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37
(2015RA11)

THE INDUSTRY-WIDE MINeworkERS' PENSION SCHEME (THE "SCHEME")

1. RECITALS

- 1.1 The Co-ordinator wishes to amend the provisions of the Trust Deed and Rules to reflect changes to overriding legislation, which have altered members' statutory rights to transfer out accrued rights, particularly in relation to money purchase benefits.
- 1.2 Specifically, since 6 April 2015, where the amended legislation applies, members of the Scheme have had a statutory right to:
- (a) transfer the value of their rights in the AVC Scheme, (where the member is a DC Member under Appendix IV Part 3 of the Trust Deed and Rules together with the value of the rights in their DC Account), at any point prior to retirement;
 - (b) transfer their rights in the AVC Scheme (together with their DC Account where applicable), and their other benefits under the Scheme, independently of each other.
- 1.3 Clause 38(1) of the Trust Deed provides that the Co-ordinator may, with the consent of the Committee of Management where this is required under paragraph (2) or (4) of that clause, and subject to certain restrictions which are not relevant to the amendments made by this resolution, amend the Trust Deed and Rules.
- 1.4 The Co-ordinator wishes to make the amendments set out below and a majority of the Committee of Management has consented to those amendments as required by Clause 38(4) of the Trust Deed.
- 1.5 The Co-ordinator is satisfied that the amendments made by this Deed are not "regulated modifications" as defined in section 67 Pensions Act 1995 and are not "listed changes" as defined by the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.
- 1.6 The Actuary has confirmed to the Trustee for the purposes of Regulation 42(2) of the Occupational Pension Schemes (Contracting Out) Regulations 1996 that he is satisfied that if the amendments in this resolution are made, the Scheme will continue to satisfy the statutory standard under section 12A of the Pension Schemes Act 1993.
- 1.7 Words and expressions used in this resolution and not defined shall so far as is consistent with the subject matter and where the context admits have the meaning attributed to them in the Trust Deed and the Rules (including in Appendix IV).
- 1.8 This Resolution may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument. Each of the parties may enter into this resolution by executing any such counterpart.

2. RESOLUTIONS

Amendments to the main Trust Deed and Rules

- 2.1 With effect on and from the date of this Resolution (the "**Effective Date**"), Rule 6(9)(c) is deleted and replaced by the following wording: "*[Not used]*".
- 2.2 With effect on and from the Effective Date, Rule 33(1) is deleted in its entirety and replaced by the following:

"33(1) In this Rule a Cash Equivalent Member means a Member who acquires a right to take a cash equivalent under section 94(1) or 94(2) of the 1993

Act in relation to one or more categories of benefits under the Scheme (as defined in section 93(6) of the 1993 Act). A Cash Equivalent Member may exercise a right to take a cash equivalent in relation to one such category of benefits under the Scheme without being required to exercise a right to take a cash equivalent or otherwise transfer any other such category of benefits under the Scheme.

If a Cash Equivalent Member who has not lost his right to a cash equivalent as set out in the 1993 Act:

- (i) exercises the option conferred by section 95 of the 1993 Act (namely to use the cash equivalent to acquire transfer credits or rights under another scheme or to purchase one or more annuities or to subscribe to other pension arrangements or partly in one way or partly one or more of the other ways) by making an application in the manner specified in sections 95(1) and (9) of the 1993 Act (and in the case of a Cash Equivalent Member who has acquired the right to a cash equivalent under section 94(1) of the 1993 Act, makes the application at a time permitted under section 95(1A) of the 1993 Act); and*
- (ii) has not made in accordance with section 100 of the 1993 Act a valid withdrawal of his application or (if he has made a valid withdrawal of his application) has made a valid application which he has not withdrawn,*

the Committee of Management shall (subject to the provisions of section 99 of the 1993 Act) do what is needed to carry out what the Member requires within the time specified in section 99 of the 1993 Act."

2.3 With effect on and from the Effective Date, Rule 33(2) is amended by:

- (a) deleting the words *"from the Employer's Fund and (if applicable) the AVC Scheme"* and replacing them with the words *"from either or both of (i) the Employer's Fund (excluding any DC Account) and (ii) (if applicable) the AVC Scheme together with any DC Account"*; and
- (b) deleting the full stop and the end of the existing Rule 33(2)(ii) and replacing this with *"; or"* and inserting the following new Rule 33(2)(iii) immediately beneath Rule 33(2)(ii) as so amended:

"(iii) to subscribe to other pension arrangements which the requirements prescribed requirements for the purpose of section 95(2) of the 1993 Act."

2.4 With effect on and from the Effective Date, Rule 33(3)(ii) shall be amended so that the words *"section 38(1) of the Pensions Act"* with *"section 12C or section 20 of the 1993 Act"*.

2.5 With effect on and from the Effective Date, Rule 33(3)(iii) shall be amended so that:

- (a) the words *"(in the form prescribed by the relevant regulations made under section 52C of the Pensions Act)"* are replaced by the words *"(in the form prescribed by the relevant regulations made under section 19 of the 1993 Act)"*; and

- (b) the words *"is not required by regulations made under the Social Security Act 1973 or the Pensions Act"* are replaced by the words *"is not required by regulations made under the Social Security Act 1973, the Pensions Act or the 1993 Act"*
- 2.6 With effect on and from the Effective Date, Rule 33(3)(iv) is deleted in its entirety and replaced by the following:
- "(iv) the transfer or payment shall be in respect of the whole of the benefits that would otherwise be payable in respect of the Member or Other Person from either or both of:*
- (I) the Employer's Fund (apart from any DC Account within the Employer's Fund); and*
- (II) the AVC Scheme in Rule 6 together with any DC Account,*
- unless the transfer or payment is to another scheme and the other scheme is not a scheme which fulfils the conditions set out in Contracting-out Rule 9.1 in which case the transfer or payment shall exclude all benefits (if any) in respect of which an entitlement is conferred by Contracting-out Rule 4.*
- 2.7 With effect on and from the Effective Date, Rules 33(3)(vi) and 33(4)(iv)(II)(a) shall be amended so that the words *"Chapter IV of Part IV of the 1993 Act"* in those Rules are replaced by the words *"section 94(1) or 94(2) of the 1993 Act"*.
- 2.8 With effect on and from the Effective Date, Rule 33(6) shall be deleted in its entirety and replaced by the following wording:
- "33(6) Where a cash equivalent or payment is made to or in respect of a Member or Other Person in accordance with paragraph (1) or (2) of this Rule the Committee of Management shall be immediately discharged from any and every obligation to provide the benefits from the Scheme to which that cash equivalent or payment relates."*
- 2.9 With effect on and from the Effective Date, a new Rule 33(7) shall be added as follows:
- "33(7) If the Member transfers out the whole of his benefits under the Scheme by taking a cash equivalent or payment in accordance with paragraph (1) or (2) of this Rule, he shall cease to be a Member, whereas if the Member transfers out part of his benefits, he shall not cease to be a Member, but his remaining benefits under the Scheme shall be reduced by excluding the benefits to which that cash equivalent or payment related. In a case in which a transfer or payment to another scheme is made in respect of a category of benefits (as defined in section 93(6) of the 1993 Act) but that transfer or payment excludes benefits in respect of which an entitlement is conferred by Contracting-out Rule 4 and which would otherwise fall within that category of benefits, the Member shall cease to be a Member only in relation to the benefits under the Scheme to which the transfer relates."*
- 2.10 With effect on and from the Effective Date, a new Rule 33(8) shall be added as follows:
- "33(8) The Committee of Management will comply with the requirements section 48 of the Pension Schemes Act 2015 and related regulations where applicable (the **"Independent Advice Check"**). If the Committee of Management would otherwise be required to pay a cash equivalent or*

transfer out of the Scheme, the Committee of Management will not be required to pay that cash equivalent or transfer if:

- (i) it has not been possible to carry out the Independent Advice Check by reason of factors that are beyond the Committee of Management's control; or
- (ii) the Committee of Management has carried out the Independent Advice Check but it did not confirm that the member had received appropriate independent advice.

Amendments to Appendix IV – Modified UKCML Fund Benefits

2.11 Paragraph 12(1) of Part 3 of Appendix IV to the Trust Deed and Rules is amended by:

- (a) deleting the words "In addition to any right to transfer all a DC Member's benefits a DC Member may" and replacing them with the words "In addition to any right to transfer one or more of his categories of benefit under the Scheme (as defined in section 93(6) of the 1993 Act) a DC Member may"; and
- (b) deleting the words "the DC Member's pension attributable to Contributing Service1 prior to the DC Effective Date shall continue to be payable" and replacing them with the words "the DC Member's pension attributable to Contributing Service1 and Contributing Service2 shall continue to be payable".

It is HEREBY CONFIRMED that the Committee of Management consents to the amendments set out above in accordance with Clause 38 of the Trust Deed.

..... *H. McGuire*

On behalf of the Committee of Management

..... *22.9.15*

Date

It is HEREBY RESOLVED by the Co-ordinator to amend the Scheme in the manner set out above.

..... *D. Dea*

On behalf of the Co-ordinator

..... *11 November 2015*

Date


Section 37 Pension Schemes Act 1993 Confirmation

Section 37 of the Pension Schemes Act 1993 and Regulation 42 of the Occupational Pension Schemes (Contracting-out) Regulations 1996

I, Donald Duval, the actuary for the Industry Wide Mineworkers' Pension Scheme ("the Scheme") appointed in accordance with section 47(1) of the Pensions Act 1995, confirm to the trustees of the Scheme that, for the purpose of section 37 of the Pension Schemes Act 1993 (as amended by the Pensions Act 1995), I have considered the alterations to the Scheme envisaged by this Deed, in relation to any rights which are to accrue under the Scheme in so far as such rights are attributable to an earner's service in contracted-out employment on or after the date on which the alterations to the rules take effect (other than rights attributable to the payment of voluntary contributions), and that I am satisfied that the Scheme would continue to satisfy the statutory standard in accordance with section 12A of the Pension Schemes Act 1993 (as inserted by the Pensions Act 1995) if the alterations in this deed were made.

General

This Confirmation will remain valid only if this Deed is executed within one month of the date below.

Signed		Date	11 September 2015
Name	Donald Duval Scheme Actuary		
Qualification	Fellow of the Institute and Faculty of Actuaries		
Address	Aon Hewitt 3 The Embankment Sovereign Street Leeds LS1 4BJ		