

*Draft Order laid before Parliament under section 23(8) of the Pensions Act 2007, for approval by  
resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**PENSIONS**

The Personal Accounts Delivery  
Authority Winding Up Order 2010

Made - - - - \*\*\*  
Coming into force - - 5th July 2010

The Secretary of State for Work and Pensions makes the following Order in exercise of the powers conferred by sections 23(1), (5) to (7) and 25(2) of the Pensions Act 2007<sup>(1)</sup>:

In accordance with section 23(8) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

**Citation and commencement**

1. This Order may be cited as the Personal Accounts Delivery Authority Winding Up Order 2010 and shall come into force on 5th July 2010.

**Interpretation**

2. In this Order—

“the Act” means the Pensions Act 2007;

“the 2008 Act” means the Pensions Act 2008<sup>(2)</sup>;

“the corporation” means The National Employment Savings Trust Corporation established under section 75 of the 2008 Act<sup>(3)</sup>;

“enactment” includes—

- (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978<sup>(4)</sup>;
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;

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(1) 2007 c. 22. Section 23(1) was substituted, and subsections (5) and (7) of section 23 were amended, by the 2008 Act, section 86.  
(2) 2008 c. 30.  
(3) The corporation was so named by S.I. 2010/3.  
(4) 1978 c.30.

- (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- (d) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales;

“intellectual property” means—

- (a) copyright, rights related to or affording protection similar to copyright and rights in databases, patents, inventions, trade marks, internet domain names, website addresses, trade names, designs, know-how, trade secrets and confidential information; and
- (b) applications for registration, and the right to apply for registration, for any of the rights referred to in paragraph (a) that are capable of being registered in any country or jurisdiction, and all other rights having similar or equivalent effect in any country or jurisdiction;

“records” means documents held by or on behalf of the Authority<sup>(5)</sup> irrespective of the media or method of storage including in particular—

- (a) all books of account, ledgers, payroll records, income records, registers, reports and information relating to contracts or suppliers;
- (b) all records relating to the Authority’s employees or other staff, including all payroll schedules, pensions records, personnel files and disciplinary records;
- (c) all records of meetings, correspondence and submissions to the Secretary of State;
- (d) all results of research and documents relating to research; and
- (e) all library material, books, reference material and publications;

“transfer date” means the beginning of the 5th July 2010.

### **Winding up of the Authority**

- 3. The Authority is wound up and dissolved on the transfer date.

### **Transfer of property, rights and liabilities**

4.—(1) Subject to paragraph (2), all of the property, rights and liabilities of the Authority, including the property, rights and liabilities described or referred to in Schedule 1, are, on the transfer date, transferred to the corporation.

(2) The property, rights and liabilities described or referred to in Schedule 2 are, on the transfer date, transferred to the Secretary of State.

### **Effects of the Order in relation to employees**

5. For the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006<sup>(6)</sup>, the transfer of property, rights and liabilities from the Authority to the corporation is to be treated as a “relevant transfer” within the meaning of regulation 2 of those Regulations.

### **Information**

6.—(1) In relation to any property, rights or liabilities that are transferred to the corporation under article 4(1), the Secretary of State shall provide to the corporation on request a copy of any record, or any other information, that she holds and that the corporation needs in order to deal with that property or those rights or liabilities.

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<sup>(5)</sup> The Authority means the Personal Accounts Delivery Authority (*see* section 20(1) of the Act).

<sup>(6)</sup> [S.I. 2006/246](#).

(2) In relation to any property, rights or liabilities that are transferred to the Secretary of State under article 4(2), the corporation shall provide to the Secretary of State on request a copy of any record, or any other information, that it holds and that the Secretary of State needs in order to deal with that property or those rights or liabilities.

### **Continuity in functions**

7.—(1) Where in relation to any property, rights or liabilities that are transferred under article 4, any action has been taken under any enactment, by or against the Authority, that action shall be regarded as having been taken by or against the corporation or the Secretary of State, as the case may be.

(2) Where in relation to any property, rights or liabilities that are transferred under article 4, any legal proceedings have been commenced by or against the Authority, those proceedings may be continued by or against the corporation or the Secretary of State, as the case may be.

### **Repeals and savings**

8.—(1) Subject to paragraphs (2) and (3), the following provisions are repealed—

- (a) sections 20 and 22 of the Act;
- (b) Schedule 6 to the Act; and
- (c) sections 79 to 85 of the 2008 Act.

(2) Paragraph 17 of Schedule 6 to the Act shall continue to apply in relation to the report on the exercise of the Authority's functions during the financial year ending on 31st March 2010, as if—

- (a) in sub-paragraph (1), for “Authority” there were substituted “The National Employment Savings Trust Corporation established under section 75 of the Pensions Act 2008”; and
- (b) in sub-paragraph (2), paragraph (aa) were omitted(7).

(3) Paragraph 19 of Schedule 6 to the Act shall continue to apply in relation to the accounting records and statement of accounts of the Authority in respect of the financial year ending on 31st March 2010, as if—

- (a) in sub-paragraphs (1) to (3), for “Authority” there were substituted “The National Employment Savings Trust Corporation established under section 75 of the Pensions Act 2008”;
- (b) in sub-paragraph (1)(a), after “records” there were inserted “in respect of the Authority”; and
- (c) in sub-paragraph (1)(b), after “in respect of” there were inserted “the activities of the Authority in”.

### **Annual report and accounts for the year 2010/2011**

9. In relation to the financial year ending on 31st March 2011, Schedule 1 to the 2008 Act shall apply as if—

- (a) in paragraph 17—
  - (i) in sub-paragraphs (1) and (2)(a), after “trustee corporation’s” there were inserted “and the Authority’s”; and
  - (ii) in sub-paragraph (2)(b), after “trustee corporation” there were inserted “or the Authority”;

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(7) Paragraph 17(2)(aa) was inserted by the 2008 Act, section 84(10).

- (b) in paragraph 20—
  - (i) in sub-paragraph (1)(a), after “accounting records” there were inserted “in respect of itself and the Authority”; and
  - (ii) in sub-paragraph (1)(b), after “statement of accounts” there were inserted “in respect of the affairs of itself and of the Authority”; and
- (c) in paragraph 26(1), before the definition of “financial year”, there were inserted ““the Authority” means the Personal Accounts Delivery Authority;”.

Signed by authority of the Secretary of State for Work and Pensions.

Date

*Name*  
Minister of State,  
Department for Work and Pensions

## SCHEDULE 1

Article 4(1)

### Property, rights and liabilities transferred to the corporation

#### **Contracts and commitments**

1. Any property, rights or liabilities that the Authority has in connection with any contracts, agreements, arrangements, commitments, engagements, assignments or orders (in writing or otherwise) including, without prejudice to the generality of the foregoing—

- (a) in relation to information technology, any leasing, hire-purchase, licensing or purchase agreements and any agreements for software development, consultancy, outsourcing, disaster recovery, website design, source code deposit, networking, facilities management, bureau services or maintenance and support;
- (b) any agreements entered into with respect to the provision of services that relate to the administration or management of the pension scheme established under section 67 of the 2008 Act;
- (c) any agreements entered into in relation to any financial assistance that has been given to the Authority by the Secretary of State under paragraph 18 of Schedule 6 to the Act<sup>(8)</sup>, including any grant or loan; and
- (d) any agreements in relation to the occupation by the Authority of any property.

#### **Non-contractual rights**

2. Any non-contractual rights or claims of the Authority that are exercisable against any third party, whether actual, contingent, accrued or accruing and whether arising in tort or under any trust or fiduciary relationship of any sort or under any enactment.

#### **Non-contractual liabilities**

3. Any non-contractual liabilities in respect of any claims by any third party against the Authority whether actual, contingent, accrued or accruing and whether arising in tort or under any trust or fiduciary relationship of any sort or under any enactment.

#### **Intellectual property**

4. Any property, rights or liabilities that the Authority has in connection with any intellectual property.

#### **Furniture and moveable equipment**

5. Any property, rights or liabilities that the Authority has in connection with any furniture, fittings, plant, equipment, stationery, computers or other machinery.

#### **Records**

6. Any property, rights or liabilities that the Authority has in connection with any records.

#### **Stock**

7. Any property, rights or liabilities that the Authority has in connection with any finished or unfinished goods, stock, scrap, inventory, stores or raw materials.

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<sup>(8)</sup> Paragraph 18 was substituted by the 2008 Act, section 82.

### **Working capital**

8. Any property, rights or liabilities that the Authority has in—
  - (a) any cash in hand or at a bank;
  - (b) any book or other debts arising out of or attributable to the activities of the Authority and owed to the Authority at the transfer date including the right to receive payment for goods despatched or delivered and services rendered before the transfer date but not invoiced before such time; or
  - (c) any creditors (whether invoiced or not), accrued charges and all other amounts whether due now or in the future.

### **Statutory licences and registrations**

9. Any property, rights or liabilities that the Authority has under any licences or registrations granted under any enactment.

## SCHEDULE 2

Article 4(2)

### Property, rights and liabilities transferred to the Secretary of State

#### **Contracts and commitments**

1. Any property, rights or liabilities that the Authority has in connection with any contracts, agreements, arrangements, commitments, engagements, assignments and orders (in writing or otherwise) in so far as that property or those rights or liabilities relate to any records within paragraph 5.

#### **Non-contractual rights**

2. Any non-contractual rights or claims of the Authority that are exercisable against any third party, whether actual, contingent, accrued or accruing and whether arising in tort or under any trust or fiduciary relationship of any sort or under any enactment, in so far as those rights and claims relate to any records within paragraph 5.

#### **Non-contractual liabilities**

3. Any non-contractual liabilities in respect of any claims by any third party against the Authority whether actual, contingent, accrued or accruing and whether arising in tort or under any trust or fiduciary relationship of any sort or under any enactment, in so far as those rights and claims relate to any records within paragraph 5.

#### **Intellectual property**

4. Any property, rights or liabilities that the Authority has in connection with any intellectual property inherent in, or relating to, any records within paragraph 5.

#### **Records**

5. Any other property, rights or liabilities that the Authority has in connection with any records that consist wholly or in part of information—

- (a) relating to assistance or advice given, or proposed to be given, by the Authority to the Secretary of State under section 79(2)(a) of the 2008 Act or section 21 of the Act (before it was repealed) for the purpose of enabling the Secretary of State to make a decision on a matter relating to policy;
- (b) relating to assistance or advice given, or proposed to be given, by the Authority to the Secretary of State or the Pensions Regulator under section 79(2)(b) of the 2008 Act;
- (c) relating to or connected with the making of a decision by the Secretary of State on a matter relating to policy;
- (d) created or assembled in connection with any information within sub-paragraph (a), (b) or (c); or
- (e) relating to the oversight by the Secretary of State of the Authority's management of its affairs.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order winds up and dissolves the Personal Accounts Delivery Authority (“the Authority”) and makes provision for the transfer of its property, rights and liabilities to the [ ] (“the corporation”) established under section 75 of the Pensions Act 2008 (c. 30) and to the Secretary of State.

Article 3 winds up and dissolves the Authority.

Article 4 transfers the property, rights and liabilities of the Authority (including the property, rights and liabilities described or referred to in Schedule 1 and excluding the property, rights and liabilities described or referred to in Schedule 2) to the corporation. It transfers the property, rights and liabilities described or referred to in Schedule 2 to the Secretary of State.

Article 5 provides for the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as the “TUPE Regulations”) to the transfer of employees from the Authority to the corporation.

Article 6 provides for the Secretary of State and the corporation to provide each other, on request, with any record or information that the other party needs in order to deal with any property, rights or liabilities that are transferred to them under article 4.

Article 7 provides that any action that has been taken by or against the Authority under any enactment, and any legal proceedings that have been commenced by or against the Authority, may be continued by or against the corporation or the Secretary of State, as the case may be.

Article 8 repeals sections 20 and 22 of, and Schedule 6 to, the Pensions Act 2007 and sections 79 to 85 of the Pensions Act 2008 (establishment, constitution and functions of the Authority), with certain savings with respect to the accounts and annual report of the Authority for 2009/2010.

Article 9 provides that the accounts and annual report of the Authority for 2010/2011 are to be included within the accounts and annual report of the corporation for that year.

A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sector.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Personal Accounts Delivery Authority Winding Up Order 2010 No. 911*