

## SCHEDULE 2

Regulation 14

### Amendment of the Employer Debt Regulations

For Schedule 1A to the Employer Debt Regulations substitute the following—

#### “SCHEDULE 1A

Regulation 6C(4) and 7(11)

#### Withdrawal Arrangements and Approved Withdrawal Arrangements

##### **Conditions for withdrawal arrangements and approved withdrawal arrangements**

1. The conditions a withdrawal arrangement, or a withdrawal arrangement after it has been approved by the Authority, must comply with are—

- (a) the trustees or managers, the cessation employer and the guarantor are parties;
- (b) it provides the date on which it is to come into force;
- (c) it provides that at or before the time specified the cessation employer will pay—
  - (i) in the case of a withdrawal arrangement, the withdrawal arrangement share; or
  - (ii) in the case of an approved withdrawal arrangement, the approved withdrawal arrangement share;
- (d) where the withdrawal arrangement share or approved withdrawal arrangement share will be paid in instalments, the dates for payment of such instalments;
- (e) it provides that the guarantors will pay an amount or amounts equal to amount B;
- (f) it provides that if an event specified in paragraph 3 of this Schedule occurs before amount B has been paid and while the agreement is still in force, the guarantors will pay amount B;
- (g) it specifies whether amount B is calculated under either sub-paragraph (2) or (3) of paragraph 5 of this Schedule;
- (h) specifies where there is more than one guarantor, whether the guarantors are jointly or jointly and severally liable;
- (i) provides details of any relevant transfer deduction which may apply, the anticipated relevant transfer liabilities, the anticipated corresponding assets and the anticipated time scale for finalisation of the relevant transfer deduction;
- (j) it provides that amounts payable under the withdrawal arrangement or approved withdrawal arrangement are payable to the trustees or managers of the scheme;
- (k) it provides that one or more parties to the withdrawal arrangement or approved withdrawal arrangement are to meet any expenses incurred by the parties in connection with one or both of the following—
  - (i) the making of the arrangement;
  - (ii) the making of any calculations by the actuary for the purpose of the arrangement;
- (l) the arrangement will continue in force until—
  - (i) the winding up of the scheme is completed;
  - (ii) in the case of an approved withdrawal arrangement, the Authority issue a notice to the parties to the arrangement stating that the Authority consider that the arrangement is no longer required; or

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- (iii) the arrangement is replaced by another arrangement that is in the case of an approved withdrawal arrangement approved by the Authority as an approved withdrawal arrangement,
- whichever occurs first.

#### **Actuarial certificates**

2. The amount of the liabilities of a scheme which are to be taken into account—
  - (a) for the purposes of a withdrawal arrangement share or an approved withdrawal arrangement share must be certified by the actuary in the form set out in Schedule 1C to these Regulations;
  - (b) to determine amount B under sub-paragraph (3) of paragraph 5 of this Schedule must be certified by the actuary in the form set out in Schedule 1D to these Regulations;
  - (c) to determine amount B under sub-paragraph (2) of paragraph 5 of this Schedule must be certified by the actuary after the guarantee time in the form set out in Schedule 1D to these Regulations.

#### **Events for payment of amount B**

3. The events where amount B must be paid are—
  - (a) the scheme commences winding-up;
  - (b) a relevant event occurs in relation to the last remaining employer in relation to the scheme (where the last remaining employer is the only employer remaining who has not had a relevant event);
  - (c) in the case of an approved withdrawal arrangement, the Authority issue a notice to the parties to the arrangement stating that they consider that amount B (or the balance remaining) should be paid; or
  - (d) the occurrence of the date on which the guarantors have agreed to pay and the trustees or managers have agreed to receive payment of amount B.

#### **Calculation of amount A**

- 4.—(1) Amount A shall be equal to either of the following amounts—
  - (a) where a relevant transfer deduction does not apply to a withdrawal arrangement share or an approved withdrawal arrangement share, the liability proportion of the scheme shortfall amount; or
  - (b) where a relevant transfer deduction applies to a withdrawal arrangement share or an approved withdrawal arrangement share, the liability proportion of the scheme shortfall amount minus the relevant transfer deduction.
- (2) For the purposes of sub-paragraph (1)(b), the relevant transfer deduction shall be determined by calculating the relevant transfer liabilities and the corresponding assets in accordance with regulation 5.
- (3) The scheme shortfall amount is the amount of the difference as at the applicable time between the value of the assets and the amount of the liabilities of the scheme determined, calculated and verified in accordance with sub-paragraph (4).
- (4) The scheme shortfall amount and, for the purposes of this paragraph, the relevant transfer deduction shall be determined, calculated and verified as follows—

- (a) where at the applicable time the trustees or managers of the scheme have received its first actuarial valuation under Part 3 of the 2004 Act, in accordance with regulation 5, but that regulation shall apply as if—
  - (i) paragraph (11) provided the following—

“(11) The amount of the liabilities in respect of pensions and other benefits are to be calculated and verified by the actuary using the same methods and assumptions as were set out in the most recent statement of funding principles under Part 3 of the 2004 Act.”, and
  - (ii) paragraph (12) were omitted;
- (b) where at the applicable time the trustees or managers of the scheme have not received its first actuarial valuation under Part 3 of the 2004 Act, in accordance with sub-paragraph (5).

(5) Where sub-paragraph (4)(b) applies, the amounts or value of the assets and liabilities of a scheme and, for the purposes of this paragraph the relevant transfer deduction, must be determined, calculated and verified by the trustees or managers of the scheme and the Actuary at the applicable time in accordance with—

- (a) regulation 3 (excluded assets), regulation 4 (contribution notices etc), regulation 5 (valuation of assets), regulation 6 (valuation of protected liabilities) and regulation 7 (alternative valuation of assets and protected liabilities in specific cases) of the PPF Valuation Regulations; and
  - (b) guidance issued by the Board of the PPF.
- (6) For the purposes of sub-paragraph (5), in the PPF Valuation Regulations—
- (i) references to “section 143 valuations” and provisions which relate to section 143 valuations shall be disregarded;
  - (ii) references to “relevant time” shall be read as if they were references to “applicable time”; and
  - (iii) references to “section 179 valuations” shall be read as if they were references to a valuation for the purposes of section 75(4) of the 1995 Act.

### **Calculation of amount B**

5.—(1) Amount B must be calculated in accordance with either sub-paragraph (2) or (3).

(2) Where a withdrawal arrangement or approved withdrawal arrangement provides that amount B is to be calculated in accordance with this sub-paragraph, amount B is equal to the amount (if any) that would be the amount of the liability share due from the cessation employer under section 75(4) of the 1995 Act if—

- (a) the employment-cessation event had occurred at the guarantee time; and
- (b) the cessation employer had not entered into a withdrawal arrangement or an approved withdrawal arrangement.

(3) Where the withdrawal arrangement or approved withdrawal arrangement provides that amount B is to be calculated in accordance with this sub-paragraph, amount B is equal to the amount of the liability share that would have been treated as due from the cessation employer under section 75(4) of the 1995 Act if the cessation employer had not entered into a withdrawal arrangement or approved withdrawal arrangement, less the sum of—

- (a) in the case of a withdrawal arrangement, the withdrawal arrangement share or in the case of an approved withdrawal arrangement, the approved withdrawal arrangement share;

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- (b) in the case of a withdrawal arrangement, if the amount that the withdrawal arrangement provides for the cessation employer to pay exceeds the withdrawal arrangement share, an amount equal to that excess.

#### **Approval of withdrawal arrangements in advance**

6.—(1) A withdrawal arrangement may be approved by the Authority in advance of an employment-cessation event occurring in relation to an employer and for the purposes of approving a withdrawal arrangement prior to an employment-cessation event occurring in relation to an employer, references in this Schedule and regulation 7 to “cessation employer”, “approved withdrawal arrangement share”, “amount B”, “amount A”, “cessation expenses”, “guarantors” and “relevant transfer deduction” shall be read accordingly.

(2) Where an approved withdrawal arrangement has been approved prior to an employment-cessation event regulation 7 shall apply as if—

- (a) following an employment-cessation event occurring in relation to the employer who is party to the approved withdrawal arrangement, the employer gave the notice required under regulation 7(1);
- (b) the Authority issued the directions under regulation 7(1);
- (c) at the time when the approved withdrawal arrangement comes into force regulation 7(6) applies and the approved withdrawal arrangement share and amount B are treated as debts due.

#### **Replacement withdrawal arrangements**

7.—(1) Where a withdrawal arrangement is replaced with an amended withdrawal arrangement or an amended approved withdrawal arrangement, paragraph 1, regulation 6B and regulation 7 shall apply to the amended withdrawal arrangement or amended approved withdrawal arrangement as they applied to the original arrangement.”.

**Changes to legislation:**

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