

SCHEDULE 2

Paragraph 4

PROTECTION OF PENSION RIGHTS

PART I

GENERAL PROVISIONS

Interpretation

1. In this Schedule—

“accrued pension rights” means, in relation to a protected person, the pension rights, other than future pension rights, to which he is at the time in question entitled under the rules of the Fund or a relevant pension scheme, calculated—

- (i) if he is a protected employee or a protected beneficiary by virtue of paragraph 3(1)(a) below, by reference to the period of his pensionable service (whether actual or credited) as a member of the Fund or of one or more relevant pension schemes and to his earnings (however defined) at the time in question; or
- (ii) if he is a protected beneficiary by virtue of paragraph 3(1)(b) below, by reference to the accrued pension rights of the protected employee in respect of whom his pension rights arise and to any entitlement to pension increases accrued up to that time;

“employer”, so far as relating to a protected beneficiary, means—

- (a) if the protected beneficiary is such by virtue of paragraph 3(1)(a) below, the person who was his employer immediately before he ceased to be a protected employee;
- (b) if the protected beneficiary is such by virtue of paragraph 3(1)(b) below, the person who immediately before the death of the person there mentioned was the employer of that person;

or (in either case) means, if there is another employer within a group of companies to whom the protected beneficiary is treated as allocated for the purpose of valuing his accrued pension rights, that employer, and “employment” shall be construed accordingly;

“Fund” means the Port of London Authority Pension Fund;

“future pension rights”, in relation to a protected employee, means the right for him to accrue pension rights on a basis no worse than that on which he was immediately before the transfer date entitled to accrue pension rights under the rules of the Fund;

“protected beneficiary” means a person to whom paragraph 3 below applies;

“protected employee” means a person to whom paragraph 2 below applies;

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

“relevant pension scheme” means a scheme to which paragraph 5 below applies.

Protected employee

2.—(1) Subject to sub-paragraph (2) below, this paragraph applies to any person transferred by virtue of the transfer under section 22(8) of the 1991 Act from the employment of the Port Authority to that of the Company who—

- (a) immediately before the transfer date is a member of the Fund; and
- (b) ceases to be such a member by virtue of the transfer.

(2) Sub-paragraph (1) above shall cease to apply to any person who—

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- (a) gives notice in the form set out in Part II of this Schedule that he elects to cease to be a protected employee;
- (b) ceases to be in continuous employment; or
- (c) voluntarily withdraws from membership of a relevant pension scheme;

and the time at which the said sub-paragraph ceases to apply to a person mentioned in paragraph (a) above shall be the date on which the notice mentioned in that paragraph takes effect.

(3) Sub-paragraph (1) above shall not cease to apply to a person by virtue of paragraph (c) of sub-paragraph (2) above if he withdraws from a relevant pension scheme in order to transfer to another such scheme and does so transfer without ceasing to be in continuous employment.

Protected beneficiary

- 3.—(1) Subject to sub-paragraph (2) below, this paragraph applies to any person—
- (a) to whom paragraph 2 above has ceased to apply pursuant to sub-paragraph (2) of that paragraph but who has accrued pension rights under a relevant pension scheme; or
 - (b) who, on or after the transfer date, acquires pension rights under a relevant pension scheme by reason of the death of a person who was at the date of his death—
 - (i) a protected employee; or
 - (ii) a person to whom paragraph (a) above applies.
- (2) Subject to paragraph (3) below, paragraph (1) above shall cease to apply to any person—
- (a) who gives notice in the form set out in Part II of this Schedule that he elects to cease to be a protected beneficiary; or
 - (b) in respect of all or part of whose accrued pension rights a payment is, at his request, made to a pension scheme not being a relevant pension scheme.
- (3) (a) The time at which sub-paragraph (1) above ceases to apply to a person mentioned in paragraph (a) of sub-paragraph (2) above shall be the date on which the notice mentioned in that paragraph takes effect.
- (b) Where a payment mentioned in paragraph (b) of the said sub-paragraph (2) is in respect of part only of the accrued pension rights of the protected person, the said sub-paragraph (1) shall cease to apply only as respects the accrued pension rights in respect of which the payment mentioned in the said paragraph (b) is made.

Continuity of employment

4. So much of Schedule 13 to the Employment Protection (Consolidation) Act 1978(1) as has effect for the purpose of ascertaining whether any employment is continuous shall apply for the purposes of the provisions of this Schedule as if those provisions were contained in that Act.

Relevant pension scheme

- 5.—(1) This paragraph applies to a pension scheme which—
- (a) provides for the payment of contributions by protected employees and for valuations of the scheme on a basis (both as to the rate of such contributions and as to the frequency of valuations and the funding of deficits) which would not cause a protected person to be

(1) 1978 c. 44; Schedule 13 was amended by the Employment Act 1980 (c. 42), Schedule 1, paragraphs 31 and 32, by the Employment Act 1982 (c. 46), Sections 20 and 21 and Schedule 2, paragraphs 7(2) and (3), Schedule 3, paragraph 2(2) and Schedule 4 and by the Reserve Forces (Safeguard of Employment) Act 1985 (c. 17), Section 21(2)(a) and Schedule 4, paragraph 6 and Schedule 5.

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- placed in any worse position than under the corresponding provisions of the rules of the Fund in force immediately before the transfer date;
- (b) is capable of receiving, at the request or with the consent of a protected person,—
 - (i) from the Fund, a transfer payment in respect of his accrued pension rights under the rules of the Fund; or
 - (ii) from a pension scheme which has itself received from the Fund or from another pension scheme a transfer payment in respect of his accrued pension rights under the rules of the Fund, a transfer payment in respect of his rights under that pension scheme (including—
 - (A) pension rights provided by that scheme in respect of his accrued pension rights under the rules of the Fund; and
 - (B) pension rights provided by that scheme in respect of accrued pension rights under another such scheme pursuant to the provisions of this Schedule); and
 - (c) provides future pension rights for each protected employee who participates in the scheme.
- (2) A scheme to which this paragraph applies may—
- (a) in addition to providing benefits for protected persons, provide benefits for other persons upon such terms as the employer or other person having the right to make or change the provisions of the scheme may determine; and
 - (b) include provision for any one or more of the protected persons who participate in the scheme of benefits additional to those provided in pursuance of the provisions of sub-paragraph (1) above, with or without an obligation to pay additional contributions, so however that it may not be a condition of membership of the scheme that a protected person shall be required to pay contributions at a higher percentage rate in relation to his remuneration than he was required to pay under the rules of the fund in force immediately before the transfer date.
- (3) A relevant pension scheme which ceases to conform to the provisions of any paragraph of sub-paragraph (1) above shall cease to be a relevant pension scheme.

Duty to provide relevant pension scheme

6.—(1) The employer of one or more protected employees shall at all times provide for the protected employees in his employment a relevant pension scheme and shall enable each such protected employee to participate in that scheme in order to accrue future pension rights.

(2) If a transfer payment is made to a relevant pension scheme in respect of the accrued pension rights of a protected person, the employer providing that scheme shall procure that the rules of that scheme secure for that person in respect of that payment—

- (a) in so far as the accrued pension rights are or are in respect of rights to which immediately before the transfer date the protected person was entitled under the rules of the Fund, pension rights which are no worse than those accrued pension rights;
- (b) in so far as the accrued pension rights are or are in respect of rights which he has since the transfer date accrued pursuant to the provisions of this Schedule, pension rights which are no worse than the pension rights so far accrued.

Protection of accrued pension rights

7.—(1) Subject to sub-paragraphs (2) and (3) below, the employer of a protected person shall at all times ensure that the assets of any relevant pension scheme provided by the employer in respect of that person are such that, in the event of the winding up of that scheme, there would be available

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in respect of the accrued pension rights of that person a sum equal to or exceeding the liability of that scheme in respect of those rights.

- (2) Where the assets of the scheme do not at any time equal or exceed that liability, but—
- (a) a valuation of that scheme has been produced by a Fellow of the Institute of Actuaries or of the Faculty of Actuaries having its effective date no later than three years and six months after—
 - (i) the effective date of the previous valuation of that scheme; or
 - (ii) if the scheme has not been established for three years and six months, the date the scheme was established; and
 - (b) 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 the protected person (calculated on the same basis as that applicable under sub-paragraph (1) above) stated, whether expressly or by implication, in that valuation;

the employer shall not be in breach of his duty under sub-paragraph (1) above.

- (a) (3) (a) In the event of the winding up, in whole or in part, of a relevant pension scheme, each employer who will as a result cease to participate in that scheme shall cause a valuation to be made by a Fellow of the Institute of Actuaries or the Faculty of Actuaries of the assets and liabilities of that scheme in respect of the protected persons whose employer he is.
- (b) If the valuation required under paragraph (a) above indicates that the assets held in respect of the accrued pension rights are insufficient to meet the liabilities of the scheme in respect of those rights, then, subject to paragraph (c) below, the employer shall forthwith pay—
 - (i) into the scheme; or
 - (ii) to an insurance company (being an insurance company to which Part II of the Insurance Companies Act 1982⁽²⁾ applies and which is authorised by or under section 3 or 4 of that Act to carry on ordinary long-term insurance business as defined in that Act) for the purchase of an annuity;
 an amount such as will secure that those liabilities are met.
- (c) The employer shall not be required to make under paragraph (b) above a payment in respect of the liabilities of the scheme for the accrued pension rights of a protected person if—
 - (i) those accrued pension rights are transferred to another relevant pension scheme; and
 - (ii) the rules of the relevant pension scheme to which the accrued pension rights are transferred require a valuation of its assets to be produced as at a date within three years and six months of the effective date of the last valuation of the relevant pension scheme from which those rights are transferred.

Winding up of relevant pension scheme

8. If any action is taken under the rules of a relevant pension scheme for the winding up, in whole or in part, of the scheme, each employer of protected employees who participates in the scheme shall forthwith notify each of his protected employees of the alternative arrangements he proposes to make and of the relevant pension scheme which he will provide for them to participate in instead of the first-mentioned relevant pension scheme.

(2) 1982 c. 50.

Amendment of relevant pension scheme

9. No amendment shall be made to the provisions of a relevant pension scheme which would result in the benefits under that scheme for or in respect of a protected person being reduced, or his contributions as a percentage of his remuneration being increased, without that person's written consent.

Persons owing a duty

10.—(1) A duty imposed by a provision of this Schedule on the employer of a protected person shall also be a duty owed by—

- (a) if the employer is not the Company, the Company; and
- (b) any other person who has been an employer of the protected person while he was a protected person.

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

Indemnities for breaches of duty

11.—(1) The provisions of this paragraph shall have effect in the event that an employer of a protected person is in breach of a duty imposed by a provision of this Schedule.

(2) In this paragraph—

“relevant duty” means a duty imposed by a provision of this Schedule;

“relevant employer” means an employer who is in breach of a relevant duty.

(3) If—

- (a) the Company (not being itself the relevant employer); or
- (b) any other person who has been an employer of the protected person while he was a protected person;

is required to fulfil a relevant duty, the relevant employer shall be liable to indemnify the Company or that other person.

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PART II
NOTICE OF ELECTION

To
(Name of Employer – Note 1)

.....
(Address of Employer – Note 2)

1. I of
(Full Name) (Address)

.....
am a person to whom section 24 of the Ports Act 1991 (which provides for the protection of pension rights) applies.

2. I give you notice that I elect that the said section 24 shall cease to apply to me and, in particular, that I elect to cease to be a protected employee/protected beneficiary.
(Note 3)

3. 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 paragraph 1 of Schedule 2 to the Port of Tilbury Transfer Scheme 1991.
2. Insert the address of the principal office or the registered office in the United Kingdom of the employer.
3. Delete the category which does not apply. The terms “protected employee” and “protected beneficiary” are defined in paragraphs 1, 2 and 3 of the 1991 Scheme.
4. The effective date, from which the protection will cease, should be inserted. This must not be less than 30 days after the date on which the notice is sent to the employer.
5. A NOTICE, ONCE GIVEN, CANNOT BE WITHDRAWN.