

Changes to legislation: There are currently no known outstanding effects for the Railways Act 1993, SCHEDULE 11. (See end of Document for details)

SCHEDULES

SCHEDULE 11

Section 134.

PENSIONS

Modifications etc. (not altering text)

- C1** Sch. 11 modified (8.6.2005 for certain purposes and 24.7.2005 in so far as not already in force) by Railways Act 2005 (c. 14), ss. 1, 12, 60, Sch. 2 para. 9(1)(c); S.I. 2005/1444, art. 2(1), Sch. 1; S.I. 2005/1909, art. 2, Sch.
- C2** Sch. 11: power to modify conferred (8.6.2005) by virtue of Railways Act 2005 (c. 14), ss. 1(8)(b), 60; S.I. 2005/1444, art. 2(1), Sch. 1

Interpretation

1 (1) In this Schedule—

“eligible persons”, in the case of any pension scheme, means—

- (a) any person who is an employee of—
- (i) the Board or any subsidiary of the Board, or
- (ia) ^{F1}
- (ii) a publicly owned railway company or a [^{F2}body corporate which is, or is to be, the franchisee or the franchise operator under a franchise agreement], and
- (b) ^{F3}

but does not include any such person as is mentioned in paragraph (a) above who participates in the Transport Police scheme;

“employment” means employment under a contract of service or apprenticeship (whether express or implied and, if express, whether oral or in writing), and cognate expressions shall be construed accordingly;

“existing scheme” means any occupational pension scheme (other than a new scheme)—

- (a) which is a scheme for the provision of pensions for or in respect of persons with service in the railway industry (whether or not pensions may also be provided under the scheme for or in respect of persons without such service); and
- (b) which the Secretary of State by order designates as an existing scheme for the purposes of this Schedule;

“the joint industry scheme” means such occupational pension scheme as the Secretary of State may by order designate as the joint industry scheme for the purposes of this Schedule;

“member”, in relation to a pension scheme, means—

- (a) any person who participates in that scheme;
- (b) any pensioner under that scheme; and

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(c) any other person who has pension rights under that scheme;

and “membership” shall be construed accordingly;

“new scheme” means an occupational pension scheme established under paragraph 2 below;

“occupational pension scheme” has the meaning given in section 1 of the ^{M1}Pension Schemes Act 1993;

“participant”, in relation to a pension scheme or a section of a pension scheme, means a person to whom pension rights are accruing under the scheme or section by virtue of his employment in a class or description of employment to which the scheme or section relates; and cognate expressions shall be construed accordingly;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

“pension rights”, in relation to any person, includes—

- (a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and
- (b) a right of allocation in respect of the present or future payment of a pension;

“prescribed” means specified in, or determined in accordance with, an order made by the Secretary of State;

“protected person” has the meaning given by paragraph 5 below;

“the Transport Police scheme” means such one of the schemes for the provision of pensions for or in respect of persons with service as officers of the British Transport Police Force (whether or not pensions may also be provided under the scheme for or in respect of persons without such service) as the Secretary of State may by order designate as the Transport Police scheme for the purposes of this Schedule;

“trustees”, in relation to any pension scheme, includes a reference to any persons who, under the rules of the scheme, are under a liability to provide pensions or other benefits but who are not trustees of the scheme.

- (2) Any reference in this Schedule to a pension scheme includes a reference to the scheme as amended under or by virtue of this Schedule.
- (3) Any power to make an order under or by virtue of this Schedule in relation to an existing scheme, the joint industry scheme, a new scheme, the Transport Police scheme, or a designated scheme within the meaning of paragraph 10 below shall be exercisable notwithstanding that the occupational pension scheme in question only becomes such a scheme by virtue of its establishment or designation as such in the instrument which contains the order in question; and references to such schemes shall be construed accordingly.
- (4) Subject to sub-paragraph (1) above, expressions used in this Schedule and in Part I ^{F4} . . . of this Act have the same meaning in this Schedule as they have in that Part.

Textual Amendments

F1 Sch. 11 para. 1(1): para. (a)(ia) in definition of “eligible persons” repealed (1.12.2006) by *Railways Act 2005 (c. 14)*, s.s. 59, 60, {Sch. 13 Pt. 1} (with s. 14(4)(5), Sch. 11 para. 11(2)); *S.I. 2006/2911*, **art. 2**, Sch.

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- F2** Words in para. (a)(ii) in the definition of “eligible persons” in Sch. 11 para. 1(1) substituted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(2)(b)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)
- F3** **Sch. 11 para. 1(1)**: para. (b) in definition of “eligible persons” omitted (6.4.2006) by virtue of The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745, **art. 6(a)**)
- F4** Words in **Sch. 11 para. 1(4)** repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in Sch. 2 Pt. II)

Marginal Citations

- M1** 1993 c. 48.

Establishment of new schemes

- 2 (1) The Secretary of State may by order provide for the establishment, administration and management of one or more occupational pension schemes for the provision of pensions and other benefits for or in respect of eligible persons.
- (2) Without prejudice to the generality of sub-paragraph (1) above, an order under that sub-paragraph may make provision with respect to—
- (a) the persons who may participate in, or otherwise be members of, the scheme;
 - (b) the making of contributions by persons participating in the scheme;
 - (c) the making of contributions by employers of persons who participate in the scheme;
 - (d) the amendment of the scheme;
 - (e) the winding up of the scheme, whether in whole or in part;
 - (f) the persons by whom any function under or relating to the scheme is to be exercisable.
- (3) Any occupational pension scheme established under this paragraph shall be treated for all purposes as if it were a pension scheme established under an irrevocable trust.

Amendment of existing schemes

- 3 (1) The Secretary of State may by order amend—
- (a) the trust deed of any existing scheme;
 - (b) the rules of any such scheme; or
 - (c) any other instrument relating to the constitution, management or operation of any such scheme;
- and any reference in this Schedule to amending an existing scheme accordingly includes a reference to amending any such trust deed, rules or other instrument.
- (2) Without prejudice to the generality of sub-paragraph (1) above, an order under this paragraph may, in particular, amend an existing scheme so as to alter any provision, or so as to make provision, with respect to any of the matters specified in paragraphs (a) to (f) of paragraph 2(2) above.
- (3) An order under this paragraph shall not make any amendment to a scheme—
- [^{F5}(a) which would prejudice registration of that scheme for the purposes of Part 4 of the Finance Act 2004 (pension schemes etc);]

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- (b) which would prevent the scheme from being a contracted-out scheme for the purposes of Part III of the ^{M2}Pension Schemes Act 1993 or Part III of the ^{M3}Pension Schemes (Northern Ireland) Act 1993;
 - (c) which would to any extent deprive a member of the scheme of pension rights which accrued to him under the scheme before the coming into force of the amendment; or
 - (d) which would provide for persons who are not eligible persons to become members of the scheme.
- (4) The Secretary of State shall not make an order under this paragraph except [^{F6}with the consent of] the trustees of the occupational pension scheme to which the order relates.

Textual Amendments

- F5** Sch. 11 para. 3(3)(a) substituted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), [art. 6\(b\)](#)
- F6** Words in Sch. 11 para. 3(4) substituted (1.2.2001) by [2000 c. 38, s. 252](#), [Sch. 27 para. 49\(3\)](#); [S.I. 2001/57, art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

Marginal Citations

- M2** 1993 c. 48.
M3 1993 c. 49.

Transfer of pension rights and corresponding assets and liabilities

- 4 (1) Where persons with pension rights under any existing or new scheme (“the transferor scheme”) are eligible to be members of another scheme (“the transferee scheme”) which is either—
- (a) an existing or new scheme, or
 - (b) the Transport Police scheme,
- the Secretary of State may by order make provision for those persons to be members of the transferee scheme instead of the transferor scheme and for their pension rights under the transferor scheme to be transferred so as to become pension rights under the transferee scheme.
- (2) Where any pension rights are transferred under sub-paragraph (1) above, the Secretary of State may by order make provision for—
- (a) such of the assets held for the purposes of the transferor scheme, and
 - (b) such of the liabilities under or in relation to that scheme of any employers or trustees,
- as he may consider appropriate in consequence of that transfer to be correspondingly transferred so as to become assets or, as the case may be, liabilities in relation to the transferee scheme.
- (3) Where any pension rights are transferred under sub-paragraph (1) above, the Secretary of State may by order—
- (a) impose on the trustees of the transferee scheme, or on the employer (if any) of the person whose pension rights are transferred, duties with respect to—
 - (i) the participation of that person or that employer in the scheme, or

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- (ii) the payment of contributions by that employer under the scheme, in accordance with the rules of the scheme; and
 - (b) make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of an order under this paragraph to give that approval or consent.
- (4) The Secretary of State may by order make provision for the winding up of the transferor scheme, whether in whole or in part, in connection with, or in consequence of, any transfers under this paragraph.
- (5) The Secretary of State shall not make an order under this paragraph except [^{F7}with the consent of] the trustees of the occupational pension schemes which are, or are to be, the transferor scheme and the transferee scheme.

Textual Amendments

F7 Words in [Sch. 11 para. 4\(5\)](#) substituted (1.2.2001) by [2000 c. 38, s. 252, Sch. 27 para. 49\(3\)](#); [S.I. 2001/57, art. 3\(1\)](#), [Sch. 2 Pt. I](#) (subject to savings and transitional provisions in [Sch. 2 Pt. II](#))

Protection of pension rights: meaning of “protected person”

- 5 In this Schedule “protected person” means—
- (a) any person who immediately before the passing of this Act—
 - (i) is an employee of the Board or of a subsidiary of the Board; and
 - (ii) is participating in an existing scheme;
 - (b) any person not falling within paragraph (a) above—
 - (i) who either is, immediately before the passing of this Act, an employee of the Board or of a subsidiary of the Board or has at some earlier time been such an employee;
 - (ii) who has participated in an existing scheme before the passing of this Act; and
 - (iii) who fulfils prescribed conditions;
 - (c) any person who, immediately before the passing of this Act, has pension rights under an existing scheme but is not participating in that scheme;
 - (d) any person who, after the passing of this Act, acquires pension rights—
 - (i) in consequence of the death of a person falling within paragraph (a), (b) or (c) above, and
 - (ii) by virtue of the participation of that other person in an existing scheme, or in an occupational pension scheme from which pension rights of that person have been transferred, whether directly or indirectly, to an existing scheme.

The powers of protection

- 6 (1) The Secretary of State may by order make provision for the purpose of protecting the interests of protected persons in respect of their pension rights.
- (2) Without prejudice to the generality of sub-paragraph (1) above, an order under that sub-paragraph may make provision for the purpose of securing—

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- (a) that the relevant pension rights of protected persons are no less favourable as a result of—
- (i) any amendment of an occupational pension scheme,
 - (ii) any transfer of pension rights [^{F8}(whether made between occupational pension schemes or sections of an occupational pension scheme or otherwise)], or
 - (iii) any winding up of an occupational pension scheme, in whole or in part,

than they would have been apart from the amendment, transfer or winding up, as the case may be;

- (b) that a person who is a protected person by virtue of paragraph (a) or (b) of paragraph 5 above is not prevented, otherwise than by reason of either of the following events, that is to say—

- (i) the continuity of his period of employment is broken, or
- (ii) he voluntarily withdraws from an occupational pension scheme,

from participating in some occupational pension scheme and acquiring pension rights under that scheme which are no less favourable than those which would have been provided under his former scheme in accordance with the rules of that scheme as in force immediately before the coming into force of the order; or

- (c) that the employer of a person falling within paragraph (b) above is required to provide an occupational pension scheme in which the person may participate and to which pension rights of his, and assets and liabilities relating to, or representative of, those pension rights, may be transferred;

and in paragraph (b) above “former scheme”, in relation to a protected person, means the existing scheme mentioned in paragraph (a) or (b), as the case may be, of paragraph 5 above.

- (3) For the purposes of this paragraph, the “relevant pension rights” of a protected person are so much of his pension rights as consist of or otherwise represent—

- (a) in the case of a person who is a protected person by virtue of paragraph (a), (b) or (c) of paragraph 5 above, any pension rights which, immediately before the passing of this Act, he had under the existing scheme mentioned in the paragraph in question;
- (b) in the case of a person who is a protected person by virtue of paragraph 5(a) or (b) above, any pension rights which he acquires, or has acquired, by virtue of his participation in an occupational pension scheme during the protected period in his case; and
- (c) in the case of a person who is a protected person by virtue of paragraph (d) of paragraph 5 above, any pension rights which he acquires, or has acquired, after the passing of this Act and in consequence of the death of the other person mentioned in the said paragraph (d) (“the deceased”), being—
 - (i) pension rights under the existing scheme mentioned in that paragraph, so far as referable to pension rights which the deceased had under that scheme before the passing of this Act;
 - (ii) pension rights under any occupational pension scheme, so far as referable to pension rights which, before the passing of this Act, the deceased had under the existing scheme mentioned in the said paragraph (d) and which have been transferred from that existing scheme, whether directly or indirectly; or

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- (iii) pension rights under any occupational pension scheme, so far as referable to the participation of the deceased in that or any other occupational pension scheme during the protected period.
- (4) For the purposes of sub-paragraph (3) above, “the protected period” means—
- (a) in the case of a person who is a protected person by virtue of paragraph (a) of paragraph 5 above, the period beginning with the passing of this Act and ending with whichever of the following events first occurs, that is to say—
 - (i) the continuity of the person’s period of employment is broken; or
 - (ii) he voluntarily withdraws from an occupational pension scheme;
 - (b) in the case of a person who is a protected person by virtue of paragraph (b) of paragraph 5 above, a period beginning at such time as may be prescribed and ending with whichever of the following events first occurs, that is to say—
 - (i) the continuity of the person’s period of employment is broken; or
 - (ii) he voluntarily withdraws from an occupational pension scheme; and
 - (c) in the case of a person who is a protected person by virtue of paragraph (d) of paragraph 5 above, the period (if any) which is the protected period in the case of the other person mentioned in the said paragraph (d).
- (5) In determining a person’s relevant pension rights for the purposes of this paragraph, where the rules of a pension scheme make provision requiring pension rights which have accrued to a person to be enhanced in consequence of increases in remuneration after the accrual of the pension rights, that provision, and any enhancement resulting from it, shall be treated, so far as relating to any enhancement in consequence of increases in remuneration after the passing of this Act, as pension rights accruing at the time of the increase in remuneration in question.
- (6) An order under this paragraph may make provision for and in connection with the making of elections in a prescribed manner by protected persons for orders under this paragraph (other than orders by virtue of this sub-paragraph) not to have effect with respect to them or their surviving dependants except to such extent (if any) as may be specified in the election or subject to such conditions (if any) as may be so specified.
- (7) In sub-paragraph (6) above “surviving dependant”, in relation to a protected person, means any person who may acquire, in consequence of the death of the protected person, pension rights referable to relevant pension rights of the protected person.
- (8) An order under this paragraph may make provision for such orders to cease to have effect in relation to a protected person if—
- (a) the continuity of his period of employment is broken,
 - (b) he voluntarily withdraws from an occupational pension scheme, or
 - (c) he requests that his pension rights be transferred from an occupational pension scheme,
- except in such circumstances or to such extent as may be prescribed.
- (9) Circumstances may be prescribed in which—
- (a) a break in the continuity of a person’s period of employment, or
 - (b) a person’s voluntary withdrawal from an occupational pension scheme,
- shall be disregarded for prescribed purposes of this paragraph.

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[^{F9}(10) Chapter I of Part XIV of the Employment Rights Act 1996, except section 218(6), shall apply for the purposes of this paragraph as it applies for the purposes of that Act.]

Textual Amendments

- F8** Words in Sch. 11 para. 6(2)(a)(ii) inserted (10.5.2000) by 2000 c. 38, ss. 245(1), 275(5)
F9 Sch. 11 para. 6(10) substituted (22.8.1996) for Sch. 11 para. 6(10)-(12) by 1996 c. 18, ss. 240, 243, Sch. 1 para. 60(3)

Protection: supplementary provisions

- 7 (1) Without prejudice to the generality of paragraph 6 above, an order under that paragraph may impose on any person falling within sub-paragraph (2) below duties with respect to—
- (a) the provision of a pension scheme,
 - (b) the terms of any pension scheme required to be provided by virtue of paragraph (a) above,
 - (c) the amendment, or the preservation from amendment, of a pension scheme,
 - (d) the acceptance of protected persons as members of a pension scheme,
 - (e) the acceptance (so as to become included among the property, rights and liabilities held for the purposes of a pension scheme or to which a pension scheme is subject) of property, rights and liabilities relating to, or representative of, pension rights of protected persons,
 - (f) the making or refunding of contributions,
 - (g) the purchase of annuities,
 - (h) the winding up of a pension scheme, in whole or in part,
- and may make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of such an order, so far as relating to matters specified in paragraphs (a) to (h) above, to give that approval or consent.
- (2) The persons mentioned in sub-paragraph (1) above are—
- (a) any person who is or has been the employer of a protected person;
 - (b) any person who contributes to a pension scheme as an employer, whether or not he is or has been the employer of a protected person;
 - (c) the trustees of any pension scheme of which a protected person is a member or to which pension rights of a protected person may be transferred;
 - (d) any person who has power to amend or wind up a pension scheme under which a protected person has pension rights.
- (3) An order under paragraph 5 or 6 above may include provision—
- (a) for disputes arising under the order to be referred to arbitration; or
 - (b) for provisions of the order to be enforceable on an application made to a prescribed court by the Secretary of State or by a prescribed person or a person of a prescribed description.

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Entitlement to participate in the joint industry scheme

- 8 (1) The Secretary of State may by order make provision conferring upon any person to whom this paragraph applies—
- (a) who is participating, or who at or after the making of the order begins to participate, in the joint industry scheme, and
 - (b) who fulfils the qualifying conditions,
- the right to continue to participate in the joint industry scheme, in accordance with the rules of that scheme, unless and until the termination conditions become fulfilled in the case of that person.
- (2) The persons to whom this paragraph applies are—
- (a) any person who immediately before the passing of this Act—
 - (i) is an employee of the Board or of a subsidiary of the Board; and
 - (ii) is participating in an existing scheme; and
 - (b) any person not falling within paragraph (a) above—
 - (i) who either is, immediately before the passing of this Act, an employee of the Board or of a subsidiary of the Board or has at some earlier time been such an employee;
 - (ii) who has participated in an existing scheme before the passing of this Act; and
 - (iii) who fulfils prescribed conditions.
- (3) For the purposes of this paragraph a person fulfils the “qualifying conditions” if—
- (a) the continuity of his period of employment has not been broken during the intervening period;
 - (b) he has not withdrawn voluntarily from an occupational pension scheme during that period; and
 - (c) he has at all times during that period been in the employment of an employer engaged in the railway industry.
- (4) In sub-paragraph (3) above, the “intervening period” means the period which begins at the passing of this Act and ends—
- (a) at the time when the person in question begins to participate in the joint industry scheme, or
 - (b) at the coming into force of the order under this paragraph which confers upon that person the right mentioned in sub-paragraph (1) above (or which would have conferred that right upon him, had he satisfied the qualifying conditions),
- whichever is the later.
- (5) The “termination conditions” become fulfilled for the purposes of this paragraph in the case of any person if—
- (a) the continuity of his period of employment is broken;
 - (b) he withdraws voluntarily from the joint industry scheme; or
 - (c) he is not in the employment of any employer engaged in the railway industry.
- (6) Circumstances may be prescribed in which—
- (a) a break in the continuity of a person’s period of employment,
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- (c) a period during which a person is not in the employment of an employer engaged in the railway industry,
shall be disregarded for the purpose of determining whether the person fulfils the qualifying conditions or whether the termination conditions have become fulfilled in his case.
- (7) The employers who are to be regarded for the purposes of this paragraph as “engaged in the railway industry” are those who carry on activities of a class or description specified for the purposes of this sub-paragraph by the Secretary of State in an order under this paragraph; and the Secretary of State may so specify any class or description of activity which, in his opinion, falls within, or is related to or connected with, the railway industry.
- (8) An order under this paragraph may—
- (a) impose on the trustees of the joint industry scheme, or on the employer (if any) of a person for the time being entitled to the right conferred by virtue of sub-paragraph (1) above, duties with respect to—
 - (i) the participation of that person or that employer in the scheme, or
 - (ii) the payment of contributions by that employer under the scheme, in accordance with the rules of the scheme; and
 - (b) make provision requiring any person whose approval or consent is necessary in connection with the doing of anything required to be done by virtue of an order under this paragraph to give that approval or consent.
- (9) An order under this paragraph may make provision for the purpose of preventing a person who would otherwise be entitled to the right conferred by virtue of sub-paragraph (1) above from continuing to participate in the joint industry scheme in circumstances where his continued participation in that scheme would in the opinion of a prescribed person—
- (a) prejudice any approval of that scheme for the purposes of Chapter I of Part XIV of the ^{M4}Income and Corporation Taxes Act 1988 (retirement benefit schemes); or
 - (b) prevent the scheme from being a contracted-out scheme for the purposes of Part III of the ^{M5}Pension Schemes Act 1993 or Part III of the ^{M6}Pension Schemes (Northern Ireland) Act 1993.
- (10) An order under this paragraph may include provision—
- (a) for disputes arising under the order to be referred to arbitration; or
 - (b) for provisions of the order to be enforceable on an application made to a prescribed court by the Secretary of State or by a prescribed person or a person of a prescribed description.
- (11) An order under this paragraph may make provision for and in connection with the making of elections in a prescribed manner by persons who would otherwise be entitled by virtue of sub-paragraph (1) above to the right there mentioned for orders under this paragraph (other than orders by virtue of this sub-paragraph) not to have effect with respect to them.
- (12) Sub-paragraph (10) of paragraph 6 above shall have effect for the purposes of this paragraph as it has effect for the purposes of that paragraph.

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Marginal Citations

- M4 1988 c. 1.
- M5 1993 c. 48.
- M6 1993 c. 49.

Payments in discharge of liabilities under s.52(1) of the Transport Act 1980

- 9 (1) In section 52 of the ^{M7}Transport Act 1980, in subsection (1) (which requires the Secretary of State to make payments each year to B.R. pension schemes in respect of unfunded pension obligations owed by the Board), for the words “Subject to the provisions of this section and section 58,” there shall be substituted the words “Subject to the provisions of this section and sections 52A to 52D and 58,”.

- (2) After that section there shall be inserted—

“52A Power to make payments by way of final discharge of liabilities under s.52(1).

- (1) If the Minister is desirous of making to the persons administering a B.R. pension scheme one or more payments by way of final discharge of his liability to make payments to them under section 52(1) in relation to that scheme, to the extent that that liability relates to so much of the relevant pension obligations as are owed in respect of—
- (a) all pension rights under the scheme,
 - (b) pension rights of some particular class or description under the scheme, or
 - (c) pension rights of persons of some particular class or description under the scheme,

he may give to the persons administering the scheme a notice identifying the pension rights in question and specifying in relation to those pension rights the matters set out in subsection (2), as determined in accordance with the following provisions of this section.

- (2) The matters mentioned in subsection (1) are—
- (a) the capital value of the attributable unfunded obligations in question, as at the beginning of the next financial year;
 - (b) the amount or amounts, or the method of determining the amount or amounts, of the payment or payments to be made under this section by way of final discharge of the Minister’s liability to make payments under section 52(1), so far as relating to the pension rights identified in the notice under subsection (1); and
 - (c) the date or dates on which that payment or those payments are to be made.
- (3) In making any determination for the purposes of paragraph (b) of subsection (2), the amount or, as the case may be, the aggregate of the amounts mentioned in that paragraph shall be such as to include—
- (a) a sum equal to the capital value determined under paragraph (a) of that subsection; and

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- (b) interest, payable at such rate as may be determined by the Minister, on so much (if any) of that sum as may from time to time be outstanding after the beginning of the financial year mentioned in the said paragraph (a).
- (4) For the purposes of this section, the capital value mentioned in paragraph (a) of subsection (2) shall either—
- (a) be determined by the Minister, or
 - (b) if the Minister so requires in the particular case, be determined by the actuary to the scheme in question and approved by the Minister, and it shall be for the Minister to determine the matters mentioned in paragraphs (b) and (c) of that subsection.
- (5) Notice under subsection (1) above shall only be given after consultation—
- (a) with the persons administering the scheme in question; and
 - (b) with the actuary to that scheme, except in a case where the capital value mentioned in subsection (2)(a) is determined by that actuary pursuant to subsection (4)(b);
- and any such notice must be given not less than one month before the beginning of the financial year mentioned in subsection (2)(a).
- (6) The giving of a notice under subsection (1) shall—
- (a) terminate the liability of the Minister to make payments under section 52(1), so far as relating to the pension rights identified in the notice, for financial years beginning after the giving of the notice; and
 - (b) impose upon the Minister a duty—
 - (i) to make to the persons administering the scheme in question the payment or payments mentioned in subsection (2)(b); and
 - (ii) to do so at the time or times specified in pursuance of subsection (2)(c).
- (7) Where notice has been given under subsection (1), the Minister may—
- (a) at any time before the expiration of the period of eleven months beginning with the financial year mentioned in subsection (2)(a) as it applies in relation to that notice, and
 - (b) after consultation with the persons administering the scheme in question and the actuary to the scheme,
- amend that notice by giving notice of the amendment to the persons administering the scheme.
- (8) If notice is given under subsection (7) of an amendment affecting the amount of a payment which has been made pursuant to this section, the Minister may also give notice to the persons administering the scheme in question requiring them—
- (a) to repay to him so much of the payment made as exceeds the amended amount; and
 - (b) to pay interest to him, at such rate as he may determine, on the amount to be repaid, as from the date on which the payment in question was made by him;

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and where notice is given under paragraph (a) or (b), the amount required to be repaid or, as the case may be, the amount of interest required to be paid from time to time, shall be treated as a debt due from those persons to the Minister.

- (9) In any case where—
- (a) notice has been given under subsection (1), the effect of which (whether taken alone or with other notices under that subsection) is that notice has been given under that subsection in respect of all pension rights under the scheme in question, and
 - (b) for that financial year in which the notice mentioned in paragraph (a) is given, the aggregate amount of the payments made under section 52(1) in relation to the scheme requires adjustment for the reason set out in section 52(3)(a) or (b), but
 - (c) the required adjustment cannot be made as mentioned in section 52(3), because (in consequence of the notice mentioned in paragraph (a)) no payments under section 52(1) fall to be made in relation to that scheme for subsequent financial years,
- payments by way of adjustment, of an amount equal in the aggregate to the amount of the required adjustment, shall instead be made by the Minister to the persons administering the scheme or, as the case may require, by those persons to the Minister, before the expiration of the period of six months beginning with the date on which the amount of the required adjustment is determined.
- (10) The Minister may give a direction to the persons administering a B.R. pension scheme requiring them to furnish to him—
- (a) information from which the proportion mentioned in section 55(1)(a) can be finally determined for the financial year mentioned in subsection (9)(b) in the case of the scheme; or
 - (b) information about any such unforeseen increase or reduction in the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the scheme for that financial year as is mentioned in section 52(3)(b).
- (11) Where payments by way of adjustment fall to be made under subsection (9), interest shall be payable from the end of the financial year in which the notice mentioned in subsection (9)(a) is given, by the person liable to make those payments, at such intervals and rates as may be determined by the Minister, on so much of the aggregate amount of the payments in question as for the time being remains unpaid.
- (12) So much of—
- (a) any payment by way of adjustment under subsection (9) which falls to be made, or
 - (b) any interest accrued under subsection (11),
- as has not been paid shall be treated as a debt due.
- (13) Nothing in this section affects the liability of the Board in respect of any relevant pension obligations.
- (14) For the purposes of this section, the “capital value of the attributable unfunded obligations”, in the case of any B.R. pension scheme, means such

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amount as is, in the opinion of the person determining that capital value pursuant to subsection (4), the capital equivalent of the payments that would, apart from this section, have been expected to be made by the Minister under section 52(1), so far as relating to the pension rights identified in the notice under subsection (1), for the successive financial years beginning with the one mentioned in subsection (2)(a).

(15) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.”

(3) After the section 52A inserted by sub-paragraph (2) above, there shall be inserted—

“52B Power to substitute obligations under this section for liabilities under s.52(1).

(1) The Minister may make a substitution order in relation to any occupational pension scheme—

- (a) which is a new scheme, within the meaning of Schedule 11 to the Railways Act 1993;
- (b) which is designated under paragraph 10(1) of that Schedule (designation of schemes which are to be treated as B.R. pension schemes for certain purposes of this Part); and
- (c) in relation to which a guarantee has been given by the Secretary of State under paragraph 11 of that Schedule;

and any reference in this section to a “guaranteed pension scheme” is a reference to such an occupational pension scheme.

(2) The Minister may also make a substitution order in relation to any section of a new scheme, within the meaning of Schedule 11 to the Railways Act 1993, if the section is one—

- (a) which is designated under paragraph 10(1) of that Schedule; and
- (b) in relation to which a guarantee has been given by the Secretary of State under paragraph 11 of that Schedule;

and the following provisions of this section (and sections 52C and 52D) shall apply in relation to any such section of a new scheme as if any reference to a guaranteed pension scheme included a reference to such a section.

(3) For the purposes of this section, a “substitution order” is an order under this section the effect of which is—

- (a) to terminate, from the termination date, the Minister’s liability to make to the persons administering the guaranteed pension scheme in question payments under section 52(1) in relation to the scheme; and
- (b) to impose on the Minister, in substitution for that liability, an obligation to make to those persons, subject to and in accordance with the following provisions of this section, one or more other payments (the “substitution payments”) in relation to that scheme.

(4) Subject to the following provisions of this section, the amount of the substitution payments to be made in the case of a guaranteed pension scheme shall be equal in the aggregate to the sum of—

- (a) the amount specified pursuant to subsection (5)(a) as the capital value of the unfunded obligations in the case of the scheme; and

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- (b) the aggregate amount of any interest which is dealt with as mentioned in subsection (8)(b)(ii) in the case of the scheme.
- (5) A substitution order must specify—
- (a) the capital value of the unfunded obligations in the case of the guaranteed pension scheme in question, as at the termination date; and
 - (b) the date which, for the purposes of this section, is to be the termination date in relation to that scheme, being a date not earlier than one month after the coming into force of the substitution order.
- (6) Any determination for the purposes of this section of the capital value of the unfunded obligations in the case of a guaranteed pension scheme shall either—
- (a) be made by the Minister; or
 - (b) if the Minister so requires in the particular case, be made by the actuary to the guaranteed pension scheme in question and approved by the Minister.
- (7) A substitution order may specify—
- (a) the amount or amounts, or the method of determining the amount or amounts, of the substitution payments,
 - (b) the date or dates on which the substitution payments are to be made,
 - (c) circumstances (which may, if the Minister so desires, be defined by reference to the opinion of any person) in which substitution payments are to be made,
- and may provide for the obligation to make substitution payments to be discharged if the guaranteed pension scheme in question has, in the opinion of a person specified or described in, or nominated under, the order, been wound up.
- (8) A substitution order must provide—
- (a) for interest to accrue from the termination date on the outstanding balance of the capital value for the time being at such rate, and at such intervals, as may be specified in, or determined under or in accordance with, the order; and
 - (b) for any such interest which accrues—
 - (i) to be paid to the persons administering the guaranteed pension scheme in question, or
 - (ii) to be added to the outstanding balance of the capital value, (or to be dealt with partly in one of those ways and partly in the other);
- and the provision that may be made by virtue of paragraph (a) includes provision for the rate of interest to be calculated by reference to any variable or to be such rate as the Minister may from time to time determine and specify in a notice to the persons administering the scheme in question.
- (9) For the purposes of subsection (8), the “outstanding balance of the capital value”, in the case of a guaranteed pension scheme, means the capital value of the unfunded obligations in the case of the scheme, as specified pursuant to subsection (5)(a),—

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- (a) reduced by the amount of any substitution payments made in relation to that scheme; and
 - (b) increased by any additions of accrued interest under or by virtue of subsection (8)(b)(ii) in relation to that scheme.
- (10) Nothing in this section affects the liability of the Board in respect of any relevant pension obligations.
- (11) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.
- (12) In this section—
- “the capital value of the unfunded obligations”, in the case of any guaranteed pension scheme, means such amount as is, in the opinion of the person determining that capital value pursuant to subsection (6), the capital equivalent of the payments that would, apart from this section, have been expected to be made by the Minister under section 52(1) in relation to that scheme after the termination date in the case of that scheme;
 - “occupational pension scheme” means an occupational pension scheme as defined in section 1 of the ^{M8}Pension Schemes Act 1993;
 - “the terminal period”, in the case of any guaranteed pension scheme, means—
 - (a) if a financial year of the scheme ends with the termination date, that financial year; or
 - (b) in any other case, so much of the financial year of the scheme in which the termination date falls as ends with that date;
 - “the termination date”, in the case of any guaranteed pension scheme, shall be construed in accordance with subsection (5)(b);
 - “the termination year”, in the case of any guaranteed pension scheme, means the financial year of the scheme which consists of or includes the terminal period;
 - “trustees”, in relation to a guaranteed pension scheme, includes a reference to any persons who, under the rules of the scheme, are under a liability to provide pensions or other benefits but who are not trustees of the scheme.

52C Adjustments arising in connection with orders under s.52B.

- (1) As soon as practicable after the termination date in the case of any guaranteed pension scheme, there shall be determined, for the terminal period, what proportion of the pensions, increases and expenses payable under, or incurred in connection with, the scheme corresponds to the relevant pension obligations.
- (2) Any determination under subsection (1) shall either—
- (a) be made by the Minister; or
 - (b) if the Minister so requires in the particular case, be made by the actuary or auditor to the guaranteed pension scheme in question and approved by the Minister.

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- (3) The Minister may give a direction to the persons administering a guaranteed pension scheme requiring them to determine the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the scheme for the terminal period or the termination year and to notify him in writing of their determination.
- (4) As respects the termination year of a guaranteed pension scheme, the extent of the liability of the Minister to make payments under section 52(1) in relation to that scheme shall be restricted to a liability to make payments of an amount (the “termination year amount”) equal in the aggregate to the product of—
- (a) the proportion determined under section 54(1) for that scheme;
 - (b) the proportion determined pursuant to subsection (1) in the case of that scheme; and
 - (c) the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with that scheme in the terminal period;
- and payments by way of adjustment shall be made by the Minister to the persons administering the scheme, or (as the case may be) by those persons to the Minister, before the expiration of the period of six months beginning with the date of the last of the determinations made under subsection (1) or (3) with respect to the scheme.
- (5) Where, in the case of a guaranteed pension scheme, the funding of the relevant pension obligations has, by virtue of subsection (3) of section 54, been left out of account in making a determination under subsection (1) of that section, the termination year amount in the case of that scheme shall be the difference between—
- (a) what that amount would have been, apart from this subsection; and
 - (b) the amount of any income accruing for the terminal period which may be applied towards the payment of such of the pensions, increases and expenses payable under or incurred in connection with the scheme as correspond to those obligations.
- (6) The Minister may give a direction to the persons administering a guaranteed pension scheme requiring them to determine the amount mentioned in subsection (5)(b) and to notify him in writing of their determination.
- (7) Where payments by way of adjustment fall to be made, interest shall be payable, as from the termination date, by the person liable to make those payments, at the rates and intervals from time to time applicable for the purposes of section 52B(8)(a) in the case of the scheme in question, on so much of the aggregate amount of the payments in question as for the time being remains unpaid.
- (8) So much of—
- (a) any payment by way of adjustment which falls to be made, or
 - (b) any interest accrued under subsection (7),
- as has not been paid shall be treated as a debt due.
- (9) Any sums required for the making of payments under this section by the Minister shall be paid out of money provided by Parliament.

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- (10) In this section, “payments by way of adjustment”, in the case of a guaranteed pension scheme, means—
- (a) if the Minister has made payments under section 52(1) in relation to that scheme for the termination year which, in the aggregate, exceed the termination year amount, payment to the Minister by the persons administering the scheme of an amount equal to the excess;
 - (b) if the Minister has made no payments under section 52(1) in relation to that scheme for the termination year, payment by the Minister to those persons of the termination year amount; or
 - (c) if the Minister has made payments under section 52(1) in relation to that scheme for the termination year which, in the aggregate, fall short of the termination year amount, payment by the Minister to those persons of an amount equal to the shortfall.
- (11) Expressions used in this section and in section 52B have the same meaning in this section as they have in that section.

52D Orders and directions under sections 52A to 52C: supplemental.

- (1) Any power to make an order under section 52B shall be exercisable by statutory instrument made by the Minister after consultation with the trustees of the guaranteed pension scheme to which the order relates.
- (2) A statutory instrument containing an order under section 52B shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) At the time when a statutory instrument containing an order under section 52B is laid before each House of Parliament pursuant to subsection (2), the Minister shall, if he has not already done so, also lay before each House of Parliament a copy of the guarantee mentioned in subsection (1)(c) of that section; but this subsection is without prejudice to the validity of the order in question.
- (4) Any power to make an order under section 52B includes power, exercisable in the same manner, to make such incidental, supplemental, consequential or transitional provision as may appear necessary or expedient to the Minister.
- (5) Any order under section 52B may make different provision for different cases or for different classes or descriptions of case.
- (6) It shall be the duty of any person to whom a direction is given under section 52A or 52C to comply with and give effect to that direction; and compliance with any such direction shall be enforceable by civil proceedings by the Minister for an injunction or interdict or for any other appropriate relief.
- (7) Any power to give a direction under section 52A or 52C includes power to vary or revoke the direction.
- (8) Any direction under section 52A or 52C shall be given in writing.
- (9) In this section—

“guaranteed pension scheme” has the same meaning as in section 52B;

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“trustees”, in relation to a guaranteed pension scheme, has the same meaning as in section 52B.”

- (4) In section 70 of that Act, in subsection (2) (interpretation), for the definition of “the Minister” there shall be substituted—

“ “the Minister means the Secretary of State;” ”.

Commencement Information

- II** Sch. 11 para. 9 wholly in force at 16.8.1994; para. 9 not in force at Royal Assent see s. 154(2); para. 9(3) in force for specified purpose and para. 9(1)(2)(4) wholly in force at 6.1.1994 by S.I. 1993/3237, art. 2(2); Sch. 11 para. 9 in force at 16.8.1994 insofar as not already in force by S.I. 1994/2142, art. 2

Marginal Citations

- M7** 1980 c. 34.
M8 1993 c. 48.

Application and modification of Part III of the 1980 Act

- 10 (1) The Secretary of State may by order designate—
- any occupational pension scheme which would not, apart from this paragraph, be included among the pension schemes which are B.R. pension schemes for the purposes of Part III of the 1980 Act, or
 - any section of an occupational pension scheme, being a section which would not, apart from this paragraph, be included among those schemes, as a pension scheme which is to be treated as included among those schemes for the purpose of requiring or enabling him to make to the persons administering the scheme payments under section 52(1), 52A, 52B or 52C of that Act in respect of qualifying pension rights transferred (whether under paragraph 4 above or otherwise) so as to become pension rights under that scheme.
- (2) An order under sub-paragraph (1) above may make provision, in any case where qualifying pension rights of any persons are, or are to be, transferred as mentioned in that sub-paragraph, for treating those persons as constituting a section of the occupational pension scheme to which those qualifying pension rights are, or are to be, so transferred.
- (3) No order shall be made under sub-paragraph (1) above except after consultation with the trustees of the occupational pension scheme to which the qualifying pension rights are, or are to be, transferred.
- (4) Subject to the following provisions of this paragraph, Part III of the 1980 Act shall have effect as if any reference in that Part to a B.R. pension scheme included a reference to a designated scheme.
- (5) Where qualifying pension rights are transferred to a designated scheme as mentioned in sub-paragraph (1) above, the proportion referred to in section 52(1)(a) of the 1980 Act in its application by virtue of this paragraph in relation to the designated scheme shall, instead of being determined under section 54 of that Act, be taken to be the proportion which has been determined under that section in relation to the B.R. pension scheme from which the qualifying pension rights are transferred; and references in Part III of that Act to that proportion shall be construed accordingly.

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- (6) In the application of Part III of the 1980 Act in relation to a designated scheme, references in that Part to “the relevant pension obligations” shall, in relation to the designated scheme, be construed—
- (a) as if the reference in section 53(1)(a) of that Act to obligations of the Board which were owed on 1st January 1975 in connection with the scheme were a reference to so much of the obligations of the Board which were owed on that date in connection with a B.R. pension scheme as are obligations in respect of qualifying pension rights transferred to the designated scheme; and
 - (b) as if the reference in section 53(1)(c) of that Act to an obligation ^{F10} . . . arising after that date to pay or secure the payment of increases payable under the scheme included a reference to so much of any such obligation ^{F10} . . . in respect of a B.R. pension scheme as is an obligation in respect of qualifying pension rights transferred to the designated scheme.
- (7) In the application of section 55 of the 1980 Act in relation to a designated scheme, paragraph (a) of subsection (1) (which requires the proportion of the scheme’s outgoings which corresponds to the relevant pension obligations to be determined before the beginning of each financial year or, in the case of the first financial year, as soon as practicable after the passing of that Act) shall be taken to require the proportion mentioned in that paragraph to be determined—
- (a) before the beginning of the financial year in question, or
 - (b) as soon as practicable after the coming into force of the order under sub-paragraph (1) above by virtue of which the scheme in question is a designated scheme,
- and paragraph (b) of that subsection shall be construed accordingly.
- (8) The power to give a direction under section 57 of the 1980 Act (which provides for certain determinations to be made as if no transfer had taken place and as if no payment representing the pension rights in question had been made) shall be exercisable in any case where the whole or any part of a person’s accrued pension rights under a B.R. pension scheme or a designated scheme are transferred (whether under paragraph 4 above or otherwise) to—
- (a) a designated scheme, or
 - (b) a pension scheme established by the Board,
- as it is in the case of any such transfer as is mentioned in that section.
- (9) Without prejudice to sub-paragraph (8) above, where in any financial year the whole or any part of a person’s accrued pension rights under a B.R. pension scheme are transferred to a designated scheme, it shall be assumed, for the purposes of any determination of the aggregate amount of the pensions, increases and expenses payable under or incurred in connection with the B.R. pension scheme in that financial year, that the payment of any sum representing those pension rights had not been made.
- (10) Without prejudice to section 59(1) of the 1980 Act (which provides that the making of payments under section 52(1) does not discharge certain relevant pension obligations), the making of any payment under section 52(1) of the 1980 Act to the persons administering a designated scheme shall not discharge any relevant pension obligation, so far as it is an obligation to pay pensions or increases of pensions under that or any other designated scheme, or under a B.R. pension scheme, or is an obligation to secure the payment of those pensions or increases.

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- (11) Without prejudice to section 59(2) of the 1980 Act (power to amend pension scheme for certain purposes), if the persons administering an occupational pension scheme would not otherwise have power to do so, they may amend the scheme by instrument in writing for the purpose of enabling persons to be admitted as members of the scheme on the basis that payments will fall to be made under Part III of the 1980 Act in respect of qualifying pension rights of theirs which are transferred so as to become pension rights under the scheme.
- (12) Where the persons administering an occupational pension scheme have power, apart from sub-paragraph (11) above, to amend the scheme for the purpose mentioned in that sub-paragraph, they may exercise that power for that purpose without regard to any limitations on the exercise of the power and without compliance with any procedural provisions applicable to its exercise.
- (13) Any reference in Part III of the 1980 Act to a “financial year” shall, in relation to a designated scheme, be taken as a reference—
- (a) to such period as—
 - (i) begins with the transfer of the qualifying pension rights in question, and
 - (ii) ends with the last day of an accounting year of the scheme, and is a period of not less than twelve months and less than two years; and
 - (b) to each successive accounting year of that scheme.
- (14) Where any provision of Part III of the 1980 Act requires anything to be done in, or in relation to, the first financial year of a B.R. pension scheme, that provision shall (so far as so requiring) be disregarded in the application of that Part in relation to a designated scheme.
- (15) In any case where—
- (a) the whole or any part of a person’s accrued pension rights under a B.R. pension scheme are transferred so as to become pension rights under a designated scheme, and
 - (b) immediately before that transfer takes effect, relevant pension obligations a proportion of which, as determined for the purposes of section 52(1)(a) of the 1980 Act, has not been funded are owed in respect of those pension rights by the [FII Authority] to the persons administering the pension scheme from which the pension rights are so transferred,
- an order under sub-paragraph (1) above may provide for the benefit of that proportion of so much of those relevant pension obligations as are owed in respect of those pension rights to be transferred, so as to become relevant pension obligations owed by the [FII Authority] to the persons administering the pension scheme to which the pension rights are transferred.
- (16) Where the benefit of any relevant pension obligations is transferred by virtue of sub-paragraph (15) above, the persons administering the pension scheme to which the benefit of those obligations is transferred shall have, in relation to the relevant pension obligations the benefit of which is so transferred, all the rights of the persons administering the pension scheme from which the benefit of those obligations is transferred.
- (17) In this paragraph—
- “the 1980 Act” means the ^{M9}Transport Act 1980;

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“designated scheme” means an occupational pension scheme or, as the case may be, a section of any such scheme, which is designated under sub-paragraph (1) above;

“pension scheme” includes a section of a pension scheme;

“qualifying pension rights” means any pension rights as respects the whole or some part of which there are subsisting relevant pension obligations a proportion of which, as determined for the purposes of section 52(1)(a) of the 1980 Act, has not been funded;

and, subject to that, expressions used in this paragraph and in Part III of the 1980 Act have the same meaning in this paragraph as they have in that Part.

Textual Amendments

F10 Words in **Sch. 11 para. 10(6)(b)** repealed (1.2.2001) by **2000 c. 38, s. 274, Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

F11 Words in **Sch. 11 para. 10(15)** substituted (1.2.2001) by **2000 c. 38, s. 252, Sch. 27 para. 49(4)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

Marginal Citations

M9 1980 c. 34.

Government guarantees to trustees of certain new schemes

- 11 (1) Subject to the following provisions of this paragraph, the Secretary of State—
- (a) shall give to the trustees of any new scheme which satisfies the conditions in sub-paragraph (3) below, and
 - (b) may give to the trustees of any new scheme which satisfies the conditions in sub-paragraph (4) below,
- a guarantee in respect of their liabilities to make payments in respect of pension rights under the scheme.
- (2) This paragraph applies in relation to a section of a new scheme as it applies in relation to a new scheme; and any reference in this paragraph to a new scheme, a closed scheme, a pension scheme or a member shall be construed accordingly.
- (3) A new scheme satisfies the conditions in this sub-paragraph if—
- (a) all the members of the scheme are persons whose pension rights under the scheme are pension rights which have been transferred, so as to become pension rights under that scheme, pursuant to an order under paragraph 4 above; and
 - (b) the rules of the scheme prevent any member of the scheme from being a participant in the scheme.
- (4) A new scheme satisfies the conditions in this sub-paragraph if—
- (a) the scheme is a closed scheme; and
 - (b) at the date on which the scheme becomes a closed scheme, all the members of the scheme are—
 - (i) participants in the scheme to whom pension rights under the scheme are accruing by virtue of their employment with a relevant employer;
 - or

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- (ii) pensioners or deferred pensioners under the scheme whose pension rights under the scheme derive in whole or in part from their, or some other person's, participation in an occupational pension scheme as an employee of a relevant employer.
- (5) Classes or descriptions of person may be prescribed whose membership of, or participation in, a new scheme is to be disregarded for the purpose of determining whether the new scheme satisfies the conditions in sub-paragraph (3) or (4) above.
- (6) The power to give a guarantee under sub-paragraph (1)(b) above becomes exercisable in the case of any new scheme if the Secretary of State is of the opinion that it is desirable to give such a guarantee for the purpose of ensuring that the trustees of the scheme are, or will be, able to meet their liabilities to make payments in respect of pension rights under the scheme as those liabilities fall to be met.
- (7) The Secretary of State shall consider any representations made by the trustees of a new scheme which satisfies the conditions in sub-paragraph (4) above concerning their ability to meet their liabilities to make payments in respect of pension rights under the scheme.
- (8) Any guarantee under this paragraph shall be given in such manner, and on such terms and conditions, as the Secretary of State may, after consultation with the trustees of, and the actuary to, the scheme in question, think fit; and, without prejudice to the generality of the foregoing provisions of this sub-paragraph, the terms and conditions on which a guarantee under this paragraph may be given include terms and conditions—
 - (a) with respect to any matter relating to payment under the guarantee, including—
 - (i) the circumstances in which payment under the guarantee falls to be made;
 - (ii) the amounts, or the method of determining the amounts, of any payments that fall to be so made;
 - (iii) the persons to whom any such payments are to be made;
 - (b) with respect to any matter relating to the management, affairs or winding up of the scheme, including—
 - (i) the policy to be followed in relation to the investment of assets held for the purposes of the scheme; and
 - (ii) the distribution of any surplus which may arise under the scheme; or
 - (c) requiring or precluding, or otherwise with respect to, amendment of the rules of the scheme;and the sub-paragraphs of paragraphs (a) and (b) above are without prejudice to the generality of the preceding provisions of the paragraph in question.
- (9) Any sums required by the Secretary of State to fulfil a guarantee given under this section shall be paid out of money provided by Parliament.
- (10) In this paragraph—
 - “closed scheme” means a pension scheme—
 - (a) to which no new members are to be admitted; but
 - (b) under which pensions and other benefits continue to be provided;
 - “deferred pensioner”, in the case of any pension scheme, means a person who has pension rights under the scheme but who (so far as relating to those

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pension rights) is neither a participant in the scheme nor a pensioner under the scheme;

“relevant employer” means—

- (a) the Board;
- (b) a wholly owned subsidiary of the Board; ^{F12} . . .
- (c) a publicly owned railway company ^{F12} . . .
- [^{F13}(d) the Authority; or
- (e) a wholly owned subsidiary of the Authority.]

Textual Amendments

- F12** Words in paras. (b)(c) in the definition of “relevant employer” in Sch. 11 para. 11(10) repealed (1.2.2001) by 2000 c. 38, s. 274, **Sch. 31 Pt. IV**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)
- F13** Paras. (d)(e) in the definition of “relevant employer” in Sch. 11 para. 11(10) inserted (1.2.2001) by 2000 c. 38, s. 252, **Sch. 27 para. 49(5)**; S.I. 2001/57, art. 3(1), **Sch. 2 Pt. I** (subject to savings and transitional provisions in **Sch. 2 Pt. II**)

Supplementary

- 12 If it appears to the Secretary of State necessary or expedient to do so, in consequence of any provision made by order under this Schedule, he may by provision made in the same manner—
- (a) repeal or amend, or modify the operation of, any private or local Act of Parliament; or
 - (b) revoke or amend, or modify the operation of, any statutory instrument (whether local or general).

Parliamentary procedure

- 13 (1) A statutory instrument containing an order under this Schedule, other than an order under paragraph 11 above, shall not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.
- (2) At or before the time when a draft of a statutory instrument containing an order under paragraph 3 or 4 above is laid before each House of Parliament pursuant to sub-paragraph (1) above, the Secretary of State shall also lay before each House of Parliament a copy of any comments on the order in question—
- (a) which have been made in writing to the Secretary of State by the trustees mentioned in paragraph 3(4) or, as the case may be, paragraph 4(5) above;
 - (b) which are designated by those trustees as comments which they wish the Secretary of State to consider as comments on that order; and
 - (c) which have been received by the Secretary of State before the expiration of such period as has been notified by him to those trustees as being the consultation period in relation to the order in question;
- but this sub-paragraph is without prejudice to the validity of the order in question.
- (3) If, apart from the provisions of this sub-paragraph, the draft of an instrument containing an order under this Schedule would be treated for the purposes of the

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Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

Transitory provision

- 14 In this Schedule, and in any amendment made by this Schedule to any other enactment,—
- (a) any reference to section 1 of the ^{M10}Pension Schemes Act 1993 shall, until the coming into force of that section, be construed as a reference to section 66(1) of the ^{M11}Social Security Pensions Act 1975;
 - (b) any reference to Part III of the Pension Schemes Act 1993 shall, until the coming into force of that Part, be construed as a reference to Part III of the ^{M12}Social Security Pensions Act 1975; and
 - (c) any reference to Part III of the ^{M13}Pension Schemes (Northern Ireland) Act 1993 shall, until the coming into force of that Part, be construed as a reference to Part IV of the ^{M14}Social Security Pensions (Northern Ireland) Order 1975.

Marginal Citations

- M10** 1993 c. 48.
M11 1975 c. 60.
M12 1975 c. 60.
M13 1993 c. 49.
M14 S.I. 1975/1503 (N.I. 15).

Changes to legislation:

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