

### Trust Deed

THIS TRUST DEED is made the 1 day of January 2004

BETWEEN microcopy Services Ltd

whose registered office is situate at Balmer Cut Buckingham Industrial Park  
Buckingham MK18 1UL  
("the Principal Employer") of the first part

LEE ROWAN STEVENS

of 2 Harlequin Place Shenley Brook End  
Milton Keynes MK5 7GF

ROSS LINCOLN STEVENS

of 1 Clover End Castle meadow  
Buckingham MK18 1FT

of

of

("the Managing Trustees" which expression shall include their successors in title) of the second part and

FRIENDS' PROVIDENT SERVICES LIMITED  
whose registered office is situate at PIXHAM END, DORKING, SURREY RH4 1QA ("the Pensioner Trustee") of the third part

the Managing Trustees and the Pensioner Trustee being hereinafter together referred to where appropriate as "the Trustees" (or "Trustee" as the context permits)

### WHEREAS

1. The Principal Employer has determined to establish a retirement benefits scheme from the date hereof to be known as the

THE MICROCOPY SERVICES LTD

Directors Retirement Plan

("the Fund") for securing relevant benefits as defined in Section 612(1) of the Income and Corporation Taxes Act 1988 for certain employees of the Principal Employer and of such associated employers as shall enter into a supplemental deed as hereinafter provided (all such associated employers together with the Principal Employer being hereinafter called "the Employers")

2. The monies necessary for the purpose aforesaid shall be provided by contributions (if any) to be made by the employees who become Members of the Fund and by

contributions to be made by the Employers in respect of those employees, together with such other monies as may from time to time arise from or be received by the Fund

3. Such benefits will be administered in accordance with the Rules annexed hereto
4. The Trustees have agreed to act as Trustees of the Fund subject to the right of the Principal Employer to appoint new or additional Trustees and to remove from office any of the Trustees
5. The Managing Trustees have agreed to act as Administrator of the Fund for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 ("the Administrator")
6. The Principal Employer has caused an announcement to be made in writing to the Members of the benefits to be provided under the Fund

**NOW THIS DEED WITNESSETH as follows:**

1. The Principal Employer hereby establishes the Fund which shall be administered in accordance with the provisions of this Deed together with the Rules annexed hereto
2. The Principal Employer hereby appoints the Trustees to be the first Trustees of the Fund and the Trustees hereby appoint the Managing Trustees to be the Administrator
3. The trust hereby created shall be irrevocable
4. The Principal Employer shall have the right by deed to appoint new or additional Trustees and may remove from office any of the Trustees
5. The Pensioner Trustee shall be entitled to rely on the accuracy and completeness of any statements made by the Managing Trustees or by the Employer or by any person advising the Trustees, Managing Trustees or Employer or anyone acting on their behalf and shall not be obliged to enquire further into such statements
6. The definitions contained in the Rules shall apply to this Deed as appropriate and in addition the following particular definitions shall also apply

"Associated Company" means a Company which (directly or indirectly) the Employer controls or that Company controls the Employer or both are controlled by a third person.

"Business" includes:

- i. a trade or profession, or
- ii. any activity other than investment carried on by a body of persons, whether corporate or incorporate, or

- iii. any activity carried out by a holding company for a trading group

"Close company" has the meaning given by section 414 and 415 of the Act

"Company" means any body corporate or unincorporated association but does not include a partnership

"Ordinary Annual Contribution" means for the purpose of Clause 7 III the smaller of:

- i. the amount found
  - (A) where the Fund has been established for three years or more at the time of any borrowing, by dividing the amount of the contributions paid by Employers in the period of three years which ended at the end of the previous accounting period of the Fund by three, or
  - (B) where the Fund has been established for less than three years at the time of any borrowing, by dividing the amount of the contributions paid by Employers in the period since the Fund was established ending at the time of that borrowing by the number of years falling within that period (a part of a year being counted as one year), and
- ii. the amount of the annual contributions which, within the period of 3 years immediately preceding the date of the borrowing, an Actuary has advised in writing would be necessary to secure the benefits payable under the Fund

"Residential Property" means property normally used, or adapted for use as one or more dwellings

"Scheme Member" means a Current Member, a person in receipt of a pension or annuity under the Fund or a person who has been a Current Member.

For the purpose of this Deed and the Rules any question of whether a person is connected with another shall be determined as follows:

- (a) a person is connected with an individual if that person is the individual's spouse or is a relative or the spouse of a relative of the individual or of the individual's spouse
- (b) a Current Member is connected with an Employer if
  - the Employer is a partnership and the Current Member is connected with a partner, or
  - the Employer is a Company and the Current Member or any person connected with him or her is or has been during the last ten years a

Controlling Director of the Company

- (c) a Company is connected with another Company if the same person has Control of both, or a person has Control of one and persons connected with that person have Control of the other, or a person has Control of one and that person or persons connected with that person have Control over the other
- (d) a Company is connected with another person if that person has Control of it or if that person and a person or persons connected with him or her together have Control of it
- (e) any two or more persons acting together to secure or exercise Control of a Company shall be treated in relation to that Company as connected one with another and with any person acting on the directions of any of them to secure or exercise Control of the Company

For the purpose of this Deed a relative means a brother, sister, ancestor or lineal descendant.

- 7. (a) The Fund shall be held under the legal control of the Managing Trustees and all investments of the Fund shall be in the names of the Managing Trustees unless the Board or the Pensioner Trustee requires that any particular investment be held jointly in the names of all the Trustees. Where the Board or the Pensioner Trustee does so require reference elsewhere in this Deed and the Rules to the Managing Trustees holding such investments or such investments being held by or in the names of the Managing Trustees shall be read as though the word 'Trustees' was substituted for the words 'Managing Trustees'. Alternatively, where the Board permits or requires the Pensioner Trustee may for land or property that is registered in England or Wales register a restriction at HM Land Registry or for registered land or property in Northern Ireland register an inhibition at the Land Registers of Northern Ireland.
- (b) The Trustees may retain in any bank account such monies as they consider proper and such accounts shall be operated jointly by the Pensioner Trustee and the Managing Trustees. Subject thereto the Managing Trustees shall have power to invest all Fund monies and to transpose and vary any such investments in any form of investment (whether involving liability or not and whether or not authorised by law for the investment of trust monies) which the Managing Trustees could make if they were absolutely and beneficially entitled thereto

In particular and without prejudice to the generality of the foregoing the Managing Trustees

- (a) shall invest such amounts from the aforesaid contributions in such contracts or policies as shall from time to time be agreed between the Managing Trustees

and Assurer

- (b) subject to sub-Clause (c) below may invest part of the assets of the Fund
  - (i) in loans with or without security as the Managing Trustees shall decide
  - (ii) in stocks shares debenture stocks bearer securities or other investments
  - (iii) in any interest in land or property
  - (iv) in units in unit trusts (whether authorised or unauthorised) exempt funds or mutual funds
  - (v) in underwriting sub-underwriting or guaranteeing the subscription of any stocks shares debenture stocks or other investments
  - (vi) with themselves in the case of a corporate trustee (in which event they may retain any profit arising therefrom) or otherwise with any local authority or bank or insurance company or building society or finance company at such rate of interest (if any) and upon such terms as the Managing Trustees shall think fit
  - (vii) by participating in any form of investment administered by an Insurance Company

and the Managing Trustees shall have the power to borrow money for the purposes of the Fund or for further investment and may utilise the assets of the Fund for the purpose of giving security in connection therewith provided that the requirements of the Board are met

- (c) shall unless and to the extent that the Pensioner Trustee shall otherwise agree in writing obtain the prior agreement of the Pensioner Trustee to any investment of the assets of the Fund and in that connection the Managing Trustees shall provide the Pensioner Trustee with such information as he may reasonably require to make a decision and the Pensioner Trustee shall be entitled to rely upon the accuracy and completeness of such information
- (d) subject to sub-Clause (c) above may give an indemnity in connection with the exercise of their powers under this Clause and may bind all or any part of the assets of the Fund to give effect thereto
- (e) shall subject to the approval of the Principal Employer and to the requirements of the Board being met have power to appoint an investment manager to the Fund and such other nominees or agents as the Managing Trustees shall determine on such terms as to remuneration and otherwise as shall from time to time be agreed between the Managing Trustees and such person or persons. The Managing Trustees may remove such person or persons whenever they think fit. An investment manager may be empowered to exercise or carry out the power of investment set out in Sub-Clause (b) of this Clause and such of

the duties of the Managing Trustees as they shall deem expedient PROVIDED THAT the Managing Trustees' powers of investment shall be restricted to preclude investment either directly or indirectly in the following

personal chattels other than choses in action

Residential Property other than that which is, or is to be, occupied:

- (i) by an employee who is not connected with his or her Employer and who is required as a condition of employment to occupy that property; or
- (ii) by a person other than a Current Member or a person connected with a Current Member where that person also occupies connected business premises which are also held by the Managing Trustees as an investment of the Fund; or

Stock or shares in a Private Company which:

- (i) carry more than thirty per cent of the voting power in the Company; or
- (ii) entitle the holder to more than thirty per cent of any dividends declared by the Company in respect of shares of the class held.

For the purposes of this Clause the Managing Trustees are not regarded as

- (A) holding a Residential Property where they hold as an investment units in a unit trust scheme
  - (i) which is an authorised unit trust scheme within the meaning of section 468(6) of the Act; or
  - (ii) an exempt unit trust within the meaning of section 96 of the Capital Gains Tax Act 1979; and
  - (iii) that unit trust scheme holds Residential Property as an investment.
- (B) indirectly holding as an investment Residential Property other than that specified above where:
  - (i) they hold as an investment subject to the trusts of the Fund a right which confers entitlement to receive payment of any rent-charge, ground annual, feu duty or other annual payment reserved in respect of, or charged on or issuing out of, that property, and
  - (ii) the property is not occupied by a Current Member or a person connected with him

**AND FURTHER**

I the Managing Trustees shall not directly or indirectly lend money

to a Scheme Member or a person who is connected to a Scheme Member other than an Employer or an Associated Company

to an Employer or an Associated Company unless the loan is:

- (i) utilised for the purpose of the borrower's Business, and
- (ii) for a fixed term, and
- (iii) at a commercial rate of interest, and
- (iv) evidenced by an agreement in writing which contains all the conditions on which it is made and, in particular, the provisions specified below;

the provisions specified in this paragraph are that the lending shall be repaid immediately if:

- (i) the borrower is in breach of the conditions of the agreement; or
- (ii) the borrower ceases to carry on business; or
- (iii) the borrower becomes insolvent within the meaning defined for the purposes of Regulation 6 of the Retirement Benefit Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991; or
- (iv) the money is required to enable the Managing Trustees to pay benefits which have already become due under the Fund.

At the time any money is lent, or any shares in the Employer or any Associated Company are acquired, the aggregate of:

- (a) the amount outstanding of any lending to an Employer and/or an Associated Company, and
- (b) the market value of stock and shares in an Employer and/or an Associated Company held by the Managing Trustees in that capacity

shall not, where that time is after the end of a period of two years from the date on which the Fund was established, exceed the amount found by the formula:-

$$\frac{(E - F) \times 50}{100}$$

where:

'E' is the market value at the time in question of all the assets of the Fund, other than assets franking any pension in payment under the Rules of the Fund where the purchase of an annuity has been deferred (including any pension that would be payable to a widow or widower of a Scheme Member following the Member's death in a case where the Rules of the Fund limit such pension to the person to whom the Member was married at retirement), and

'F' is the aggregate of any sums borrowed to purchase those assets which are outstanding at that time, and any other liabilities incurred by the Managing Trustees which are outstanding at that time, other than liabilities to pay benefits under the Fund

and shall not, where that time is during the period of two years from the date in which the Fund was established, exceed the amount found of the formula:

$$\frac{(C - D) \times 25}{100}$$

where

'C' is the market value at the time in question of the assets of the Fund which are derived from contributions made by an Employer and by employees since the Fund was established, other than assets franking any pension in payment under the Rules of the Fund where the purchase of an annuity has been deferred (including any pension that would be payable to a widow or widower of a Scheme Member following the Member's death in a case where the Rules of the Fund limit such pension to the person to whom the Member was married at retirement), and

'D' is the aggregate of any sums borrowed to purchase those assets which are outstanding at that time, and any other liabilities incurred by the Managing Trustees which are outstanding at that time, other than liabilities to pay benefits under the Fund.

- II the Managing Trustees shall not in that capacity directly or indirectly purchase sell or lease any investment or asset from or to the following

a Scheme Member or a person (other than an Employer or an Associated Company) connected with a Member. A purchase will not be construed as being an indirect purchase from a Scheme Member or connected person if at the time of purchase three or more years have elapsed since the investment or asset was owned by the Member or connected person. A sale will not be construed as an indirect sale to a Scheme Member or a connected person if the purchase by the Member or connected person takes place three years or more after the sale by the Trustees

an Employer or an Associated Company except in accordance with independent professional advice obtained in writing

- III The power of the Managing Trustees to borrow shall be restricted so that at the time of the borrowing, the Managing Trustees shall not have borrowed and not repaid an aggregate amount including the amount of the borrowing in excess of the total of:

three times the Ordinary Annual Contribution, and

three times the annual amount of contributions paid or payable as a condition of membership by Current Members in the year of assessment ending immediately before the borrowing takes place, and

the amount found by the formula:

$$\frac{(A - B) \times 45}{100}$$

where:

'A' is the market value of the assets of the Fund at that time, other than assets franking any pension in payment under the Rules of the Fund where the purchase of an annuity has been deferred (including any pension that would be payable to a widow or widower of a Scheme Member following the Member's death in a case where the Rules of the Fund limit such pension to the person to whom the Member was married at retirement), and

'B' is the aggregate of any sums borrowed to purchase those assets which are outstanding at that time, and any other liabilities incurred by the Managing Trustees which are outstanding at that time, other than liabilities to pay benefits under the Fund.

8. The Administrator of the Fund will furnish the Board of Inland Revenue with such information and documents as the Board requires .
9. The Fund may be terminated and payment made out of the assets of the Fund only in accordance with the Rules and provided always that the consent of the Pensioner Trustee shall first be obtained
10. The Managing Trustees shall have and be entitled to exercise all powers rights and privileges in connection with the Fund to enable them to carry out any transaction act deed or thing arising under or in connection with the Fund. The consent or concurrence of the Principal Employer the other Employers or the Members or any of them shall not be necessary in connection with the giving of any receipt or discharge or the making of any payment or the doing of any act or thing made or done in the exercise of their powers or to discharge their liability as Managing Trustees or in connection with the Rules except as is expressly provided in this Deed or in the Rules
11. (a) No Trustee (or directors or officers of a corporate trustee which is a Trustee) shall be liable for the consequences of any mistake (whether of law or fact) or for any breach of duty or trust in relation to the Fund or for any loss to or

depreciation of the Fund arising by way of commission or omission by such Trustee or any employee, agent or person to whom any matter has been delegated or sub-delegated under the provisions of the Fund, except where this is proved to have been made, done or omitted fraudulently by such Trustee or with such Trustee's wilful breach of trust (or negligence in the case of a professional trustee), or where the Trustee has been in wilful breach of trust (or negligent in the case of a professional trustee) in such delegation or sub-delegation.

- (b) Without prejudice to Clause 16 or the right to indemnity by law given to trustees, each of the Trustees (for the purpose of this Clause 11(b) whether individuals or a body corporate or any director or officer of any body corporate which is a Trustee) will be indemnified:

- (i) by the Principal Employer; and

- (ii) to the extent that the Principal Employer is unable to meet the indemnity, from the assets of the Fund,

against all claims, costs, damages, losses and expenses which he may incur or sustain in or about the exercise or the purported performance of his duties unless such liability is proved to have arisen out of any fraudulent act or omission of the Trustee in question, or as a result of such Trustee's wilful breach of trust (or negligence in the case of a professional trustee). To the extent permitted by law, this indemnity shall extend to the liability of the Trustees in respect of any act or default of any person appointed by them for the carrying out of the purposes of the trusts and provisions of the Fund.

- (c) Each of the Employers other than the Principal Employer shall at all times indemnify the Principal Employer for that part of the liabilities under this Clause 11 in the same proportion as the Employer's contributions to the Fund bear to the total contributions pay by the Employers to the Fund.

- (d) To the extent permitted by law, if the Pensioner Trustee's liability is not exonerated by the foregoing provisions of this Clause 11, its liability will be limited to such assets within the Fund to which it has access from time to time for the purpose of discharging such liability.

- 12. The Trustees shall act on the advice of the Actuary (as defined in the Rules) where such advice is required under this Deed or the Rules and shall have power to obtain advice from any other professional person and the Trustees shall not be responsible for any loss occasioned by so acting
- 13. The Managing Trustees shall keep proper records of the administration of the Fund and shall prepare accounts at yearly intervals or for such other periods as the Pensioner Trustee may require

14. One of the Trustees shall be a Pensioneer Trustee and the appointment of that Trustee and his obligation and entitlement to act as a Pensioneer Trustee, shall be incapable of termination at any time except:
- (a) by the death of the Trustee,
  - (b) by an order of the court,
  - (c) by virtue of section 3, 4 or 29 of the Pensions Act 1995 or Article 3, 4 or 29 of the Pensions (Northern Ireland) Order 1995 (prohibition, suspension or disqualification),
  - (d) by withdrawal by the Board of their approval of the Trustee to act as a Pensioneer Trustee, or
  - (e) where termination occurs by virtue of the Trustee having committed a fraudulent breach of trust in relation to the Fund
  - (f) where another Trustee is appointed to act as Pensioneer Trustee in place of the Trustee, and the appointment of the other Trustee takes effect at the same time as the termination.
15. The appointment of a successor to the former Pensioneer Trustee shall, except where Clause 14 (f) above applies, be made no more than 30 days after the termination. The appointment of a successor shall be made by the Principal Employer.
16. The Pensioneer Trustee shall be entitled to charge for all services provided including services provided on its behalf by the Assurer at such rate as shall from time to time be agreed between the parties hereto and the Managing Trustees and the Employers shall be jointly and severally liable for the payment of such charges
17. (a) The Managing Trustees shall act unanimously
- (b) The number of Managing Trustees shall not except in the case of a trust corporation or a company duly constituted for the purposes of acting as a Managing Trustee be less than two in number provided always that in the event of the number falling below two the surviving or continuing Managing Trustee may pending the appointment of a new Managing Trustee or Trustees continue to so act
  - (c) During any period in which there is only one Member of the Fund for all purposes relating to the day to day management of assets of the Fund which are investments the expression Managing Trustees in this Deed shall exclude any person who is neither a Member nor a person of the kind described in section 191(2)(a)(b) or (c) of the Financial Services Act 1986
  - (d) Before any investment of the resources of the Fund is made every Member and any Dependents in receipt of pension but for whom an annuity has not yet been purchased shall agree in writing to the making of that investment.

18. Any company (being a subsidiary of the Principal Employer within the meaning of section 736 of the Companies Act 1985 or a company otherwise associated in business with the Principal Employer) may with the prior consent of the Board be admitted as a party to the Fund on entering into a deed with the Principal Employer and the Managing Trustees whereby such company shall agree to observe and perform such of the provisions of this Deed and the Rules as are to be observed and performed by a company admitted as a party to the Fund provided always that a company may become and shall remain a party to the Fund only if and for so long as such participation shall not affect the Approval of the Fund
19. The Trustees may with the consent of the Principal Employer and the agreement of the Board at any time by deed alter modify or add to all or any of the provisions of this Deed and with the like consent by instrument in writing under their hand alter modify or add to all or any of the provisions of the Rules provided that no such alteration modification or addition shall be made if
  - (a) it would operate so as to prejudice materially (except with his written consent) the rights or interests of any person already a Member or any person receiving benefits by virtue of the membership of any deceased Member insofar as they concern benefits secured in respect of Service prior to the date of such alteration modification or addition or
  - (b) it would result or be capable of resulting in a Member whose pensionable service with the Employers is terminated before the date of alteration modification or addition being treated less favourably than would have been the case had there been no such alteration modification or addition or it would prejudice Approval of the Fund

Any changes to the Deed or Rules will be subject to the requirements of section 67 of the Pensions Act 1995.

The Managing Trustees shall notify in writing each Member affected by any such alteration modification or addition

20. The Managing Trustees shall at the request of the Principal Employer pay out of the Fund to an Employer an amount permitted under Schedule 22 to the Act to be so paid subject to the prior written agreement of the Board and to deduction of tax under section 601 of the Act
21. The Trustees may from time to time in writing delegate to any person or persons (whether or not a trustee hereof) all or any of the duties vested in them hereunder other than in relation to the termination of the Fund which shall require the consent of the Pensioner Trustee as set out in Clause 9 on such terms and conditions as the Trustees think fit and shall not be liable for any loss incurred as a result of any such delegation

22. (a) The Managing Trustees shall insure at full replacement cost any property constituting an asset of the Fund in the joint names of the Managing Trustees where that property is held in the joint names of the Managing Trustees.
- (b) The Trustees shall insure at full replacement cost any property constituting an asset of the Fund in the joint names of the Trustees where that property is held in the joint names of the Trustees.
- (c) In addition to 22(a) and (b), the Trustees together, or the Managing Trustees or the Pensioner Trustee separately may take out any policies of insurance for the purposes of the Fund, including any policy of trustee indemnity insurance (subject to the provisions of the Pension Act 1995 regarding payment of insurance premiums).
23. A trustee of the Fund who is a beneficiary may exercise his powers and discretions and execute his duties as a trustee notwithstanding that he is a beneficiary. No decision of or exercise of a power or discretion by the Trustees shall be invalidated or questioned on the grounds that the Trustees or any of them had a direct or other personal interest in the mode or result of such decision or of exercising such power or discretion

IN WITNESS whereof the parties hereto have executed this Deed the day and year first before written

EXECUTED BY

Name of Principal Employer

Signed



Director

Signed



Company Secretary

THE COMMON SEAL OF  
FRIENDS' PROVIDENT SERVICES LIMITED  
was hereunto affixed in the presence of

Signed



192  
Authorised Official

Signed



Authorised Official

Signed and delivered by

Name of Managing Trustee *LEE LOWAN STEVENS*

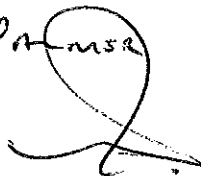
Signature



in the presence of

Name of witness *MARK PAINCE*

Signature



Address of witness *ORNDENE, RICKMANS LANE, PLAINTON, W. SUSSEX BN14 0W*

Signed and delivered by

Name of Managing Trustee *ROSS LINCOLN STEVENS*

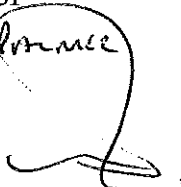
Signature



in the presence of

Name of witness *MARK PAINCE*

Signature



Address of witness *ORNDENE, RICKMANS LANE, PLAINTON, W. SUSSEX BN14 0W*

# **FRIENDS PROVIDENT**

## **DIRECTORS RETIREMENT PLAN**

### **RULES**

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## 1. **Definitions and Interpretation**

### **In these Rules**

- (a) unless the context otherwise requires words importing the singular number include the plural number and vice versa and words other than the word "male" importing the masculine gender include the feminine gender
- (b) a reference to any enactment shall be deemed to include any statutory amendment or re-enactment of it and any regulations made under it for the time being in force.

**"Act"** means the Income and Corporation Taxes Act 1988 and any statutory amendment modification or re-enactment thereof.

**"Actuary"** means a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries including one employed by the Assurer who shall be for the time being and from time to time appointed by the Trustees as Actuary for the purposes of the Fund.

**"Administrator"** means the Managing Trustees of the Fund.

**"Aggregate Retirement Benefit"** means the aggregate of

- (a) the Member's pension under this Fund and any Associated Scheme and
- (b) the pension equivalent of the Member's Lump Sum Retirement Benefit

**"Approval"** means approval of the Fund by the Board of Inland Revenue under Chapter I of Part XIV of the Act.

**"Associated Employer"** An employer is associated with another employer if one is controlled by the other or both are controlled by a third party. Control has the meaning in Section 840 of the Act, or in the case of a close company, Section 416 of the Act.

**"Associated Scheme"** means any Relevant Scheme providing benefits in respect of Service.

**"Assurer"** means Friends Provident Life and Pensions Limited or any company directly or indirectly controlled by or associated with Friends Provident Life and Pensions Limited.

**"Board"** means the Board of Inland Revenue.

**"Child"** means a child of a Member or a child who, at the date of death of a Member, was in the opinion of the Administrator dependent upon the Member and who, in either case is under the age of eighteen or in receipt of full-time educational or vocational training.

**"Class A Member"** means any Member who is not a Class B or C Member.

**"Class B Member"** means any Member:

- (a) who, on or after 17 March 1987 and before 1 June 1989, joined the Fund being a scheme which commenced before 14 March 1989, or
- (b) who the Board have agreed in writing to be a Class B Member by virtue of previous membership of a Relevant Scheme

and, in either case has not opted to become a Class A Member.

**"Class C Member"** means any Member who joined the Fund before 17 March 1987 or who joined subsequently and who the Board have agreed in writing to be a Class C Member by virtue of previous membership of a Relevant Scheme and, in either case, has not opted to become a Class A Member.

**"Commencement Date"** means the date the Fund was established.

**"Connected Scheme"** means any Relevant Scheme which is connected with the Fund in relation to the Member i.e. if

- (a) there is a period during which the Member has been the Employee of two Associated Employers; and
- (b) that period counts under both schemes as a period in respect of which benefits are payable ; and
- (c) the period counts under one scheme for service with one employer and under the other for service with the other Employer.

**"Control"** in relation to a body corporate (other than a close company) or partnership shall be construed in accordance with Section 840 of the Act and in relation to an unincorporated association that section shall be applied as it applies to a body corporate.

In relation to a close company "Control" shall be construed in accordance with Section 416 of the Act.

**"Controlling Director"** means a Member who at any time on or after 17th March 1987 and in the last 10 years before the Relevant Date has, in relation to the Employer, been both within the definition of a director in Section 612(1) of the Act and within paragraph (b) of Section 417(5) of the Act.

**"Current Member"** means a Member of the Fund to whom a benefit is currently accruing as a result of service as an Employee, or an Ex-Spouse Participant whose rights under the Fund derive from a pension sharing order agreement or equivalent provision.

**"Deed"** means the deed to which these Rules are annexed.

**"Dependant"** means

- (i) in relation to a Member the Member's spouse and any other individual who in the opinion of the Administrator is financially dependent on the Member and for the purposes of Rule 7.1 any person or body whom the Member has requested the Administrator in writing to consider as a possible recipient of a benefit arising under the Fund on his death.
- (ii) in relation to an Ex-Spouse Participant the Ex-Spouse Participant's spouse or child under the age of 18 years or who is older but receiving full-time education or vocational training and any other individual who in the opinion of the Administrator is financially dependent on the Ex-Spouse Participant

**"Employee"** means any employee of the Employers including any director whose inclusion in the Fund would not prejudice Approval.

**"Employer"** means the Principal Employer and any other employer which is associated in business with or controlled by the Principal Employer to such an extent that the participation in the Fund of that employer will not prejudice Approval, to whose participation in the Fund the Board shall have given their prior consent and which shall have entered into a deed undertaking to observe and perform those provisions of the Fund which are to be observed and performed by an employer in relation to those Employees of that employer who become Members. In relation to a Member or applicant for membership, "Employer" means that one or more of the employers with whom the Member holds (or held at the relevant time) an employment or directorship.

**"Ex-Spouse"** means an individual to whom the Pension Credit Rights have been or are to be allocated following a Pension Sharing Order, agreement or equivalent provision.

**"Ex-Spouse Participant"** is an Ex-Spouse who participates in the Fund. For this purpose the Ex-Spouse Participant must participate in the Fund, either,

- (a) solely for the provision of a Pension Credit Benefit, or,
- (b) for the wholly separate provision of a Pension Credit Benefit, where benefits accrue or have accrued to that individual under the Fund for any other reason.

**"Final Remuneration"** means the greater of:

- (a) the highest remuneration upon which tax liability has been determined for any one of the 5 years preceding the Relevant Date being the aggregate of:
  - (i) the basic pay for the year in question, and
  - (ii) the yearly average over 3 or more consecutive years ending with the expiry of the corresponding basic pay year, of any Fluctuating Emoluments provided that Fluctuating Emoluments of a year other than the basic pay year may be increased in proportion to the increase in the Index from the last day of that year up to the last day of the basic pay year. Remuneration that is received after the Relevant Date and upon which tax liability has been determined will be treated as a Fluctuating Emolument (providing it was earned or qualified for prior to the Relevant Date). In these circumstances it may be included provided the yearly average of 3 or more consecutive years begins no later than the commencement of the basic pay year; or
- (b) The yearly average of the total emoluments from the employer which are assessable to income tax under Case I or II Schedule E and upon which tax liability has been determined for any 3 or more consecutive years ending not earlier than 10 years before the Relevant Date. Where such emoluments are received after the Relevant Date but are earned or qualified for prior to that date, they may be included provided that in these circumstances the yearly average of 3 or more consecutive years begins no later than the commencement of the year ending with the Relevant Date.

Provided that:

- (i) remuneration and total emoluments do not include any amounts which arise from the acquisition or disposal of shares or any interest in shares or from a right to acquire shares (except where the shares or rights etc. which give rise to such an amount liable to tax under Schedule E had been acquired before 17 March 1987) or anything in respect of which tax is chargeable by virtue of Section 148;

- (ii) in relation to a Controlling Director, final remuneration shall be the amount ascertained in accordance with (b) and (a) above shall not apply;
- (iii) in relation to any other Employee whose remuneration in any year subsequent to 5 April 1987 used for the purpose of calculating benefits has exceeded £100,000 (or such other figure as may be prescribed by the Treasury), final remuneration shall not exceed the amount ascertained in accordance with (b) above and (a) above shall not apply, unless the individual chooses to adopt £100,000 (or such other figure as may be prescribed by the Treasury);
- (iv) where final remuneration is computed by reference to any year other than the last complete year ending on the Relevant Date, the member's remuneration or total emoluments of any year may be increased in proportion to any increase in the Index from the last day of that year up to the Relevant Date. For a Class C Member this proviso shall not apply to the calculation of the maximum Lump Sum Retirement Benefit unless the Member's aggregate total benefits are similarly increased beyond the maximum amount which could be paid but for this proviso and/or the first sentence of (a)(ii) above and then only to the same proportionate extent,
- (v) for Class A Members final remuneration shall not exceed the Permitted Maximum;
- (vi) for the purpose of calculating the maximum Lump Sum Retirement Benefit of a Class B Member final remuneration shall not in any event exceed £100,000 (or such other figure as may be prescribed by the Treasury);
- (vii) an Employee who remains, or is treated as remaining, in service but by reason of Incapacity is in receipt of a much reduced remuneration i.e. under a sick pay or permanent health insurance scheme, for more than 10 years up to the Relevant Date, may calculate final remuneration under (a) or (b) above with the final remuneration calculated at the cessation of normal pay and increased in accordance with the Index;
- (viii) the total amount of any profit related pay (whether relieved from income tax or not) may be classed as pensionable remuneration and treated as a Fluctuating Emolument;
- (ix) an early retirement pension in payment from the Employer may not be included in final remuneration.

Notes: Except as in proviso (i) above, benefits in kind may be taken into account when they are assessed to income tax as emoluments under Schedule E, and will normally be regarded as Fluctuating Emoluments. If benefits are not so assessable, they may not be included as part of final remuneration except with the agreement of the Pension Schemes Office.

For the purposes of providing immediate benefits at the Relevant Date it will be permitted to calculate final remuneration on the appropriate basis above using remuneration assessable to tax under Case I or II of Schedule E and upon which tax liability has not been determined. On determination of this liability final remuneration must be recalculated. Should this result in a lower final remuneration then benefits in payment should be reduced if this is necessary to ensure that they do not exceed the maximum approvable based on the lower final remuneration. Where final remuneration is greater it will be possible to augment benefits in payment but such augmentation must take the form of non-commutable pension.

Where immediate benefits are not being provided or where a transfer payment is to be made in respect of accrued pension benefits then final remuneration may only be calculated using remuneration assessable to income tax under Case I or II of Schedule E and upon which tax liability has been determined.

**"Fluctuating Emoluments"** means any part of an employee's earnings which are not paid on a fixed basis and are additional to the basic wage or salary. They include overtime, commission, bonuses or benefits in kind as long as they are assessable to tax under Case I or II Schedule E and profit related pay (see proviso (viii) to definition of Final Remuneration). Directors' fees may rank as fluctuating emoluments according to the basis on which they are voted.

**"Fund"** means the scheme the title of which is described in the Deed.

**"Incapacity"** means a degree of physical or mental deterioration which prevents the Member from following his normal employment or which seriously impairs his earning capacity. It does not mean simply a decline in energy or ability.

**"Index"** means the Government's Index of Retail Prices.

**"Insurance Company"** is as defined in Section 659B of the Act.

**"Long Service Benefit"** means the benefit to which a Member, his Dependents and personal representatives will be entitled under the Fund if he remains in Pensionable Service until the Normal Retirement Date.

**"Lump Sum Death Benefit"** means the aggregate of the Pension Account and any life assurance payable under the Policy on the death of a Member.

**"Lump Sum Retirement Benefit"** means the total value of all retirement benefits payable in any form other than non-commutable pension under this and any Associated Scheme.

**"Managing Trustees"** means the managing trustees named in the Deed and shall include their successors in title.

**"Member"** means an Employee who has been admitted to membership of the Fund such membership continuing for so long as any benefits remain payable to or in respect of him.

**"Negative Deferred Pension"** means the amount by which the Member's pension or deferred pension under the Fund which arose/arises from Service with the Employer, is reduced at the Relevant Date by Section 31 Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation, following a Pension Sharing Order, agreement or equivalent provision. For this purpose, Service with the Employer includes all periods of service with other employers which have been treated as if they were Service with the Employer where a transfer payment has been made to the Fund in respect of that other service.

**"Normal Retirement Date"** means such date as shall be agreed between the Administrator, the Employer and the Member provided that it shall not without the prior consent of the Board be prior to the Member's 60th anniversary of birth nor subsequent to a Member's 75th anniversary of birth.

**"Pension Account"** means in relation to a Member such share of the assets of the Fund as the Administrator determines to be appropriate on the advice of the Actuary having regard to the contributions made by the Member (if any) and on behalf of the Member by the Employer, excluding any made in respect of life assurance under the Policy, and any sums received and the value of any policies transferred to the Fund in accordance with Rule 16. Provided that nothing in this definition shall confer on the Member any right to specific assets of the Fund which are attributable to him on a notional basis solely for benefit calculation purposes.

**"Pension Credit"** means a credit under Section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation.

**"Pension Credit Benefit"** in relation to a scheme, means the benefits payable under the scheme to or in respect of a person by virtue of rights under the scheme attributable (directly or indirectly) to a Pension Credit.

**"Pension Credit Rights"** means rights to future benefits under a scheme which are attributable (directly or indirectly) to a Pension Credit.

**"Pension Debit"** means a debit under Section 29(1)(a) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation.

**"Pension Debit Member"** means a Member whose benefits have been permanently reduced by a Pension Debit. Such a Member will either be;

- (a) a Member who is a Controlling Director of a company which is his Employer if he is a director of the company to whom paragraph (b) of Section 417(5) of the Act applies either at the date on which the marriage was dissolved or annulled, or at any time within the period of 10 years before that date or,
- (b) a Member whose earnings at the date at which his marriage was dissolved or annulled exceeded  $\frac{1}{4}$  of the Permitted Maximum for the year of assessment in which the dissolution or annulment occurred. Earnings for these purposes shall be taken to be the total emoluments-
  - (i) which were paid to the Member in consequence of Pensionable Service to which the Fund relates during the year of assessment before the year of assessment in which the marriage was dissolved or annulled, and
  - (ii) from which tax was deducted in accordance with the Income Tax (Employments) Regulations 1993.

**"Pension Sharing Order"** means any order or provision as is mentioned in Section 28(1) of the Welfare Reform and Pensions Act 1999 or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

**"Pensionable Service"** has the meaning ascribed to it by Section 70 of the Pensions Scheme Act 1993.

**"Pensioneer Trustee"** means a Trustee of the Fund who:

- (i) is approved by the Board to act as such, and

- (ii) is not connected with a Current Member, another Trustee or an Employer.

Any reference to The Pensioneer Trustee means the Pensioneer Trustee of the Fund named in the Deed and any successor in title.

**"Pensioner"** means a Member who is in receipt of a pension or entitled to an immediate pension.

**"Permitted Maximum"** is to be construed as defined in Section 590C(2) of the Act.

**"Policy"** means the policy or policies securing benefits under the Fund in respect of a Member.

**"Principal Employer"** means the employer so described in the Deed and shall include their successors in title.

**"Private Company"** means a company which is not officially listed on a recognised stock exchange within the meaning of Section 841 of the Act.

**"Qualifying Service"** has the meaning ascribed to it in Section 71(7) of the Pension Schemes Act 1993.

**"Relatives"** means the Member's spouse, children (including legally adopted children and step-children), grandchildren, parents, grandparents, brothers, sisters, nephews and nieces.

**"Relevant Date"** means the date of retirement, leaving Pensionable Service or death as the case may be.

**"Relevant Scheme"** means any other scheme approved or seeking approval under Chapter I Part XIV of the Act and in respect of a Class A Member who is a Controlling Director also any retirement annuity contract or trust scheme approved under Chapter III Part XIV or any personal pension scheme as approved under Chapter IV Part XIV of the Act insofar as it provides benefits secured by contributions in respect of Service.

**"Remuneration"** in relation to any year shall mean the aggregate of the total emoluments for the year in question from the Employer and which are assessable to Income Tax under Schedule E but excluding any amounts which arise from the acquisition or disposal of shares or any interest in shares or a right to acquire shares or anything in respect of which tax is chargeable by virtue of Section 148 of the Act. Provided that for a Class A Member there shall be disregarded any emoluments in excess of the Permitted Maximum.

**"Retained Death Benefits"** means any lump sum benefits payable on the Member's death from;

- (a) retirement benefits schemes approved or seeking approval under Chapter 1 Part XIV of the Act or relevant statutory schemes as defined in Section 611A thereof,
- (b) funds to which Section 608 of the Act applies,
- (c) retirement benefits schemes which have been accepted by the Inland Revenue as "corresponding" in respect of a claim made on behalf of the Member for the purposes of section 596(2)(b) of the Act,
- (d) retirement annuity contracts approved under Chapter III Part XIV of the Act, or
- (e) term life provisions under personal pension schemes approved under Chapter IV Part XIV of the Act,
- (f) transfer payments from overseas schemes held in a type of arrangement defined in (a) (d) or (e) above

in respect of previous employments or periods of self-employment (whether alone or in partnership). If the Retained Death Benefits do not exceed £2,500 in total they may be ignored.

**"Service"** shall mean service with the Employer or an Associated Employer or, except in relation to a Class A Member who is a Controlling Director of either Employer, an Employer who is associated with the Employer only by virtue of a permanent community of interest.

**"Short Service Benefit"** means the benefits payable to or in respect of a Member under the Fund on termination of Pensionable Service (other than by death) before the Normal Retirement Date.

**"Trustees"** shall mean the trustee(s) of the Fund as defined in the Deed and shall include their successors in title.

## 2. **Eligibility**

- 2.1 Membership of the Fund is open to such Employees as the Employer in its absolute discretion determines to be eligible.
- 2.2 An eligible Employee shall become a Member by completing an application form setting out such particulars as the Administrator may require and being notified by the Administrator that he has been included in the Fund.

2.3 A Member may by giving the Administrator such notice as it may require elect at any time before Normal Retirement Date that his Pensionable Service shall cease.

2.4 An Ex-Spouse who applies to do so may become an Ex-Spouse Participant subject to the agreement of the Administrator.

### **3. Provision of Benefits**

3.1 The Employer shall pay contributions in respect of each Member to the Fund and the rate of contribution may be increased, decreased or terminated at the Employer's discretion but not so that Approval is prejudiced. The rate of Employer contributions shall be determined on the basis of appropriate actuarial advice.

3.2 (a) Each Member is required to contribute at such a rate as determined by the Employer and notified in writing to the Member. No rate of contribution determined under this sub-rule may be altered before the expiry of a period of 12 months from the date on which the first payment at the current rate became due without the specific agreement of the Board.

(b) In addition the Member may make voluntary contributions to the Fund to secure additional benefits for himself and/or his Dependants.

(c) In respect of a Class A Member, any retirement benefits secured by voluntary contributions must be in the form of non-commutable pension except to the extent to which the provisions of the Fund allow commutation of trivial pensions or on the grounds of serious ill health.

(d) In respect of a Class B or C Member, where voluntary contributions commence on or after 8 April 1987 any retirement benefits so secured must be in the form of non-commutable pension except to the extent to which the provisions of the Fund allow commutation of trivial pensions or on grounds of serious ill health.

(e) The contributions paid to the Fund by a Class A Member shall not exceed either

- (i) when aggregated with the Member's contributions to any other exempt approved schemes, 15% of the Member's Remuneration, or
    - (ii) when aggregated with the Member's contributions to any schemes which are Associated or Connected Schemes, 15% of the Permitted Maximum.
  - (f) The total contributions paid by a Class B or C Member in a year of assessment to this and any Associated Scheme shall not exceed 15% of his Remuneration for that year.
- 3.3 All benefits payable under the Fund shall be relevant benefits within the meaning given to this term by Section 612(1) of the Act.
- 3.4 The benefits payable in respect of a Member will be those determined by the Managing Trustees on the advice of the Actuary as being secured by the Member's Pension Account.
- 3.5 No benefit provided under the provisions of this Rule will be such as to exceed the limits laid down in Rule 17 or in any way to prejudice Approval.

Any part of the Pension Account not used to provide benefits for the Member because of this restriction shall be used to increase the Pension Account of any remaining Members as determined by the Administrator on the advice of the Actuary.

- 3.6 The Actuary shall prepare an actuarial valuation in respect of the Fund at intervals not exceeding three years and shall adjust the funding rate in the event that he considers it excessive.
- 3.7 Where the application of the limits in Rule 17 requires the quantum of the Aggregate Retirement Benefit to be restricted and the Member has paid additional voluntary contributions to supplement Fund benefits, that restriction shall first be effected on those supplementary benefits so as to permit the repayment of the surplus additional voluntary contributions subject to Section 599A of the Act.

The Administrator of the Fund shall comply with the requirements of Regulation 5 of The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations

1993 [SI 1993 No 3016] and where the Fund is the "leading scheme" in relation to a Member, with the requirements of Regulation 6 of those Regulations so far as they concern "main schemes". If these Regulations are amended or replaced by any other Regulations then this Rule will have effect as if it had been amended or replaced accordingly.

3.8 All death in Service benefits in respect of a Member shall be insured under the Policy to the extent that they exceed the value of the Member's Pension Account.

3.9 If

- (a) at the Commencement Date all of the assets of the Fund are, or are to be, invested in insurance contracts, and
- (b) at a later date all or part of such assets are to be invested other than in such contracts so that the Fund becomes subject to The Retirement Benefit Schemes (Restriction on Discretion to Approve) (Small Self-Administered Schemes) Regulations 1991.

the Administrator shall immediately notify the Pension Schemes Office of that fact and provide them with details of the non-insured investments.

#### 4. Pension on Retirement

Subject to Rule 17 a Member will be entitled to a pension as follows

- (a) A Member who retires from Service on the Normal Retirement Date will be entitled to an immediate pension payable from the Normal Retirement Date.
- (b) On the retirement of a Member from the Service
  - (i) after Normal Retirement Date but not later than the 75th birthday of a Class A Member
  - (ii) at any time before Normal Retirement Date because of Incapacity
  - (iii) with the consent of the Employer on or after the Member's 50 birthday

the provisions of paragraph (a) of this sub-Rule shall operate as if the Member's date of retirement were his Normal Retirement Date. The retirement of a Controlling Director before Normal Retirement Date on grounds of Incapacity shall be subject to the prior agreement of the Board.

- (c) The pension of a Class B or C Member who defers his retirement beyond his Normal Retirement Date may become payable at that date or at any later date before actual retirement in which event he shall for the purposes of the Fund be deemed to have retired on the date of commencement of his pension.
- (d) In respect of a Class A Member, the payment of his retirement benefits shall not commence earlier than the Member attaining age 50, except on retirement on grounds of Incapacity, nor later than attaining age 75.

No part of the Member's retirement benefits, is to be paid in advance of actual retirement except as necessary to comply with the first paragraph of this Rule 4(d) or to the extent necessary to comply with the requirements of the Pension Schemes Act 1993.

- (e) Any pension payable under this Rule shall be paid by equal instalments during the Member's lifetime, the first instalment being due on the Normal Retirement Date (or such other date in accordance with paragraph (b) above) and the last payment subject to Rule 7.2 being the instalment due immediately preceding the Member's death.
- (f) Member's pension may if the Member so elects be guaranteed for a period of five years.
- (g) A Member may surrender part of the pension payable to him to secure a pension for a Dependant or Child in accordance with Rule 8.2.
- (h) Subject to Rule 4(i) any pension or increase in pension coming into payment shall be secured by purchase of a non-commutable annuity which shall be non-assignable in the hands of the annuitant from an Insurance Company. An annuity shall be purchased in the names of the Managing Trustees.
- (i) In the case of (i) a Member who retires for whatever reason on or after 4 February 1994 or (ii) a Member who retired on or after 4 February 1989 but whose pension has not been secured within five years of that retirement, the Managing Trustees may purchase an annuity for such Member. Where a prospective spouse's reversionary pension is payable, the Managing Trustees shall purchase such a contingent annuity at the same time as the Member's

own pension is so secured. If, however, the spouse's pension is payable to whichever person is the Member's spouse when the Member dies, its purchase may be deferred until the death of the Member.

The Managing Trustees shall, however, have the power to defer the purchase of an annuity for such Member or for any Dependant (subject always to the above conditions for purchasing a spouse's pension) of a Member who dies while in Service or after retirement until in the case of the Member's pension no later than the date on which such Member attains age 75, or in the case of a Dependant's pension until the earlier of the attaining by the Dependant of age 75 or the date on which the deceased Member would have attained age 75.

This Rule 4(i) shall apply only if the Fund satisfies the definition of a small self-administered scheme set out in regulation 2 of the Retirement Benefits Schemes (Restriction On Discretion to Approve) (Small Self-Administered Schemes) Regulations 1991.

Furthermore this Rule 4(i) shall apply only with the consent of the Member or (where appropriate) Dependant and only so long as the following conditions are and remain satisfied:

- (1) Where all Members and Dependants (if any) are in receipt of pensions (contingent spouses of Pensioners whose pensions must be secured at the same time as the Pensioners' being regarded as in receipt of pension), the Managing Trustees shall not, directly or indirectly, make any new loans to, or share purchases in, the Employer or an Associated Employer or make any new investments in any stock or shares in any Private Company following the later of the first payment of pension to the last Member to retire and the first payment of pension to the last Dependant. The Managing Trustees shall ensure the repayment of any existing loan made to the Employer or to any Associated Employer and shall realise the value of any stock or shares held in any Private Company within five years of the commencement of pension in respect of the last Member or Dependant or on attainment by that Member or Dependant of age 70 if earlier. Where the Member or Dependant has already attained age 70 when payment of pension commences, the repayment of any existing loan or realisation of any stock or shares held in any Private Company shall take place immediately.
- (2) Where the Fund has both Members/prospective Dependants whose pensions are not yet in payment and Pensioners/Dependants with pensions in payment whose annuity purchase has been deferred (prospective spouses of Pensioners whose pensions must be secured at

the same time as the Pensioner's being regarded as in receipt of a pension), the Actuary shall exclude each Pensioner's and Dependant's actuarial interest in the Fund when determining the proportion and the amount which may be lent to, or used to buy shares in, the Employer or any Associated Employer or used to buy stock or shares in any Private Company.

Within five years of the commencement of pension to new Pensioners or Dependants or on attainment by the Pensioner or Dependant of age 70 if earlier, the Managing Trustees shall ensure that an appropriate proportion of any loan to or shares in the Employer or any Associated Employer is repaid or sold and shall ensure an appropriate proportion of the value of any stock or shares held in any Private Company is realised. Where the Member or Dependant has already attained age 70 when payment of pension commences, the repayment of any existing loan or realisation of any stock or shares held in any Private Company shall take place immediately.

- (3) Where, during the period of deferral, investments held for the purposes of the Fund include real or heritable property, the Managing Trustees shall ensure that there are sufficient other readily realisable assets so as to be in a position to purchase a Member's or Dependant's annuity at any time after the Member or Dependant has attained age 70.
- (4) The amount of any new borrowing by the Managing Trustees during any period of deferral shall be restricted so that the Pensioners' and Dependants' actuarial interest in the Fund are excluded from the calculation of the market value of the investments for the purposes of Clause 7III of the Deed. The Managing Trustees shall ensure the reduction of any borrowing in existence when a Member retires or when a Dependant's benefits come into payment so as to comply with the levels set out in Clause 7III of the Deed within 5 years of those events or on attainment by the retired Member or Dependant of age 70 if earlier. Where the Member or Dependant has already attained age 70 when payment of pension commences, any reduction in borrowing to comply with the levels set out in Clause 7III of the Deed shall take place immediately.
- (5) During the period of deferral, and whilst the pension is paid by the Managing Trustees, the Actuary shall certify the amount of pension which can be maintained by the Managing Trustees taking account of:

- (i) in the case of a Pensioner's pension, any contingent Dependants' pension payable;
- (ii) the income and assets of the Fund, and in particular those liquid assets representing the Pensioner's or Dependants' actuarial interest in the Fund.

In the case of a Pensioner's pension, the certificate shall compare the pension with the amount of an annuity which could at that time and on the same terms, be secured with the Pensioner's actuarial interest in the Fund. In the case of a Dependants' pension, the initial certificate shall compare the pension with an annuity that could have been secured at the Member's death. Subsequent renewal certificates shall compare the Dependants' pension with the amount of an annuity which could, at that time and on the same terms, be secured with the Dependants' actuarial interest in the Fund. Where the pension and annuity differ by 10% or more, the certificate shall include a full explanation.

- (6) A copy of the initial actuarial certificate shall be provided to the Pension Schemes Office with the next actuarial valuation report of the Fund or earlier on request by the Pension Schemes Office.
- (7) A formal review of the amount of pension payable shall thereafter form part of the Fund's triennial actuarial reviews; and the renewal certificate shall be supplied to the Pension Schemes Office with the actuarial valuation report.

## **5. Commutation of Pension**

- 5.1 With the consent of the Administrator a Member may elect to receive a lump sum in commutation of a part or the whole of his pension.

The option must be exercised at the date of commencement of the pension except that if the pension of a Class B or C Member commences after Normal Retirement Date the option may be exercised once only either at Normal Retirement Date or at any date not later than the date of commencement of the pension.

- 5.2 Subject to Rules 5.3 and 5.4 the lump sum payable under Rule 5.1 shall not cause the Lump Sum Retirement Benefit to exceed the relevant maximum in Rule 17.

- 5.3 If the Member's Aggregate Retirement Benefit does not exceed £260 or such higher amount as may be prescribed from time to time by regulations made under Section 21(1) and Section 77(5) and (6) of the Pension Schemes Act 1993 and which will not prejudice Approval the whole of the pension under the Fund may be commuted for a lump sum subject to Rule 12.1.
- 5.4 In exceptional circumstances of serious ill-health of a Member the whole of the pension under the Fund may be commuted for a lump sum subject to Rule 12.1 and in respect of a Controlling Director to the prior approval of the Board.

## **6. Pension Increases**

- 6.1 Members' and Dependants' pensions may be either level pensions or pensions which increase each year on such date as the Managing Trustees shall in their discretion decide by an amount determined by the Managing Trustees or if the benefits have been secured under a Policy as specified in that Policy, provided that any such increases shall not exceed the limits laid down in Rule 17.
- 6.2 Any pension secured by contributions other than voluntary contributions in respect of employment carried on after 5 April 1997 shall be increased each year on such date as the Managing Trustees shall in their discretion decide by the percentage rise in the Index published as at the preceding September or such other month as the Managing Trustees decide during the previous 12 months or, if less, 5%.

## **7. Lump Sum Death Benefit**

- 7.1 On the death of a Member in Service before the Normal Retirement Date such amount of the Lump Sum Death Benefit as shall be determined by the Administrator shall if it arises on the death of a Member who is a Controlling Director occurring on or after the 75th anniversary of his day of birth be held by the Administrator upon trust for the surviving spouse of the Member or in the absence of any surviving spouse to his legal personal representatives absolutely but otherwise shall be held by the Administrator upon trust with power to pay or apply the same either in whole or in part to or for the benefit of any one or more of the following to the exclusion of the others in such manner and in such proportions as the Administrator shall in its absolute discretion determine namely the Dependants Relatives and legal personal representatives of the deceased provided that if the Administrator

shall not have paid or applied the said sum or any part or parts thereof within a period expiring on

- (a) the second anniversary of the death of the deceased or
- (b) the date of termination of the trusts of the Fund in accordance with Rule 14

whichever is the earlier the Administrator shall forthwith pay the said sum or part or parts thereof in respect of which there shall have been no payment to the legal personal representatives of the deceased.

**7.2** On the death of a Member within five years after any pension has commenced where such pension has been guaranteed under Rule 4(f)

- (a) If the pension has been secured by purchase of an annuity from an Insurance Company a capital sum equivalent to and in lieu of the balance of the guaranteed pension instalments discounted at such rate as the Insurance company shall determine shall be dealt with in the same manner as in Rule 7.1.
- (b) If the pension has not been secured by purchase of an annuity from an Insurance Company a capital sum in lieu of the balance of the guaranteed pension instalments of an amount calculated by the Actuary shall be dealt with in the same manner as in Rule 7.1.

**7.3** On the death of a Member in Service after the Normal Retirement Date

- (a) If no cash sum or other benefits have been taken Rules 7.1 and 8.1 shall apply as if the Member had died in service before Normal Retirement Date.
- (b) If a cash sum only has been taken under Rule 5.1, a capital sum of up to the balance of five years' instalments of pension which would have been paid had the Member retired on the date of his death shall be dealt with in the same manner as in Rule 7.1.

**7.4** If a Member leaves Service before Normal Retirement Date without taking any immediate benefits any death benefit payable under the Fund will be paid by the Administrator in the same manner as in Rules 7.1 and 8.1.

**7.5** Any benefits payable under this Rule shall be subject to the limits in Rule 17.9.

## 8. Dependant's and Child's Pension

### 8.1 Death before Retirement

In the event of the Member

- (i) dying before receiving retirement benefits to the extent that the Lump Sum Death Benefit exceeds the limit laid down in Rule 17.9, or is not applied as a capital sum in accordance with Rule 7.1, or
- (ii) dying in Service after the Normal Retirement Date and after taking a cash sum in accordance with Rule 5.1, to the extent that the Lump Sum Death Benefit is not applied as a capital sum in accordance with Rule 7.3,

it shall be applied to provide a Dependant's or Child's pension as determined by the Administrator. Such pensions shall (subject to Rule 4(i)) be in the form of or secured by the purchase of non-commutable non-assignable annuities payable by an Insurance Company

### 8.2 Death in Retirement

- (a) A Member who is to receive a pension or to whom a pension is being paid may at any time before that pension is secured by the purchase of an annuity surrender part of such pension (to be determined by the Administrator acting on the advice of the Actuary) for a deferred pension (which shall not be less than £260 per annum) to commence on his death and be payable to a Dependant or Child chosen by the Member. Provided that his remaining pension shall not be less than the amount of any pension payable under this Rule.
- (b) In the event of the Dependant or Child dying before the Member but after the pension for that Dependant or Child has been secured by the purchase of an annuity the Member's pension shall not thereby be increased.
- (c) That part of the Pension Account not utilised to provide benefits for the Member shall be utilised to provide pensions for the Dependents of the Member and subject to Rule 4(i) such benefits shall be secured by purchase of a non-commutable non-assignable annuity in the names of the Managing Trustees from an Insurance Company at the same time as the Member's pension except that a prospective widow's or widower's pension may be secured either simultaneously with the Member's pension or when the Member dies. If the purchase is made

on the death of the Member the pension shall only be payable to a widow or widower so living at that date.

### 8.3 Payment of Pension

A pension payable under this Rule shall be payable by equal monthly instalments and shall not exceed the limits laid down in Rule 17.10. The first instalment of the pension payable under Rule 8.1 shall be due on the date of the Member's death. The first instalment of the pension payable under Rule 8.2 shall be due one month after the last instalment of the Member's own pension provided that the Dependant or Child is then alive. A Dependant's pension will be paid during the lifetime of the Dependant, the last instalment being that due immediately preceding the death of the Dependant. A Child's pension will be paid until the Child dies or ceases to be a Child (except if the Child remains dependent because of disability) whichever is earlier, the last instalment being that due immediately preceding such event.

## 9. Leaving Pensionable Service

- 9.1 If a Member's Pensionable Service ceases before the Normal Retirement Date and before he has completed a total of two years' Qualifying Service then he shall be entitled to a refund of that proportion of the Pension Account represented by his own contributions (if any) with or without interest as the Managing Trustees decide, except those contributions which in accordance with Rule 16.3 may not be returned.

At the discretion of the Employer a Member may be offered in lieu of such refund benefits as described in Rule 9.2.

- 9.2 A Member whose Pensionable Service ceases after he has completed two years' Qualifying Service shall be entitled to benefits which in the opinion of the Administrator based on the advice of the Actuary are secured by the Pension Account subject to the limits laid down in Rule 17 and which shall be payable at Normal Retirement Date except that at the request of the Member benefits may come into payment before or after such date at the discretion of the Administrator at the payment dates specified for benefits in accordance with Rules 4 and 5 provided that in the case of a Class B or C Member benefits shall not commence after the latest of the Normal Retirement Date, the normal retirement date under the Member's last retirement benefits scheme or the date on which the Member ceases all employment.

9.3 (a) At the request in writing of a Member who is entitled to benefits under Rule 9.1 or 9.2 the Administrator will transfer the Pension Account in the manner described in Chapter IV of Part IV of the Pension Schemes Act 1993 in respect of the payment of cash equivalents

(i) to the trustees or other persons having control of any other retirement benefits scheme or personal pension scheme of which the Member is or is to be a member or

(ii) to one or more policies or contracts providing relevant benefits (as defined in Section 612(1) of the Act) which may be different from those which would have been provided by the Fund and otherwise fulfilling the requirements of the Board effected with one or more Insurance Companies in his name or in the name of trustees for his benefit

or partly to one and partly to the other.

Provided that

(I) transfer to a policy or contract shall include assignment of the Policy in whole or in part to the Member or to trustees for his benefit subject to the requirements of the Board

(II) transfer to another retirement benefits scheme may be effected by assignment of the Policy in whole or in part

(III) in circumstances prescribed in regulations made under the Pension Schemes Act 1993 the Administrator may without the consent of the Member pay a sum to an Insurance Company for the purchase of a contract as described in paragraph (a)(ii) above subject to the contract satisfying the requirements of the said regulations

(IV) any such transfer shall be subject to the requirements of the Board.

(b) At the request in writing of a Member who is not entitled to benefits under Rules 9.1 or 9.2 the Administrator may in its discretion and subject to the requirements of the Board transfer in accordance with paragraph (a) hereof the Pension Account or that part thereof which the Administrator determines to be secured by contributions paid by the Member.

- (c) Before making any such transfer the Administrator shall ensure compliance with any requirements of the Board and ascertain from the trustees or other persons having control of such other scheme the section and Act under which such other scheme is approved or being considered for approval by the Board and if the proposed transfer is one that requires to be reported to the Board such transfer shall be made only with the express agreement of the Board and subject to such terms as the Board may stipulate.
- (d) When on or after a transfer having been made to another occupational pension scheme or to a policy or contract as aforesaid the administrator of such scheme or the insurer of such policy or contract so requests the Administrator shall calculate as at the date of transfer and supply the receiving scheme or insurer with a certificate of the maximum lump sum payable on retirement from the transfer value or assigned policy and shall advise the administrator or insurer of the amount included in the value transferred which relates to contributions made by the Member and of any restrictions on a return of such contributions which would apply under the Fund.
- (e) When making a transfer to an approved personal pension scheme the Administrator shall provide a certificate of the maximum lump sum payable on retirement from the transfer value if the transferring member:
  - (i) was aged 45 or more at the time that the transfer payment was made, or
  - (ii) has at any time within the 10 years preceding the date on which the right to the cash equivalent being transferred arose, been, in respect of any employment to which the transfer payment or any part of it relates, either
    - (I) a Controlling Director, or
    - (II) in receipt of annual remuneration in excess of £60,000 or, if greater, the allowable maximum (i.e. the equivalent for personal pension schemes of the Permitted Maximum) for the year of assessment in which the date of transfer falls, or
    - (III) is entitled to benefits included in the transfer payment which arise from an occupational pension scheme under which the normal retirement age is 45 or less.

- (f) A transfer under this Rule in respect of a Member shall discharge the liability of the Fund to provide such benefits for and in respect of him as are represented by the transfer.
- 9.4 A Member shall not be treated as leaving Service if he re-enters Service not more than one month after leaving Service.
- 9.5 If a female Member is absent from work due to pregnancy or childbirth or if a Member is absent from work for family reasons the following provisions shall apply:
- (a) To the extent required by Schedule 5 of the Social Security Act 1989 and the Employment Relations Act 1999 contributions by and in respect of the Member shall continue to be paid, benefits for and in respect of the Member shall continue to accrue and the Member shall be treated as having remained in Service.
  - (b) For any period of such absence during which (a) does not apply payment of contributions by and in respect of the Member shall be suspended. In that event such period shall not be treated as Service and any life assurance benefit under the Policy (and any corresponding benefit under Rule 8.1) shall not be payable if the Member dies during such period.
  - (c) The Employer may with the agreement of the Administrator determine that (b) shall not apply and that any such period shall be treated as under (a) above with such modifications as they may determine.
  - (d) If a female Member on maternity absence does not return to work on or before the last day on which she has a right to return under the provisions of the Employment Relations Act 1999 and his employment is terminated on or before that date she shall be treated as having left Service on that date.
- 9.6 If the Member is temporarily absent from Service before Normal Retirement Date for more than one month and Rule 9.5 does not apply and the Member remains resident in the United Kingdom during such absence, the Employer may choose to treat him as:-
- (a) having left Service, in which case Rule 9 shall apply, or
  - (b) if there is a definite expectation of a return to work or if the absence is due to ill-health or otherwise if the Board agree, continuing in Service, in which case the Member's benefits under the Fund shall

remain in full force and contributions shall continue to be payable under Rule 3.1 in respect of such benefits

Provided that (b) above shall not apply:-

- (i) for more than ten years after the Member first became temporarily absent unless the Board otherwise agrees or the absence is due to ill-health, or
- (ii) if during such temporary absence the Member becomes a member of another retirement benefits scheme.

On the date on which (b) above ceases to apply under (i) or (ii) above, the Member shall be treated as having left Service and Rule 9 shall apply.

- (c) a Member who is temporarily absent from work during a period of secondment abroad may with the consent of the Employer remain in Pensionable Service in such circumstances and on such conditions as do not prejudice Approval.

9.7 After the 6th April 1988 a Member may give one month's written notice to the Administrator of cessation of his Pensionable Service and on the expiry of such notice his Pensionable Service shall cease.

#### **10. Bankruptcy or Anticipation of Benefits**

Except where otherwise provided in the Rules or in accordance with sections 95, 166 or 167 of the Pensions Act 1995 benefits under the Fund shall not be capable of being assigned, charged or alienated in any way by the individuals entitled thereto. No payment shall be made in respect of any such benefit if, to the knowledge of the Administrator the individual entitled thereto shall have purported to assign, charge or alienate the same or any part thereof or any event shall have happened whereby, if the benefit had belonged to the individual absolutely, it would have become vested in or charged in favour of some person other than that individual or his personal representatives. The Administrator may pay or apply any such benefit to or for the benefit of the individual, his spouse or any of his Dependants provided that in no circumstances shall payment be made to any purported assignee.

#### **11. The Employer's Right to Terminate Employment**

Nothing in these Rules shall restrict the right of the Employer to terminate the employment of any Member at any time.

## **12. Tax Liability**

- 12.1 Where the Administrator is liable for any tax or any interest thereon as a result of any benefit being payable under the Fund he may deduct that tax or interest from that benefit or any instalment thereof or may withhold payment of all or part of that benefit until such tax or interest has been paid or provided for. The Administrator shall make satisfactory arrangements with the Board for payment of any tax due under Section 599 of the Act in respect of any cash sum payable under Rule 5.3 or, in exceptional circumstances of serious ill-health of the Member, under Rule 5.4.
- 12.2 Subject to the prior agreement of the Board the Administrator may make any payment from the Fund to the Employer that is necessary to ensure that the requirements of the Board for the approval and treatment of the Fund as an exempt approved scheme are met. Such payment will be made less any tax for which the Administrator may be accountable under Section 601 of the Act in respect of the payment.
- 12.3 Where the Administrator is liable to pay any tax or duty or any interest thereon in connection with the Fund he may make such payments out of the assets of the Fund.

## **13. Production of Evidence and Information**

Payment of benefits under the Fund to any person shall be conditional upon the production of such evidence or information as the Administrator may reasonably require and if any such evidence does not accord with the information upon which provision for benefits under the Fund was based the Administrator may pay such benefits as are appropriate in the circumstances.

## **14. Discontinuance of the Fund**

- 14.1 The Principal Employer reserves the right at any time to discontinue the Fund in respect of all or some of the Members on giving each Member affected written notice of its intention. Any other Employer has the right at any time to discontinue its part of the Fund on giving each Member affected written notice of its intention. In addition, if an Employer ceases to be controlled by or associated with the Principal Employer to the extent necessary for Approval or continued Approval, that part of the Fund shall likewise be discontinued.
- 14.2 The Fund or part thereof shall after payment of all costs, charges and expenses which may then be owing, be applied by the Administrator after

consultation with the Actuary for the benefit of persons then in receipt of pensions from the Fund and for the benefit of other Members in the following manner.

The Administrator shall purchase a policy from an Insurance Company for the benefit of:-

- (a) any Member who is either then in receipt of a pension from the Fund or at the date of termination has attained or passed the Normal Retirement Date and is entitled to retire on pension or is entitled to receive a deferred pension under the terms of the Rules commencing at the Normal Retirement Date.
- (b) any other person who is then in receipt of a pension from the Fund or will receive a pension under the terms of Rule 8 on the death of a Member.

Such policies shall provide a pension of an amount determined by the Administrator based on the advice of the Actuary as being secured by the remainder of the Member's Pension Account and with the same rights (if any) to payment of a lump sum on the pensioner's death as that payable or due under the Fund at the date of termination. Any such policy purchased for a Member who is in receipt of a pension from the Fund shall be non-commutable and any other policy purchased in accordance with this Rule shall be subject to the restrictions set out in Rules 4 and 5 as if they had continued to have effect after the date of termination of the Fund.

The provisions of Rule 9 shall apply to Members who have not attained Normal Retirement Date.

- 14.3 Any balance remaining shall in such manner and to such extent as the Administrator may at his discretion determine be applied in whole or in part to increase the pensions payable under this Rule (provided that no pension so increased shall be such as will prejudice Approval) and subject thereto any balance remaining thereafter shall subject to the prior written agreement of the Board be paid to the Employer in such proportions as the Administrator may determine less any tax for which the Administrator may be accountable under Section 601 of the Act.

- 14.4 The consent of the Pensioner Trustee shall be required before discontinuance of the Fund.

**15. Liquidation, Dissolution or Replacement of the Employer**

- 15.1 If the Principal Employer or other Employer is liquidated or dissolved for the purpose of reconstruction or amalgamation and/or Members employed by the Principal Employer or other Employer are transferred to another Employer such arrangements as may be thought fit may be made for the continuance of the Fund with such reconstructed, amalgamated or new Employer substituted as the Principal Employer or other Employer.
- 15.2 If the Principal Employer or Employer is otherwise liquidated or dissolved without a successor then unless otherwise agreed by the Board and subject to any conditions the Board may impose the Fund shall be wound up or partially wound up as appropriate in accordance with Rule 14.

**16. Transfers into the Fund**

- 16.1 If a Member is or has been a member of another retirement benefits scheme or of a personal pension scheme approved or provisionally approved under Section 631 of the Act or has contributed to a retirement annuity contract approved under Chapter III of Part XIV of the Act the Administrator may upon the request of the Member in writing accept from such other scheme or contract such sum or the transfer of such policy or other asset as may be available thereunder or accept the surrender value of any policy or contract effected in the name of or assigned to the Member or trustees for his benefit in lieu of his entitlement under such other scheme or the transfer of such policy or contract provided that before it accepts such sum or transfer the Administrator shall satisfy itself that the acceptance thereof will not affect Approval and shall comply with any requirements of the Board.
- 16.2 The Administrator shall in respect of such sum policy contract or other asset obtain from the trustees or other persons having control of such other scheme or from the insurer of such policy or contract a certificate showing
- (a) to what extent the benefits to be provided in respect of such sum or other transfer may be commuted
  - (b) the period of service whilst a member of such other scheme to be taken into account in ascertaining the Qualifying Service in respect of the Member
  - (c) the amount (if any) of the Member's own contributions (and any interest thereon) to which the sum or other transfer relates and such amount shall be deemed to be Member's contributions to the Fund.

16.3 Notwithstanding anything contained in these Rules where a sum or other transfer has been received under Rule 16.1 in respect of a Member then on termination of Pensionable Service at any time for any reason

- (a) he shall be entitled to additional benefits as described in Rule 9 in respect of the sum or other transfer
- (b) he shall not be entitled to receive any refund of his contributions (if any) and in the event that he would otherwise have become entitled to a return of his contributions he shall be entitled to benefits as described in Rule 9 secured by such contributions.

16.4 The benefits arising on retirement from such a transfer shall not be capable of commutation nor shall they be paid in lump sum form if the transfer is accompanied by a certificate from the administrator of the transferring scheme or the insurer of the policy or contract to the effect that the sum policy contract or other asset is not to be used to provide benefits in lump sum form.

16.5 For Class B or Class C Members, any retirement benefits arising by virtue of the receipt by the Fund of a transfer (other than from another scheme providing benefits in respect of Service) shall not be capable of commutation unless and then only to the extent that a certificate has been obtained from the administrator of the transferring scheme showing the maximum lump sum payable from the transfer. The amount so certified may be increased in proportion to any increase in the Index since the date the transfer payment was received.

## **17. Inland Revenue Limits**

### **RULES 17.1 TO 17.5 INCLUSIVE WILL APPLY TO CLASS B AND CLASS C MEMBERS ONLY.**

17.1 Notwithstanding anything to the contrary in the Fund provisions but in the case of a Pension Debit Member subject to Rule 19 the benefits payable to a Class B or Class C Member or to his Dependants or other beneficiaries in respect of him shall not when aggregated with all benefits of a like nature provided under all Associated Schemes exceed the limits set out below.

17.2 The Member's Aggregate Retirement Benefit shall not exceed:-

- (1) on retirement at or before Normal Retirement Date, a pension of 1/60th of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
- (2) on retirement at any time before Normal Retirement Date on grounds of Incapacity a pension of the amount calculated in accordance with Rule 17.2(1) above as if the Member had remained in Service until the Normal Retirement Date, Final Remuneration being computed as at the actual date of retirement;
- (3) on retirement after Normal Retirement Date, a pension of the greatest of:-
  - i. the amount calculated in accordance with Rule 17.2(1) above on the basis that the actual date of retirement was the Member's Normal Retirement Date,
  - ii. the amount which could have been provided at Normal Retirement Date in accordance with Rule 17.2 (1) above increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period, and
  - iii. where the Member's total Service has exceeded 40 years, the aggregate of 1/60th of Final Remuneration for each year of Service before Normal Retirement Date (not exceeding 40 such years) and of a further 1/60th of Final Remuneration for each year of Service after Normal Retirement Date, with an overall maximum of 45 reckonable years.Final Remuneration being computed in respect of i. and iii. above as at the actual date of retirement, but subject always to Rule 17.4.
- (4) on leaving Pensionable Service before Normal Retirement Date, a pension of 1/60th of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or of such greater amount as will not prejudice Approval. The amount computed as aforesaid may be increased by 5% for each complete year or if greater, in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the pension begins to be payable. Any further increase necessary to comply with Social Security legislation is also allowable.

- (5) For the purpose of calculating the Aggregate Retirement Benefit or the total retirement benefit in 17.2(1) to 17.2(4) above, the pension equivalent of any Lump Sum Retirement Benefit will be determined on a basis agreed for the time being with the Board.

17.3 The Member's Lump Sum Retirement Benefit shall not exceed:-

- (1) on retirement at or before Normal Retirement Date, 3/80ths of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
- (2) on retirement at any time before Normal Retirement Date on grounds of Incapacity the amount calculated in accordance with Rule 17.3 (1) above as if the Member had remained in Service until the Normal Retirement Date, Final Remuneration being computed as at the actual date of retirement;
- (3) on retirement after Normal Retirement Date, the greatest of:-
  - i. the amount calculated in accordance with Rule 17.3 (1) above on the basis that the actual date of retirement was the Member's Normal Retirement Date,
  - ii. the amount which could have been provided at Normal Retirement Date in accordance with Rule 17.3 (1) above together with an amount representing interest thereon, and
  - iii. where the Member's total Service has exceeded 40 years, the aggregate of 3/80ths of Final Remuneration for each year of Service before Normal Retirement Date (not exceeding 40 such years) and of a further 3/80ths of Final Remuneration for each year of Service after Normal Retirement Date, with an overall maximum of 45 reckonable years.

Final Remuneration being computed in respect of i. and iii. above as at the actual date of retirement, but subject always to Rule 17.4.
- (4) on leaving Pensionable Service before Normal Retirement Date, a lump sum of 3/80ths of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed as aforesaid may be increased in proportion to any increase in the Index which has occurred between the date of

termination of Pensionable Service and the date on which the benefit is first paid.

- 17.4 If a Member elects under Rule 4(c) to take any part of his benefits under the Fund in advance of actual retirement, the limits set out in Rules 17.2 and 17.3 above shall apply as if he had retired at the date of the election as aforesaid, no account being taken of subsequent Service, save that the maximum amount of any uncommuted pension not commencing immediately may be increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period.
- 17.5 The preceding provisions of this Rule shall be modified in their application to a Member who is or has been a Controlling Director as follows:-
- (1) the amount of the maximum Aggregate Retirement Benefit in Rule 17.2 and of the maximum Lump Sum Retirement Benefit in Rule 17.3 shall be reduced, where necessary for Approval, so as to take account of any corresponding benefits under either a retirement annuity contract or trust scheme approved under Chapter III Part XIV of the Act or a personal pension scheme approved under Chapter IV Part XIV of the Act,
  - (2) where retirement takes place after Normal Retirement Date but not later than the Member's 70th birthday, Rule 17.2 (3) ii. and iii. and Rule 17.3(3) ii. and iii. shall not apply, and if retirement is later than the attainment of that age, the said paragraphs shall apply as if the Member's 70th birthday had been specified in these Rules as his Normal Retirement Date, so as not to treat as Service after Normal Retirement Date any Service before the Member reaches the age of 70;
  - (3) where Rule 17.4 applies to him, the rate of the actuarial increase referred to therein in relation to any period of deferment prior to his attaining the age of 70 shall not exceed the percentage increase in the Index during that period.

**RULES 17.6 TO 17.8 WILL ONLY APPLY TO CLASS A MEMBERS.**

- 17.6 Notwithstanding anything to the contrary in the Fund provisions but in the case of a Pension Debit Member subject to Rule 19 the benefits payable to a Class A Member or his Dependents or other beneficiaries in respect of him shall not, when aggregated with all benefits of a like nature provided under all Associated Schemes exceed the limits set out below.

17.7 The Member's Aggregate Retirement Benefit shall not exceed:-

- (1) on retirement at any time between attaining age 50 and attaining age 75, except before Normal Retirement Date on grounds of Incapacity, a pension of 1/60th of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
- (2) on retirement at any time before Normal Retirement Date on grounds of Incapacity a pension of the amount which could have been provided at Normal Retirement Date in accordance with Rule 17.7(1) above; Final Remuneration being computed as at the actual date of retirement;
- (3) on leaving Pensionable Service before attaining age 75, a pension of 1/60th of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed may be increased by the greater of 5% for each complete year or if greater in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the pension begins to be payable. Any further increase necessary to comply with Social Security legislation is also allowable.
- (4) Benefits for a Class A Member are further restricted to ensure that his total retirement benefit from this Fund and from any Associated Scheme or Connected Scheme does not exceed a pension of 1/30th of the Permitted Maximum for each year of service, subject to a maximum of 20/30ths. For the purpose of this limit, service is the aggregate of Service and any period of service which gives rise to benefits under a Connected Scheme provided that no period is to be counted more than once.
- (5) For the purpose of calculating the Aggregate Retirement Benefit or the total retirement benefit in (1) to (4) above, the pension equivalent of any Lump Sum Retirement Benefit is one twelfth of its total cash value.

17.8 The Member's Lump Sum Retirement Benefit shall not exceed:-

- (1) on retirement at any time between attaining age 50 and attaining age 75, except before Normal Retirement Date on grounds of Incapacity, 3/80ths of Final Remuneration for each year of Service (not

exceeding 40 years) or such greater amount as will not prejudice Approval;

- (2) on retirement at any time before Normal Retirement Date on grounds of Incapacity the amount which could have been provided at Normal Retirement Date in accordance with Rule 17.8(1) above; Final Remuneration being computed as at the actual date of retirement;
- (3) on leaving Pensionable Service before attaining age 75, a lump sum of 3/80ths of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed may be increased in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the benefit is first paid.

#### **RULES 17.9 AND 17.11 WILL APPLY TO ALL MEMBERS**

17.9 The lump sum benefit (exclusive of any refund of the Member's own contributions not applied specifically to secure the payment of benefits on the Member's death and any interest thereon) payable on the death of a Member while in Service or (having left Service with a deferred pension) before the commencement of his pension shall not, when aggregated with all like benefits under Associated Schemes, exceed the greater of :-

- a. £5,000, and
- b. 4 times the greatest of:
  - (i) the annual rate of the Member's basic salary or wages at the date of death or leaving Pensionable Service together with the yearly average of Fluctuating Emoluments received in the 3 years (or the whole period of Service if less) up to the date of death or leaving Pensionable Service (subject, for a Class A Member, to the Permitted Maximum) and
  - (ii) the Member's total emoluments (subject, for a Class A Member, to the Permitted Maximum) of any selected period of 12 months ending not earlier than 36 months before the date of death
  - (iii) Final Remuneration disregarding provisos (i) (ii) and (iii) of that definition,

less Retained Death Benefits.

Fluctuating Emoluments or total emoluments in (i) or (ii) above for any year other than the 12 months prior to death may be increased in proportion to the increase in the Index from the last day of that year up to the date of death.

- 17.10 Any pension for a Dependant, when aggregated with the pensions, other than those provided by surrender of the Member's own pension, payable to that Dependant under all Associated Schemes, shall not exceed an amount equal to 2/3rds of the maximum Aggregate Retirement Benefit payable to the Member immediately before death under Rules 17.2 and 17.7 above. Where the death of the Member occurs whilst in Service before the Normal Retirement Date the maximum is that appropriate had the Member retired on grounds of Incapacity on the date of death entitled to no retained benefits from previous employments.

If pensions are payable to more than one Dependant of a Member, the aggregate of all Dependant's pensions payable in respect of him under this and all Associated Schemes shall not exceed the full amount of the maximum Aggregate Retirement Benefit described in the previous paragraph of this Rule.

- 17.11 The maximum amount of a pension ascertained in accordance with this Rule less any pension which has been commuted for a lump sum or the pension equivalent of any benefits in lump sum form and any pension surrendered to provide a Dependant's pension may be increased by 3% for each complete year or if this would give a greater increase in proportion to the increase in the Index which has occurred since the pension commenced to be paid.

## 18. Liens

- 18.1 Any Employer shall be entitled to a lien on any benefits to which a Member may become entitled under the Fund otherwise than under Rule 16 to enable such Employer to obtain the discharge by the Member of a monetary obligation due to such Employer which arises out of a criminal negligent or fraudulent act or omission by the Member.
- 18.2 The amount of any recovery from or retention out of the assets of the Fund under this Rule shall be limited to the lesser of the amount of such obligation and the actuarial value of the benefits at the time of such recovery or retention subject to any different agreement in writing between such Employer and the Member.

18.3 In the event of any dispute as to the amount to be recovered or retained the Employer shall not be entitled to enforce the lien except after such obligation has become enforceable under an order of a competent court or the award of an arbitrator or in Scotland an arbiter to be appointed (failing agreement between the parties) by the sheriff.

18.4 The Member shall be given a certificate showing the amount recovered or retained and its effect on his benefits or prospective benefits.

**19. Pension Sharing on Divorce**

19.1 The provisions of this Rule will apply where a Pension Sharing Order agreement or equivalent provision is or has been made in respect of a Member in accordance with the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation.

19.2 Rule 10 is amended to permit the assignment of part or all of the Member's retirement benefits or rights to benefits under the Fund to his Ex-Spouse to the extent necessary to comply with a Pension Sharing Order, agreement or equivalent provision or the assignment of part or all of the Ex-Spouse Participant's benefits or rights to benefits under the Fund to his Ex-Spouse to the extent necessary to comply with a Pension Sharing Order, agreement or equivalent provision.

19.3 The Administrator must make provision for the Pension Credit Benefits under the Fund to be treated as provided separately from any benefits provided under the Fund for the same individual as an Employee or as the Dependant of an Employee.

19.4 Participation in the Fund offered to an Ex-Spouse either where the requirement in Rule 19.3 is satisfied, or where the Ex-Spouse only has Pension Credit Benefits under the Fund

The following options will be available to the Ex-Spouse Participant in relation to the Pension Credit Benefit, subject to compliance with Social Security legislation.

- (a) A pension can be paid at the request of the Ex-Spouse Participant at any time between attaining age 50 and 75, or earlier on grounds of incapacity where he is simultaneously taking benefits on incapacity grounds arising from Service as an Employee under the Fund in which the Pension Credit Benefits are held. Additionally a pension not yet in payment may be fully commuted, at any age, on the grounds of exceptional circumstances of serious ill-health. The

Ex-Spouse Participant cannot defer commencement of the pension beyond his 75th birthday. If he is aged 75 or over at the date the Pension Sharing Order is implemented, the pension must come into payment immediately. There is no limit on the amount of the pension. Such a pension should not be commuted, surrendered or assigned except in accordance with the Rules of the Fund. Such a pension must be payable for life unless it is fully commuted under Rule 19.4(f), and may be guaranteed.

- (b) No lump sum may be paid to the Ex-Spouse Participant where the Member (who was formerly married to the Ex-Spouse Participant) has already received a Lump Sum Retirement Benefit from the Fund before the date of the implementation by the Fund of the Pension Sharing Order, agreement or equivalent provision.

No lump sum may be paid to the Ex-Spouse Participant where all of the Pension Credit Rights under the Fund have been transferred into the Fund with a lump sum nil certificate.

Otherwise the Ex-Spouse Participant may choose to take a lump sum in commutation for part of the pension, at the time the pension first becomes payable. The lump sum is limited to a maximum of 2.25 x the initial annual pension. For this purpose, the initial annual pension should be calculated on the following bases;

- (i) if the pension payable for the year changes, the initial pension payable should be taken;
  - (ii) it should be assumed that the Ex-Spouse Participant will survive for a year;
  - (iii) the effect of commutation should be ignored.
- (c) Where the Ex-Spouse Participant dies before benefits come into payment a lump sum death benefit may be paid. This lump sum can be paid to any person at the discretion of the Administrator.

The lump sum is limited to 25% of what would have been the cash equivalent of the Pension Credit Rights at the Ex-Spouse Participant's date of death. The balance of the said cash equivalent may be used to provide a non-commutable pension to a Dependant of the Ex-Spouse Participant. The amount of pension payable to a Dependant is limited to a maximum of 2/3rds of the amount of the pension that could have been paid to the Ex-Spouse Participant at the date of death had the whole of the cash equivalent of the Pension Credit Rights been used to purchase an annuity at an available

market rate. For the purpose of determining the pension which could have been paid to the Ex-Spouse Participant, it should be assumed that he was aged 50 at the date of death where he died at an earlier age. Where more than one pension is to be paid the total of all the pensions cannot exceed the amount of the pension that could have been paid to the Ex-Spouse Participant.

Such pensions must be payable for life, except that pensions paid to children must cease on the attainment of age 18 or, if later, on cessation of full time education. Such pensions may, however, be fully commuted for a lump sum on the grounds of triviality at the time that such a pension becomes payable.

- (d) Where the Ex-Spouse Participant dies after pension has come into payment, a non-commutable pension may be payable to a Dependant of the Ex-Spouse Participant.

The amount of pension payable to a Dependant is limited to a maximum of 2/3rds of the initial annual pension which was paid to the Ex-Spouse Participant as increased by any rise in the Index since the commencement of the Ex-Spouse Participant's pension. Where more than one pension is to be paid the total of all the pensions cannot exceed the amount of the initial annual pension which was paid to the Ex-Spouse Participant, as increased by any rise in the Index since the commencement of the Ex-Spouse Participant's pension. For these purposes initial annual pension should be calculated on the same basis as for Rule 19.4(b).

Such pensions must be payable for life, except that pensions paid to children must cease on the attainment of age 18 or, if later, on the cessation of full time education. Such pensions may, however, be fully commuted for a lump sum on the grounds of triviality at the time that such a pension becomes payable.

Where the Ex-Spouse Participant selected a guarantee not exceeding 5 years and the guarantee period has not expired, the remaining balance of the pension instalments can be paid as a lump sum. This lump sum can be paid to any person at the discretion of the Administrator. Where the Ex-Spouse Participant selected a guarantee exceeding 5 years and the guarantee period has not expired, the remaining balance of the pension instalments must be paid in pension form to an individual or individuals at the discretion of the Administrator.

- (e) On the date the Ex-Spouse Participant's pension becomes payable (but not where the pension is paid in the form of income drawdown), part of this pension may be surrendered for the provision, on the death of the Ex-Spouse Participant, of a pension payable to a Dependant of the Ex-Spouse Participant. The amount of pension surrendered should not exceed the reduced pension that the Ex-Spouse Participant retains.
- (f) Full commutation of the Pension Credit Rights on the grounds of triviality or exceptional circumstances of serious ill-health is permitted when the pension first becomes payable. Where the Ex-Spouse Participant is also entitled to benefits under the Fund arising from Service as an Employee, for the purposes of determining the aggregate value of the total benefits payable to the Member under Rule 5.3 benefits from Pension Credit Rights must be included. Where the Ex-Spouse Participant is also entitled to benefits under the Fund arising from Service as an Employee, full commutation of the Pension Credit Rights on the grounds of triviality will only be permitted where benefits arising from Service as an Employee are simultaneously commuted.
- (g) The Ex-Spouse Participant may request that the Administrator arranges a transfer of his Pension Credit Rights to another scheme approved under Chapter I Part XIV of the Act if he is already a member of that scheme or an ex-spouse participant in that scheme or to a scheme approved under Chapter IV part XIV of the Act. The Ex-Spouse Participant may request that the Administrator arranges a transfer of his Pension Credit Rights to any other scheme if the Inland Revenue's requirements are satisfied in relation to a transfer to that scheme. The Administrator must confirm to the receiving scheme or arrangement, that the transfer value consists wholly or partly of Pension Credit Rights for the benefit of an Ex-Spouse Participant.
- (h) At the point the pension becomes payable, the Ex-Spouse Participant may request that the Administrator arranges for the purchase of an annuity from an Insurance Company of his choice.
- (i) The rights to a Pension Credit Benefit under the Fund shall not be absolute, but shall be forfeited upon the bankruptcy of the Ex-Spouse Participant. Such benefits may then be paid to any individuals or individual as specified by the Administrator, in its absolute discretion.

19.5 Notwithstanding any other provisions of the Rules of the Fund, the benefits for a Pension Debit Member are additionally subject to the following limits, subject to

compliance with Social Security legislation:

- (a) The pension shall not exceed the Aggregate Retirement Benefit in Rule 17 less the Negative Deferred Pension in this Fund and the Negative Deferred Pension in any Associated Scheme and, furthermore in the case of a Class A Member the Negative Deferred Pension in any Connected Scheme.
- (b) The lump sum from this and any Associated Scheme shall not exceed;
  - (i) for Pension Debit Members who are Class A Members or Class B Members, an amount determined by  $2.25 \times$  the initial annual pension payable
  - (ii) for Pension Debit Members who are Class C Members, an amount of the greater of:
    - (I)  $2.25 \times$  the initial annual pension payable or,
    - (II) an amount determined in accordance with Rule 17.3 as if there had been no Pension Debit, less  $2.25 \times$  the Negative Deferred Pension.

For the purposes of this Rule, the initial annual pension should be calculated on the following bases;

- (aa) if the pension payable for the year changes, the initial pension payable should be taken;
  - (bb) it should be assumed that the Pension Debit Member will survive for a year;
  - (cc) the effect of commutation should be ignored.
- (c) On the death of the Pension Debit Member, any pension for a Dependant shall not exceed  $\frac{2}{3} \times$  an amount determined in accordance with Rule 17.10 as if there had been no Pension Debit, less the Negative Deferred Pension and the Negative Deferred Pension in any Associated Scheme and, furthermore in the case of a Class A Member the Negative Deferred Pension in any Connected Scheme. Where more than one pension is to be paid the total of all the pensions cannot exceed 100% of an amount determined in accordance with Rule 17.10 as if there had been no Pension Debit, less the Negative Deferred Pension and the Negative Deferred Pension in any Associated Scheme and, furthermore in the case of a Class A Member the Negative Deferred Pension in any Connected Scheme.

- 19.6 The Administrator must give full details of the Pension Debit and a lump sum certificate specifying the maximum permissible lump sum, to the receiving scheme/arrangement where the fund underlying the benefits for a Pension Debit Member is transferred to another scheme approved under Chapter I Part XIV of the Act or a scheme approved under Chapter IV Part XIV of the Act.
- 19.7 Where the Administrator accepts a transfer payment for an individual who is already a Member of the Fund or is already an Ex-Spouse Participant in the Fund and is informed by the transferer that the transfer value consists wholly or partly of Pension Credit Rights in the former scheme or arrangement, then the Administrator must separately identify the transfer payment relating to the Pension Credit Rights or the part of the transfer payment relating to the Pension Credit Rights from other funds held for the benefit of the Member. Furthermore the Administrator must comply with the requirements of Rule 19.3 in respect of the transferred-in Pension Credit Rights. Then the individual will acquire the status of an Ex-Spouse Participant in the Fund in relation to his transferred-in Pension Credit Benefits. Such Pension Credit Benefits will not count towards any limit on benefits for that Member.
- 19.8 Where the Administrator accepts a transfer payment and is informed by the transferer of the details of a Pension Debit relating to the transfer payment, the Administrator must take account of the Pension Debit, if appropriate, in the calculation of any limit on benefits for that Member. If a transfer of the fund underlying the benefits for the Member is made to a scheme approved under Chapter I Part XIV of the Act or a scheme approved under Chapter IV Part XIV of the Act, the Administrator must give full details of the Pension Debit to the receiving scheme/arrangement.
- 19.9 If the Ex-Spouse dies after a Pension Sharing Order, agreement or equivalent provision is made but before it is acted upon by the Administrator, the following benefits may be paid.

A lump sum death benefit may be paid to any person at the discretion of the Administrator.

The lump sum is limited to 25% of what would have been the cash equivalent of the fund which would have provided the Pension Credit Rights for the Ex-Spouse. The balance of the fund may be used to provide a non-commutable pension to a Dependant of the Ex-Spouse.

The amount of pension payable to a Dependant is limited to a maximum of 2/3rds of the amount of pension that could have been paid to the Ex-Spouse at the date of death if the whole of what would have been the cash equivalent of the

fund which would have provided the Pension Credit Rights had been used to purchase an annuity at an available market rate. Where more than one pension is to be paid the total of all the pensions cannot exceed the amount of the pension that could have been paid to the Ex-Spouse.

Such pensions must be payable for life, except that pensions paid to children must cease on the attainment of age 18 or, if later, on the cessation of full time education. Such pensions may be fully commuted, however, for a lump sum on the grounds of triviality at the time such a pension becomes payable.

## **20. Overseas Employer**

- 20.1 This Rule shall apply solely to Employees of Employers which are not resident in the United Kingdom and shall override any other provisions of the Deed and Rules which are inconsistent with it.
- 20.2 Membership of the Fund shall be open to Employees that are not resident in the United Kingdom who are chargeable to United Kingdom income tax under Case I or II of Schedule E of the Act on their emoluments from the Employer: But Employees:-
- (a) cannot be Members in respect of a period of service when they qualified for a deduction of 100% under Section 193(1) of the Act and
  - (b) must be restricted to receiving death in service benefits if they are in receipt of foreign emoluments as defined in Section 192(1) of the Act and are members of a scheme in respect of which they are obtaining relief under the "corresponding" provisions of Section 192(3) or 596(2)(b) of the Act. (Where any Employee in receipt of foreign emoluments has become a member of a scheme in respect of which he is obtaining relief under the "corresponding" provisions of Section 192(3) or 596(2)(b) of the Act, his benefits relating to subsequent service shall be confined to death in service benefits or he shall be withdrawn from membership of the Fund immediately.)
- 20.3 Membership of the Fund shall be open to Employees of Employers that are not resident in the United Kingdom if:
- (a) the Inland Revenue Pension Schemes Office has explicitly approved the terms of their membership, or
  - (b) membership commences or continues because the following circumstances and conditions are satisfied.

The circumstances are that:

- (i) there is a definite expectation that the Employee will come to the United Kingdom either to take up employment with an Employer (such an expectation should be evidenced in writing), or to retire, or
- (ii) the Employee's earnings remain effectively chargeable because he only works overseas for periods which total less than 365 days in any year.

The conditions are that:

- (I) the United Kingdom employer or the United Kingdom branch of the overseas employer should continue to pay to the approved scheme any employer contributions due, but must be reimbursed by the overseas employer for the costs, unless the Inland Revenue Pension Schemes Office have specifically agreed otherwise;
- (II) the prospective pension in respect of the service abroad should be calculated and funded by reference to the rate of remuneration appropriate for similar employment in the United Kingdom; and
- (III) the period of service abroad should not exceed 10 years. If there has been a previous period or periods of service abroad continuation of scheme membership is limited to an aggregate of 10 years.

For the purposes of the aggregation calculation

- (aa) any period or periods of service abroad separated from a subsequent period of service abroad by at least one year's employment in the United Kingdom can be ignored and
- (bb) any period of service that arises from employees performing their duties abroad for a United Kingdom resident Employer who are provided with benefits under an approved scheme (regardless of whether they are effectively chargeable) can be ignored.

20.4 Benefits for any Employees of the said Employers shall be provided in relation only to their periods of Service with and remuneration from the Employer whilst they satisfy the eligibility conditions in Rules 20.2 or 20.3.

20.5 In the event of an Employee of one of the said Employers ceasing to satisfy the eligibility conditions in Rules 20.2 or 20.3 his benefits will be held subject to the Rules of the Fund until he leaves Service or retires or his benefits are transferred out of the Fund.

