

equal in total as at the transfer date to the transfer amount calculated for that receiving scheme in accordance with and subject to the provisions of regulation 4 less the amount of any interim transfer payment made under paragraph (3) or otherwise.

(3) The trustees of a receiving scheme may request in writing at any time after the transfer date and prior to the specified date an interim transfer payment consisting of not more than 40% of what the actuary to the scheme estimates will be the transfer amount when calculated in accordance with and subject to the provisions of regulation 4 and the trustees of the scheme shall within thirty days of receipt of such written request transfer to the trustees of the receiving scheme an interim transfer payment which shall comprise either—

(*a*) an equal proportion of each of the assets of the scheme at the transfer date (excluding real property); or

(*b*) such assets of the scheme (including without limitation cash) as the trustees of the receiving scheme may agree with the trustees of the scheme,

equal in total as at the transfer date to the percentage of the estimated transfer amount so requested.

(4) In this regulation the specified date shall be the date which falls—

(*a*) 12 months after the transfer date; or

(*b*) three months after a determination of the Department made under regulation 6 in respect of a dispute relating to the transfer in question; or

(*c*) in respect of the proportion of the transfer amount representing guaranteed minimum pensions (such proportion being the ratio $\frac{TA(GMP)}{TA}$ where TA is as calculated in paragraph (1)(*a*) of regulation 4 and TA(GMP) is that part of TA representing the guaranteed minimum pensions) 14 days after the trustees of the scheme are informed in writing by the trustees of the receiving scheme that the receiving scheme is contracted out,

whichever is the latest.

(5) The transfers made under this regulation shall be adjusted to include the receipt of interest payments and investment income upon the assets to be transferred between the transfer date and the date at which the assets are actually transferred to the receiving scheme on the basis set out in Schedule 2 such adjustment to be paid in cash unless otherwise agreed by the trustees of the scheme with the trustees of the receiving scheme.

Disputes

6. Any dispute that is not resolved between the trustees of the scheme and the trustees of a receiving scheme in connection with the transfer to be made in accordance with regulations 4 and 5 shall be referred to the Department by either party for determination.

Regulations not to affect other duties under the 1992 Order

7. Nothing in these Regulations and no act done under or in consequence of them shall affect any other duty or obligation of any party under regulations made under paragraph 4 of Schedule 11 to the 1992 Order.

Sealed with the Official Seal of the Department of Economic Development on 5th March 1992.

(L.S.) *W. D. Duncan*
Assistant Secretary

SCHEDULE 1 Regulation 4(3)

Calculation of the value of accrued rights and liabilities for the purposes of regulation 4

1. The value of liabilities shall be determined in accordance with the principles described as the 'Projected Accrued Benefit Method' in the 1988 edition of the document entitled "Pension Fund Terminology: Specimen Descriptions of Commonly Used Valuation Methods" published by the Institute of Actuaries and the Faculty of Actuaries.

2. Benefits to be valued shall include a notional lump sum payable on death before retirement of three eightieths of final salary for each year of pensionable service.

3. Service enhancements on death in service and ill-health retirement in accordance with the rules of the scheme shall be ignored.

4. The valuation shall make use of the following actuarial assumptions—

(*a*) the valuation rate of interest (net of expenses) shall be 9 per cent. per annum;

(*b*) salaries shall be taken to be increased by 7 per cent. per annum before allowing for increases due to promotion or seniority, guaranteed minimum pensions shall be assumed to be revalued to state pension age at the same rate;

(*c*) pensions in payment shall increase at 5·5 per cent. per annum on that part in excess of the guaranteed minimum pension;

(*d*) the scheme shall bear the cost of increases at a rate of 3 per cent. per annum on that part of the guaranteed minimum pensions in payment which accrued after 5th April 1988;

(*e*) preserved pension and lump sum benefits in respect of members who have left service before retirement age shall be assumed to increase during deferment at 5·5 per cent. per annum;

(*f*) salaries shall be assumed to increase as a result of promotion and seniority in accordance with the scales given in columns 1, 2 and 3 of the Table;

(*g*) the probability of a contributing member dying while accruing service in the scheme shall be assumed to be in accordance with the rates given in columns 4, 5 and 6 of the Table;

(*h*) the probability of a contributing member retiring on ill-health grounds while accruing service in the scheme shall be assumed to be in accordance with the rates given in columns 7, 8 and 9 of the Table;

(*i*) no allowance shall be made for future voluntary resignation from service;

(*j*) all retirements other than those arising on ill-health shall be assumed to take place on attaining age 63 except for women who joined the scheme before 1st April 1988 who shall be assumed to retire on attaining age 60;

(*k*) the probability of a member with preserved pension rights at the transfer date dying before those benefits come into payment shall be assumed to be in accordance with columns 4, 5 and 6 of the Table;

(*l*) preserved benefits at the transfer date shall be assumed to come into payment on attaining the following ages—

(i) 50 or 55 as appropriate for those subject to rule 18(B) of the scheme;

(ii) 65 for other males who left service before 1st April 1988;