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SCHEDULES

SCHEDULE 8

CONTRIBUTION NOTICES AND FINANCIAL SUPPORT DIRECTIONS UNDER 2005 ORDER

Contribution notices and financial support directions: bulk transfers

9 After Article 35 (the sum specified in an Article 34 contribution notice) insert—

“Article 34 contribution notice: transfer of members of the scheme

35A.—(1) This Article applies where—

- (a) the Regulator is of the opinion that in relation to a scheme (“the initial scheme”) in relation to which Article 34 applies—
 - (i) an act or failure to act falling within paragraph (5) of that Article has occurred (or first occurred) at any time, and
 - (ii) the other conditions in that Article for issuing a contribution notice are met in relation to the initial scheme (or, but for any transfer falling within sub-paragraph (b), would be met), and
- (b) the accrued rights of at least two persons who were members of the initial scheme are transferred at that or any subsequent time to one or more work-based pension schemes (whether by virtue of the act or otherwise).

(2) The Regulator may issue a contribution notice under Article 34 in relation to any transferee scheme (and, accordingly, any reference in Article 36 or 37 to the scheme is to the transferee scheme).

(3) In the case of any contribution notice issued by virtue of paragraph (2) to any transferee scheme which is not within paragraph (5)(a) or (b), Article 35 has effect as if any reference in that Article to the scheme were a reference to whichever of—

- (a) the initial scheme, and
- (b) the transferee scheme,

the Regulator determines to be more appropriate in the circumstances.

(4) In any case where Article 35 has effect in relation to the transferee scheme by virtue of paragraph (3), any reference in that Article to a debt

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under Article 75 of the 1995 Order is a reference to so much of that debt as, in the Regulator's opinion, is attributable to those members of the transferee scheme who were members of the initial scheme.

(5) In the case of any contribution notice issued by virtue of paragraph (2) to any transferee scheme which is—

- (a) a scheme to which Article 75 of the 1995 Order does not apply, or
- (b) a scheme to which that Article does apply in a case where the liabilities of the scheme that would be taken into account for the purposes of that Article do not relate to the members of the initial scheme,

the sum specified by the Regulator in the notice is determined in accordance with regulations (and not in accordance with Article 35).

(6) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the sum payable under the notice is applied for the benefit of the members of the transferee scheme who were members of the initial scheme.

(7) If the trustees or managers fail to comply with a direction issued to them under paragraph (6), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

Article 35A: supplemental

35B.—(1) In Article 35A a “transferee scheme”, in relation to any time, means any work-based pension scheme—

- (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
- (b) of which any of those persons are members at that time.

(2) For the purposes of Article 35A(1) and paragraph (1) it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.

(3) For the purposes of Article 35A and this Article references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

(4) In Article 35A and this Article—

- (a) “work-based pension scheme” has the meaning given by Article 4(3);

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- (b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).
- (5) Article 35A applies even if the initial scheme—
 - (a) is wound up as a result of any transfer falling within paragraph (1) (b) of that Article, or
 - (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.
- (6) Accordingly, in any such case, in paragraph (1) of that Article—
 - (a) the reference to a scheme to which Article 34 applies is a reference to a scheme which was such a scheme before the transfer;
 - (b) the reference to any conditions in Article 34 being met is a reference to any conditions in that Article that, but for the transfer, would have been met in relation to the scheme.
- (7) Nothing in Article 35A or this Article is to be read as preventing the Regulator from issuing a contribution notice in relation to the initial scheme.
- (8) Regulations may make provision applying, with or without modifications, any provision made by or under Article 35A or this Article in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—
 - (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
 - (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
 - (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
 - (d) the incurring at any time of any obligation to do any act falling within sub-paragraphs (a) to (c).
- (9) Any reference in paragraph (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.
- (10) Regulations under paragraph (8) may—
 - (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Department publishes a statement of the intention to make the regulations; and

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- (b) without prejudice to Article 287(3), make consequential provision applying with modifications any provision of this Order which relates to contribution notices under Article 34.”.

10 After Article 39 (financial support directions) insert—

“Financial support directions: transfer of members of the scheme

39A.—(1) This Article applies where—

- (a) the Regulator is of the opinion by reference to any time that the conditions in Article 39 for issuing a financial support direction are met in relation to a scheme (“the initial scheme”) in relation to which that Article applies (or, but for any transfer falling within sub-paragraph (b), would be met), and
- (b) the accrued rights of at least two persons who were members of the initial scheme are transferred at any subsequent time to one or more work-based pension schemes.

(2) The Regulator may issue a financial support direction under that Article in relation to any transferee scheme (and, accordingly, any reference in Article 41 or any of Articles 43 to 46 to the scheme is to the transferee scheme).

(3) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the financial support is put in place for the benefit of the members of the transferee scheme who were members of the initial scheme.

(4) If the trustees or managers fail to comply with a direction issued to them under paragraph (3), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

Article 39A: supplemental

39B.—(1) In Article 39A a “transferee scheme”, in relation to any time, means any work-based pension scheme—

- (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
- (b) of which any of those persons are members at that time.

(2) For the purposes of Article 39A(1) and paragraph (1) it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.

(3) For the purposes of Article 39A and this Article references to the transfer of accrued rights of members of a pension scheme to another

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pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

(4) In Article 39A and this Article—

- (a) “work-based pension scheme” has the meaning given by Article 4(3);
- (b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).

(5) Article 39A applies even if the initial scheme—

- (a) is wound up as a result of any transfer falling within paragraph (1) (b) of that Article, or
- (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.

(6) Accordingly, in any such case, in paragraph (1) of that Article—

- (a) the reference to a scheme to which Article 39 applies is a reference to a scheme which was such a scheme before the transfer;
- (b) the reference to any conditions in Article 39 being met is a reference to any conditions in that Article that, but for the transfer, would have been met in relation to the scheme.

(7) Nothing in Article 39A or this Article is to be read as preventing the Regulator from issuing a financial support direction in relation to the initial scheme.

(8) Regulations may make provision applying, with or without modifications, any provision made by Article 39A or this Article in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—

- (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
- (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
- (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
- (d) the incurring at any time of any obligation to do any act falling within sub-paragraphs (a) to (c).

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(9) Any reference in paragraph (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.

(10) Regulations under paragraph (8) may—

- (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Department publishes a statement of the intention to make the regulations; and
- (b) without prejudice to Article 287(3), make consequential provision applying with modifications any provision of this Order which relates to financial support directions under Article 39.”.

11 In Article 279(2) (overriding requirements)—

(a) after sub-paragraph (d) insert—

“(da) any direction issued by the Regulator under Article 35A(6);”;
and

(b) after sub-paragraph (e) insert—

“(ea) any direction issued by the Regulator under Article 39A(3);”.

12 In Article 288(3) (orders and regulations under Order that are subject to confirmatory procedure), after sub-paragraph (aa) (as inserted by paragraph 5 of this Schedule) insert—

“(ab) regulations under Article 35A(5), 35B(8) or 39B(8) (contribution notices and financial support directions: bulk transfers);”.

13 In Part 4 of Schedule 2 (the reserved regulatory functions of Pensions Regulator: functions under Order)—

(a) after paragraph 30 insert—

“**30A** The power to issue a direction under Article 35A(6) to any person.”; and

(b) after paragraph 33 insert—

“**33A** The power to issue a direction under Article 39A(3) to any person.”.

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