
STATUTORY INSTRUMENTS

1994 No. 1432

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

PART IV

Election, arbitration and enforcement

Elections

- 12.**—(1) Subject to the following provisions of this article—
- (a) a protected person may elect that Part II of this Order shall not have effect with respect to him or his surviving dependants by giving written notice of his election to the trustees of the scheme in which he has relevant pension rights;
 - (b) a person with the right to continue to participate in the joint industry scheme under article 11 may elect that Part III of this Order shall not have effect with respect to him by giving written notice of his election to the trustees of the joint industry scheme.
- (2) Where a notice of election is given to the trustees of an occupational pension scheme under paragraph (1)—
- (a) by a protected person, Part II of this Order shall cease to have effect in relation to any of his rights as such a person to the extent that those rights are specified in that notice;
 - (b) by a person with the right to participate in the railway industry under article 11, Part III of this Order shall cease to have effect in relation to any of his rights as such a person to the extent that those rights are specified in that notice.
- (3) An election under this article shall have effect—
- (a) where a person is to enter employment with a new employer after he has given notice under paragraph (1) but before the trustees to whom he has given that notice have selected a date under this paragraph, immediately before he enters employment with that new employer; and
 - (b) in any other case, on such date as those trustees shall select which falls—
 - (i) not less than 30 days after; but
 - (ii) during the second month after the month in which;that notice is given.
- (4) Where the trustees have received a notice which has been given under paragraph (1), they shall within 21 days give to the person who gave that notice a written acknowledgment that it has been received and notice of the date which they propose to select as the date on which Part II, Part III or both of those Parts of this Order, as the case may be, shall cease to have effect in relation to the rights in question.
- (5) A notice of election given under paragraph (1) may be withdrawn if the person who gave it gives a written notice of the withdrawal to the trustees of the scheme in question—

- (a) before the expiry of 30 days from the date on which the notice was given; or, if earlier
 - (b) before he enters into employment with a new employer.
- (6) Subject to paragraph (5), an election given under paragraph (1) shall be irrevocable.

Arbitration

13.—(1) Any dispute arising under Parts I to IV of this Order between—

- (a) a protected person, or a person with the right to continue to participate in the joint industry scheme under article 11, and a person falling within paragraph 7(2) (employers, persons contributing as employers, trustees and persons with power to amend or wind up the scheme) of Schedule 11; or
- (b) more than one person who falls within paragraph 7(2) of that Schedule;

shall be referred to arbitration under the provisions of this article.

(2) Where a dispute arises between two or more of the persons mentioned in paragraph (1), any of those persons shall give to the other or others a notice in writing which—

- (a) specifies the matters in dispute;
- (b) refers to this article; and
- (c) nominates a person who is willing to act as arbitrator of the dispute;

and for the purposes of this article a person who gives a notice under this paragraph shall be “the applicant” and the person or persons to whom it is given shall be “the defendant”.

(3) The defendant may, within 28 days of a notice being given to him under paragraph (2), give to the applicant a notice in writing which—

- (a) states that he approves as the arbitrator of the dispute the person nominated by the applicant; or
- (b) nominates an alternative person who is willing to act as arbitrator of the dispute;

and if the defendant fails to give such notice within that period the arbitrator nominated by the applicant shall act as the arbitrator of the dispute in question.

(4) If, within 56 days of the notice being given under paragraph (2), the applicant and the defendant have not agreed who should be nominated as the arbitrator of the dispute and no arbitrator has been appointed under paragraph (3), either of them may request the person prescribed by paragraph (5) or (6) to appoint the person who is to act as the arbitrator of the dispute.

(5) Subject to paragraph (6), the person prescribed for the purposes of paragraph (4) shall be—

- (a) where the principal residence of the applicant is in Scotland, the President of the Law Society of Scotland;
- (b) where the principal residence of the applicant is in Northern Ireland, the President of the Law Society of Northern Ireland; and
- (c) in any other case, the President of the Law Society of England and Wales.

(6) Where more than one request is made under paragraph (4) in relation to a dispute between the same parties which concerns the same, or substantially the same, issues—

- (a) if those requests are made to the President of one Law Society, the prescribed person shall be the President of that Law Society; and
- (b) if those requests are made to the Presidents of more than one Law Society, the prescribed person shall be the first of those Presidents to receive one of those requests.

(7) If after applying the provisions of paragraphs (5) and (6) there remains doubt as to who is the prescribed person, the prescribed person shall be the President of the Law Society of England and Wales.

(8) Where in relation to any dispute the President of a Law Society is the prescribed person by virtue of paragraph (6)(b) or (7), before selecting the arbitrator who is to act in relation to the dispute in question he shall consult each other President of a Law Society who has received a request which relates to the same dispute.

(9) Where an arbitrator has been appointed to determine more than one dispute which relates to the same issue (whether those disputes are between the same or different parties) he may, if all of those parties consent, hear and determine those disputes together as if they were a single reference.

(10) In the application of this article to Scotland, references to an “arbitrator” shall be construed as references to an “arbiter”.

Enforcement

14.—(1) Where a dispute which has been referred to an arbitrator appointed under article 13 has not been resolved because the arbitrator has—

- (a) failed to take any steps to determine it within 3 months of his appointment;
- (b) failed to determine it within 2 years; or
- (c) become unable to act;

or where there is no dispute for the purposes of article 13, any of the persons mentioned in paragraph (2) may apply to the court for an order which requires any other of those persons to comply with any provision of Parts I to IV of this Order.

(2) The persons mentioned for the purposes of paragraph (1) are—

- (a) the Secretary of State;
- (b) any person who has been, or is likely to be, affected by a failure to comply with Parts I to IV of this Order or who has a duty under any of those Parts who is—
 - (i) a protected person; or
 - (ii) a person mentioned in paragraph 7(2) of Schedule 11; or
- (c) in respect of Part III of this Order, a person who has the right to continue to participate in the joint industry scheme under article 11.

(3) In this article “the court” means—

- (a) where the principal residence of the person who makes an application under paragraph (1) is in Scotland, the Court of Session or the Sheriff;
- (b) where the principal residence of the person who makes an application under paragraph (1) is in Northern Ireland, the High Court or a County court in Northern Ireland;

and in any other case, the High Court or a County court in England and Wales.