
EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the protection of the relevant pension rights of protected persons for the purposes of Schedule 11 to the Railways Act 1993 (“Schedule 11”). That Act was passed on 5th November 1993.

Article 1 defines certain expressions which are used in this Order but are not defined in Schedule 11.

Article 2 sets out conditions which a person who was not participating in an occupational pension scheme as a British Rail employee immediately before 5th November 1993 must satisfy in order to qualify as a protected person under paragraph 5(b) of Schedule 11.

Article 3 provides that the protected period for a person who satisfies the conditions set out in article 2 is to begin when, as an employee in the railway industry, he re-joins an occupational pension scheme.

Article 4 requires the employer of a protected employee to provide an occupational pension scheme in which that employee may acquire relevant pension rights which are no less favourable than the relevant pension rights which were provided under his designated scheme.

Article 5 provides that the persons specified in that article shall not prevent a protected employee from joining an occupational pension scheme provided by his employer.

Article 6 provides that any amendment of an occupational pension scheme which would make the relevant pension rights of protected persons (both pensioners and participants) less favourable to them, and any transfer of such rights which would make them less favourable to the persons transferred, shall have no effect. It also provides that an occupational pension scheme in which a protected person is participating may not be wound up unless replacement arrangements are made which are no less favourable than the provision made by the scheme which is to be wound up.

Article 7 requires that the employer’s contribution to an occupational pension scheme in which a protected person is a member must be sufficient, in the opinion of the scheme actuary, to meet the cost of providing pensions to the members of that scheme, having taken into account the resources of the scheme — including employee contributions.

Article 8 makes provision, subject to exceptions, for this Order to cease to apply where the continuity of the period of employment of a protected employee is broken, a protected person voluntarily withdraws from an occupational pension scheme or a protected person requests that his relevant pension rights be transferred from an occupational pension scheme.

Article 9 makes provision for disregarding certain breaks in the continuity of employment so that, for example, the right to protection would not be lost because of a break in that continuity where a person has the right to return to employment in the railway industry.

Article 10 makes provision for disregarding voluntary withdrawal from an occupational pension scheme in certain circumstances.

Article 11 confers on certain persons whose employers are engaged in the railway industry the right to participate in the joint industry scheme.

Article 12 makes provision for a person to elect that this Order shall not apply to him.

Article 13 makes provision for disputes which arise under this Order to be referred to arbitration.

Article 14 makes provision for the enforcement of the Order by the courts.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Article 15 and the Schedule to this Order designate as “existing schemes” certain occupational pension schemes which provide pensions for, or in respect of, persons with service in the railway industry.

Compliance Costs

The provision made by this Order will impose a cost on the railway industry but the size of that cost is impossible to quantify. In order to protect the pensions of persons engaged in that industry it is necessary to ensure that the cost of providing pensions which is borne by the industry broadly reflects those which would have been incurred but for the changes pursuant to the Railways Act 1993. However, to some extent those costs would be incurred in any event because of the existing contractual entitlements of the persons engaged in the industry. Moreover, the costs falling on employers as a consequence of this Order will also depend to a large measure on the actions taken by the employer, as well as on general economic conditions.

Nevertheless, it is anticipated that no direct cost will arise until September 1996 and that, thereafter, the maximum cost is likely to be a percentage of that part of gross earnings which reckons for pension purposes under the relevant pension scheme established by the employer to comply with this Order. On that basis, the maximum average cost of compliance is, on the information at present available, assessed as 4.5% of pay reckoning for pension purposes from October 1996, increasing from October 2003 to 10.8% of the pay which is taken into account for pension purposes. These figures are net of the current contracted-out rebate for employers but include an allowance for administration expenses.