

Status: Point in time view as at 22/08/1996.

Changes to legislation: There are currently no known outstanding effects for the Coal Industry Act 1994, SCHEDULE 5. (See end of Document for details)

SCHEDULES

SCHEDULE 5

Section 22.

PENSIONS PROVISION IN CONNECTION WITH RESTRUCTURING

Interpretation of Schedule

1 (1) In this Schedule—

“assets”, in relation to any existing scheme, means all the assets for the time being held for the purposes of the scheme by the trustees of the scheme, including every interest in property and right to which the trustees of the scheme are for the time being entitled, together with any liabilities, not being liabilities in respect of pension obligations, to which any entitlement of the trustees to any of the scheme’s assets is subject;

“existing scheme” means any scheme having effect by virtue of regulations made under section 37 of the 1946 Act for purposes relating to pensions, gratuities or other like benefits;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of that person, including—

(a) a lump sum, allowance or gratuity so payable; and

(b) a return of contributions, with or without interest or any other addition;

“pension obligation” means any present, future or contingent obligation to make a payment which is an obligation to which pension rights of the person to whom it is owed give rise;

“pension rights”, in relation to any person, includes all forms of right to or eligibility for the present or future payment of a pension to or in respect of that person and any right of allocation in respect of the present or future payment of a pension;

“prescribed” means prescribed by regulations made by the Secretary of State;

“the relevant enactments” means Chapter I of Part XIV of the ^{M1}Income and Corporation Taxes Act 1988 (retirement benefit schemes) and Part III of the ^{M2}Pension Schemes Act 1993 (so far as relating to occupational pension schemes within the meaning of that Act).

(2) References in this Schedule to a scheme being approved for the purposes of Part III of the ^{M3}Pension Schemes Act 1993 are references to its being included in a contracting-out certificate having effect for the purposes of that Part of that Act.

Marginal Citations

M1 1988 c. 1.

M2 1993 c. 48.

M3 1993 c. 48.

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Modification of existing schemes

- 2 (1) The Secretary of State may by regulations make provision in relation to an existing scheme for it to continue in force notwithstanding the repeal by this Act of section 37 of the 1946 Act and of the enactments modifying that section.
- (2) Without prejudice to any powers conferred (so long as it remains in force) by section 37 of the 1946 Act, the Secretary of State may by regulations make such provision as he considers appropriate in connection with the provisions of this Act for modifying any existing scheme.
- (3) Without prejudice to the generality of the power conferred by sub-paragraph (2) above, the modifications of an existing scheme that may be made by regulations under this paragraph shall include modifications for any of the following purposes, that is to say—
- (a) for conferring power on the Secretary of State or any other prescribed person to appoint trustees of the existing scheme or for requiring trustees to be appointed only in such manner and in such circumstances, or with the approval of the Secretary of State or such other person, as may be prescribed;
 - (b) for enabling a person who is entitled to appoint trustees of the existing scheme to remove trustees of the scheme from office;
 - (c) for requiring or enabling powers or duties of any person under the existing scheme to be exercisable or performed by or in accordance with the directions of such persons or in such circumstances, or to be exercisable or performed only in such manner or with the consent of such persons, as may be prescribed;
 - (d) for providing that persons who have become entitled in respect of any period of employment to be participants in another prescribed scheme are not, as from such time as may be determined in accordance with the regulations, to be entitled in respect of that period of employment to be participants in the existing scheme;
 - (e) for facilitating the transfer in prescribed circumstances to another scheme of—
 - (i) rights and liabilities under the existing scheme of any participant in the existing scheme who becomes a participant in the other scheme; or
 - (ii) the benefit of any arrangements under which participants in the existing scheme are relieved from any obligation to make contributions;
 - (f) for the apportionment and allocation to particular rights and liabilities of assets of the existing scheme and for the transfer of assets to other schemes in connection with any provision made by virtue of this Schedule;
 - (g) for restricting the persons who are to be able on and after the restructuring date to become participants in the existing scheme;
 - (h) for enabling expenses incurred in or in connection with the management or other administration of the existing scheme to be met out of the assets of the scheme;
 - (i) for securing that the existing scheme continues to be approved for the purposes of the relevant enactments;
 - (j) for enabling the existing scheme to be wound up (in whole or in part) in such circumstances as may be prescribed.

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- (4) The modifications of an existing scheme that may be made by regulations under this paragraph shall include modifications making such provision as the Secretary of State considers appropriate for cases where either—
- (a) there are assets of the scheme representing a relevant surplus, or
 - (b) the assets of the scheme are insufficient for meeting pension obligations under the scheme.
- (5) The modifications mentioned in sub-paragraph (4) above may contain—
- (a) provision for a relevant surplus, and the assets representing it, to be apportioned between—
 - (i) the part (if any) of the surplus which is to be retained in a reserve (“an investment reserve”) as an asset of the scheme, and
 - (ii) the remainder (“the distributable part”) of the surplus;
 - (b) provision for the management of assets representing an investment reserve and for the manner in which any such assets are to be applied;
 - (c) provision for income accruing in respect of assets representing an investment reserve to be added to the reserve;
 - (d) provision for the manner in which assets representing the distributable part of a relevant surplus are to be applied; and
 - (e) provision, for the purposes of any provision under paragraphs (a) to (d) above, for modifying any decisions as to the way in which relevant surpluses determined as at times before the restructuring date, and the assets representing any such surpluses, are to be treated.
- (6) The provision as to the apportionment of any surplus or assets to an investment reserve that may be contained in modifications made by virtue of sub-paragraph (4) above shall not include any provision authorising the allocation to such a reserve of any part of a surplus determined as at a time after 31st March 1994, or of any assets representing any part of such a surplus, except where the allocation is made for making good amounts which (apart from any entitlement for which provision is made by virtue of sub-paragraph (7) below) would have been comprised in the value of the reserve if assets representing any part of it had not been applied from the reserve in meeting a deficiency that arose as at any time by reason of the other assets of the scheme having been insufficient as at that time for meeting pension obligations under the scheme.
- (7) The provision as to the application of assets representing an investment reserve that may be contained in modifications made by virtue of sub-paragraph (4) above shall include provision for the Secretary of State to become entitled where—
- (a) any such arrangements as are mentioned in sub-paragraph (9) below have been entered into in relation to pension obligations under the scheme in question, and
 - (b) the value of the assets representing the reserve exceeds the aggregate amount required for the purposes for which the reserve has been retained,
- to assets of the scheme representing the amount of the excess or, where those purposes have ceased, the value of the reserve.
- (8) The provision as to the application of assets representing the distributable part of a relevant surplus that may be contained in modifications made by virtue of sub-paragraph (4) above shall include provision for the Secretary of State to become entitled where—

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- (a) the surplus is one determined as at a time on or after 31st March 1994, and
- (b) any such arrangements as are mentioned in sub-paragraph (9) below have been entered into in relation to pension obligations under the scheme in question,
- to assets of the scheme representing no more than one half of the distributable part of that surplus.
- (9) The Secretary of State may, with the consent of the Treasury, enter into such arrangements as he may consider appropriate for guaranteeing or otherwise securing, in relation to any existing scheme, that the assets of the scheme are at all times sufficient for meeting the principal pension obligations and such other pension obligations under the scheme as are obligations to which he considers such arrangements should apply.
- (10) Sums required by the Secretary of State for making any payment in pursuance of any arrangements entered into by him under sub-paragraph (9) above shall be paid out of money provided by Parliament; and any sums received by him by virtue of sub-paragraph (7) or (8) above shall be paid into the Consolidated Fund.
- (11) Regulations under this paragraph may provide for—
- (a) any such apportionments or allocations as are mentioned in the preceding sub-paragraphs,
- (b) any determination for the purposes of any existing scheme of the amount of, or of any part of, any surplus or excess or of the assets for the time being to be treated as representing the whole or any part of any such surplus or excess, and
- (c) the determination of any other matter falling to be determined for the purposes of any provision relating, in the case of any such scheme, to the management or application of the assets representing any reserve or surplus, to be made as at such times, on such basis and by reference to the opinion of such persons as may be prescribed.
- (12) The power by regulations under this paragraph to modify an existing scheme shall not authorise the making of any modification which, in relation to the person entitled to it, adversely affects so much of any pension right as gives rise to any of the principal pension obligations under that scheme.
- (13) Before making any regulations under this paragraph in relation to an existing scheme the Secretary of State shall consult with the Corporation and the trustees for the time being of that scheme.
- (14) The power to make regulations under this paragraph shall not be exercisable at any time after the end of the period of two years beginning with the restructuring date; but this sub-paragraph shall be without prejudice to any regulations made before the end of that period or to anything done (whether before or after the end of that period) under any regulations so made.
- (15) In this paragraph “relevant surplus”, in relation to an existing scheme, means any surplus determined as at any time on or after 31st March 1992 of the assets of the scheme over the amounts required, as at that time, for meeting the obligations which (apart from the surplus) either have arisen or may arise as pension obligations under the scheme.

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- (16) In this paragraph references to the principal pension obligations under an existing scheme are references to the following, that is to say—
- (a) so much of any pension obligation arising under the scheme as derives neither from modifications of the scheme made on or after the restructuring date nor from any relevant surplus;
 - (b) so much of any pension obligation arising under the scheme as represents the effect on any pension right giving rise to a pension obligation falling within paragraph (a) above of any decision before 1st September 1994 to appropriate any of a relevant surplus determined as at a time before 31st March 1994 to the payment of increases in any pensions payable in pursuance of that right; and
 - (c) so much of any pension obligation arising under the scheme as represents the effect on any pension right giving rise to a pension obligation falling within paragraph (a) or (b) above of any provisions of the scheme, as modified on or after the restructuring date, which require that right to be varied from time to time by reference to fluctuations in any level of prices in Great Britain.

Replacement schemes for employees transferred to the private sector etc.

- 3 (1) The Secretary of State may by regulations make such provision as he thinks fit for securing that arrangements are made and implemented in relation to any existing scheme for enabling participants in that scheme to become participants in another pension scheme (“a new scheme”) which—
- (a) is established, under and in accordance with the regulations, by the Corporation or such other person as may be prescribed; and
 - (b) satisfies the statutory requirements by reference to that existing scheme.
- (2) Where at any time the employment of any participant in any existing scheme in relation to which a new scheme has been established in pursuance of regulations under this Schedule is affected—
- (a) by the coming into force of any provisions of a restructuring scheme in accordance with which a person other than the Authority becomes his employer in place of the Corporation or one of its wholly-owned subsidiaries, or
 - (b) by a company’s having ceased at any time on or after the restructuring date to be a subsidiary of the Corporation,
- the duty specified in sub-paragraph (3) below shall arise and be owed to the participant and to every person who at that time is a participant in that existing scheme in respect of his continuing employment with a person other than the Corporation or a subsidiary of the Corporation.
- (3) That duty is a duty to secure that the person to whom the duty is owed is afforded, and is entitled to exercise, an option of becoming a participant in the new scheme in respect of the employment to which he is transferred or, as the case may be, in respect of his continuation, after the time when the duty arises, in the employment in respect of which he is at that time participating in the existing scheme.
- (4) The duty owed to any person under sub-paragraphs (2) and (3) above shall be owed—
- (a) in a case where it is owed to a person who is transferred in accordance with a restructuring scheme from the employment of one person to the employment of another, by the person to whose employment he is transferred; and

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- (b) in any other case, by the person who, in relation to the employment to which the duty relates, is the employer of the person to whom the duty is owed.
- (5) For the purposes of this paragraph, where a company has ceased to be a subsidiary of the Corporation, the persons whose employment shall be treated as affected by the company's having ceased to be such a subsidiary shall be (and shall be confined to) the persons employed by that company at whichever is the later of the following times, that is to say—
- (a) the time when the company ceased to be a subsidiary of the Corporation; and
 - (b) the time when the company would so cease if any shares in the company which have at any time been transferred (whether in accordance with a restructuring scheme or otherwise) to any of the following persons, that is to say—
 - (i) the Treasury,
 - (ii) the Secretary of State,
 - (iii) a company wholly owned by the Crown, or
 - (iv) any nominee of the Treasury, the Secretary of State or a company wholly owned by the Crown,
 remained vested in the Corporation for so long after their transfer as they remain vested in any of the persons mentioned in sub-paragraphs (i) to (iv) above;
- and a person whose employment is affected by a company's having ceased to be a subsidiary of the Corporation shall be treated for the purposes of this paragraph as so affected only at whichever of the times mentioned in paragraphs (a) and (b) above is applicable in his case.
- (6) For the purposes of this paragraph a new scheme satisfies the statutory requirements by reference to an existing scheme ("the previous scheme") if it contains all such provision as may be prescribed for the purposes specified in sub-paragraph (7) below, together with such other provision as may be prescribed.
- (7) The purposes mentioned in sub-paragraph (6) above are the purposes of securing—
- (a) that no person is able to participate in the new scheme as an employee unless he is a person falling within sub-paragraph (8) below;
 - (b) that the new scheme is and continues to be approved for the purposes of the relevant enactments;
 - (c) that the new scheme provides benefits to and in respect of participants in the new scheme which are no less advantageous than the benefits falling to be provided under the previous scheme as at the time immediately before the restructuring date; and
 - (d) that the pension rights under the previous scheme of any person who becomes a participant in the new scheme in respect of any employment are capable, at that person's option, of being transferred so as to become rights under the new scheme.
- (8) A person falls within this sub-paragraph if he is—
- (a) one of the persons who by virtue of sub-paragraph (2) above is to be afforded the option of becoming a participant in the new scheme;
 - (b) a person the duties of whose employment with the same employer have changed so that he has ceased to be eligible to participate in a scheme in relation to which he has been entitled to protection under paragraph 4 below

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- but has become a person who satisfies, by reference to his new duties, a condition of eligibility for participation in the new scheme; or
- (c) a person with pension rights as a result of having been a participant in an existing scheme who, at any time on or after the restructuring date, enters the employment of a person any of whose employees are already, in respect of their employment with that person, participants in the new scheme.
- (9) Regulations under this paragraph prescribing the provision that must be contained in a scheme for it to satisfy the statutory requirements may provide for that provision to be determined by reference to such directions and certificates of the Secretary of State as may be given or issued to such persons, in such cases and in such manner as may be prescribed.

Protection for rights under private sector schemes

- 4 (1) This paragraph applies to—
- (a) any scheme established in pursuance of regulations under paragraph 3(1) above; and
- (b) any prescribed scheme the establishment of which appears to the Secretary of State to be, or to have been required, for the purposes of any protection to which any person is entitled by virtue of this paragraph.
- (2) The Secretary of State may by regulations impose such restrictions and obligations as appear to him to be appropriate for the purpose of securing—
- (a) that no person entitled to protection in relation to a scheme to which this paragraph applies is placed in any worse position by reason of—
- (i) any such amendment of the scheme as is made otherwise than in prescribed circumstances and results in benefits under the scheme being reduced, or contributions by employees being increased; or
- (ii) any winding-up, in whole or in part, of the scheme;
- (b) that no person entitled to protection in relation to a scheme to which this paragraph applies is prevented from continuing to participate in or acquire pension rights under the scheme by reason of any change of employer which does not affect his continuity of employment; and
- (c) that no person entitled to protection in relation to a scheme to which this paragraph applies is prevented (in a case not falling within paragraph (b) above) from continuing to participate in or acquire pension rights under the scheme by reason of his having entered the employment of an employer who—
- (i) opts to allow that person to continue, in respect of his employment with that employer, as a participant in that scheme; and
- (ii) is able to exercise that option without the scheme ceasing to be approved for the purposes of the relevant enactments.
- (3) Regulations under this paragraph may make provision for securing that a person entitled to protection in relation to a scheme to which this paragraph applies who—
- (a) ceases, by reason of any change in the duties of his employment with the same employer, to be eligible to participate in that scheme, but
- (b) by reason of the change becomes a person who satisfies, by reference to his new duties, a condition of eligibility for participation in another such scheme,

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is afforded the equivalent protection with respect to his participation in the other scheme as was previously secured, by virtue of this paragraph, with respect to his continuing participation in the scheme for which he has ceased to be eligible.

- (4) Regulations under this paragraph may make provision for securing that individuals with pension rights under a scheme to which this paragraph applies are allowed to become participants in another such scheme or to renew their participation in the same scheme where, in prescribed cases, they enter the employment of a person any of whose employees are already, in respect of their employment with that person, participants in the other scheme or, as the case may be, in the scheme under which those rights subsist.
- (5) Regulations under this paragraph may—
- (a) impose duties (whether as to the provision or amendment of any scheme to which this paragraph applies, the purchase of annuities, the making of payments or otherwise) on—
 - (i) any person who has been or is for the time being the employer of a person entitled to protection in relation to any such scheme; and
 - (ii) any persons by whom such an employer is or has been wholly owned;

and
 - (b) provide for the duties imposed by the regulations on any person to be owed to such persons as may be prescribed, including persons other than the persons who are or have been employed by that person or, as the case may be, by a company wholly owned by him.
- (6) The following persons shall be entitled to protection in relation to any scheme to which this paragraph applies, except in so far as they cease to be so entitled under any of sub-paragraphs (7) to (9) below, that is to say—
- (a) every person who—
 - (i) has exercised an option conferred by virtue of paragraph 3(2) above to become a participant in the scheme in respect of his employment; or
 - (ii) is or has been a participant in the scheme in pursuance of any regulations made under this paragraph for the purpose of preserving the entitlement of that person to protection in relation to any other scheme to which this paragraph applies;

and
 - (b) every person who has pension rights under the scheme in consequence of the death of a person falling within paragraph (a) above;
- but a person shall not be entitled to protection by virtue of paragraph (b) above except as respects the pension rights in respect of which he falls within that paragraph.
- (7) A person entitled to protection in relation to a scheme to which this paragraph applies may elect, in such manner as may be prescribed, that he is to cease to be entitled to that protection.
- (8) Subject to sub-paragraph (9) below, if—
- (a) any person entitled by virtue of sub-paragraph (6)(a) above to protection in relation to any scheme to which this paragraph applies ceases to be in continuous employment or voluntarily withdraws from that scheme, and

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- (b) the circumstances of that cesser or withdrawal are not such as may be prescribed,
that person shall cease to be entitled to that protection except as respects pension rights which have accrued to him before the time when he so ceases or withdraws.
- (9) If any person entitled by virtue of sub-paragraph (6)(a) above to protection in relation to any scheme to which this paragraph applies continues to be a participant in that scheme after such a change of employment as brings the case within sub-paragraph (2)(c) above, that person shall cease to be entitled to that protection except as respects pension rights which have accrued to him before that change.
- (10) The reference in sub-paragraph (2) above to being placed in any worse position shall be construed, in relation to a person entitled to protection by virtue of sub-paragraph (6)(a) above who ceases, after the exercise of the option made available to him in pursuance of paragraph 3(2) above, to participate in or acquire pension rights under any scheme, as a reference to being placed in a position which is worse than his position immediately before he so ceases.
- (11) [^{F1}Chapter I of Part XIV of the Employment Rights Act 1996, except section 218(6),] shall apply for the purposes of this paragraph as if this paragraph were contained in that Act.
- (12) Regulations under this paragraph may provide that no account shall be taken for the purposes of this paragraph of any person's ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed.
- (13) For the purposes of this paragraph a company is wholly owned by any person if its members do not include any person other than—
- (a) that person himself;
 - (b) companies wholly owned by that person; and
 - (c) persons acting on behalf of that person or a company wholly owned by that person.

Textual Amendments

F1 Words in [Sch. 5 para. 4\(11\)](#) substituted (22.8.1996) by [1996 c. 18, ss. 240, 243, Sch. 1 para. 64](#).

General provisions

- 5 (1) Every power of the Secretary of State to make regulations under this Schedule shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Any power of the Secretary of State to make provision by regulations under this Schedule shall include power—
- (a) to make different provision for different cases or different purposes; and
 - (b) to make such supplemental, incidental, consequential and transitional provision as the Secretary of State considers appropriate in relation to the provision contained in any such regulations.
- (3) The power conferred by sub-paragraph (2) above shall include—
- (a) power, for the purpose of giving effect to any option afforded by virtue of this Schedule, to provide for the modification of the contracts of employment

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- of persons who become participants in a scheme established in pursuance of any such regulations; and
- (b) power to require any dispute arising under or in relation to any regulations under this Schedule to be referred to such arbitration as may be prescribed.
- (4) Regulations under this Schedule may be made so as to have effect from a date prior to their making; but, in making any provision so to have effect, regulations under this Schedule shall not place any person other than—
- (a) the Secretary of State,
 - (b) the Authority,
 - (c) the Corporation or a wholly-owned subsidiary of the Corporation, or
 - (d) a company wholly owned by the Crown,
- in a worse position than he or it would have been in if the regulations had been made so as to have effect only from the date of their making.
- (5) Where any modification by virtue of this Schedule of any existing scheme confers any powers on the Secretary of State, those powers shall be treated as conferred for purposes that include securing that trustees and other persons concerned in the administration of the scheme exercise and perform their powers and duties in such manner as appears to the Secretary of State to take account, to the extent that he thinks appropriate, of the desirability—
- (a) of preventing the Secretary of State from incurring any liability under arrangements entered into as mentioned in paragraph 2(9) above;
 - (b) of keeping to a minimum the amount of any liability that is incurred under any such arrangements; and
 - (c) of managing the scheme so as to produce the largest practicable surpluses at the times as at which determinations of any relevant surpluses (within the meaning of paragraph 2 above) fall to be made.
- (6) Nothing in any enactment or rule of law shall prevent the Corporation, the trustees of any existing scheme, or any other person concerned in the administration of any such scheme, from giving the Secretary of State or such other person as may be prescribed all such advice or assistance as he may reasonably require for the purposes of making any determination, apportionment, allocation or transfer, or giving or issuing any direction or certificate, for which provision is made by or under this Schedule.

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