STATUTORY INSTRUMENTS

1990 No. 164

ELECTRICITY

The Electricity Supply Pension Scheme (Eligible Persons) Regulations 1990

Made - - - -	*2nd February 1990*
Laid before Parliament	*8th February 1990*
Coming into force	*1st March 1990*

The Secretary of State for Energy and the Secretary of State for Scotland, in exercise of the powers conferred by section 54 of the Electricity Act 1947(**a**) and now vested in them (**b**), and the Secretary of State for Energy, in exercise of the powers conferred by section 104 of, and paragraphs 1 and 5(3)(**c**) of Schedule 14 to, the Electricity Act 1989(**d**), and of all other enabling powers, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Electricity Supply Pension Scheme (Eligible Persons) Regulations 1990 and shall come into force on 1st March 1990.

Interpretation

2.—(1) In these Regulations–

"the 1947 Act" means the Electricity Act 1947;

"by-analogy member" means a person referred to in regulation 3;

"old scheme" means, in respect of each by-analogy member to whom regulation 3(2)(c)(i) applies, the retirement benefits scheme created by the determination referred to in that paragraph and, in respect of each by-analogy member to whom regulation 3(3) applies, the retirement benefits scheme created by a determination applying in respect of that member while he was entitled to accrue pension rights in accordance with it;

"the Pension Scheme" means the Electricity Supply Pension Scheme;

"relevant existing body" means, prior to the transfer date, in respect of each by-analogy member, any existing body of which he is or was at any time the Chairman or other member prior to the coming into force of these Regulations which has a legal or customary obligation to contribute to the pension rights of that by-analogy member and, after the transfer date, the successor company of that existing body to which any liability under these Regulations is transferred;

"relevant scheme" means a retirement benefits scheme, other than the Pension Scheme or an old scheme, under which a by-analogy member has acquired pension rights and to which an existing body or a Scottish Board has paid contributions in respect of that by-analogy member;

(**a**) 1947 c.54; section 54 was amended by the Electricity Act 1957 (c.48), section 42 and Schedule 4, Part I; the Tribunals and Inquiries Act 1958 (c.66), Schedule 2, Part II; the Employment Protection (Consolidation) Act 1978 (c.44), section 130 and Schedule 10, paragraph 7 and S.I. 1959/1769, 1968/729 and 1970/1537.
(**b**) S.I. 1957/48, 1969/1498 and 1970/1537.
(**c**) *See* the defintion of "prescribed" in section 64(1).
(**d**) 1989 c.29.

"retirement benefits scheme" has the same meaning as in section 611 of the Income and Corporation Taxes Act 1988(a);

"the Trustees" means the Trustees of the Pension Scheme from time to time.

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is a reference to the regulation in 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.

By-analogy members

3.—(1) Any person to whom paragraph (2) or (3) applies is a by-analogy member for the purpose of these Regulations.

(2) This paragraph applies to any person who–

(a) is or has at any time been a Chairman or other member of an existing body in England and Wales;

(b) was not entitled by virtue of any regulations made under subsection (4) of section 54 of the 1947 Act to be a member of any pension scheme established under subsection (1) of that section; and

(c) (i) is or was entitled to accrue pension rights in accordance with a determination under section 3(6) of the 1947 Act upon terms expressed by reference to the Pension Scheme or another retirement benefits scheme but containing modifications to the terms of the Pension Scheme or that other scheme as the same was expressed to apply to that person; or

(ii) notwithstanding sub-paragraph (b) of this paragraph was treated by the Trustees as a member of the Pension Scheme.

(3) This paragraph applies to any person to whom paragraph (2) would have applied, if that person had not died prior to the coming into force of these Regulations.

Amendments to the Pension Scheme

4.—(1) The amendments to the Pension Scheme specified in Part I of the Schedule shall have effect.

(2) Between the coming into force of these Regulations and the transfer date the Pension Scheme shall have effect as if any provision of an old scheme which requires or has the effect of requiring that any discretion in that scheme to apply particular features of it to or in respect of a by-analogy member shall be exercised by the Secretary of State and the Treasury were a provision of the Pension Scheme.

Transfer of by-analogy members

5. Each by-analogy member to whom regulation 3(2) applies shall become a Transferred By-Analogy Member(b) of the Pension Scheme and each by-analogy member to whom regulation 3(3) applies shall become a Transferred Former By-Analogy Member(b) of the Pension Scheme.

Transfer of property and rights

6.—(1) Subject to the provisions of this regulation and of regulation 7, all property and rights of every type and description vested at the coming into force of these Regulations in any person other than as a nominee or custodian trustee being property or rights available for the purposes of any old scheme are hereby transferred without further assurance to the Trustees.

(2) A certificate, signed by the relevant existing body and by any person in whom any property or right transferred by virtue of this regulation was vested immediately before these Regulations came into force, that the property or right was so transferred, or a copy of such certificate certified by the relevant existing body to be a true copy thereof, shall be sufficient evidence that the property or right was transferred as aforesaid.

(a) 1988 c.1.

(b) A definition of this phrase is inserted into the Pension Scheme by these Regulations, *see* Part I of the Schedule, paragaph 1.

(3) In the case of any property or right vested in two or more persons jointly, a certificate for the purposes of paragraph (2) signed by any one of those persons on behalf of them all shall be sufficient.

(4) Every person in whom any property or right transferred as aforesaid was vested immediately before these Regulations came into force shall do all such things as are necessary, or as the Trustees may reasonably require to be done, for the purpose of ensuring–

(a) the due registration of the title of the Trustees to such property;

(b) the delivery to the Trustees of any document constituting evidence of the said registration;

(c) the performance for the benefit of the Trustees of all obligations due in respect of such rights; and

(d) the receipt by the Trustees of all dividends, rent, interest or other sums in respect of such property or right due for payment after these Regulations come into force.

Transfer of liabilities

7.—(1) Subject to the provisions of paragraph (2), every liability or obligation outstanding immediately before the coming into force of these Regulations and incurred by any relevant existing body or other person on behalf of or for the purposes of an old scheme or by any relevant scheme in respect of a by-analogy member shall be liabilities or obligations of the Trustees to the exclusion of that person:

Provided that nothing in this paragraph shall relieve any relevant existing body or other person from any liability for any breach of trust or duty, except in so far as under the provisions of the old scheme or the relevant scheme he would, but for the operation of these Regulations, have been entitled to an indemnity in respect thereof from assets available for the purposes of the old scheme or the relevant scheme.

(2) In respect of an old scheme the exclusion of each relevant existing body or other person to whom the foregoing paragraph applies from liability as aforesaid shall, without prejudice to the vesting in the Trustees of the liability in question, take effect only after signature and delivery of all certificates required to be made for the due registration of the title of the Trustees to all property and rights transferred with respect to the old scheme by virtue of regulation 6.

Valuation of accrued pension rights

8.—(1) Subject to paragraph (2), the Trustees shall cause an actuarial valuation to be prepared by the actuary of the Pension Scheme of the accrued pension rights of or in respect of the by-analogy member of each old scheme and each relevant scheme and the property and rights (if any) transferred under regulation 6 as at the coming into force of these Regulations, using actuarial assumptions identical to those adopted for the valuation of the Pension Scheme on 31st March 1989 and, in respect of any old scheme having more than one relevant existing body, showing separately the value of–

(a) the accrued pension rights of that scheme for which each relevant existing body is responsible; and

(b) any property or rights apportioned in the ratio which the accrued pension rights for which each relevant existing body is responsible bear to the aggregate accrued pension rights in respect of that scheme.

(2) Where the Trustees have received contributions or other payments in respect of a person to whom regulation 3(2)(c)(ii) applies and are satisfied that, having regard to the provisions of the Pension Scheme and the pension rights of that person, they already hold, in whole or in part, adequate funds, the provisions of paragraph (1) shall not apply, to the extent that they are so satisfied.

(3) For the purpose of this regulation, "accrued pension rights" shall mean–

(a) all pension rights under the old scheme or the relevant scheme (relating, in the case of a by-analogy member in service whose pension rights are still accruing, to rights in respect of pensionable service up to the date these Regulations come into force but taking into account, where appropriate, assumed future salary increases);

(b) all additional rights calculated by reference to the rights under sub-paragraph (a) of this paragraph and arising from a customary or express obligation undertaken by the relevant existing body or Scottish Board, other than annual payments arising in connection with the termination of employment of any person due to reorganisation or redundancy (including any increase in such payments); and

(c) all additional rights which would arise for the benefit of or in respect of the by-analogy member of the old scheme or the relevant scheme if that scheme had contained the obligations referred to in sub-paragraph (b) of this paragraph and a provision having the same effect as Rule 26 of the Pension Scheme,

whether payments in respect of such rights are being made or are prospectively or contingently payable and includes any lump sums payable on retirement or death.

(4) Subject to paragraph (2), the Trustees shall deliver a copy of the valuation prepared for the purposes of paragraph (1) and a statement specifying the amount (if any) by which the value of the accrued pension rights and any other liabilities or obligations exceeds the value of the property and rights (if any) transferred under regulation 6–

(a) in respect of an old scheme, to the relevant existing body; and

(b) in respect of a relevant scheme, to the trustees of that scheme.

(5) Within 60 days of the delivery of the statement under paragraph (4) the relevant existing body or the trustees of the relevant scheme, as the case may be, shall pay to the Trustees the amount specified in the statement.

Application of funds

9. The Trustees shall not cause or allow the disposal of any property or right transferred or payment received by virtue of the foregoing regulations or the application of any such property or right or payment otherwise than–

(a) for the discharge of any liability or obligation or the payment of any expense imposed upon them by these Regulations; or

(b) in accordance with the provisions of the Pension Scheme.

Winding up

10. Each old scheme shall cease to have effect on the date when these Regulations come into force:

Provided that–

(a) the proviso to paragraph (1) of regulation 7 shall apply in relation to this paragraph as it applies in relation to that paragraph; and

(b) nothing in this paragraph shall affect the operation of paragraph (2) of regulation 7.

Officers of the Electricity Consumers' Council

11.—(1) Any person who, whether before or after the coming into force of section 21 of and Schedule 2 to the Energy Act 1983(a)–

(a) is or was an officer of the Electricity Consumers' Council; and

(b) was treated as a member of the Pension Scheme,

shall be deemed to have been a member of the Pension Scheme from the date of commencement of such treatment, notwithstanding the provisions of section 54(1) of the 1947 Act, and any contributions paid by or in respect of that person shall be deemed to have been properly paid to and received by the Trustees.

(2) In consequence of paragraph (1), the amendments to the Pension Scheme specified in Part II of the Schedule shall have effect.

(a) 1983 c.25.

1st February 1990

John Wakeham
Secretary of State for Energy

2nd February 1990

Malcolm Rifkind
Secretary of State for Scotland

SCHEDULE

PART I — Regulation 4(1)

AMENDMENTS TO THE ELECTRICITY SUPPLY PENSION SCHEME RELATING TO BY-ANALOGY MEMBERS

1. *In Clause 46, the following definitions shall be inserted in alphabetical sequence:*

" "By-Analogy Arrangement" means an arrangement for providing pension and lump sum benefits for a person defined and referred to in the By-Analogy Assimilation Regulations as a "by-analogy member";

"By-Analogy Assets" means in relation to each By-Analogy Arrangement the assets which are transferred to the Scheme in respect of such arrangement by the relevant By-Analogy Employer pursuant to the By-Analogy Assimilation Regulations;

"By-Analogy Assimilation Regulations" means the Electricity Supply Pension Scheme (Eligible Persons) Regulations 1990;

"By-Analogy Employer" means the person having liabilities in relation to a By-Analogy Arrangement, being defined and referred to in the By-Analogy Assimilation Regulations as a "relevant existing body";

"By-Analogy Liabilities" means in relation to each By-Analogy Arrangement the liabilities which are assumed by the Trustees in respect of such arrangement pursuant to the By-Analogy Assimilation Regulations, that is to say every liability or obligation outstanding immediately before the coming into force of the By-Analogy Assimilation Regulations and incurred by any By-Analogy Employer or other person on behalf of or for the purposes of a By-Analogy Arrangement;

"Transferred By-Analogy Member" means:

(a) an individual who was contributing in respect of a By-Analogy Arrangement on the date on which the By-Analogy Assimilation Regulations came into force;

(b) an individual who had ceased contributing in respect of a By-Analogy Arrangement on such date and was in receipt of a pension pursuant to such arrangement; or

(c) an individual who had ceased contributing in respect of a By-Analogy Arrangement on such date and was prospectively entitled to benefits pursuant to such arrangement;

"Transferred Former By-Analogy Member" means a person who was deceased on the date on which the By-Analogy Assimilation Regulations came into force and in respect of whom benefits were being paid under a By-Analogy Arrangement on such date;".

2. *In Clause 46, the definition of "Former Member" shall be amended by the insertion at the end of sub-paragraph (c) of the words:*

"and a Transferred Former By-Analogy Member".

3. *In Clause 46, the definition of "Special Member" shall be amended by the addition at the end of the words:*

"and a Transferred By-Analogy Member".

4. *Add new Rule 46 as follows:*

"**ASSIMILATION OF BY-ANALOGY ARRANGEMENTS**

46.(1) The Trustees shall assume responsibility for the By-Analogy Liabilities in respect of the Transferred By-Analogy Members and in respect of the dependants of the Transferred By-Analogy Members and of the Transferred Former By-Analogy Members who are in receipt of, or prospectively or contingently entitled to, benefits in relation to the By-Analogy Arrangements.

(2)(a) Upon assuming responsibility for the By-Analogy Liabilities, the Trustees shall cause an actuarial valuation of the By-Analogy Assets and the By-Analogy Liabilities in respect of each By-Analogy Arrangement to be prepared by the Actuary, in accordance with the provisions of the By-Analogy Assimilation Regulations.

(b) Where under an actuarial valuation referred to in sub-paragraph (a) the Actuary certifies that the By-Analogy Assets are not sufficient to meet the By-Analogy Liabilities, the deficiency certified by the Actuary shall be met by a payment to the Fund of the amount of such deficiency by the By-Analogy Employer which was responsible for the relevant By-Analogy Arrangement.

(3)(a) The Transferred By-Analogy Members and the dependants of the Transferred By-Analogy Members and of the Transferred Former By-Analogy Members in respect of whom the Trustees have assumed By-Analogy Liabilities shall each be afforded substituted rights under the Scheme as set out in sub-paragraphs (b) and (c), in substitution for and satisfaction of all their rights under the By-Analogy Arrangements.

(b) The said substituted rights shall be equivalent to:

(i) the rights to which each Transferred By-Analogy Member and each dependant of a Transferred By-Analogy Member and of a Transferred Former By-Analogy Member would have been entitled under the relevant By-Analogy Arrangement, had it remained applicable to him; and

(ii) all additional rights calculated by reference to pensions and lump sums under (i) arising from an obligation undertaken by the By-Analogy Employer in relation to him by way of annual payments as are transferred to the Scheme under the By-Analogy Assimilation Regulations;

Provided That such substituted rights shall be subject to the modifications and exceptions set out in sub-paragraph (c).

(c) The modifications and exceptions referred to in sub-paragraph (b) are as follows:

(i) with effect from the date on which such Regulations come into force there shall be deemed to be included in such substituted rights provisions for pensions increases on the basis set out in Rule 26, to the exclusion of the like provisions (if any) of the relevant By-Analogy Arrangement;

(ii) in relation to each Transferred By-Analogy Member whose By-Analogy Arrangement was made on terms which took effect from a date prior to 1 April 1988 and were expressed by reference to the Scheme, the Transferred By-Analogy Member shall be treated for the purposes of the Scheme as if he had become a Contributor prior to 1 April 1988;

(iii) for any disability benefit for total disablement that includes a fixed sum payable periodically for a limited period there shall be substituted an incapacity pension for life of an amount certified by the Actuary to be equivalent in value to the whole of the benefit concerned;

(iv) if a refund of a Transferred By-Analogy Member's contributions (with or without interest) is made on his leaving Service, no other benefit except such a pension as is mentioned in (vii) of this sub-paragraph shall be payable to or in respect of him;

(v) no Transferred By-Analogy Member shall be entitled to exercise any option to continue to make contributions after he has left Service;

(vi) no benefit payable under sub-paragraph (a) shall exceed the maximum which would have been payable under the relevant By-Analogy Arrangement in order for that arrangement to comply with the requirements of the Board of Inland Revenue under the Taxes Act 1988; and

(vii) if any Transferred By-Analogy Member leaves Service in circumstances in which a payment in lieu of contributions under the National Insurance Act 1965 would fall to be made, the Trustees may, if they think fit, make arrangements to pay to the Transferred By-Analogy Member on attaining age 65 (60 in the case of a woman) such a pension in respect of his non-participating employment under the said Act as will constitute Equivalent Pension Benefits and such pension shall be payable accordingly.

(4)(a) Subject to the provisions of Rule 12, each Transferred By-Analogy Member shall pay contributions to the Fund equivalent to the contributions which would have been payable by him under the By-Analogy Arrangement applicable to him.

(b) Where contributions are payable by a Transferred By-Analogy Member under sub-paragraph (a), the provisions of Clause 13(1)(a) shall apply in relation thereto."

PART II Regulation 11(2)

AMENDMENTS TO THE ELECTRICITY SUPPLY PENSION SCHEME RELATING TO OFFICERS OF THE ELECTRICITY CONSUMERS' COUNCIL

1. *In Clause 46, the definition of "the Boards" shall be deleted and the following definition shall be substituted:*

" "the Boards" means the Council, the Generating Board, the Area Boards, the Consultative Councils and the Electricity Consumers' Council; and "the Board" means whichever of the Boards is appropriate;".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide:

(i) for certain present and former Chairmen and other members of the Electricity Council and the Electricity Boards in England and Wales; and

(ii) for certain officers and former officers of the Electricity Consumers' Council,

who were ineligible for membership of the Electricity Supply Pension Scheme (the Pension Scheme) (which is an existing scheme providing pension benefits for most employees and members of the electricity supply industry in England and Wales) under section 54 of the Electricity Act 1947, as amended, to become eligible for membership.

Regulation 1 provides for the citation and commencement of the Regulations and regulation 2 contains definitions. Regulation 3 defines the persons who are within paragraph (i) above. Regulation 4(1) introduces Part I of the Schedule, which contains the amendments to the Pension Scheme necessary to provide how these persons will be treated as members of the Scheme. The effect of the amendments is that their existing pension benefits will be at least maintained. Regulation 4(2) continues the effect of a provision of old schemes (as defined) but only until the transfer date. Regulation 5 then provides for the persons mentioned in paragraph (i) above to become members of the Pension Scheme.

Regulations 6 to 10 provide for the winding up of the old schemes of such persons created by determinations under section 3(6) of the 1947 Act. These regulations provide for the assets and outstanding liabilities of these schemes to pass to the Trustees of the Pension Scheme, and for an actuarial valuation of all assets and liabilities of the schemes to be wound up and of certain liabilities to be transferred from other schemes. Each Electricity Board which presently funds these liabilities out of revenue is, and the trustees of other electricity supply industry schemes holding assets in respect of those persons are, required to make a payment to the Trustees of the Pension Scheme in respect of any deficit shown by the valuation. Certain requirements are specified in the regulations for the effective registration of the title to the property being transferred.

Regulation 11 provides that any officer or former officer of the Electricity Consumers' Council who has been treated as a member of the Pension Scheme shall be deemed to have been a member of the Scheme from the date of commencement of such treatment, notwithstanding the fact that section 54(1) of the 1947 Act did not entitle such persons to be members of the Scheme. This provision is to apply whether or not the officer served with the Electricity Consumers' Council before it was put on to a statutory footing under section 21 of and Schedule 2 to the Energy Act 1983. Part II of the Schedule contains an amendment to the Pension Scheme to add the Electricity Consumers' Council to the list of bodies which may participate in the Scheme.