

**RESOLUTION UNDER SECTION 229 PENSIONS ACT 2004**

**THE INDUSTRY-WIDE MINEWORKERS' PENSION SCHEME (THE "SCHEME")**

This Resolution is made on 9 July

2013

**1. RECITALS**

- (A) UK Coal Operations Limited ("**UKCOL**") is the sole participating employer in the UK Coal Operations Limited Employer's Fund of the Scheme (the "**UKCOL Fund**").
- (B) The UKCOL Fund was established by a deed of adherence dated 8 December 2012 during a restructuring of the UK Coal group known as "Project Juniper", under which the employment of all the DB Contributors in the UK Coal Mining Limited Employer's Fund (the "**UKCML Fund**") transferred to UKCOL on 7 December 2012 by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**"). In line with that transfer of employment, the transferring employees transferred to the UKCOL Fund of the Scheme in respect of benefits accrued on and from 7 December 2012. In addition, the past service liabilities of these employees also transferred to the UKCOL Fund.
- (C) While members of the UKCML Fund of the Scheme, the transferring employees' benefits for service in that Fund on and after 1 January 2012 had been modified in accordance with the terms set out in Appendix IV to the Scheme's Trust Deed and Rules (the "**Modified Basis**"). By way of a section 229 resolution dated 7 December 2012, which followed a period of disagreement between UKCOL and the trustees of the UKCOL Fund regarding the contributions payable in respect of future benefit accrual under the UKCOL Fund, the trustees resolved (with UKCOL's agreement) to modify benefit accrual in the UKCOL Fund so that it would be provided on the Modified Basis.
- (D) The UK Coal group is now undergoing a further restructuring, under which the employment of certain of the DB Contributors in the UKCOL Fund (the "**Transferring Employees**") transferred to UK Coal Thoresby Limited (the "**Employer**") by operation of TUPE (the "**Transfer**") on 9 July 2013 (the "**Transfer Date**").
- (E) As a result, a new Single Employer's Fund was established in the Scheme (the "**Thoresby Fund**") by a deed of adherence dated 9 July 2013. All of the Transferring Employees transferred to the Thoresby Fund of the Scheme in respect of benefits accrued on and from the Transfer Date.
- (F) The Trustees consider that there is an argument (not accepted by the Employer) that the Modified Basis of accrual will no longer apply to the Transferring Employees on and from the Transfer Date and that the basis of accrual applicable to the Transferring Employees before 1 January 2012 and since the Scheme was established (the "**Old Basis**") may apply instead. This is because the Transferring Employees are all Protected Persons under the Coal Industry (Protected Persons) Pensions Regulations 1994 (the "**Protected Persons Regulations**") which provide protection in the event of a change of employer and the operation of the Protected Persons Regulations in that event is unclear.

- (G) The Trustees have prepared a Schedule of Contributions in respect of the contributions due in respect of the Old Basis. A copy of the Trustees' letter is appended to this Resolution at Schedule 1.
- (H) The Employer has refused to agree to sign a Schedule of Contributions prepared on the Old Basis. The Employer has sent a letter to the Trustees to this effect in the form appended to this Resolution at Schedule 2.
- (I) The Trustees consider that it is not possible within the prescribed time to obtain the Employer's agreement to contribute at a rate which is sufficient to fund accrual in the Thoresby Fund on the Old Basis. The Trustees therefore wish to exercise the power afforded to them under section 229(2) of the Pensions Act 2004. This permits the Trustees, with the Employer's agreement (as evidenced by its execution of this Resolution) by resolution to modify the Scheme as regards the future accrual of benefits such that accrual in the Thoresby Fund will be calculated on the Modified Basis.
- (J) As required by section 229(5) of the Pensions Act 2004, the Trustees will report the failure to agree to the Pensions Regulator.
- (K) The Employer has notified the Trustees that it has been unable to consult with active members on this matter as it is required to do under section 259 of the Pensions Act 2004 due to the short timescales involved in the restructuring. Although the Pensions Regulator has not formally dispensed with this consultation requirement, it has notified the Employer that it accepts the view that the unusual circumstances surrounding and the urgent timescale of the restructuring means the consultation requirements cannot be satisfied in these circumstances. The Employer is satisfied that it has taken all reasonable steps to secure compliance and that it has provided as much information as possible to those affected members in the time available. A copy of the correspondence between the Employer and the Pensions Regulator is appended to this Resolution at Schedule 3.
- (L) The parties are satisfied that, on taking effect, the modifications being made by this Resolution will not adversely affect the subsisting rights of any member of the Scheme or of any survivor of a member of the Scheme for the purposes of section 67A of the Pensions Act 1995 and section 229(3) of the Pensions Act 2004.
- (M) The Actuary has confirmed to the Trustees for the purposes of Regulation 42(2) of the Occupational Pension Schemes (Contracting Out) Regulations 1996 that he is satisfied that if the amendments are made to the Thoresby Fund, it will continue to satisfy the statutory standard under section 12A of the Pension Schemes Act 1993 in relation to all earners whose employments are contracted-out by reference to it.

## 2. RESOLUTION

- 2.1 With effect on and from the date of this Resolution, the Trustees in exercise of their powers under section 229(2) of the Pensions Act 2004:
- (a) hereby resolve to modify accrual in the Thoresby Fund so that it will be provided on the basis set out in Appendix IV of the Scheme's Trust Deed and Rules in force at the date of this Resolution; and
  - (b) agree that the Accrual Fraction and the Additional Employee DB Contribution (if any) that applied to DB Contributors of the UKCOL Fund immediately before the Transfer

Date shall apply to DB Contributors of the Thoresby Fund until 5 April 2014 when a new Accrual Fraction and Additional Employee DB Contribution (if any) as determined by the Actuary shall apply in accordance with Rule 1 of Part 2 of Appendix IV of the Scheme's Trust Deed and Rules in force at the date of this Resolution. The Accrual Fraction and the Additional Employee DB Contribution (if any) shall then continue to be reviewed going forward on each Certification Date in accordance with Rule 1 of Part 2 of Appendix IV of the Scheme's Trust Deed and Rules.

- 2.2 Words and expressions used in this Resolution but not defined shall where the context so admits have the meaning given to them in the Scheme's Trust Deed and Rules.
- 2.3 The parties hereby confirm that they have approved the modifications set out above.
- 2.4 In accordance with section 229(4)(b) of the Pensions Act 2004, the Trustee will notify the active members of the Thoresby Fund within one month of the modifications taking effect.
- 2.5 This resolution may be signed in any number of counterparts, each of which when signed shall be an original but all of which when taken together shall constitute one and the same resolution.

*K. Jones*      KEITH JONES  
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For and on behalf of the Trustees

Date: 9 July 2013

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For and on behalf of UK Coal Thoresby Limited

Date:

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Date:

  
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For and on behalf of UK Coal Thoresby Limited

Date: 9 July 2013