

SCHEDULES

SCHEDULE 4

OCCUPATIONAL AND PERSONAL PENSION SCHEMES

PART I

PROTECTING PENSIONS

Occupational pensions: independent trustee where employer insolvent etc

- 1 The following sections shall be inserted after the section 57B of the Pensions Act inserted by paragraph 11 below—

“57C Requirement for independent trustee where employer becomes insolvent etc

- (1) This section applies in relation to an occupational pension scheme which is constituted by trust deed—
- (a) if a person (“the practitioner”) commences to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer of persons in the description or category of employment to which the scheme relates; or
 - (b) if the official receiver becomes—
 - (i) the liquidator or provisional liquidator of a company which is the employer of any such persons, or
 - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer of any such persons.
- (2) If and so long as this section applies to a scheme, it shall be the duty of the practitioner or official receiver—
- (a) to satisfy himself that at all times at least one of the trustees of the scheme is an independent person; and
 - (b) if at any time he is not so satisfied, to appoint under this paragraph, or to secure the appointment of, an independent person as a trustee of the scheme;
- but this subsection is subject to subsection (5) below.
- (3) For the purposes of subsection (2) above a person is “independent” only if—
- (a) he has no interest in the assets of the employer or of the scheme, otherwise than as trustee of the scheme;
 - (b) he is neither connected with, nor an associate of—
 - (i) the employer;
 - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer; or

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- (iii) the official receiver, acting in any of the capacities mentioned in subsection (1)(b) above in relation to the employer; and
- (c) he satisfies such other requirements as may be prescribed; and any reference in this section or section 57D below to an “independent trustee” shall be construed accordingly.
- (4) Sections 249 and 435 of the Insolvency Act 1986 (connected and associated persons) shall apply for the purposes of paragraph (b) of subsection (3) above as they apply for the purposes of that Act; and section 74 of the Bankruptcy (Scotland) Act 1985 (associated persons) shall apply for the purposes of that paragraph as that section applies for the purposes of the said Act of 1985.
- (5) Where, apart from this subsection, the duties imposed by subsection (2) above in relation to a scheme would fall to be discharged at the same time by two or more persons acting in different capacities, those duties shall be discharged—
- (a) if the employer is a company, by the person or persons acting as the company’s liquidator, provisional liquidator or administrator; or
 - (b) if the employer is an individual, by the person or persons acting as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate.
- (6) If the practitioner or official receiver neglects or refuses to discharge any duty imposed upon him by subsection (2) above in relation to a scheme, any member of the scheme may apply to the appropriate court for an order requiring him to discharge his duties under that subsection.
- (7) Where this section applies in relation to a scheme, it shall cease to do so—
- (a) if some person other than the employer mentioned in subsection (1) above becomes the employer of persons in the description or category of employment to which the scheme relates; or
 - (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;
- but nothing in this subsection affects the application of this section in relation to the scheme on any subsequent occasion when the conditions specified in subsection (1)(a) or (b) above are satisfied in relation to the scheme.
- (8) In this section—
- “acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with sections 388 and 399 of the Insolvency Act 1986;
- “the appropriate court”, in relation to an application for an order under subsection (6) above, means—
- (a) if the employer in question is a company—
 - (i) where a winding up order has been made or a provisional liquidator appointed, the court which made the order or appointed the liquidator;
 - (ii) in any other case, any court having jurisdiction to wind up the company; and
 - (b) in any other case—

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- (i) in England and Wales, the court as defined in section 385 of the Insolvency Act 1986; or
- (ii) in Scotland, where sequestration has been awarded or, by virtue of the proviso to section 13(1) of the Bankruptcy (Scotland) Act 1985 (petition presented by creditor or trustee acting under trust deed) an interim trustee appointed, the court which made the award or appointment and, if no such award or appointment has been made, any court having jurisdiction under section 9 of that Act;

“bankrupt” has the meaning given by section 381 of the Insolvency Act 1986;

“company” means a company within the meaning given by section 735(1) of the Companies Act 1985 or a company which may be wound up under Part V of the Insolvency Act 1986 (unregistered companies);

“interim trustee” and “permanent trustee” have the same meaning as they have in the Bankruptcy (Scotland) Act 1985.

- (9) References in this section to an individual include, except where the context otherwise requires, references to a partnership and to any debtor within the meaning of the Bankruptcy (Scotland) Act 1985.

57D Independent trustees: further provisions

- (1) If and so long as section 57C above applies in relation to a scheme, no independent trustee of the scheme shall be removed from being a trustee by virtue only of any provision of the scheme.
- (2) If a trustee appointed under subsection (2)(b) of that section ceases to be an independent trustee, then—
 - (a) he shall forthwith give written notice of that fact to the practitioner or official receiver by whom the duties under that provision fall to be discharged; and
 - (b) he shall cease to be a trustee of the scheme, unless the circumstances are such that upon his cessation there would be no other trustee of the scheme, in which case he shall not cease by virtue of this subsection to be a trustee until such time as another trustee is appointed.
- (3) A trustee appointed under subsection (2)(b) of that section shall be entitled to be paid out of the scheme’s resources his reasonable fees for acting in that capacity and any expenses reasonably incurred by him in doing so, and to be so paid in priority to all other claims falling to be met out of the scheme’s resources.
- (4) If, immediately before the appointment of an independent trustee under subsection (2)(b) of that section, there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.
- (5) If and so long as section 57C above applies in relation to a scheme—

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- (a) any power vested in the trustees or managers of the scheme and exercisable at their discretion shall be exercisable only by the independent trustee; and
 - (b) any power—
 - (i) which the scheme confers on the employer (otherwise than as trustee or manager of the scheme), and
 - (ii) which is exercisable by him at his discretion but only as trustee of the power,
 shall be exercisable only by the independent trustee;
- but if, in either case, there is more than one independent trustee, the power shall also be exercisable with the consent of at least half of those trustees by any person who could exercise it apart from this subsection.
- (6) Notwithstanding anything in section 155 of the Insolvency Act 1986 (court orders for inspection etc), if and so long as section 57C above applies in relation to a scheme, it shall be the duty of the practitioner or official receiver to provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.
 - (7) Any expenses incurred by the practitioner or official receiver in complying with a request under subsection (6) above shall be recoverable by him as part of the expenses incurred by him in the discharge of his duties; and he shall not be required under that subsection to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.
 - (8) The provisions of section 57C above and this section, and of any regulations made under that section or this section, override any provision of a scheme to the extent that it conflicts with them.
 - (9) The Secretary of State may make regulations modifying section 57C above and this section in their application—
 - (a) to any occupational pension scheme which applies to earners in employments under different employers;
 - (b) to any occupational pension scheme of which there are no members who are in pensionable service under the scheme, as defined in paragraph 3 of Schedule 16 to the 1973 Act; or
 - (c) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme.
 - (10) Section 57C above and this section (other than this subsection) shall not apply in relation to an occupational pension scheme of a prescribed description.”

Employer to make good deficiencies on winding up

- 2 The following section shall be inserted into the Pensions Act after the section 58A inserted by section 11 of this Act—

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“58B Deficiencies in the assets of a scheme on winding up

- (1) If, in the case of an occupational pension scheme which is not a money purchase scheme, the value at the applicable time of the scheme’s liabilities, as determined in accordance with regulations, exceeds the value of its assets, as so determined, then—
 - (a) an amount equal to the excess shall be treated as a debt due from the employer to the trustees of the scheme; and
 - (b) if that debt has not been discharged before the default time then, for the purposes of the law relating to winding up, bankruptcy or sequestration as it applies in relation to the employer, it shall be taken to arise at the default time.

- (2) In this section—
 - “the applicable time” means the earlier of—
 - (a) any time when the scheme is being wound up which falls before the default time; or
 - (b) the default time;
 - “the default time” means—
 - (a) in England and Wales—
 - (i) where the employer is a company, immediately before the company goes into liquidation, within the meaning of section 247(2) of the Insolvency Act 1986; or
 - (ii) where the employer is an individual, immediately before the commencement of his bankruptcy, within the meaning of section 278 of that Act; or
 - (b) in Scotland—
 - (i) where the employer is a company, immediately before the commencement of the company’s being wound up, within the meaning of section 129 of that Act; or
 - (ii) where the employer is a debtor, within the meaning of the Bankruptcy (Scotland) Act 1985, immediately before the date of sequestration as defined in section 12(4) of that Act;
 - “the employer” means the employer of persons in the description or category of employment to which the scheme relates;
 - “money purchase scheme” has the same meaning as it has in section 58A above.

- (3) The power to make regulations conferred by subsection (1) above includes power to provide—
 - (a) that, in calculating the value of the scheme’s liabilities, any provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded;
 - (b) that the value of the scheme’s liabilities or assets is to be calculated and verified in such manner as may, in the particular case, be approved—
 - (i) by a prescribed person,

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- (ii) by a person with prescribed professional qualifications or experience, or
 - (iii) by a person approved by the Secretary of State,
- or that their value is to be calculated and verified in accordance with guidance prepared by a prescribed body.
- (4) This section is without prejudice to any other right or remedy which the trustees may have in respect of the deficiency.
 - (5) A debt due by virtue only of this section shall be regarded neither as a preferential debt for the purposes of the Insolvency Act 1986 nor as a preferred debt for the purposes of the Bankruptcy (Scotland) Act 1985.
 - (6) The Secretary of State may make regulations modifying this section in its application—
 - (a) to any occupational pension scheme which applies to earners in employments under different employers;
 - (b) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme;
 - (c) to any occupational pension scheme of which there are no members who are in pensionable service under the scheme, as defined in paragraph 3 of Schedule 16 to the 1973 Act; or
 - (d) to any case where the assets and liabilities of the scheme are transferred to another occupational pension scheme.
 - (7) The provisions of this section and of any regulations made under it override any provision of a scheme to the extent that it conflicts with this section or those regulations.”

Investment of scheme's resources

3 After section 57 of the Pensions Act there shall be inserted the following section—

“57A Restrictions on investment of scheme's resources in employer-related assets

- (1) An occupational pension scheme shall comply with such restrictions as may be prescribed with respect to the proportion of its resources that may at any time be invested in, or in any description of, employer-related investments.
- (2) In this section—
 - “employer-related investments” means—
 - (a) shares or other securities issued by the employer or by any person who is connected with, or an associate of, the employer;
 - (b) land which is occupied or used by, or subject to a lease in favour of, the employer or any such person;
 - (c) property (other than land) which is used for the purposes of any business carried on by the employer or any such person;
 - (d) loans to the employer or any such person;
 - “the employer” means the employer of persons in the description or category of employment to which the scheme in question relates;

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“securities” means any asset, right or interest falling within paragraph 1, 2, 4 or 5 of Schedule 1 to the Financial Services Act 1986.

- (3) If and to the extent that any sums due and payable by a person to the trustees or managers of a scheme remain unpaid, those sums shall be regarded for the purposes of this section as loans made to that person by the trustees or managers, and resources of the scheme shall be regarded as invested accordingly.
- (4) Sections 249 and 435 of the Insolvency Act 1986 (connected and associated persons) shall apply for the purposes of this section as they apply for the purposes of that Act; and section 74 of the Bankruptcy (Scotland) Act 1985 shall apply for the purposes of this section as that section applies for the purposes of the said Act of 1985.”

Revaluation of preserved pensions

- 4 (1) For the definition of “qualifying pensionable service” in paragraph 2(3) of Schedule 1A to the Pensions Act (which precludes revaluation of accrued rights referable to service before 1st January 1985) there shall be substituted—
 - ““qualifying pensionable service” means—
 - (a) where the termination of pensionable service occurs after the coming into force of this paragraph of this definition, the whole of the member’s pensionable service, as defined in this sub-paragraph; and
 - (b) in any other case, so much of any such service as falls on or after 1st January 1985.”
- (2) In paragraph 3 of that Schedule (average salary benefits) in sub-paragraph (5) (definition of “salaries”) for the words from “means” to “terminated” there shall be substituted the words “means, subject to sub-paragraph (5A) below, the member’s salaries for the period between the date when his pensionable service commenced and the date when it terminated”.
- (3) After that sub-paragraph there shall be inserted—
 - “(5A) Where the member’s pensionable service terminated before the coming into force of this sub-paragraph, sub-paragraph (5) above shall have effect with the substitution for the words from “means” to “terminated” of the words “means the member’s salaries for the period between 1st January 1985 and the date when his pensionable service terminated””.