

SCHEDULES

SCHEDULE 5

PENSIONS PROVISION IN CONNECTION WITH RESTRUCTURING

Replacement schemes for employees transferred to the private sector etc.

- 3 (1) The Secretary of State may by regulations make such provision as he thinks fit for securing that arrangements are made and implemented in relation to any existing scheme for enabling participants in that scheme to become participants in another pension scheme (“a new scheme”) which—
- (a) is established, under and in accordance with the regulations, by the Corporation or such other person as may be prescribed; and
 - (b) satisfies the statutory requirements by reference to that existing scheme.
- (2) Where at any time the employment of any participant in any existing scheme in relation to which a new scheme has been established in pursuance of regulations under this Schedule is affected—
- (a) by the coming into force of any provisions of a restructuring scheme in accordance with which a person other than the Authority becomes his employer in place of the Corporation or one of its wholly-owned subsidiaries, or
 - (b) by a company’s having ceased at any time on or after the restructuring date to be a subsidiary of the Corporation,
- the duty specified in sub-paragraph (3) below shall arise and be owed to the participant and to every person who at that time is a participant in that existing scheme in respect of his continuing employment with a person other than the Corporation or a subsidiary of the Corporation.
- (3) That duty is a duty to secure that the person to whom the duty is owed is afforded, and is entitled to exercise, an option of becoming a participant in the new scheme in respect of the employment to which he is transferred or, as the case may be, in respect of his continuation, after the time when the duty arises, in the employment in respect of which he is at that time participating in the existing scheme.
- (4) The duty owed to any person under sub-paragraphs (2) and (3) above shall be owed—
- (a) in a case where it is owed to a person who is transferred in accordance with a restructuring scheme from the employment of one person to the employment of another, by the person to whose employment he is transferred; and
 - (b) in any other case, by the person who, in relation to the employment to which the duty relates, is the employer of the person to whom the duty is owed.
- (5) For the purposes of this paragraph, where a company has ceased to be a subsidiary of the Corporation, the persons whose employment shall be treated as affected by the company’s having ceased to be such a subsidiary shall be (and shall be confined to) the persons employed by that company at whichever is the later of the following times, that is to say—

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- (a) the time when the company ceased to be a subsidiary of the Corporation; and
- (b) the time when the company would so cease if any shares in the company which have at any time been transferred (whether in accordance with a restructuring scheme or otherwise) to any of the following persons, that is to say—
 - (i) the Treasury,
 - (ii) the Secretary of State,
 - (iii) a company wholly owned by the Crown, or
 - (iv) any nominee of the Treasury, the Secretary of State or a company wholly owned by the Crown,
 remained vested in the Corporation for so long after their transfer as they remain vested in any of the persons mentioned in sub-paragraphs (i) to (iv) above;

and a person whose employment is affected by a company's having ceased to be a subsidiary of the Corporation shall be treated for the purposes of this paragraph as so affected only at whichever of the times mentioned in paragraphs (a) and (b) above is applicable in his case.

- (6) For the purposes of this paragraph a new scheme satisfies the statutory requirements by reference to an existing scheme ("the previous scheme") if it contains all such provision as may be prescribed for the purposes specified in sub-paragraph (7) below, together with such other provision as may be prescribed.
- (7) The purposes mentioned in sub-paragraph (6) above are the purposes of securing—
 - (a) that no person is able to participate in the new scheme as an employee unless he is a person falling within sub-paragraph (8) below;
 - (b) that the new scheme is and continues to be approved for the purposes of the relevant enactments;
 - (c) that the new scheme provides benefits to and in respect of participants in the new scheme which are no less advantageous than the benefits falling to be provided under the previous scheme as at the time immediately before the restructuring date; and
 - (d) that the pension rights under the previous scheme of any person who becomes a participant in the new scheme in respect of any employment are capable, at that person's option, of being transferred so as to become rights under the new scheme.
- (8) A person falls within this sub-paragraph if he is—
 - (a) one of the persons who by virtue of sub-paragraph (2) above is to be afforded the option of becoming a participant in the new scheme;
 - (b) a person the duties of whose employment with the same employer have changed so that he has ceased to be eligible to participate in a scheme in relation to which he has been entitled to protection under paragraph 4 below but has become a person who satisfies, by reference to his new duties, a condition of eligibility for participation in the new scheme; or
 - (c) a person with pension rights as a result of having been a participant in an existing scheme who, at any time on or after the restructuring date, enters the employment of a person any of whose employees are already, in respect of their employment with that person, participants in the new scheme.

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- (9) Regulations under this paragraph prescribing the provision that must be contained in a scheme for it to satisfy the statutory requirements may provide for that provision to be determined by reference to such directions and certificates of the Secretary of State as may be given or issued to such persons, in such cases and in such manner as may be prescribed.