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STATUTORY INSTRUMENTS

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**1994 No. 3070**

**COAL INDUSTRY**

**The Coal Industry (Protected  
Persons) Pensions Regulations 1994**

<i>Made</i>	- - - -	<i>1st December 1994</i>
<i>Laid before Parliament</i>		<i>2nd December 1994</i>
<i>Coming into force</i>	- -	<i>24th December 1994</i>

The Secretary of State, in exercise of the powers conferred by section 22 of, and paragraphs 4 and 5 of Schedule 5 to, the Coal Industry Act 1994<sup>(1)</sup> and of all other enabling powers, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Coal Industry (Protected Persons) Pensions Regulations 1994 and shall come into force on 24th December 1994.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Coal Industry Act 1994;

“accrue” means to become entitled to pension rights in respect of employment while a member of a relevant scheme and cognate expressions shall be construed accordingly;

“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 from time to time entitled;

“alternative scheme” has the meaning given by regulation 7 and—

(a) in relation to a protected employee means the alternative scheme in which that protected employee is or was a participant; and

(b) in relation to a protected beneficiary means the pension scheme in which that protected beneficiary has pension rights in consequence of the death of a person falling within paragraph (a);

“employer” means—

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(1) 1994 c. 21.

- (a) in respect of a protected employee who has ceased to be entitled to protection in the circumstances specified in regulation 3(2)(b), any person who employed that employee as a protected employee at a time before he so ceased to be entitled to protection; and
- (b) in respect of a protected beneficiary, any employer who employed the protected employee (at a time when that protected employee was entitled to protection in relation to a relevant scheme) in consequence of whose death the protected beneficiary has pension rights under a relevant scheme;

and “employment” shall be construed accordingly;

“future pension rights” has the meaning given by regulation 6;

“New Scheme” means a pension scheme established under and in accordance with the Industry-Wide Coal Staff Superannuation Scheme Regulations 1994(2) or the Industry-Wide Mineworkers' Pension Scheme Regulations 1994(3) and—

- (a) in relation to a protected employee means any New Scheme in which that protected employee is or was a participant; and
- (b) in relation to a protected beneficiary means any New Scheme in which that protected beneficiary has or had pension rights in consequence of the death of a person falling within paragraph (a);

“participate” means—

- (a) in respect of a protected employee, being a member of a relevant scheme for the purpose of accruing pension rights or otherwise being entitled to the future payment of a pension;
- (b) in respect of a protected beneficiary, being entitled to pension rights under a relevant scheme; and
- (c) in respect of an employer, adhering to a relevant scheme for the purpose of providing pension rights;

and cognate expressions shall be construed accordingly;

“participation date rights” means in relation to a protected employee the future pension rights provided by the New Scheme in the form in which the New Scheme was on the date when he became a participant in the New Scheme;

“pension group” means two or more companies which may be required to be treated as a single entity within a relevant scheme for the purpose of valuing the assets and liabilities of that scheme;

“protected beneficiary” means any person who is entitled to protection in relation to a relevant scheme by virtue of regulation 3(1)(b);

“protected employee” means any person (not being a protected beneficiary) who is entitled to protection in relation to a relevant scheme by virtue of regulation 3(1)(a);

“protected person” means any person who is a protected beneficiary or a protected employee;

“relevant scheme” means a New Scheme or an alternative scheme;

“the Taxes Act” means the Income and Corporation Taxes Act 1988(4);

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation or Schedule is a reference to the regulation in or the Schedule to these Regulations bearing that number, and any reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation bearing that number.

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(2) 1994/2973.  
(3) 1994/2974.  
(4) 1988 c. 1.

(3) Where an employer is a member of a pension group in a relevant scheme, any reference in these Regulations to that scheme shall be construed as a reference to the provisions of that scheme which relate to that pension group and any reference in these Regulations to protected persons in, the accrued pension rights under or the future pension rights provided by that scheme shall be construed as a reference to protected persons in, the accrued pension rights under or the future pension rights provided by that scheme in respect of the pension group of which that employer is a member.

### **Protected Persons**

**3.—(1)** The following persons shall be entitled to protection in relation to a relevant scheme except in so far as they cease to be so entitled in any of the circumstances specified in paragraph (2), that is to say—

- (a) every person who is or has been a participant in that scheme in consequence of—
  - (i) the exercise in relation to the scheme of an option conferred on him by virtue of paragraph 3(2) of Schedule 5 to the Act;
  - (ii) regulation 11; or
  - (iii) the performance of a duty placed on an employer to provide the scheme by virtue of regulation 8 or 9;

and

- (b) every person who has pension rights under the scheme in consequence of the death of a person falling within sub-paragraph (a) above; but a person shall not be entitled to protection by virtue of sub-paragraph (b) above except as respects the pension rights in respect of which he falls within that sub-paragraph.

(2) The circumstances mentioned in paragraph (1) above are as follows—

- (a) where any person entitled by virtue of paragraph (1)(a) or (b) to protection in relation to a relevant scheme elects under regulation 14 that he is to cease to be entitled to that protection;
- (b) where, except as provided in paragraph (3)(b) or (c), any person entitled by virtue of paragraph (1)(a) to protection in relation to a relevant scheme at any time
  - (i) ceases to be in continuous employment; or
  - (ii) withdraws from that scheme other than at the requirement of his employer and in either such case that person shall cease to be entitled to that protection except as respects pension rights which have accrued to him before that time;
- (c) where any person entitled by virtue of paragraph (1)(a) to protection in relation to a relevant scheme exercises a right to require a transfer payment to be made representing the cash equivalent of all or any part of his accrued pension rights from the relevant scheme to another scheme other than another relevant scheme provided by his employer, except in respect of the accrued pension rights not included in the cash equivalent represented by the transfer payment. For the purposes of this sub-paragraph the words “cash equivalent” have the same meaning as in Chapter IV of Part IV of the Pension Schemes Act 1993(5).

(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 partial or total winding up of the scheme in which that person participates, he transfers to the relevant scheme provided under regulation 8 or 9.

### **Continuity of Employment**

4.—(1) Subject to paragraphs (2) and (4), references in these Regulations to a protected person being in continuous employment shall be construed in accordance with paragraph 4(11) of Schedule 5 to the Act.

(2) No account shall be taken for the purpose of paragraph (1) of any period—

- (i) prior to the commencement of which the employer (“employer A”) of the protected employee agreed that if he took up employment with another employer (“employer B”) he would, upon the termination of the employment with employer B, be expected to return to employment with employer A;
- (ii) which would not include employment by employer B for more than 3 years or such longer period as may be approved by the Inland Revenue;
- (iii) during which the protected employee was not employed by any other employer; and
- (iv) during which the protected employee was not a member of any approved retirement benefits scheme of an employer other than employer A or of any approved personal pension scheme.

(3) In sub-paragraph (iv) of paragraph (2) “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.

(4) No account shall be taken for the purpose of paragraph (1) of any period during which a protected employee is temporarily laid off or granted, or deemed to be granted, leave of absence and continues to participate in a relevant scheme.

### **Accrued pension rights**

5.—(1) Subject to paragraphs (2) and (3), an employer shall at all times ensure that, in respect of each protected person who is or has been in his employment, the assets of that employer’s fund of the relevant scheme in respect of the accrued pension rights of that person which are a liability of that fund are such that, in the event of the winding up of that employer’s fund, there would be available to provide accrued pension rights for such protected person a sum equal to or exceeding the liability of that employer’s fund 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—

(a) recommendations as to rates of contribution have been made by a Fellow of the Institute of Actuaries or of the Faculty of Actuaries in:—

- (i) a report as at the date of the establishment of the scheme or as at the date of commencement of the employer’s participation in the scheme (if later), and
- (ii) a report on a valuation of the scheme as at a date within the previous three and one half years or such lesser period (if any) as may be prescribed under sections 113 and 114 of the Pension Schemes Act 1993 (disclosure of information about schemes to members);

and

(b) the employer has paid all contributions payable by him as recommended in such reports at the times so recommended and has taken all reasonable steps to secure that all contributions payable by the protected person which are required to be paid by him under the scheme have been paid and the employer has taken and continues to take such steps as are reasonable in all the circumstances (having regard to good actuarial practice) to make good any deficiency in respect of the accrued pension rights of that protected person (calculated on the same basis as that applicable under paragraph (1)) stated, whether expressly or by implication, in those reports.

(3) In the event of the total or partial winding up of a relevant scheme, each employer who will, as a result of that total or partial winding up, cease to participate in that scheme, shall cause a valuation to be made by a Fellow of the Institute of Actuaries or of the Faculty of Actuaries of the assets and liabilities of that scheme in respect of the protected persons who are or were in his employment and if the accrued pension rights of any protected person in that scheme shall not be transferred to a relevant scheme and if the valuation required under this paragraph shall indicate that the assets held to provide the accrued pension rights are insufficient to meet the liabilities of the first mentioned scheme in respect of those accrued pension rights, the employer shall forthwith apply a sum equal to the amount of the deficit in respect of each protected person to the purchase of an annuity for the benefit of such person.

(4) If a protected person shall transfer or be transferred to a relevant scheme, a transfer payment shall at his request or with his consent be made in respect of his accrued pension rights to that scheme, and if such payment is made the employer providing that scheme shall procure that the rules of that scheme will secure accrued pension rights which, on the basis of good actuarial practice, are at least equivalent in value to his accrued pension rights so transferred from the former scheme.

### **Future pension rights**

6.—(1) The rights specified in paragraph (2) are the future pension rights to which a protected employee is entitled.

(2) The rights mentioned in paragraph (1) are—

(a) The right of a protected employee to participate in a relevant scheme and (subject to paragraph (4))—

(i) where that scheme is a New Scheme, to accrue pension rights in accordance with the rules from time to time of that scheme;

(ii) where that scheme is an alternative scheme, to accrue pension rights on the same basis as that applicable to other protected employees in that scheme;

(iii) in the event of a change of employer which does not affect continuity of employment to an employer who participates in a New Scheme, to accrue pension rights on the same basis as that applicable to other protected employees in that scheme; and

(iv) in the event of a change of employer which does not affect continuity of employment to an employer who participates in an alternative scheme, to accrue pension rights on the same basis as that applicable to other protected employees in that scheme;

Provided that the pension rights referred to in sub-paragraphs (ii) and (iv) of this paragraph do not include any addition to or improvement of the pension rights provided by the alternative scheme in question which is made after the date upon which such scheme is provided pursuant to these Regulations.

(b) Subject to paragraph (3), the right of a protected employee, who is participating in a relevant scheme and who changes his employer, where such change does not affect continuity of employment, to an employer who provides a relevant scheme in which no protected employees are then participating to accrue pension rights which are no worse than his participation date rights.

(3) Where an employer has no protected employees participating in an alternative scheme which the employer provides for a protected employee pursuant to these Regulations at any time after the date of commencement of the total winding up of a New Scheme and—

- (a) the employer has at any time since that date provided an alternative scheme for protected employees who participated in the New Scheme on that date; or
- (b) the employer has not provided such a scheme but is a company wholly owned by a person which has provided such a scheme,

there shall be substituted in paragraph (2)(b) for the reference to participation date rights a reference to the rights so provided.

(4) Where the pension rights of protected employees in a relevant scheme are worse than the participation date rights in relation to a protected employee joining that scheme, any reference in paragraph (2)(a)(iii) or (iv) to the pension rights of the protected employees in that scheme shall be construed as a reference to those participation date rights.

### **Alternative scheme**

7.—(1) In these Regulations an “alternative scheme” means a scheme which—

- (a) is provided in accordance with regulation 8 or 9;
- (b) is approved or designed so as to be capable of being approved by the Inland Revenue for the purposes of Chapter I of Part XIV of the Taxes Act;
- (c) provides at the request or with the consent of the protected person for the receipt of any transfer payment in respect of accrued pension rights in accordance with regulation 5(4);
- (d) contains provision for payment of contributions by protected employees and for valuations of the scheme on a basis both as to the amount of such contributions and as to valuation, frequency and funding of deficits or disposal of surpluses which would not cause any protected person to be in any worse position than under the corresponding provisions contained in the New Scheme at the time the scheme became a relevant scheme;
- (e) provides future pension rights in accordance with regulation 6;
- (f) may provide benefits for persons other than protected persons upon such terms (not being terms which prejudice compliance with sub-paragraph (b) of this paragraph) as the employer or other person having the right to make or change the rules of the scheme may determine and may include additional benefits for the benefit of any one or more of the protected persons who participate in the scheme with or without any obligation to pay additional contributions but so that it cannot be a condition of membership of that scheme that a protected person shall be obliged to accept such additional benefits and make additional contributions; and
- (g) is nominated by the employer as an alternative scheme for the purpose of this regulation by notice to any protected person for whom the employer is required to provide an alternative scheme.

(2) Any scheme which ceases to satisfy the provisions of any sub-paragraph of paragraph (1) shall cease to be an alternative scheme for the purposes of these Regulations.

### **Partial winding up**

8.—(1) If an employer who participates in a New Scheme or an alternative scheme as respects a protected person ceases to be permitted to participate in the scheme (except in the event of the employer entering into liquidation) he shall forthwith notify that protected person of the new arrangements he proposes to make and as soon as practicable provide an alternative scheme for the purposes of the protection of that protected person to which he is entitled by virtue of paragraph 4

of Schedule 5 to the Act and enable that protected person to participate in the alternative scheme in place of his participation in the New Scheme or alternative scheme, as the case may be, not later than the date on which the employer ceases to participate in the New Scheme or alternative scheme.

(2) The future pension rights to be provided by the alternative scheme for the protected person where his participation in the alternative scheme is in place of his participation in a New Scheme shall be no worse than the future pension rights provided for him under the New Scheme immediately prior to the date upon which the protected person ceased to participate in that Scheme and where his participation in the alternative scheme is in place of his participation in an alternative scheme shall be no worse than those required to be provided for that protected person by these Regulations under the alternative scheme which is replaced.

### **Total winding up**

**9.**—(1) If any action is taken under a New Scheme or an alternative scheme to cause its total winding up, each employer who participates in it as respects a protected person shall forthwith notify that protected person of the new arrangements he proposes to make and as soon as practicable provide an alternative scheme for the purposes of the protection of that protected person as mentioned in regulation 8(1) and enable that protected person to participate in the alternative scheme in place of his participation in the New Scheme or alternative scheme, as the case may be, not later than the date of the commencement of the winding up.

(2) The provisions of regulation 8(2) shall apply to this regulation as if they were included herein.

### **Change of employer**

**10.**—(1) This regulation shall apply for the benefit of a protected employee who changes his employer in either of the circumstances specified in paragraph (4).

(2) If the new employer is not a participant in the relevant scheme in which the protected employee participates he shall forthwith make application to join the scheme and shall carry out the procedural requirements of the scheme to enable such an application to be accepted and every employer who is a participant in the scheme shall take all the necessary steps to ensure that the application is accepted.

(3) If the circumstances in which the protected employee changes his employer are those specified in paragraph (4)(a) and the new employer is a member of a pension group within the relevant scheme or forms a pension group or joins an existing pension group or joins with any other employers to form a pension group within the scheme, the employer shall provide or procure the provision of future pension rights to the protected employee which—

- (a) if the pension group already contains protected employees, are the same as the future pension rights for which provision is made by regulation 6(2)(a)(iii) and (iv) and (4); or
- (b) if the pension group contains no protected employees, are the same as those for which provision is made by regulation 6(2)(b) and (3).

(4) The circumstances mentioned in paragraph (1) are:

- (a) where the change of employer of a protected employee does not affect the continuity of employment of the protected employee;
- (b) where sub-paragraph (a) above does not apply and the new employer—
  - (i) opts to allow the protected employee to continue, in respect of his employment with that employer, as a participant in the relevant scheme; and
  - (ii) is able to exercise that option without the scheme ceasing to be approved for the purposes of the relevant enactments.

### **Change of duties**

11. A protected employee who—

- (a) ceases by reason of any change in the duties of his employment with the same employer, to be eligible to participate in a relevant scheme, but
- (b) by reason of the change becomes a person who satisfies, by reference to his new duties, a condition of eligibility for participation in another relevant scheme,

shall be afforded the equivalent protection with respect to his participation in the other relevant scheme as was previously secured, under these Regulations, with respect to his continuing participation in the relevant scheme for which he has ceased to be eligible.

### **Re-employed pensioners**

12. The employer of a person who has pension rights under a relevant scheme shall allow that person to become a participant in another relevant scheme as a member or to renew such participation in the same scheme where—

- (a) that person enters his employment and any of his employees are already, in respect of their employment with him, participants in the other scheme, or, as the case may be, in the scheme under which those rights subsist, and
- (b) that person is permitted by his terms of employment with the employer to become such a participant or, as the case may be, to renew such participation.

### **Amendment of a relevant scheme**

13.—(1) Except in the circumstances specified in paragraph (2), no amendment shall be made to a relevant scheme which results in the reduction of benefits under the scheme to which a protected person is or may become entitled or the increase of contributions to the scheme to be made by a protected employee.

(2) The circumstances mentioned in paragraph (1) are where the amendment affects that part of the future pension rights which is prospective and is payable to or in respect of a protected employee or affects contributions payable by a protected employee and where—

- (a) the scheme is a New Scheme established under and in accordance with the Industry-Wide Coal Staff Superannuation Scheme Regulations 1994, the amendment is approved by a resolution passed by a majority of not less than two-thirds of such of those protected employees who are then existing contributors to the scheme who would be affected by the amendment as shall vote on the matter either personally or by proxy at an extraordinary meeting of which due notice shall have been given specifying the intention to propose such amendment;
- (b) the scheme is a New Scheme established under and in accordance with the Industry-Wide Mineworkers' Pension Scheme Regulations 1994, the amendment is approved by a resolution passed by the votes of a majority of the members for the time being of the committee of management established or appointed in accordance with that scheme.

(3) References in paragraph (2) above to a New Scheme established under and in accordance with the Industry-Wide Coal Staff Superannuation Scheme Regulations 1994 or the Industry-Wide Mineworkers' Pension Scheme Regulations 1994 shall include references to an alternative scheme which replaces that scheme or any other alternative scheme pursuant to regulation 8 or 9.



### **Termination of protection**

14.—(1) A protected employee may at any time elect that he does not wish to be a protected employee, and a protected beneficiary may at any time elect that he does not wish to be a protected beneficiary.

(2) Any person who wishes to make an election under paragraph (1) (“the elector”) shall complete a notice in the form set out in Schedule 1 and shall serve it on his employer.

(3) Subject to paragraphs (4) and (5), an election under paragraph (1) shall have effect from the date specified in the notice served under paragraph (2), and thereafter the elector shall cease to be a protected employee or a protected beneficiary, as the case may be, for the purpose of these Regulations.

(4) Upon receipt of any notice served under paragraph (2), the employer shall within 21 days send to the elector an acknowledgement in the form set out in Schedule 2.

(5) Unless the elector, within 21 days of the receipt of such acknowledgement, notifies the employer in writing that he wishes to withdraw the notice served under paragraph (2) (in which event that notice shall be deemed never to have been given) such notice shall take effect upon the date stated in the notice and shall be irrevocable.

### **Persons owing a duty**

15.—(1) Any duty imposed by these Regulations on the employer of a protected person shall also be a duty owed by any person by whom such employer is, or at any time after the protected person became a protected person has been, wholly owned.

(2) If a protected employee changes his employer and does not require the accrued pension rights to which he is entitled immediately before the change to be transferred to the relevant scheme provided by his new employer in accordance with these Regulations, any former employer of whose relevant scheme those rights remain a liability shall be treated as the employer of that person for the purposes of these Regulations in respect of those rights until they are transferred to another relevant scheme.

### **Arbitration**

16.—(1) Any dispute arising under these Regulations between a protected person and the employer of that protected person or a person owing a duty to that protected person under regulation 15 or between the persons referred to in regulation 15, shall be referred to arbitration in accordance with the provisions of this regulation.

(2) Any party to a dispute (“the applicant”) may serve notice on the other party (“the respondent”)

- (a) specifying the nature of the dispute;
- (b) referring to this regulation; and
- (c) nominating a person who is willing to act as arbitrator of the dispute.

(3) The respondent shall within 28 days of the serving of any notice under the preceding paragraph notify the applicant in writing either that he approves the person nominated as arbitrator or that he wishes to nominate an alternative arbitrator who is willing to act, specifying that person.

(4) If the applicant and the respondent have not agreed the person to be appointed as arbitrator within 56 days of the serving of notice under paragraph (2), either party may request the President of the Law Society to appoint a person to act as arbitrator of the dispute.

(5) Any person who gives or receives a notice under this regulation shall as soon as reasonably practicable thereafter send a copy of any such notice to each person on whom a duty is imposed by these Regulations in respect of the protected person to whom the dispute relates.

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(6) In the application of this regulation to arbitration proceedings which are subject to the law of Scotland—

- (a) references to an arbitrator shall be construed as references to an arbiter; and
- (b) the reference to the President of the Law Society shall be construed as a reference to the President of the Law Society of Scotland.

Department of Trade and Industry  
1st December 1994

*Tim Eggar*  
Minister for Industry and Energy,

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## SCHEDULE 1

Regulation 14(2)

### NOTICE OF ELECTION

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To .....  
(Name of Employer-Note 1)

.....  
(Address of Employer-Note 2)

1. .... of .....  
(Full Name) (Address)

am a protected person under the Coal Industry (Protected Persons) Pensions Regulations 1994 ("the 1994 Regulations").

2. I give you notice under regulation 14(2) of the 1994 Regulations that I elect to cease to be a .....  
..... (Note 3)

3. I recognise that in making this election I am giving up a valuable legal right to continued pension protection and I am satisfied that it is in my best interests to do so.

4. This election shall take effect on .....  
(Note 4)

SIGNED ..... DATE.....  
(Note 5)

NOTES

1. A protected employee should insert the name of his or her employer at the date of the notice. A protected beneficiary should insert the name of the person satisfying the definition of "employer" in regulation 2(1) of the 1994 Regulations.

2. Insert the address of the principal office or the registered office in the United Kingdom of the employer.

3. Insert "protected employee" or "protected beneficiary". These terms are defined in regulation 2(1) of the 1994 Regulations.

4. This date should be not less than 60 days after the date upon which the notice is sent to the employer.

5. A NOTICE, ONCE GIVEN, MAY BE WITHDRAWN IN ACCORDANCE WITH REGULATION 14(5) OF THE 1994 REGULATIONS BY NOTIFYING THE EMPLOYER IN WRITING OF YOUR WISH TO WITHDRAW THE NOTICE. THIS MAY BE DONE WITHIN 21 DAYS OF RECEIVING FROM THE EMPLOYER NOTICE OF ACKNOWLEDGEMENT OF THIS NOTICE IN THE FORM SET OUT IN SCHEDULE 2 TO THE 1994 REGULATIONS. IF THE NOTICE IS NOT WITHDRAWN IN ACCORDANCE WITH REGULATION 14(5) IT IS IRREVOCABLE AND WILL RESULT IN THE LOSS OF THE PROTECTION GIVEN BY THE REGULATIONS.

6. Regulation 14 of the 1994 Regulations is in the following terms-

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### **Termination of protection**

14.—(1) A protected employee may at any time elect that he does not wish to be a protected employee, and a protected beneficiary may at any time elect that he does not wish to be a protected beneficiary.

(2) Any person who wishes to make an election under paragraph (1) ("the elector") shall complete a notice in the form set out in Schedule 1 and shall serve it on his employer.

(3) Subject to paragraphs (4) and (5), an election under paragraph (1) shall have effect from the date specified in the notice served under paragraph (2), and thereafter the elector shall cease to be a protected employee or a protected beneficiary, as the case may be, for the purpose of these Regulations.

(4) Upon receipt of any notice served under paragraph (2), the employer shall within 21 days send to the elector an acknowledgement in the form set out in Schedule 2.

(5) Unless the elector, within 21 days of the receipt of such acknowledgement, notifies the employer in writing that he wishes to withdraw the notice served under paragraph (2) (in which event that notice shall be deemed never to have been given) such notice shall take effect upon the date stated in the notice and shall be irrevocable.

## SCHEDULE 2

Regulation 14(4)

### NOTICE OF ACKNOWLEDGEMENT

To: [name of person giving notice under regulation 14(2)]

[address shown in that notice]

I/We, [name of person to whom that notice was given], acknowledge receipt of the notice dated [insert date] given by you under regulation 14(2) of the Coal Industry (Protected Persons) Pensions Regulations 1994 and received by me/us on [insert date].

**Unless you notify me/us within 21 days of receipt of this acknowledgement that you wish to withdraw your election it will take effect upon the date which you have specified and will thereafter be irrevocable.**

Signed

Date

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are concerned with the industry-wide pension scheme established in accordance with the Industry-Wide Coal Staff Superannuation Scheme Regulations 1994 and the industry-wide pension scheme established in accordance with the Industry-Wide Mineworkers' Pension Scheme

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Regulations 1994. Both of the regulations were made under the Coal Industry Act 1994. Such an industry-wide scheme is defined in the present Regulations as a “New Scheme”.

The present Regulations make provision for the protection of persons in relation to a New Scheme and in relation to a scheme which an employer must provide on a winding up of a New Scheme under regulation 8 or 9 (alternative scheme). The Regulations define a “relevant scheme” as a New Scheme or an alternative scheme.

Regulation 3 defines those entitled to protection as being—

- (a) those who participate
  - (i) in a New Scheme in consequence of the exercise of an option under paragraph 3(2) of Schedule 5 to the 1994 Act;
  - (ii) in a relevant scheme by reason of a change of duties (dealt with by regulation 11); or
  - (iii) in an alternative scheme provided under regulation 8 or 9
- and
- (b) those who have pension rights under a relevant scheme in consequence of the death of a person falling within (a).

A person falling within (a) is defined in the Regulations as a “protected employee” and a person falling within (b) is defined as a “protected beneficiary”. Protected employees and protected beneficiaries are defined as “protected persons”.

Regulation 3 also specifies that a protected person may cease to be entitled to protection principally where he elects under regulation 14 to cease to be protected, where he ceases to be in continuous employment or where he withdraws from the scheme.

Regulation 4 provides that references in the Regulations to a protected person being in continuous employment shall be construed in accordance with paragraph 4(11) of Schedule 5 to the 1994 Act. Paragraph 4(11) defines continuous employment by reference to Schedule 13 to the Employment Protection (Consolidation) Act 1978. The effect of this is that if a protected employee is employed in a business which is transferred from one person to another and continues to be employed in the business after the transfer his employment will be regarded as continuous.

Regulation 5 requires the employer to take steps to ensure that there are sufficient assets to secure the accrued pension rights of protected persons.

Regulation 6 provides for the future pension rights to which a protected employee is entitled. It provides for him to accrue pension rights in accordance with the New Scheme in which he participates or an alternative scheme. It provides that on a change of employer which does not affect continuity of employment to an employer who participates in a relevant scheme the protected employee has the right to accrue pension rights on the same basis as protected employees in that scheme but where the rights of protected employees are worse than his participation date rights (i. e. the rights in the New Scheme when the protected employee became a participant) the protected employee has the right to accrue pension rights on the same basis as participation date rights. Where the change of employer is to an employer who provides a scheme in which there are no protected employees the pension rights are to be no worse than participation date rights. Special rules are applied where there is a total winding up.

Regulation 7 sets out the requirements with which an alternative scheme must comply.

Regulations 8 and 9 provide for partial and total winding up of a relevant scheme. Where this takes place the employer must provide an alternative scheme for protected persons. The regulations provide for the no worsening of the future pension rights.

Regulation 10 deals with a change of employer of a protected employee where the change does not affect continuity of employment or where the new employer opts to allow the protected employee to continue as a participant in a relevant scheme and is able to do so without the scheme ceasing to be

approved for the purposes of the relevant enactments. If the new employer is not a participant in the scheme in which the employee participates he is required to apply to become a participant and the participant employers must ensure that the application is accepted. The regulation makes provision regarding future pension rights where there is a pension group within the scheme.

Regulation 11 makes provision for the protection of a protected employee to be carried from one scheme to another on a change of duties.

Regulation 12 makes provision for re-employed pensioners to join or re-join a pension scheme.

Regulation 13 restricts the amendment of a relevant scheme which results in the reduction of benefits of protected persons or increases contributions payable by protected employees.

Regulation 14 makes provision for a protected person to elect to cease to be entitled to protection and specifies the procedure for doing so.

Regulation 15 provides for any duty imposed by the Regulations on the employer of a protected person to be extended to any person by whom such employer is or has been wholly owned and for a former employer to be treated as an employer in respect of accrued pension rights which a protected employee does not require to be transferred to a scheme provided by his new employer.

Regulation 16 makes provision for disputes to be referred to arbitration.

Schedule 1 sets out the form of notice of election referred to in regulation 14(2) and Schedule 2 sets out the form of acknowledgement of such notice referred to in regulation 14(4).