

*Status: Point in time view as at 23/05/2018.*

*Changes to legislation: Electricity Act 1989, SCHEDULE 15 is up to date with all changes known to be in force on or before 14 July 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)*

## <sup>F 1</sup> SCHEDULES

### SCHEDULE 15

Section 105.

#### THE SCOTTISH PENSION SCHEMES

##### *Power to amend schemes*

- 1 (1) The Secretary of State may make regulations amending the Hydroboard Superannuation Fund (in this Schedule referred to as “the North Scheme”) and the South of Scotland Electricity Board’s Superannuation Scheme (in this Schedule referred to as “the South Scheme”) for any of the following purposes, namely—
  - (a) for enabling members, former members and existing employees of the Scottish Boards to participate in or acquire pension rights under the North Scheme or the South Scheme on such terms and conditions as may be prescribed;
  - (b) for requiring any persons to make payments to the trustees of the schemes in such circumstances as may be prescribed;
  - (c) for enabling either scheme, or both schemes, to be wound up (in whole or in part) in such circumstances as may be prescribed; and
  - (d) for securing that the schemes continue to be [<sup>F1</sup>registered or] approved for the purposes of the relevant enactments notwithstanding the transfers made by this Act and the repeal by this Act of section 37 of the <sup>M1</sup>Electricity (Scotland) Act 1979.
- (2) Without prejudice to the generality of paragraph (c) of sub-paragraph (1) above, regulations made for the purposes of that paragraph may require persons not participating in—
  - (a) the North Scheme to make payments to the trustees of the North Scheme;
  - (b) the South Scheme to make payments to the trustees of the South Scheme.
- (3) Regulations under this paragraph may make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (4) Regulations under this paragraph may be made so as to have effect from a date prior to their making, so however that so much of any regulations as provides that any provision of regulations shall have effect from a date prior to their making shall not place any person other than the Boards or existing bodies (within the meaning of Schedule 14 to this Act), or their successor companies, in a worse position than he would have been in if the regulations had been made to have effect only from the date of their making.
- (5) Regulations under this paragraph shall not be made at any time after any Scottish electricity company has ceased to be wholly owned by the Crown.

*Status: Point in time view as at 23/05/2018.*

*Changes to legislation: Electricity Act 1989, SCHEDULE 15 is up to date with all changes known to be in force on or before 14 July 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)*

#### Textual Amendments

**F1** Words in Sch. 15 para. 1(1)(d) inserted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **3(3)(a)**

#### Marginal Citations

**M1** 1979 c. 11.

### *Protection for certain persons*

- 2 (1) The Secretary of State may make regulations for the purpose of securing that (regardless of which scheme an existing employee of the Scottish Boards is a participant in immediately before the transfer date)—
- (a) no person to whom paragraph 3(1) or (2) below applies is placed in any worse position by reason of—
    - (i) any winding up, in whole or in part, of a relevant scheme, that is to say, the North Scheme or the South Scheme or any other scheme which is provided or amended in pursuance of the regulations; or
    - (ii) any amendment of a relevant scheme which results in benefits under that scheme being reduced, or contributions by employees being increased, and is made otherwise than in such circumstances as may be prescribed; and
  - (b) no person to whom paragraph 3(1) below applies is prevented from continuing to participate in or acquire pension rights under the North Scheme or the South Scheme by reason of any change of employer—
    - (i) which does not affect his continuity of employment and is made otherwise than in such circumstances as may be prescribed; and
    - (ii) in the case of which his new employer either is a participant in that scheme or is wholly owned by one or more companies which or each of which is such a participant; and
  - (c) no person to whom paragraph 3(1) below applies is placed in any worse position by reason of any change of employer which does not affect his continuity of employment but prevents him from continuing to participate in or acquire pension rights under a relevant scheme;
- and the references in paragraphs (a) and (c) above to any worse position shall be construed, in relation to a person to whom paragraph 3(1) below applies who, after the transfer date, ceases to participate in or acquire pension rights under the North Scheme or the South Scheme, as references to a position which is any worse than his position, immediately before he so ceases, under whichever of the schemes he is then participating in or last acquired pension rights under.
- (2) Regulations under this paragraph may impose duties (whether as to the amendment of either scheme, the provision or amendment of other schemes, the purchase of annuities, the making of payments or otherwise) on persons who are or have been employers of persons to whom paragraph 3(1) or (2) below applies; and duties so imposed on any person may include duties owed to persons of whom he is not and has not been an employer.
- (3) Regulations made under this paragraph may also provide for any dispute arising under them to be referred to arbitration.

*Status: Point in time view as at 23/05/2018.*

*Changes to legislation: Electricity Act 1989, SCHEDULE 15 is up to date with all changes known to be in force on or before 14 July 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)*

- (4) Sub-paragraphs (3) and (5) of paragraph 1 above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.
- 3 (1) Subject to sub-paragraph (3) below, this sub-paragraph applies to—
- (a) any—
    - (i) existing employee of the Scottish Boards; or
    - (ii) existing employee of a Consultative Council,who, immediately before the transfer date, is a participant in the North Scheme or the South Scheme;
  - (b) any existing employee of the Scottish Boards who, after that date, participates in either scheme within three months of his attaining the minimum age for such participation;
  - (c) any former participant in either scheme who, after that date, participates in or acquires pension rights under either scheme in such circumstances as may be prescribed by regulations under paragraph 2 above; and
  - (d) any person who participates in either scheme in pursuance of regulations made under paragraph 1(1)(a) above.
- (2) Subject to sub-paragraph (3) below, this sub-paragraph applies to—
- (a) any person not falling within sub-paragraph (1)(c) above who, immediately before the transfer date, is not a participant in the North Scheme or the South Scheme but has pension rights under either scheme; and
  - (b) any person who, after that date, acquires pension rights under a relevant scheme by reason of the death of a person falling within sub-paragraph (1) or paragraph (a) above,
- but only as respects the pension rights by virtue of which he falls within paragraph (a) or (b) above.
- (3) Any person to whom sub-paragraph (1) or (2) above applies may elect in such manner as may be prescribed by regulations under paragraph 2 above that that sub-paragraph shall cease to apply to him; and if, otherwise than in such circumstances as may be so prescribed, any person to whom sub-paragraph (1) above applies—
- (a) ceases to be in continuous employment; or
  - (b) voluntarily withdraws from a relevant scheme and does not forthwith—
    - (i) become a participant in another such scheme; and
    - (ii) transfer to that scheme the pension rights which have accrued to him before that time under the scheme from which he is withdrawing,that sub-paragraph shall cease to apply to him except as respects pension rights which have so accrued.
- 4 (1) [F2Chapter I of Part XIV of the Employment Rights Act 1996] shall apply for the purposes of paragraphs 2 and 3 above as if—
- (a) those paragraphs were contained in that Act; and
  - (b) in that Schedule “associated employer”, in relation to a company participating in a relevant scheme, included any other company participating in such a scheme and any other company of which a company so participating has control, or companies so participating together have control;
- but regulations under paragraph 2 above may provide that no account shall be taken for the purposes of this paragraph of any person ceasing to be in continuous

*Status: Point in time view as at 23/05/2018.*

*Changes to legislation: Electricity Act 1989, SCHEDULE 15 is up to date with all changes known to be in force on or before 14 July 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)*

employment for such periods and in such circumstances as may be prescribed by the regulations.

- (2) For the purposes of sub-paragraph (1) above, a company has control, or two or more companies together have control, of another company (“the other company”) if—
- (a) that company, or each of those companies, is a member of the other company and that company controls, or those companies together control, the composition of the other company’s board of directors;
  - (b) that company holds, or those companies together hold, more than half in nominal value of the other company’s equity share capital;
  - (c) a company of which that company has control, or those companies together have control, has control of the other company; or
  - (d) two or more companies of which that company has control, or those companies together have control, together have control of the other company;

and subsections (2) to (4) of section 736 of the <sup>M2</sup>Companies Act 1985 (as originally enacted) shall, with any necessary modifications, apply for the purposes of this sub-paragraph as they apply for purposes of subsection (1) of that section.

#### Textual Amendments

**F2** Words in Sch. 15 para. 4(1) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 43(3)(b)** (with ss. 191-195, 202)

#### Marginal Citations

**M2** 1985 c. 6.

### Interpretation

- 5 (1) In this Schedule—

“Consultative Council” means a Consultative Council established under section 7A of the <sup>M3</sup>Electricity Act 1947 for the district of a Scottish Board;

“employer”, in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;

“existing employee of a Consultative Council” means any person who, immediately before the transfer date, is employed by a Consultative Council;

“existing employee of the Scottish Boards” means any person who, immediately before the transfer date, is employed by one or other of those Boards or falls to be treated as so employed by virtue of regulations made under section 54(4) of the <sup>M4</sup>Electricity Act 1947 (service as a member to count as service as an employee);

“former participant” means any person who, immediately before the transfer date, is not a participant in the North Scheme or the South Scheme but has pension rights under one or other (or both) of the schemes by virtue of his having been such a participant;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

“pension rights”, in relation to any person, includes—

*Status: Point in time view as at 23/05/2018.*

*Changes to legislation: Electricity Act 1989, SCHEDULE 15 is up to date with all changes known to be in force on or before 14 July 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)*

- (a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and
- (b) any expectation of the accruer of a pension to or in respect of him;

and includes a right of allocation in respect of the present or future payment of a pension;

“the relevant enactments” means [<sup>F3</sup>Part 4 of the Finance Act 2004 (pension schemes etc)] and Part III of the [<sup>F4</sup>Pension Schemes Act 1993 (so far as relating to occupational pension schemes within the meaning of that Act)];

“relevant scheme” has the meaning given by paragraph 2(1) above;

“wholly-owned subsidiary” has the same meaning as in the <sup>M5</sup>Companies Act 1985.

- (2) For the purposes of this Schedule, a company is wholly owned by one or more other companies if it has no members except—
  - (a) that other or those others and its or their nominees; and
  - (b) wholly-owned subsidiaries of that other or those others and their nominees.
- (3) Subject to sub-paragraph (1) above, expressions used in this Schedule which are also used in Part I or II of this Act have the same meanings as in that Part.

#### Textual Amendments

- F3** Words in Sch. 15 para. 5(1) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **3(3)(b)**
- F4** Words in Sch. 15 para. 5(1) substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 8 para.23** (with ss. 6(8), 164); S.I. 1994/86, **art. 2**

#### Marginal Citations

- M3** 1947 c. 54.
- M4** 1947 c. 54.
- M5** 1985 c. 6.

**Status:**

Point in time view as at 23/05/2018.

**Changes to legislation:**

Electricity Act 1989, SCHEDULE 15 is up to date with all changes known to be in force on or before 14 July 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.