SCHEDULE 4 Regulation 20(2)

TRANSITIONAL PROVISIONS AND SAVINGS

PART 1

Transitional provisions

1. Paragraphs 2 to 7 of this Schedule apply to a scheme which—

(a) is either—

(i) subject to section 56 of the 1995 Act (minimum funding requirement), or

(ii) exempted from the application of that section by regulation 28 of the Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996(**1**) ("the 1996 Regulations"),

immediately before the commencement date, and

(b) becomes subject to Part 3 of the 2004 Act (scheme funding) on that date.

2. Section 224 of the 2004 Act (actuarial valuations and reports) applies to the scheme as if—

(a) it included a requirement for the trustees or managers of the scheme—

(i) to obtain an actuarial valuation ("the first valuation under the 2004 Act"), in accordance with the requirements specified in paragraph 3 of this Schedule, and

(ii) to ensure that the first valuation under the 2004 Act is received by them within the relevant period specified in paragraph 4 of this Schedule;

(b) neither paragraph (a) of subsection (1) nor subsection (4) applied in relation to the first valuation under the 2004 Act, and

(c) paragraph (a) of subsection (3) were omitted.

3.—(1) Except where sub-paragraph (3), (5) or (7) applies, the trustees or managers of the scheme must obtain the first valuation under the 2004 Act by reference to an effective date not more than one year after the commencement date.

(2) Sub-paragraph (3) applies where—

(a) the trustees or managers received, before the commencement date, in accordance with any provisions of section 57 of the 1995 Act (valuation and certification of assets and liabilities) and the 1996 Regulations, or receive—

(i) on or after the commencement date, and

(ii) within one year of its effective date,

in accordance with any such provisions which continue in force under Part 2 of this Schedule, an actuarial valuation by reference to an effective date on or after 21st September 2002, and

(b) neither sub-paragraph (5) nor sub-paragraph (7) applies.

(3) Where this sub-paragraph applies, the trustees or managers must obtain the first actuarial valuation under the 2004 Act by reference to an effective date which is—

(a) no earlier than 22nd September 2005, and

(**1**) S.I.1996/1536; relevant amending instruments are S.I. 1997/786 and 1997/3038.

(b) not more than three years after the effective date of the last valuation they received under the 1995 Act.

(4) Subject to sub-paragraph (8), sub-paragraph (5) applies where—

(a) immediately before the commencement date, the trustees or managers were required under section 57(2)(a) of the 1995 Act to obtain an actuarial valuation by virtue of a certificate in the terms set out in that provision, or

(b) on or after the commencement date, the trustees or managers receive a certificate in the terms set out in section 57(2)(a) of the 1995 Act in consequence of the requirements saved by paragraph 15 of this Schedule,

and the trustees or managers have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date which is no earlier than 22nd September 2005 and not more than three years after the effective date of the last valuation they received under the 1995 Act.

(5) Where this sub-paragraph applies, the trustees or managers must obtain the first valuation under the 2004 Act by reference to the effective date they have determined.

(6) Subject to sub-paragraph (8), sub-paragraph (7) applies where—

(a) immediately before the commencement date, the trustees or managers were required under section 57(2)(b) of the 1995 Act to obtain an actuarial valuation by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations (section 75 debts in multi-employer schemes), and

(b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date which is no earlier than 22nd September 2005 and not more than three years after the effective date of the last valuation they received under the 1995 Act.

(7) Where this sub-paragraph applies, the trustees or managers must obtain the first valuation under the 2004 Act by reference to the effective date they have determined.

(8) In a case where, but for this provision, sub-paragraph (5) would apply, by virtue of the receipt by the trustees or managers of a certificate in the terms set out in section 57(2)(a) of the 1995 Act, and sub-paragraph (7) would also apply, by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations, sub-paragraph (5) applies only if the certificate was received before the event occurred and sub-paragraph (7) applies only if the event occurred before the certificate was received.

4. The trustees or managers must ensure that the first valuation under the 2004 Act is received by them—

(a) where paragraph 3(1) applies, or where paragraph 3(3) applies and the trustees or managers obtained that valuation by reference to an effective date which is after 29th December 2005, within 15 months after its effective date;

(b) where paragraph 3(3) applies and the trustees or managers obtained that valuation by reference to an effective date between 22nd September and 29th December 2005, within 18 months after its effective date;

(c) where paragraph 3(5) applies, within 18 months after the date on which the certificate referred to in paragraph 3(4) is signed, and

(d) where paragraph 3(7) applies, within 18 months after the date on which the event referred to in paragraph 3(6) occurred.

5. Section 227 of the 2004 Act (schedule of contributions) applies to the scheme as if it included a requirement for the trustees or managers of the scheme to prepare a schedule of contributions (“the first schedule of contributions under the 2004 Act") within the same period as that within which they are required by paragraph 4 to ensure that they receive the first valuation under the 2004 Act.

6. In the circumstances described in paragraph 4(b), (c), and (d), regulation 6(2) of these Regulations (first statement of funding principles) applies to the scheme, and regulations 8(1)(a) and 13 apply in relation to the first valuation under the 2004 Act, as if the period there referred to were the same period as that within which the trustees or managers are required by paragraph 4 to ensure that they receive the first valuation under the 2004 Act.

7. References in sections 224 to 231 of the 2004 Act to actuarial valuations or schedules of contributions shall be taken to exclude any such valuation or schedule of contributions under the 1995 Act as in force before the commencement date or as continued in force by paragraphs 9 to 16 of this Schedule.

PART 2

Savings

8. Paragraphs 9 to 19 of this Schedule apply to a scheme which—

(a) is subject to section 56 of the 1995 Act immediately before the commencement date, and

(b) becomes subject to Part 3 of the 2004 Act on that date.

9. Sections 56 and 58 to 60 of the 1995 Act, regulations 15 to 17 and 19 to 27 of the 1996 Regulations and Schedules 2 and 4 to those Regulations continue to apply to the scheme from the commencement date until the date on which the first schedule of contributions under the 2004 Act comes into force.

10. Where—

(a) immediately before the commencement date, the trustees or managers of the scheme were required under section 57(1)(a) of the 1995 Act and regulation 10 of the 1996 Regulations (time limits for minimum funding valuations) to obtain an actuarial valuation within a period ending on or after the commencement date, and

(b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions apply to the scheme on and after the commencement date in respect of that valuation.

11. Where—

(a) immediately before the commencement date, the trustees or managers of the scheme were required under section 57(2)(a) of the 1995 Act to obtain an actuarial valuation within the period specified in section 57(4)(a) of that Act, and

(b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions apply to the scheme on and after the commencement date in respect of that valuation.

12. Where—

(a) immediately before the commencement date, the trustees or managers of the scheme were required under section 57(2)(b) of the 1995 Act to obtain an actuarial valuation by virtue of the occurrence of an event of the kind described in regulation 13 of the 1996 Regulations, and

(b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005, those provisions apply to the scheme on and after the commencement date in respect of that valuation, subject to the modification that the valuation must be obtained within the period of six months beginning with the date on which the relevant event occurred.

13. Where—

(a) immediately before the commencement date, the trustees or managers of the scheme were required under section 41(1)(a) and (2)(c) of the 1995 Act and regulation 30 of the 1996 Regulations (ongoing actuarial valuations and statements) to obtain an actuarial valuation within a period ending on or after the commencement date, and an accompanying statement in the form set out in Schedule 6 to those Regulations, and

(b) they have determined before that date, or determine subsequently, that the valuation should be obtained by reference to an effective date before 22nd September 2005,

those provisions apply to the scheme on and after the commencement date in respect of that valuation and statement.

14. Where a requirement to obtain a valuation is preserved by any of paragraphs 10 to 13 of this Schedule, section 57(5) to (7) of the 1995 Act, regulations 3 to 9 of the 1996 Regulations and (except in the case to which paragraph 13 applies) regulation 14 of and Schedule 1 to those Regulations apply in respect of that valuation.

15. Where, immediately before the commencement date, the trustees or managers of the scheme were required under section 57(1)(b) of the 1995 Act and regulation 18 of the 1996 Regulations (occasional and periodic certification of adequacy of contributions) to obtain annual certificates as to the adequacy of contributions payable towards the scheme, those provisions, sections 57(5) to (7) of that Act and Schedule 3 to the 1996 Regulations apply to the scheme until the effective date of the first valuation under the 2004 Act relating to the scheme.

16. Section 61 of the 1995 Act (supplementary), regulation 2 of the 1996 Regulations (interpretation) and regulation 29 of, and Schedule 5 to, those Regulations (modifications) apply, so far as material, on and after the commencement date in relation to the provisions of the Act and Regulations saved by paragraphs 9 to 15 of this Schedule.

17. Where any provision of the 1995 Act or the 1996 Regulations applies to the scheme on or after the commencement date by virtue of this Schedule, any reference to that provision in the Occupational Pension Schemes (Contracting-out) Regulations 1996(**2**) ("the Contracting-out Regulations") applies in relation to the scheme on and after the commencement date as if—

(a) in the case of a provision of the 1995 Act, the repeal of that provision by the 2004 Act had not come into force on that date in accordance with the Pensions Act 2004 (Commencement No. 8) Order 2005(**3**) ("the Commencement Order");

(b) in the case of a provision in the 1996 Regulations, those Regulations had not been revoked by regulation 21, and

(c) the amendments of the Contracting-out Regulations in paragraph 1 of Schedule 3 to these Regulations had not come into force.

18. Where any provision of the 1995 Act or the 1996 Regulations applies to the scheme on or after the commencement date by virtue of this Schedule, regulation 4(2) of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996(**4**) shall be taken to include a reference to that provision notwithstanding its repeal by the 2004 Act in accordance with the Commencement Order or the revocation of the 1996 Regulations by regulation 21.

19. Any reference to the 1995 Act or the 1996 Regulations in—

(**2**) S.I. 1996/1172; relevant amending instruments are S.I. 1997/786 and 2002/681.
(**3**) S.I. 2005/3331.
(**4**) S.I. 1996/2475, to which there are amendments not relevant to these Regulations.

(a) the Occupational Pension Schemes (Winding Up) Regulations 1996(**5**);

(b) the Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996(**6**), or

(c) the Occupational Pension Schemes (Employer Debt) Regulations 2005(**7**),

applies to the scheme on and after the commencement date as if, where the reference is to a provision of the Act, the repeal of that provision by the 2004 Act had not come into force on that date in accordance with the Commencement Order, and, where the reference is to a provision in the 1996 Regulations, those Regulations had not been revoked by regulation 21.

(**5**) S.I. 1996/3126, to which there are amendments not relevant to these Regulations.
(**6**) S.I. 1996/3128, amended by S.I. 1997/786 and 3038, 1999/3198, 2002/380, 2004/403, 2005/72 and 678.
(**7**) S.I. 2005/678, amended by S.I. 2005/2224.