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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Schedule 10. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 10

Section 175

#### INDEPENDENT SYSTEM OPERATOR AND PLANNER: PENSIONS

##### *Introductory*

- 1 (1) In this Schedule—
- “active member” has the same meaning as in section 124(1) of the Pensions Act 1995;
  - “associate” has the same meaning as in section 1152 of the Companies Act 2006;
  - “member” has the same meaning as in section 124(1) of the Pensions Act 1995;
  - “prescribed” means prescribed by regulations made by the Secretary of State;
  - “qualifying accrued rights” means—
    - (a) any right which, at the relevant time, has accrued to or in respect of a qualifying member of a qualifying pension scheme to future benefits under the scheme,
    - (b) any entitlement under a qualifying pension scheme to the present payment of a pension or other benefit that a qualifying member of the scheme has at the relevant time, or
    - (c) any entitlement to benefits, or rights to future benefits, under a qualifying pension scheme that a person who has survived a qualifying member of the scheme has at the relevant time in respect of the member;
  - “qualifying member”, in relation to a qualifying pension scheme, means a person who is or has been a member of the scheme;
  - “qualifying pension scheme” means a pension scheme that provides for the payment of pensions or other benefits to or in respect of employees or former employees of—
    - (a) a transferor in relation to a transfer scheme under paragraph 1 of [Schedule 9](#), or
    - (b) an associate of such a transferor;
  - “the relevant time” means the time immediately before the prescribed date (which may be before the passing of this Act).
- (2) For the purposes of the definition of “qualifying accrued rights” in subparagraph (1)—
- (a) references to pensions or other benefits (including future benefits) include money purchase benefits;
  - (b) references to a right include a pension credit right.

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- (3) In the event that a section of a qualifying pension scheme is constituted as a separate pension scheme the members of which consist of or include persons who are qualifying members of the qualifying pension scheme, any reference in this Schedule to the qualifying pension scheme includes a reference to that separate pension scheme.

**Commencement Information**

- II** Sch. 10 para. 1 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

*Participation in qualifying pension schemes and transfer of assets and rights*

- 2 (1) The Secretary of State may by regulations make such pensions provision as the Secretary of State considers appropriate—
- (a) in preparation for or in connection with the designation of a person under [section 162\(1\)](#), or
  - (b) otherwise in connection with the making of a transfer scheme under paragraph 1 of [Schedule 9](#).
- (2) “Pensions provision” means provision in connection with a qualifying pension scheme, including provision for—
- (a) enabling an entity to which [sub-paragraph \(3\)](#) applies to participate in the scheme;
  - (b) the division of the scheme into different sections;
  - (c) the participation in the different sections of different persons (including entities to which [sub-paragraph \(3\)](#) applies);
  - (d) the allocation of assets, rights, liabilities or obligations between the different sections;
  - (e) the transfer of assets and qualifying accrued rights from the scheme to another pension scheme (whether or not a qualifying pension scheme), without the need for any approval or consent to the transfer;
  - (f) the valuation of assets and qualifying accrued rights in accordance with provision made by the regulations, for the purposes of their allocation to a particular section or for the purposes of their transfer as mentioned in paragraph (e);
  - (g) the discharge of liabilities in respect of qualifying accrued rights that are transferred.
- (3) This sub-paragraph applies to the following entities—
- (a) the ISOP;
  - (b) an associate of the ISOP;
  - (c) any other entity which employs a person—
    - (i) whose contract of employment is transferred by a transfer scheme under paragraph 1 of [Schedule 9](#), and
    - (ii) who is an active member of the qualifying pension scheme at the relevant time.
- (4) Regulations under [sub-paragraph \(1\)](#) may have retrospective effect.

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- (5) Before making regulations under [sub-paragraph \(1\)](#), the Secretary of State must consult—
- (a) the trustee of the qualifying pension scheme or schemes in question, and
  - (b) the person who is the principal employer in relation to that scheme or those schemes.

**Commencement Information**

**I2** Sch. 10 para. 2 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

*Amendment of qualifying pension schemes*

- 3 (1) The Secretary of State may by regulations make such amendments of a qualifying pension scheme as the Secretary of State considers appropriate—
- (a) in preparation for or in connection with the designation of a person under [section 162\(1\)](#),
  - (b) otherwise in connection with the making of a transfer scheme under paragraph 1 of [Schedule 9](#), or
  - (c) in connection with the making of regulations under paragraph 2 of this Schedule.
- (2) The provision that may be made under [sub-paragraph \(1\)](#) includes—
- (a) provision authorising or requiring the amount of pensions or other benefits payable to or in respect of qualifying members of the scheme to be determined in particular circumstances by reference to pensionable service under the scheme in question before and after the relevant time;
  - (b) provision for the transfer out of assets, rights, liabilities or obligations from one or more new sections of a qualifying pension scheme to another pension scheme (whether or not a qualifying pension scheme);
  - (c) provision for the transfer in of assets, rights, liabilities or obligations to one or more new sections of one qualifying pension scheme from one or more new sections of another qualifying pension scheme.
- (3) Regulations under [sub-paragraph \(1\)](#) may have retrospective effect.
- (4) Before making regulations under [sub-paragraph \(1\)](#), the Secretary of State must consult—
- (a) the trustee of the qualifying pension scheme being amended, and
  - (b) the person who is the principal employer in relation to that scheme.
- (5) In this paragraph—
- (a) the reference to making amendments of a qualifying pension scheme includes a reference to amending the trust deed or rules of that scheme or any other instrument relating to the constitution, management or operation of the scheme;
  - (b) references to a “new” section of a qualifying pension scheme are to one of the sections into which the scheme is divided by regulations under paragraph 2(1);
  - (c) “pensionable service” has the same meaning as in section 124(1) of the Pensions Act 1995.

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**Commencement Information**

**I3** Sch. 10 para. 3 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

*Protection against adverse treatment*

- 4 (1) When exercising the power to make regulations under paragraph 2 or 3, the Secretary of State must ensure that the following requirements are met in respect of each person who is or has been a qualifying member of a qualifying pension scheme—
- (a) the general scheme requirement;
  - (b) where the regulations relate to a person’s rights or entitlements to money purchase benefits other than pensions in payment, the money purchase requirement.
- (2) The general scheme requirement is that the provision for the payment of pensions or other benefits that is contained in a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) is, in all material respects, at least as good immediately after the exercise of the power as it is immediately before its exercise.
- (3) The money purchase requirement is that the value of the rights or entitlements to money purchase benefits, other than pensions in payment, that a person has under a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) immediately after, and as a result of, the exercise of the power is at least equivalent to the value of the person’s rights or entitlements before its exercise.
- (4) Nothing in sub-paragraph (1) requires—
- (a) the different sections (if any) of a qualifying pension scheme to be established in a particular way,
  - (b) particular provisions of the sections, or of a pension scheme to which a transfer is made by virtue of paragraph 2(2)(e), to take the same or similar form, or
  - (c) any power or duty conferred or imposed by a qualifying pension scheme to be exercised or performed in a particular way.
- (5) The power of the Secretary of State to amend a qualifying pension scheme may not be exercised in any way that would or might adversely affect any provision of the scheme made in respect of qualifying accrued rights unless—
- (a) the applicable consent requirements are satisfied in respect of the exercise of the power in that way, or
  - (b) the scheme is amended in the prescribed manner.
- (6) The applicable consent requirements are the requirements that apply in relation to obtaining the consent of members of the scheme to its amendment (including any such requirements set out in the trust deed or rules of the scheme).

**Commencement Information**

**I4** Sch. 10 para. 4 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

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### *Information and assistance*

- 5 (1) The Secretary of State may direct a person within [sub-paragraph \(3\)](#) to provide the Secretary of State with—
- (a) such specified pensions information, or
  - (b) such specified assistance,
- as the Secretary of State may reasonably require in preparation for or in connection with the exercise of a power conferred on the Secretary of State by this Schedule.
- (2) “Pensions information” means information that—
- (a) relates to pensions or other benefits under a qualifying pension scheme, or
  - (b) relates to the administration of a qualifying pension scheme in respect of pensions or other benefits under the scheme.
- (3) The following persons are within this sub-paragraph—
- (a) the trustee of a qualifying pension scheme;
  - (b) any person who exercises functions on behalf of a person within [paragraph \(a\)](#);
  - (c) any person who is or has been an employer of a qualifying member of a qualifying pension scheme.
- (4) The power under [sub-paragraph \(1\)](#) ceases to be exercisable—
- (a) at the end of the period of 3 years beginning with the time from which the first designation under [section 162\(1\)](#) has effect, or
  - (b) if at any time before the end of that period a transfer scheme is made under [paragraph 1\(1\) of Schedule 9](#), at the end of the period of 3 years beginning with the date (or, if there is more than one, the first date) from which the transfer of property, rights or liabilities under the scheme takes effect.
- (5) A person to whom a direction is given under [sub-paragraph \(1\)](#) must, so far as reasonably practicable, provide the Secretary of State with the specified pensions information or assistance—
- (a) within the specified period, and
  - (b) in the specified form and manner.
- (6) A direction under [sub-paragraph \(1\)](#) is enforceable by the Secretary of State in civil proceedings—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under [section 45 of the Court of Session Act 1988](#), or
  - (c) for any other appropriate remedy or relief.
- (7) The Secretary of State must reimburse a person for costs reasonably incurred by the person in complying with a direction under [sub-paragraph \(1\)](#).
- (8) In this paragraph, “specified” means specified in the direction.

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#### **Commencement Information**

**I5** Sch. 10 para. 5 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

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### *Consultation*

- 6 Any requirement imposed by this Schedule to carry out consultation may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).

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**Commencement Information**

**I6** Sch. 10 para. 6 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

### *National Security and Investment Act 2021*

- 7 The exercise by the Secretary of State of a power conferred on the Secretary of State by any provision of this Schedule is not a trigger event for the purposes of the National Security and Investment Act 2021.

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**Commencement Information**

**I7** Sch. 10 para. 7 in force at Royal Assent, see [s. 334\(2\)\(h\)\(ii\)](#)

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