
Changes to legislation: There are currently no known outstanding effects for the Coal Industry Act 1994, Cross Heading: Modification of existing schemes. (See end of Document for details)

SCHEDULES

SCHEDULE 5

PENSIONS PROVISION IN CONNECTION WITH RESTRUCTURING

Modification of existing schemes

- 2 (1) The Secretary of State may by regulations make provision in relation to an existing scheme for it to continue in force notwithstanding the repeal by this Act of section 37 of the 1946 Act and of the enactments modifying that section.
- (2) Without prejudice to any powers conferred (so long as it remains in force) by section 37 of the 1946 Act, the Secretary of State may by regulations make such provision as he considers appropriate in connection with the provisions of this Act for modifying any existing scheme.
- (3) Without prejudice to the generality of the power conferred by sub-paragraph (2) above, the modifications of an existing scheme that may be made by regulations under this paragraph shall include modifications for any of the following purposes, that is to say—
- (a) for conferring power on the Secretary of State or any other prescribed person to appoint trustees of the existing scheme or for requiring trustees to be appointed only in such manner and in such circumstances, or with the approval of the Secretary of State or such other person, as may be prescribed;
 - (b) for enabling a person who is entitled to appoint trustees of the existing scheme to remove trustees of the scheme from office;
 - (c) for requiring or enabling powers or duties of any person under the existing scheme to be exercisable or performed by or in accordance with the directions of such persons or in such circumstances, or to be exercisable or performed only in such manner or with the consent of such persons, as may be prescribed;
 - (d) for providing that persons who have become entitled in respect of any period of employment to be participants in another prescribed scheme are not, as from such time as may be determined in accordance with the regulations, to be entitled in respect of that period of employment to be participants in the existing scheme;
 - (e) for facilitating the transfer in prescribed circumstances to another scheme of—
 - (i) rights and liabilities under the existing scheme of any participant in the existing scheme who becomes a participant in the other scheme; or
 - (ii) the benefit of any arrangements under which participants in the existing scheme are relieved from any obligation to make contributions;

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- (f) for the apportionment and allocation to particular rights and liabilities of assets of the existing scheme and for the transfer of assets to other schemes in connection with any provision made by virtue of this Schedule;
 - (g) for restricting the persons who are to be able on and after the restructuring date to become participants in the existing scheme;
 - (h) for enabling expenses incurred in or in connection with the management or other administration of the existing scheme to be met out of the assets of the scheme;
 - (i) for securing that the existing scheme continues to be ^[F1]registered or approved for the purposes of the relevant enactments;
 - (j) for enabling the existing scheme to be wound up (in whole or in part) in such circumstances as may be prescribed.
- (4) The modifications of an existing scheme that may be made by regulations under this paragraph shall include modifications making such provision as the Secretary of State considers appropriate for cases where either—
- (a) there are assets of the scheme representing a relevant surplus, or
 - (b) the assets of the scheme are insufficient for meeting pension obligations under the scheme.
- (5) The modifications mentioned in sub-paragraph (4) above may contain—
- (a) provision for a relevant surplus, and the assets representing it, to be apportioned between—
 - (i) the part (if any) of the surplus which is to be retained in a reserve (“an investment reserve”) as an asset of the scheme, and
 - (ii) the remainder (“the distributable part”) of the surplus;
 - (b) provision for the management of assets representing an investment reserve and for the manner in which any such assets are to be applied;
 - (c) provision for income accruing in respect of assets representing an investment reserve to be added to the reserve;
 - (d) provision for the manner in which assets representing the distributable part of a relevant surplus are to be applied; and
 - (e) provision, for the purposes of any provision under paragraphs (a) to (d) above, for modifying any decisions as to the way in which relevant surpluses determined as at times before the restructuring date, and the assets representing any such surpluses, are to be treated.
- (6) The provision as to the apportionment of any surplus or assets to an investment reserve that may be contained in modifications made by virtue of sub-paragraph (4) above shall not include any provision authorising the allocation to such a reserve of any part of a surplus determined as at a time after 31st March 1994, or of any assets representing any part of such a surplus, except where the allocation is made for making good amounts which (apart from any entitlement for which provision is made by virtue of sub-paragraph (7) below) would have been comprised in the value of the reserve if assets representing any part of it had not been applied from the reserve in meeting a deficiency that arose as at any time by reason of the other assets of the scheme having been insufficient as at that time for meeting pension obligations under the scheme.
- (7) The provision as to the application of assets representing an investment reserve that may be contained in modifications made by virtue of sub-paragraph (4) above shall include provision for the Secretary of State to become entitled where—

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- (a) any such arrangements as are mentioned in sub-paragraph (9) below have been entered into in relation to pension obligations under the scheme in question, and
 - (b) the value of the assets representing the reserve exceeds the aggregate amount required for the purposes for which the reserve has been retained,

to assets of the scheme representing the amount of the excess or, where those purposes have ceased, the value of the reserve.
- (8) The provision as to the application of assets representing the distributable part of a relevant surplus that may be contained in modifications made by virtue of sub-paragraph (4) above shall include provision for the Secretary of State to become entitled where—
 - (a) the surplus is one determined as at a time on or after 31st March 1994, and
 - (b) any such arrangements as are mentioned in sub-paragraph (9) below have been entered into in relation to pension obligations under the scheme in question,

to assets of the scheme representing no more than one half of the distributable part of that surplus.
- (9) The Secretary of State may, with the consent of the Treasury, enter into such arrangements as he may consider appropriate for guaranteeing or otherwise securing, in relation to any existing scheme, that the assets of the scheme are at all times sufficient for meeting the principal pension obligations and such other pension obligations under the scheme as are obligations to which he considers such arrangements should apply.
- (10) Sums required by the Secretary of State for making any payment in pursuance of any arrangements entered into by him under sub-paragraph (9) above shall be paid out of money provided by Parliament; and any sums received by him by virtue of sub-paragraph (7) or (8) above shall be paid into the Consolidated Fund.
- (11) Regulations under this paragraph may provide for—
 - (a) any such apportionments or allocations as are mentioned in the preceding sub-paragraphs,
 - (b) any determination for the purposes of any existing scheme of the amount of, or of any part of, any surplus or excess or of the assets for the time being to be treated as representing the whole or any part of any such surplus or excess, and
 - (c) the determination of any other matter falling to be determined for the purposes of any provision relating, in the case of any such scheme, to the management or application of the assets representing any reserve or surplus,

to be made as at such times, on such basis and by reference to the opinion of such persons as may be prescribed.
- (12) The power by regulations under this paragraph to modify an existing scheme shall not authorise the making of any modification which, in relation to the person entitled to it, adversely affects so much of any pension right as gives rise to any of the principal pension obligations under that scheme.
- (13) Before making any regulations under this paragraph in relation to an existing scheme the Secretary of State shall consult with the Corporation and the trustees for the time being of that scheme.

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- (14) The power to make regulations under this paragraph shall not be exercisable at any time after the end of the period of two years beginning with the restructuring date; but this sub-paragraph shall be without prejudice to any regulations made before the end of that period or to anything done (whether before or after the end of that period) under any regulations so made.
- (15) In this paragraph “relevant surplus”, in relation to an existing scheme, means any surplus determined as at any time on or after 31st March 1992 of the assets of the scheme over the amounts required, as at that time, for meeting the obligations which (apart from the surplus) either have arisen or may arise as pension obligations under the scheme.
- (16) In this paragraph references to the principal pension obligations under an existing scheme are references to the following, that is to say—
- (a) so much of any pension obligation arising under the scheme as derives neither from modifications of the scheme made on or after the restructuring date nor from any relevant surplus;
 - (b) so much of any pension obligation arising under the scheme as represents the effect on any pension right giving rise to a pension obligation falling within paragraph (a) above of any decision before 1st September 1994 to appropriate any of a relevant surplus determined as at a time before 31st March 1994 to the payment of increases in any pensions payable in pursuance of that right; and
 - (c) so much of any pension obligation arising under the scheme as represents the effect on any pension right giving rise to a pension obligation falling within paragraph (a) or (b) above of any provisions of the scheme, as modified on or after the restructuring date, which require that right to be varied from time to time by reference to fluctuations in any level of prices in Great Britain.

Textual Amendments

F1 Words in Sch. 5 para. 2(3)(i) inserted (6.4.2006) by [The Taxation of Pension Schemes \(Consequential Amendments\) Order 2006 \(S.I. 2006/745\)](#), arts. 1, **9(b)**

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