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Cross Heading: Protection for rights under private sector schemes. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 5

#### PENSIONS PROVISION IN CONNECTION WITH RESTRUCTURING

##### *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 <sup>F1</sup>registered or] 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) [<sup>F2</sup>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.

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**Textual Amendments**

- F1** Words in Sch. 5 para. 4(2)(c)(ii) inserted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **9(b)**
- F2** Words in Sch. 5 para. 4(11) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 64**.

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