

**Changes to legislation:** There are currently no known outstanding effects for the Railways Act 1993, Cross Heading: Payments in discharge of liabilities under s.52(1) of the Transport Act 1980. (See end of Document for details)

## SCHEDULES

### SCHEDULE 11

#### PENSIONS

##### Modifications etc. (not altering text)

- C1** Sch. 11 modified (8.6.2005 for certain purposes and 24.7.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 12, 60, Sch. 2 para. 9(1)(c); S.I. 2005/1444, art. 2(1), Sch. 1; S.I. 2005/1909, art. 2, Sch.
- C1** Sch. 11: power to modify conferred (8.6.2005) by virtue of Railways Act 2005 (c. 14), ss. 1(8)(b), 60; S.I. 2005/1444, art. 2(1), Sch. 1

##### *Payments in discharge of liabilities under s.52(1) of the Transport Act 1980*

- 9 (1) In section 52 of the <sup>M1</sup>Transport Act 1980, in subsection (1) (which requires the Secretary of State to make payments each year to B.R. pension schemes in respect of unfunded pension obligations owed by the Board), for the words “Subject to the provisions of this section and section 58,” there shall be substituted the words “Subject to the provisions of this section and sections 52A to 52D and 58,”.

- (2) After that section there shall be inserted—

##### **“52A Power to make payments by way of final discharge of liabilities under s.52(1).**

- (1) If the Minister is desirous of making to the persons administering a B.R. pension scheme one or more payments by way of final discharge of his liability to make payments to them under section 52(1) in relation to that scheme, to the extent that that liability relates to so much of the relevant pension obligations as are owed in respect of—

- (a) all pension rights under the scheme,
- (b) pension rights of some particular class or description under the scheme, or
- (c) pension rights of persons of some particular class or description under the scheme,

he may give to the persons administering the scheme a notice identifying the pension rights in question and specifying in relation to those pension rights the matters set out in subsection (2), as determined in accordance with the following provisions of this section.

- (2) The matters mentioned in subsection (1) are—

- (a) the capital value of the attributable unfunded obligations in question, as at the beginning of the next financial year;

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- (b) the amount or amounts, or the method of determining the amount or amounts, of the payment or payments to be made under this section by way of final discharge of the Minister's liability to make payments under section 52(1), so far as relating to the pension rights identified in the notice under subsection (1); and
  - (c) the date or dates on which that payment or those payments are to be made.
- (3) In making any determination for the purposes of paragraph (b) of subsection (2), the amount or, as the case may be, the aggregate of the amounts mentioned in that paragraph shall be such as to include—
  - (a) a sum equal to the capital value determined under paragraph (a) of that subsection; and
  - (b) interest, payable at such rate as may be determined by the Minister, on so much (if any) of that sum as may from time to time be outstanding after the beginning of the financial year mentioned in the said paragraph (a).
- (4) For the purposes of this section, the capital value mentioned in paragraph (a) of subsection (2) shall either—
  - (a) be determined by the Minister, or
  - (b) if the Minister so requires in the particular case, be determined by the actuary to the scheme in question and approved by the Minister, and it shall be for the Minister to determine the matters mentioned in paragraphs (b) and (c) of that subsection.
- (5) Notice under subsection (1) above shall only be given after consultation—
  - (a) with the persons administering the scheme in question; and
  - (b) with the actuary to that scheme, except in a case where the capital value mentioned in subsection (2)(a) is determined by that actuary pursuant to subsection (4)(b);and any such notice must be given not less than one month before the beginning of the financial year mentioned in subsection (2)(a).
- (6) The giving of a notice under subsection (1) shall—
  - (a) terminate the liability of the Minister to make payments under section 52(1), so far as relating to the pension rights identified in the notice, for financial years beginning after the giving of the notice; and
  - (b) impose upon the Minister a duty—
    - (i) to make to the persons administering the scheme in question the payment or payments mentioned in subsection (2)(b); and
    - (ii) to do so at the time or times specified in pursuance of subsection (2)(c).
- (7) Where notice has been given under subsection (1), the Minister may—
  - (a) at any time before the expiration of the period of eleven months beginning with the financial year mentioned in subsection (2)(a) as it applies in relation to that notice, and
  - (b) after consultation with the persons administering the scheme in question and the actuary to the scheme,

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amend that notice by giving notice of the amendment to the persons administering the scheme.

(8) If notice is given under subsection (7) of an amendment affecting the amount of a payment which has been made pursuant to this section, the Minister may also give notice to the persons administering the scheme in question requiring them—

- (a) to repay to him so much of the payment made as exceeds the amended amount; and
- (b) to pay interest to him, at such rate as he may determine, on the amount to be repaid, as from the date on which the payment in question was made by him;

and where notice is given under paragraph (a) or (b), the amount required to be repaid or, as the case may be, the amount of interest required to be paid from time to time, shall be treated as a debt due from those persons to the Minister.

(9) In any case where—

- (a) notice has been given under subsection (1), the effect of which (whether taken alone or with other notices under that subsection) is that notice has been given under that subsection in respect of all pension rights under the scheme in question, and
- (b) for that financial year in which the notice mentioned in paragraph (a) is given, the aggregate amount of the payments made under section 52(1) in relation to the scheme requires adjustment for the reason set out in section 52(3)(a) or (b), but
- (c) the required adjustment cannot be made as mentioned in section 52(3), because (in consequence of the notice mentioned in paragraph (a)) no payments under section 52(1) fall to be made in relation to that scheme for subsequent financial years,

payments by way of adjustment, of an amount equal in the aggregate to the amount of the required adjustment, shall instead be made by the Minister to the persons administering the scheme or, as the case may require, by those persons to the Minister, before the expiration of the period of six months beginning with the date on which the amount of the required adjustment is determined.

(10) The Minister may give a direction to the persons administering a B.R. pension scheme requiring them to furnish to him—

- (a) information from which the proportion mentioned in section 55(1) (a) can be finally determined for the financial year mentioned in subsection (9)(b) in the case of the scheme; or
- (b) information about any such unforeseen increase or reduction in the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the scheme for that financial year as is mentioned in section 52(3)(b).

(11) Where payments by way of adjustment fall to be made under subsection (9), interest shall be payable from the end of the financial year in which the notice mentioned in subsection (9)(a) is given, by the person liable to make those payments, at such intervals and rates as may be determined by the Minister,

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on so much of the aggregate amount of the payments in question as for the time being remains unpaid.

- (12) So much of—
- (a) any payment by way of adjustment under subsection (9) which falls to be made, or
  - (b) any interest accrued under subsection (11),
- as has not been paid shall be treated as a debt due.
- (13) Nothing in this section affects the liability of the Board in respect of any relevant pension obligations.
- (14) For the purposes of this section, the “capital value of the attributable unfunded obligations”, in the case of any B.R. pension scheme, means such amount as is, in the opinion of the person determining that capital value pursuant to subsection (4), the capital equivalent of the payments that would, apart from this section, have been expected to be made by the Minister under section 52(1), so far as relating to the pension rights identified in the notice under subsection (1), for the successive financial years beginning with the one mentioned in subsection (2)(a).
- (15) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.”.

(3) After the section 52A inserted by sub-paragraph (2) above, there shall be inserted—

**“52B Power to substitute obligations under this section for liabilities under s.52(1).**

- (1) The Minister may make a substitution order in relation to any occupational pension scheme—
- (a) which is a new scheme, within the meaning of Schedule 11 to the Railways Act 1993;
  - (b) which is designated under paragraph 10(1) of that Schedule (designation of schemes which are to be treated as B.R. pension schemes for certain purposes of this Part); and
  - (c) in relation to which a guarantee has been given by the Secretary of State under paragraph 11 of that Schedule;
- and any reference in this section to a “guaranteed pension scheme” is a reference to such an occupational pension scheme.
- (2) The Minister may also make a substitution order in relation to any section of a new scheme, within the meaning of Schedule 11 to the Railways Act 1993, if the section is one—
- (a) which is designated under paragraph 10(1) of that Schedule; and
  - (b) in relation to which a guarantee has been given by the Secretary of State under paragraph 11 of that Schedule;
- and the following provisions of this section (and sections 52C and 52D) shall apply in relation to any such section of a new scheme as if any reference to a guaranteed pension scheme included a reference to such a section.

(3) For the purposes of this section, a “substitution order” is an order under this section the effect of which is—

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- (a) to terminate, from the termination date, the Minister’s liability to make to the persons administering the guaranteed pension scheme in question payments under section 52(1) in relation to the scheme; and
  - (b) to impose on the Minister, in substitution for that liability, an obligation to make to those persons, subject to and in accordance with the following provisions of this section, one or more other payments (the “substitution payments”) in relation to that scheme.
- (4) Subject to the following provisions of this section, the amount of the substitution payments to be made in the case of a guaranteed pension scheme shall be equal in the aggregate to the sum of—
  - (a) the amount specified pursuant to subsection (5)(a) as the capital value of the unfunded obligations in the case of the scheme; and
  - (b) the aggregate amount of any interest which is dealt with as mentioned in subsection (8)(b)(ii) in the case of the scheme.
- (5) A substitution order must specify—
  - (a) the capital value of the unfunded obligations in the case of the guaranteed pension scheme in question, as at the termination date; and
  - (b) the date which, for the purposes of this section, is to be the termination date in relation to that scheme, being a date not earlier than one month after the coming into force of the substitution order.
- (6) Any determination for the purposes of this section of the capital value of the unfunded obligations in the case of a guaranteed pension scheme shall either—
  - (a) be made by the Minister; or
  - (b) if the Minister so requires in the particular case, be made by the actuary to the guaranteed pension scheme in question and approved by the Minister.
- (7) A substitution order may specify—
  - (a) the amount or amounts, or the method of determining the amount or amounts, of the substitution payments,
  - (b) the date or dates on which the substitution payments are to be made,
  - (c) circumstances (which may, if the Minister so desires, be defined by reference to the opinion of any person) in which substitution payments are to be made,and may provide for the obligation to make substitution payments to be discharged if the guaranteed pension scheme in question has, in the opinion of a person specified or described in, or nominated under, the order, been wound up.
- (8) A substitution order must provide—
  - (a) for interest to accrue from the termination date on the outstanding balance of the capital value for the time being at such rate, and at such intervals, as may be specified in, or determined under or in accordance with, the order; and
  - (b) for any such interest which accrues—
    - (i) to be paid to the persons administering the guaranteed pension scheme in question, or

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- (ii) to be added to the outstanding balance of the capital value, (or to be dealt with partly in one of those ways and partly in the other);
- and the provision that may be made by virtue of paragraph (a) includes provision for the rate of interest to be calculated by reference to any variable or to be such rate as the Minister may from time to time determine and specify in a notice to the persons administering the scheme in question.
- (9) For the purposes of subsection (8), the “outstanding balance of the capital value”, in the case of a guaranteed pension scheme, means the capital value of the unfunded obligations in the case of the scheme, as specified pursuant to subsection (5)(a),—
- (a) reduced by the amount of any substitution payments made in relation to that scheme; and
- (b) increased by any additions of accrued interest under or by virtue of subsection (8)(b)(ii) in relation to that scheme.
- (10) Nothing in this section affects the liability of the Board in respect of any relevant pension obligations.
- (11) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.
- (12) In this section—
- “the capital value of the unfunded obligations”, in the case of any guaranteed pension scheme, means such amount as is, in the opinion of the person determining that capital value pursuant to subsection (6), the capital equivalent of the payments that would, apart from this section, have been expected to be made by the Minister under section 52(1) in relation to that scheme after the termination date in the case of that scheme;
- “occupational pension scheme” means an occupational pension scheme as defined in section 1 of the <sup>M2</sup>Pension Schemes Act 1993;
- “the terminal period”, in the case of any guaranteed pension scheme, means—
- (a) if a financial year of the scheme ends with the termination date, that financial year; or
- (b) in any other case, so much of the financial year of the scheme in which the termination date falls as ends with that date;
- “the termination date”, in the case of any guaranteed pension scheme, shall be construed in accordance with subsection (5)(b);
- “the termination year”, in the case of any guaranteed pension scheme, means the financial year of the scheme which consists of or includes the terminal period;
- “trustees”, in relation to a guaranteed pension scheme, includes a reference to any persons who, under the rules of the scheme, are under a liability to provide pensions or other benefits but who are not trustees of the scheme.

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### **52C Adjustments arising in connection with orders under s.52B.**

- (1) As soon as practicable after the termination date in the case of any guaranteed pension scheme, there shall be determined, for the terminal period, what proportion of the pensions, increases and expenses payable under, or incurred in connection with, the scheme corresponds to the relevant pension obligations.
- (2) Any determination under subsection (1) shall either—
  - (a) be made by the Minister; or
  - (b) if the Minister so requires in the particular case, be made by the actuary or auditor to the guaranteed pension scheme in question and approved by the Minister.
- (3) The Minister may give a direction to the persons administering a guaranteed pension scheme requiring them to determine the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the scheme for the terminal period or the termination year and to notify him in writing of their determination.
- (4) As respects the termination year of a guaranteed pension scheme, the extent of the liability of the Minister to make payments under section 52(1) in relation to that scheme shall be restricted to a liability to make payments of an amount (the “termination year amount”) equal in the aggregate to the product of—
  - (a) the proportion determined under section 54(1) for that scheme;
  - (b) the proportion determined pursuant to subsection (1) in the case of that scheme; and
  - (c) the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with that scheme in the terminal period;and payments by way of adjustment shall be made by the Minister to the persons administering the scheme, or (as the case may be) by those persons to the Minister, before the expiration of the period of six months beginning with the date of the last of the determinations made under subsection (1) or (3) with respect to the scheme.
- (5) Where, in the case of a guaranteed pension scheme, the funding of the relevant pension obligations has, by virtue of subsection (3) of section 54, been left out of account in making a determination under subsection (1) of that section, the termination year amount in the case of that scheme shall be the difference between—
  - (a) what that amount would have been, apart from this subsection; and
  - (b) the amount of any income accruing for the terminal period which may be applied towards the payment of such of the pensions, increases and expenses payable under or incurred in connection with the scheme as correspond to those obligations.
- (6) The Minister may give a direction to the persons administering a guaranteed pension scheme requiring them to determine the amount mentioned in subsection (5)(b) and to notify him in writing of their determination.

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- (7) Where payments by way of adjustment fall to be made, interest shall be payable, as from the termination date, by the person liable to make those payments, at the rates and intervals from time to time applicable for the purposes of section 52B(8)(a) in the case of the scheme in question, on so much of the aggregate amount of the payments in question as for the time being remains unpaid.
- (8) So much of—
- (a) any payment by way of adjustment which falls to be made, or
  - (b) any interest accrued under subsection (7),
- as has not been paid shall be treated as a debt due.
- (9) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.
- (10) In this section, “payments by way of adjustment”, in the case of a guaranteed pension scheme, means—
- (a) if the Minister has made payments under section 52(1) in relation to that scheme for the termination year which, in the aggregate, exceed the termination year amount, payment to the Minister by the persons administering the scheme of an amount equal to the excess;
  - (b) if the Minister has made no payments under section 52(1) in relation to that scheme for the termination year, payment by the Minister to those persons of the termination year amount; or
  - (c) if the Minister has made payments under section 52(1) in relation to that scheme for the termination year which, in the aggregate, fall short of the termination year amount, payment by the Minister to those persons of an amount equal to the shortfall.
- (11) Expressions used in this section and in section 52B have the same meaning in this section as they have in that section.

**52D Orders and directions under sections 52A to 52C: supplemental.**

- (1) Any power to make an order under section 52B shall be exercisable by statutory instrument made by the Minister after consultation with the trustees of the guaranteed pension scheme to which the order relates.
- (2) A statutory instrument containing an order under section 52B shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) At the time when a statutory instrument containing an order under section 52B is laid before each House of Parliament pursuant to subsection (2), the Minister shall, if he has not already done so, also lay before each House of Parliament a copy of the guarantee mentioned in subsection (1)(c) of that section; but this subsection is without prejudice to the validity of the order in question.
- (4) Any power to make an order under section 52B includes power, exercisable in the same manner, to make such incidental, supplemental, consequential or transitional provision as may appear necessary or expedient to the Minister.
- (5) Any order under section 52B may make different provision for different cases or for different classes or descriptions of case.



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- (6) It shall be the duty of any person to whom a direction is given under section 52A or 52C to comply with and give effect to that direction; and compliance with any such direction shall be enforceable by civil proceedings by the Minister for an injunction or interdict or for any other appropriate relief.
- (7) Any power to give a direction under section 52A or 52C includes power to vary or revoke the direction.
- (8) Any direction under section 52A or 52C shall be given in writing.
- (9) In this section—  
“guaranteed pension scheme” has the same meaning as in section 52B;  
“trustees”, in relation to a guaranteed pension scheme, has the same meaning as in section 52B.”
- (4) In section 70 of that Act, in subsection (2) (interpretation), for the definition of “the Minister” there shall be substituted—  
““the Minister means the Secretary of State;””.

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**Commencement Information**

- II** Sch. 11 para. 9 wholly in force at 16.8.1994; para. 9 not in force at Royal Assent see s. 154(2); para. 9(3) in force for specified purpose and para. 9(1)(2)(4) wholly in force at 6.1.1994 by S.I. 1993/3237, art. 2(2); Sch. 11 para. 9 in force at 16.8.1994 insofar as not already in force by S.I. 1994/2142, art. 2

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**Marginal Citations**

- M1** 1980 c. 34.  
**M2** 1993 c. 48.

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