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**RULES OF UNIVERSITIES
SUPERANNUATION SCHEME**

as adopted by Deed of Consolidation dated
1 October 2003 incorporating all Supplemental
Amending Deeds up to and including the
Seventeenth Supplemental Amending Deed dated
30 April 2009

RULES

- of -

UNIVERSITIES SUPERANNUATION SCHEME

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Section 1 -Commencement and Interpretation

1.1 Commencement

The *scheme* commenced on 1st April 1975. These present *rules* shall be deemed to have come into operation on the *prescribed date* to the exclusion of all the rules and regulations in force prior to that date and to be binding on all *active members* at and after that date. Benefits payable to or in respect of a *former member* who has not been in *service* on or after the *prescribed date* shall be payable under the rules in force at the date such *former member* last left service (as then defined for the purposes of the *scheme*).

1.2 General interpretation

Unless the context otherwise requires all words importing the singular number shall include the plural, and vice versa, and words importing the masculine, feminine or neuter gender shall include either or both of the others, and words importing persons shall include corporations and unincorporated associations.

1.3 Statutory references

All references to any enactment (which shall for this purpose include any regulations made under any Act of Parliament), other than a reference to any definition contained in any enactment, shall be deemed to include a reference to any statutory modification or re-enactment thereof for the time being in force and all references to any enactment passed since the coming into force of the Northern Ireland Act 1974 shall include a reference to any order made under that Act applying the enactment to Northern Ireland or the corresponding enactment which applies to Northern Ireland.

1.4 Particular Definitions

In these *rules* the words and expressions defined in section 24 shall, unless inconsistent with the subject or context, have the meanings set opposite to them and where such words and expressions are intended to have their defined meanings they have been printed in italic type.

1.5 Effect of headings and marginal notes

The arrangement of *rules*, headings and any marginal notes shall not form part of the *rules* and shall not affect the interpretation of any one or more of the *rules*.

1.6 References to current provisions of the scheme

Where the context so requires any reference to a rule or provision of the *scheme* shall be deemed to include a reference to the corresponding or equivalent rule or provision previously in force from time to time and any reference in any deed, document or other instrument which refers to a rule or provision previously in force shall be deemed to refer to the corresponding or equivalent rule or provision now in force.

1.7 Contributions and salary during employment outside the United Kingdom

The *trustee company* may make regulations consistent with *approval* for the determination of the rate according to which contributions and *salary* shall be converted into the currency of the United Kingdom in relation to any *member* whose *employer* has notified the *trustee company* that such member's employment is for the time being exercised outside the United Kingdom and whose *salary* is for the time being expressed in a currency other than that of the United Kingdom.

Section 2 - The Fund

2.1 The fund

The investments, cash and other assets held by the *trustee company* for the purposes of the *scheme* comprise the *fund* and the *money purchase AVC fund*. The *fund* includes:-

- (a) investments, cash and other assets transferred by the trustees or administrator of any fund pursuant to rules 5.3 to 5.5A or to rule 9A.6 other than any such as are transferred to the *money purchase AVC fund*;
- (b) all contributions by *active members* pursuant to the *rules* other than an *AVC* paid under rule 7.4 and not transferred to the *fund* in pursuance of an election under paragraph (ff) of that rule;
- (c) all amounts contributed or paid by any of the *institutions* pursuant to the *rules*;
- (d) any other assets transferred to the *fund* to secure benefits, including additional benefits, for *members* and *former members*; and
- (e) the interest, dividends and income of the *fund* and any donations, legacies or other exceptional receipts.

The *fund* shall be allocated to two notional sections to be called "the *main section*" and "the *supplementary section*".

2.2 The main section of the fund

The *main section* of the *fund* shall be the balance of the *fund* for the time being after deducting the amount attributable to the *supplementary section*.

2.3 The supplementary section of the fund

The amount attributable to the *supplementary section* from time to time shall be the aggregate of the amounts referred to in paragraph (a) below after deducting the amounts referred to in paragraph (b) and then making the further adjustments required by rules 2.5 and 2.6:-

- (a) there shall be included in the *supplementary section*:-
 - (i) all amounts transferred from *USDPS* pursuant to the amalgamation of the fund of that scheme with the *fund* on 1st April 1988;

- (ii) sums in respect of each *active member* equal to 0.35% of such member's *salary* (or such other proportion of that *salary* as the *trustee company* after consultation with the *joint negotiating committee* shall decide from time to time to be appropriate) received by the *trustee company* on and after 1st April 1988; and
 - (iii) a proportion of the income and capital profits of the *fund*, such proportion to be calculated in such manner as the *trustee company* shall from time to time decide;
- (b) there shall be deducted from the *supplementary section*:-
- (i) *supplementary benefits* paid in accordance with the *rules*;
 - (ii) *pension credit benefit* paid which is attributable to that part of a *pension credit* derived from rights to *supplementary benefit* of a *pensioner member* to whom the corresponding *pension debit* applied;
 - (iii) the amount of any payment made to the trustees or administrator of a *transfer arrangement* in discharge of the liability of the *trustee company* for a *pension credit* or in pursuance of a notice given under rule 9A.7, in so far as that amount is attributable to that part of a *pension credit* derived from rights to *supplementary benefit* of a *pensioner member* to whom the corresponding *pension debit* applied; and
 - (iv) a proportion of the capital losses of the *fund*, such proportion to be calculated in such manner as the *trustee company* shall from time to time decide.

2.4 The money purchase AVC fund

The *money purchase AVC fund* shall comprise and include, in so far as they have not been expended on the provision of benefits under rule 7.4 or rule 9A.8, or in pursuance of any commutation of such benefits:-

- (a) all AVCs paid under rule 7.4;
- (b) investments, cash and other assets transferred to the *money purchase AVC fund* in conjunction with other transfers to the *scheme* pursuant to rules 5.3 to 5.5A and to rule 9A.8; and
- (c) all investments from time to time representing (a) and (b) above and the interest, dividends and other income on them.

2.5 Adjustments to the supplementary section

With the consent of the *joint negotiating committee* the *trustee company* may decide that any amount of the *supplementary section* may be transferred to the *main section* and irrevocably become part of the *main section* and, without prejudice to the generality of the foregoing, may do so if any new or improved benefits are being provided for *members* which do not become a charge on the *supplementary section*.

2.6 Deficiency in the supplementary section

If the *actuary* shall certify that the amount of the *supplementary section* is not sufficient to finance the *supplementary benefits* currently and prospectively payable then the *trustee company* shall have power, notwithstanding anything to the contrary in the *rules*, to determine that:-

- (a) there shall be an increase in the rate of contribution credited to the *supplementary section* under rule 2.3(a)(ii) with a corresponding increase in *members'* contributions under rule 7.1; and
- (b) the amount of the *supplementary benefits* prospectively payable will be adjusted in such manner and by such amount as the *trustee company*, acting on *actuarial advice*, shall certify to be appropriate;

and the *trustee company*, after consultation with the *joint negotiating committee*, shall adopt one or both of these courses to the intent that the *supplementary benefits* shall never be financed out of or chargeable against all or any part of the *main section*.

Section 3 - Participation By Institutions

3.1 Participation by institutions

- (a) A body which has employees who would fall within the definition of *eligible employee* if it were an *institution* may be admitted to participation with the agreement of the *trustee company* subject to that body entering into a deed of covenant with the *trustee company* to abide by and comply with the *scheme* and the *rules* (subject to any modifications made pursuant to rules 3.3 or 3.6 below) so far as they relate to it and its *eligible employees* who become *members* and subject to the following provisions of this rule.
- (b) Without prejudice to its powers under rule 3.3 the *trustee company* may impose such terms and conditions in relation to the admission of a body which does not fall within sub-paragraph (i) or (ii) of paragraph (b) of the definition of an *institution* in section 24 of these *rules*, as it may in its discretion decide with a view to monitoring whether that body continues to be an *institution* and to securing the interests of that body's *eligible employees* who become *members*, but shall before doing so consult with any *institutions* which for the time being have *control* of that body.
- (c) Terms and conditions imposed in relation to a body under paragraph (b) above may include the giving by any *institution* which has *control* of that body for the time being of such undertakings, guarantees or assurances as the *trustee company* may deem appropriate, and at such time as it may deem appropriate. Guarantees under this paragraph may include a guarantee on the part of an *institution* that the obligations under the *rules* of a body under its *control* at the time that guarantee is given will be met in any event, but even if that *institution* should subsequently have ceased to have *control* of that body, or have ceased to be an *institution*, or both.
- (d) Where the *trustee company* imposes any terms or conditions in relation to any body under paragraph (b) above, it shall include a term that if in its opinion there shall have been a breach of any term or condition imposed, the *trustee company* may, after consultation with that body and with any *institutions* which then have *control* of it, resolve that it is no longer expedient for that body to be an *institution*, so that it will, if then an *institution*, become a *retiring institution* by virtue of rule 22.1(a)(iv).
- (e) Where one *institution* has had another under its *control* and ceases to do so, both shall so inform the *trustee company* forthwith; and where one *institution* comes under the *control* of another, both shall so inform the *trustee company* forthwith.
- (f) The *trustee company* may execute such a supplemental deed of accession in relation to an *institution* as is provided for in paragraph (ii) of the definition in

section 24 of the expression *salary sacrifice arrangement*, and shall be treated as having done so in relation to an *institution* if the terms there referred to were incorporated in the deed of covenant required for that *institution* before its admission to the *scheme* under paragraph (a) above.

3.2 Institutions participating on the prescribed date

An *institution* participating in the *scheme* on the *prescribed date* shall continue to participate after that date on the same terms as had previously been agreed between the *institution* concerned and the *trustee company* (which includes a covenant by the *institution* to abide by and comply with the *scheme* and the *rules* from time to time in force).

3.3 Special provisions on participation by Institutions in specified circumstances

- (a) On an *institution* first being admitted to participation in the *scheme* or as a condition of the first or continued participation of an *institution* in relation to any person or class of persons who are to become *eligible employees* in pursuance of a specification by the institution under rule 4.2(a)(iv) or where the *trustee company* has given its consent to an office post or employment (or category of the same) previously declared non-pensionable by an *institution* under proviso (i) to rule 4.2(a) being subsequently treated as an *eligible employment* for any period or in such other circumstances as the *trustee company* may approve with the prior consent of the *joint negotiating committee*, the *trustee company* may require that the *rules* shall be modified by deed in relation to that *institution* and to rights arising out of any person's employment by that *institution* in such manner as may be agreed between that *institution* and the *trustee company* and without prejudice to the generality of the foregoing the *rules* may be so modified as to:-
- (i) exclude from the definition of *eligible employee* persons who would otherwise fall within that definition by virtue of being employed by that *institution*;
 - (ii) disapply or modify in relation to any *member* or class of *members* any provision of the *scheme* which would otherwise apply by virtue of *membership* as an employee of that *institution*; and
 - (iii) provide for the payment by the *institution* of such additional contributions as the *trustee company* may require in order to secure for employees of that *institution* who become *members* an agreed level of benefits in respect of their employment prior to the date of joining the *scheme*;

- (iv) provide for the satisfaction of such conditions as the *trustee company* may require under either or both of paragraph (b) below and rule 3.3A;

Provided that nothing in this paragraph or in paragraph (b) below shall permit the *rules* to be amended or terms and conditions to be imposed by the *trustee company* so as (in either such case) to prejudice any accrued benefits to which a *member* had become entitled under the *rules* prior to the date of becoming an employee of that *institution* or to cause the *scheme* to breach the requirements of Chapter I of Part IV of the *Pensions Schemes Act*.

- (b) Without prejudice to the generality of paragraph (a) above, the *trustee company* may determine on *actuarial advice* that any particular class of employee who would otherwise be eligible to participate in the *scheme* by virtue of rule 4.2(a)(iv) shall not be so eligible at all (subject to the Disability Discrimination Act 1995) or shall only be so eligible subject to terms and conditions specified by the *trustee company* having regard to the overall age profile of that class, to an increased risk of mortality, to an increased risk of the provision of early retirement pensions on the grounds of *incapacity* under rule 10.4 related to the occupation of the class of employees in question or to any or all of those factors. The *trustee company* shall be entitled to require the *institution* which has specified those employees as potentially eligible for *membership* to provide such information as the *trustee company* may require to decide that question. The *trustee company* shall be at liberty, but only so far as consistent with the Disability Discrimination Act 1995, to impose such terms and conditions in relation to *membership* of the *scheme*, consistent with *approval*, as it may think fit, including the disapplication or modification in relation to any *member* or class of *members*, of any provision of the *scheme* which would otherwise apply by virtue of *membership* as an employee of that *eligible employee* by virtue of rule 4.2(a)(iv).
- (c) The prior consent of the *joint negotiating committee* and the *Funding Council* shall not be required to any deed executed pursuant to paragraph (a) above but a copy of each such deed shall be sent to each member of the *joint negotiating committee* and to the *Funding Council*.

3.3A Further conditions for participation in respect of certain employees

Without prejudice to the generality of rule 3.3 above, the *trustee company* may determine that any employee or class of employee, who would otherwise, by virtue of rule 4.2(a)(iv), be eligible to join (or as the case may be remain a *member* of) the *scheme*, shall be so eligible only if any one or more of the conditions referred to below are satisfied:-

- (a) the *institution* provides to the *trustee company* such supporting evidence, including any relevant legal opinion, as the *trustee company* may reasonably require, that the terms of the guarantee referred to in rule 4.2(c) are capable of

fulfilment in relation to that employee or class of employees or (as the case may be) continue to be capable of such fulfilment;

- (b) the *institution* agrees to pay to the *trustee company* in respect of that employee or class of employees such additional contributions under section 8 as the *trustee company* may determine, on the advice of the *actuary*, and having regard to any particular circumstances relating to that employee or to the nature and composition of any such class of employees, to be the additional cost to the *scheme* (if any), after taking account of any contributions made or to be made under rule 7.2(b) by that employee or class of employees, of providing the benefits of the *scheme* to that employee or class of employees (including the assumption by the *scheme* of the risk of such provision).

The *trustee company* may also apply one or more of the conditions referred to above to any case in which the *trustee company* has given its consent to an office, post or employment (or category of the same) previously declared non-pensionable by an *institution* under proviso (i) to rule 4.2(a) being subsequently treated as an *eligible employment* for any period, or in such other circumstances as the *trustee company* may approve with the prior consent of the *joint negotiating committee*.

3.4 Restrictions on participation by institutions

An *institution* shall not be entitled to participate, or to continue to participate, in the *scheme* if it establishes, maintains or contributes to any other pension scheme (within the meaning of section 150 of the Finance Act 2004) for *eligible employees* or for individuals who would be *eligible employees* if proviso (i) to paragraph (a) of rule 4.2 did not apply to the posts or offices held by them, but this rule shall not apply to an *institution* by reason of its participation in or contribution to:-

- (a) *FSSU* in respect of *eligible employees* who were members of *FSSU* at 5th April 1980 and have continued as members since that date;
- (b) any *part II scheme* in respect of *eligible employees* who were members thereof at 5th April 1980 and have continued as members since that date;
- (c) the *National Health Service Pension Scheme* in respect of *eligible employees* entitled to be members thereof;
- (d) any *retirement benefits scheme* for *eligible employees* of any *institution* which commenced its participation after 1st April 1975 and in respect of which the *trustee company* has agreed that they may remain in that *retirement benefits scheme*; or
- (e) any *retirement benefits scheme* for any *eligible employee* in respect of employment by virtue of which that person has a statutory right to membership of that scheme which is not subject to the consent of any other

person or to contractual arrangements between the *institution* and any third party;

- (f) any other pension scheme in circumstances agreed to by the *trustee company* acting in its absolute discretion.

Nothing in this rule shall be taken to prevent an *institution* from participating as an employer in any public sector pension scheme within the meaning of Section 1 of the *Pension Schemes Act* or as principal employer or as a participating employer in any other *retirement benefits scheme* (in either or both such cases) in respect of any employee of that *institution* who does not fall within any category of employee designated by that institution as an *eligible employee* under sub-paragraph (iv) of paragraph (a) of rule 4.2 or who is not otherwise an *eligible employee* by virtue any of sub-paragraphs (i) to (iii) of that paragraph.

3.5 Institutions ceasing to participate

An *institution* which maintains or participates in another *retirement benefits scheme* or contributes to a pension scheme in contravention of rule 3.4 shall cease to participate in the *scheme* and shall become a *retiring institution* to which rule 22.1 applies.

3.6 Amalgamation

- (a) Subject to paragraph (b) below this rule shall apply in the following cases:-
 - (i) a higher education or research organisation which is not an *institution* has been or proposes to be amalgamated with or absorbed by an *institution*;
 - (ii) an *institution* has acquired or proposes to acquire from another higher education or research organisation (which is not an *institution*) some or all of its teaching or research functions;

and as a result of such amalgamation, absorption or acquisition such *institution* becomes or will become the employer in relation to employees of such other organisation and, except for this rule, such employees would become *eligible employees*.

For the purposes of this paragraph a higher education organisation is one whose employees are or, if employed by an *institution*, would be engaged in higher education as defined in the Education Reform Act 1988.

- (b) This rule shall not apply to an *institution* if both of the following conditions apply:-
- (i) the amalgamation, absorption or acquisition is not part of a major transfer of employees by employers which are treated as employing authorities for the purposes of the *National Health Service Pension Scheme* (as to which the decision of the *trustee company* after consulting with *UUK* shall be final and binding);
 - (ii) the number of such employees as are referred to in paragraph (a) above does not exceed the lesser of 50 or 10% of those persons who, on 31st March immediately preceding the date of amalgamation, absorption or acquisition referred to in paragraph (a) above, are *active members* by virtue of employment with that *institution*.
- (c) An *institution* to which this rule applies or may apply shall give notice in writing to the *trustee company* of that fact and such *institution* shall not agree with any of the employees referred to in (a) above that they shall be *eligible employees* by virtue of their employment with that *institution* until the *trustee company*, acting in its absolute discretion, shall have agreed in writing that such employees (or any class of them) shall be treated as *eligible employees* and thus eligible for *membership*.
- (d) Notwithstanding anything contained in section 4 any such employees as are referred to in paragraph (a) above shall not be *eligible employees* by virtue of employment with the *institution* referred to in paragraph (c) above until the agreement of the *trustee company* referred to in paragraph (c) above has been notified in writing to that *institution*.
- (e) As consideration for any agreement under (c) above the *trustee company* may require that the *rules* shall be modified in relation to the *institution* and such of its employees as are employees to whom paragraph (a) above applies as if it were an *institution* to which rule 3.3 applies.

Section 4 - Eligibility and Membership

4.1 Eligibility for membership

An employee of an *institution* participating in the *scheme* is entitled to become a *member* under rule 4.6 if such employee:-

- (a) is an *eligible employee* as defined in rule 4.2; and
- (b) is, or is accepted as being, an *eligible employee* to whom rule 4.3(a) applies or within one of the categories set out in rule 4.4; and
- (c) is either:-
 - (i) under the age of 60; or
 - (ii) within the exceptions to the requirement of being under the age of 60 which are set out in rule 4.5; and
- (d) is neither a *pensioner member* except one who is in receipt of a pension by virtue only of section 12 or rule 10.4(d) nor a person who would have been such a *pensioner member* but for the operation of rule 16.3, provided that, insofar as a *pensioner member*, who is in receipt of a pension otherwise than by virtue only of either or both of section 12 and rule 10.4(d), is able to claim a right to become a *member*, such a *pensioner member* shall be subject to a maximum age for admission to *membership* of 50 years; and
- (e) is not a person to whom rule 5.6 applies but who does not qualify to resume *active membership* under that rule.

4.2 Eligible employee

- (a) Subject to rules 3.3 and 3.6 an *eligible employee* is an individual who is in the employment of an *institution* and who is:-
 - (i) employed within a university or university college in an academic, research or related post; or
 - (ii) employed within a university or university college in a role comparable to a post within sub-paragraph (i) in terms of responsibility and/or salary and by reference to that *institution's* job-evaluated pay structure; or

- (iii) in a post as an officer or employee of a non-university *institution* of a status comparable with that of an employee falling within paragraph (i) or paragraph (ii) above; or
- (iv) in the employment of an *institution* which has, by at least one month's prior written notice to the *trustee company*, specified that individual as eligible either by name or by reference to a class of employees to which that individual belongs, including (without limitation) by reference to entitlement to membership of a particular *retirement benefits scheme*, but subject to the agreement of the *trustee company*, to whose agreement conditions may be attached and expressed in a deed to be executed under rule 3.3.

provided that:

- (i) where an *institution* has declared (subject to proviso (ii) below) that an office, post or employment (or category of employment) shall not give the holder of that office, post or employment (or, as the case may be, any person falling within that category) the right to be treated as an *eligible employee*, such office, post, or employment (or category of employment) shall remain non-pensionable so as not to give any future such holder or person the right to be treated as an *eligible employee*, except with the consent of the *trustee company*, to be given in its absolute discretion;
- (ii) where an employee is entitled under Part I of the *Employment Act* to receive within a specified time (which shall be deemed to run from the later of 22nd March 2001 and the commencement of the employment in question) a statement from that person's *employer* of any terms and conditions of an office post or employment relating to entitlement to membership of any pension scheme or arrangement, a declaration under proviso (i) shall not be capable of being effective in relation to any employee, as regards that office, post or employment, where such office, post or employment comprises a *variable time employment* (and so shall be deemed never to have applied) unless within that specified time the *institution* shall have communicated in writing to that employee the effect of the application of that declaration to that office post or employment;
- (iii) full particulars of any declaration by an *institution* of a kind referred to in proviso (i) or (ii) above made subsequent to 27th March 2003 must be provided to the *trustee company* by the *institution* within fourteen days of it being first communicated to employees or prospective employees of that *institution* affected by it or within such longer period as the *trustee company* shall allow and full particulars of any variation in the terms of any such declaration must also be provided to the *trustee company* within such a period; in relation to any

declaration of a kind made under either such proviso or under any predecessor rule of the *scheme* previously in force to substantially similar effect to proviso (i) above, in any such case made prior to 27th March 2003 the *trustee company* may require full particulars of any such declaration by the relevant *institution* (and of any variation to it) to be provided to it within such period as the *trustee company* may consider reasonable in the circumstances; and

- (iv) if an individual would, apart from this proviso, qualify as an *eligible employee* under this paragraph (a) but that individual is or becomes (whether upon the expiry or extension of a secondment or otherwise) a "qualifying person" for the purposes of Part 7 of the Pensions Act 2004 and of the Occupational Pension Schemes (Cross-Border Activities) Regulations 2005 (SI 2005/3381) and any other regulations under that Part, then, if that individual becoming a *member* would involve the acceptance by the *trustee company* after 28 June 2006 of contributions from a "European employer" within the meaning of those regulations, that individual is not an *eligible employee* and is not entitled to *membership* and may only be an *eligible employee* and become a *member* with the written agreement of the *trustee company*.
- (b) The specification by an *institution* under paragraph (a)(iv) of this rule of any person or class of persons to be eligible for *membership*, together with the execution by such *institution* of any deed (including a Deed of Variation) required under rule 3.3 in pursuance of that specification, shall be deemed to have incorporated a guarantee by that *institution* to the *trustee company*, with effect from the date of inclusion of that person or class of persons within the scope of this rule, that that inclusion will not give rise to any breach of the requirements of the equal treatment laws of Sections 62 to 64 of the Pensions Act 1995, of the Disability Discrimination Act 1995 or of any other applicable laws relating to equal access to or membership of the *scheme* and will not otherwise amount to unlawful discrimination against any person not so included, whether such breach could give rise to liability on the part of the *institution*, the *trustee company* or both of them. If as a result of circumstances which shall have arisen after the original agreement of the *trustee company* so to include that person or class of persons, and which the *trustee company*, after consultation with the *institution*, determines were not then reasonably foreseeable, the *institution* can no longer provide the above guarantee in relation to that person or to *eligible employees* in that class, the *trustee company* shall not in that case refuse its agreement to such an extension or modified extension in accordance with this rule of the definition of *eligible employees* as would enable the above guarantee to be maintained, but it may under rule 3.3 attach such conditions to that extension for the protection of the *fund* as it may on *actuarial advice* deem necessary or appropriate.
- (c) The specification by an *institution* under paragraph (a)(iv) of this rule of any person or class of persons to be eligible for *membership*, together with the

execution by such *institution* of any deed (including a Deed of Variation) required under rule 3.3 in pursuance of that specification, shall be deemed to have incorporated a guarantee that in its reasonable opinion that specification will not prejudice unfairly any one or more groups of *members* employed by it or by any of its *associated employers* when compared with another such group so employed.

4.2A Separation of computation of the benefits of Eligible Employees in certain circumstances

- (a) This rule shall apply to any *member* and to any *variable time employment* of that *member* for any period for which that person is concurrently in such employment and in *eligible employment* which is not *variable time employment*.
- (b) This rule shall apply also to any *member* for a period when this rule would apply to that person by virtue of paragraph (a) above if:
 - (i) *eligible employment* which is not *variable time employment* were treated as if it were such employment by virtue of a determination of the *trustee company* under this paragraph; and
 - (ii) the *trustee company* has at the request of the *employer*, or otherwise in consultation with the *employer*, determined that this rule shall apply by virtue of this paragraph to that *eligible employment* and that *member*;

Provided that:

- (A) if the request of the *employer* for which this paragraph provides is made or given before 1st April 2004, and the *employer* consents thereto, the *trustee company* may determine that this paragraph shall apply so as to take effect in relation to *pensionable service* completed prior to 1st October 2003, subject to paragraph (c) below; and
- (B) the *trustee company* shall not make a determination under this paragraph at the request of an *employer* without having secured from that *employer* with regard to the effect of that determination on its employees and those of its *associated employers* the same guarantees as are under paragraphs (b) and (c) of rule 4.2 deemed to be incorporated in the specification to which those paragraphs refer with regard to the inclusion of persons therein.
- (c) Where a *member* is one to whom this rule has at any time applied by virtue of paragraph (a) above and was an *active member* immediately before the date on which the 32nd Deed of Amendment came into effect, the benefits payable to or in respect of that *member* which are attributable to periods of *pensionable*

service that were within rule 5.1(a) or rule 5.2 prior to 1st October 2003 shall be computed, subject to rule 5.2(g), as the higher of:

- (i) the benefits that would have been so payable for that *pensionable service* apart from this rule; and
 - (ii) the benefits that would have been so payable for that *pensionable service* if this rule had been in effect as substituted by the 32nd Deed of Amendment throughout every prior period of that *member's active membership*.
- (d) For any year beginning immediately after an *accounting date* any part of which is, or forms part of, a period for which this rule applies to a *member*, the amount of *pensionable service* credited to that *member* in respect of *service* during that period as a *variable time employee* while a *member* to whom this rule applies, or in *eligible employment* to which this rule applies by virtue of paragraph (b) above, shall be determined by the *trustee company* applying the formula set out in paragraph (e) of this rule and, subject to rule 5.2(g), not otherwise.
- (e) The formula referred to in paragraph (d) above is:

$PS = (A/B) \times C$ where

- PS is the amount of *pensionable service* to be credited under paragraph (d) above;
- A is the *member's average salary* for *eligible employment* to which paragraph (d) refers (adjusted, insofar as applicable, under paragraphs (a) to (c) of rule 6.1 and under rule 6.3, but not under rule 6.4 or rule 7.6);
- B is the *member's salary*, determined as at the end of the year referred to in paragraph (d) (or on the *member* last ceasing within that year to be one to whom this rule applies), for the *member's major eligible employment*, which shall be that with the greatest *salary* so determined for any *eligible employment* of that *member*, but that *salary* so determined shall be adjusted under rule 6.4 (where applicable) as if for the purposes of calculating *pensionable salary*;
- C is the duration within the relevant year of the *service* referred to in paragraph (d).
- (f) If a deed (including a Deed of Variation) is executed by an *institution* in pursuance of rule 3.3 which deed provides for paragraph (e) of this rule to be disapplied or modified, it shall be deemed to have incorporated, with regard to

the effect on its employees of that disapplication or modification, the same guarantees as are under paragraphs (b) and (c) of rule 4.2 deemed to be incorporated in the specification to which those paragraphs refer with regard to the inclusion of persons therein.

- (g) Paragraphs (b) and (g) of rule 4.6 shall apply as if *eligible employment* to which this rule applies by virtue of paragraph (b) above were *variable time employment*, except that any reference to a calendar date in proviso (i) to rule 4.6(b) shall in relation to such *eligible employment* be construed as a reference to the date from which the *trustee company* has determined that paragraph (b) shall apply to it.
- (h) On or after determining that this rule shall apply to an *eligible employment* by virtue of paragraph (b) above, the *trustee company* may decide that, with effect from such date, and subject to such modifications, as it may specify, rule 5.12 or paragraphs (k) and (l) of rule 6.1 shall apply to any *member* in respect of that *eligible employment* as if it were *variable time employment*.
- (j) No employment as a *variable time employee* and no other *eligible employment* to which this rule applies shall be taken to be an appointment to which rule 12.1 applies, and a *member* may in consequence be treated for the purposes of section 12 as having been solely engaged in an appointment notwithstanding concurrent *variable time employment* or other *eligible employment* to which this rule applies.

4.3 Eligibility categories without prior alternative benefits service

- (a) Subject as provided in paragraph (b) below, the following *eligible employees* may become *members* of the *scheme*:-
 - (i) each individual who becomes an *eligible employee* on or after the *prescribed date* who has no prior period of *alternative benefits service*; and
 - (ii) each individual who on the date of entering *eligible employment* (or on 6th April 1980 if later) was entitled in respect of *eligible employment* to contribute to *FSSU* or to a *part II scheme* and who, having remained since that date in an *eligible employment*, elects (while still so entitled) to cease all such contributions.
- (b) Notwithstanding the provisions of paragraph (a) above:-
 - (i) an individual who on entering an *eligible employment* is a member of the *National Health Service Pension Scheme* may not become a *member* of the *scheme* in respect of that *eligible employment* if, being eligible, such individual elects to continue in active membership of the

National Health Service Pension Scheme in respect of that employment; and

- (ii) any employee (including one who becomes an *eligible employee* by virtue of an agreement by the *trustee company* pursuant to rule 3.6(c) and (d)) who on becoming an *eligible employee*:-
 - (A) is a member of another *retirement benefits scheme* to which any of paragraphs (d) to (f) of rule 3.4 applies, who exercises the right to remain in active membership of that other *retirement benefits scheme*; or
 - (B) is a member of any other pension scheme to which rule 3.4(f) applies to which the *employer* and employee agree that the *employer* will continue to contribute;

shall not be eligible for *membership* of the *scheme* in respect of that *eligible employment*.

4.4 Eligibility categories with prior alternative benefits service

If an *eligible employee* has a prior period of *alternative benefits service* the relevant categories for the purpose of rule 4.1(b) are (subject to rule 12.3):-

- (a) an *eligible employee* who was on last leaving *eligible employment* a member of the *scheme* under the rules then in force;
- (b) an *eligible employee* who:-
 - (i) opted for *alternative benefits* whether on first becoming an *eligible employee* or after a period of *service* as a *member*; and
 - (ii) has applied to become a *member* within six months of first becoming an *eligible employee* or within six months of such *eligible employee's alternative benefits service* commencing (if later); and
 - (iii) has supplied a declaration in such form as the *trustee company* may from time to time require that, having regard to age and occupation, the *eligible employee* is in normal health;
- (c) an *eligible employee* who:-
 - (i) has had a prior period of *alternative benefits service*, but has subsequently ceased to be an *eligible employee* and again become an *eligible employee*; and

- (ii) has neither been employed by an *institution* in the six months prior to again becoming an *eligible employee* nor subsequently been in *alternative benefits service*; and
 - (iii) has supplied a declaration in such form as the *trustee company* may from time to time require that, having regard to age and occupation, the *eligible employee* is in normal health; and
- (d) an *eligible employee* who:-
- (i) has had a prior period of *alternative benefits service* but to whom paragraphs (a), (b), and (c) above do not apply;
 - (ii) has applied to the *trustee company* to become a *member* and has provided such declaration of health and been subject to such medical examination as the *trustee company* shall require;
 - (iii) has not had that application rejected by the *trustee company*, acting in its absolute discretion, on the grounds that it is not satisfied that the state of health is normal for a person of the age and occupation of the *eligible employee*; and
 - (iv) has agreed with the *trustee company* to pay whatever increased contributions may be payable in accordance with rule 7.2.

4.5 Eligible employees aged 60 or over

An *eligible employee* is within the exceptions referred to in rule 4.1(c)(ii) to the requirement to be under the age of 60 on becoming a *member* if:-

- (a) the *trustee company*, acting in its discretion, so decides; and
 - (b) the *employer* gives its consent; and
 - (c) the *eligible employee* agrees to such terms and conditions as the *trustee company* in the exercise of its discretion under paragraph (a) above, but acting on *actuarial advice*, shall think fit including the payment of such increased contributions as the *trustee company* shall decide but not so as to cause the *scheme* to breach the requirements of Chapter I of Part IV of the *Pension Schemes Act*; and
- (d) one of the following circumstances applies:-
- (i) a transfer payment pursuant to rules 5.3 to 5.5A will be made to the *scheme* on the *eligible employee* becoming a *member*; or

- (ii) the *eligible employee* has been in pensionable employment immediately before joining the *scheme* in respect of which such person is entitled to deferred benefits; or
- (iii) there are exceptional circumstances which render it likely that the *eligible employment* will not terminate at *normal retirement age* and can be expected to last for a period of five years following the *eligible employee* becoming a *member*; or
- (iv) the consent of the *Funding Council* to the *eligible employee* joining the *scheme* has been granted.

4.6 Joining the scheme

- (a) An *eligible employee* to whom rule 4.3(a)(i) or 4.4(a) applies and who otherwise fulfils the conditions for *membership* in rule 4.1 shall become a *member* of the *scheme* immediately upon becoming an *eligible employee* unless:-
 - (i) the *eligible employee* has opted, before entering into that *eligible employment*, not to become a *member* of the *scheme*; or
 - (ii) the *eligible employee* has the option or right in respect of that employment to remain in active membership of the *National Health Service Pension Scheme* or another *retirement benefits scheme* to which any of paragraphs (d) to (f) of rule 3.4 applies or to have the *employer* continue contributions to any other pension scheme to which rule 3.4(f) applies; or
 - (iii) the *eligible employee* was, immediately before 6th April 2006, disqualified from being an *eligible employee* because his or her *membership* would have prejudiced *approval*.
 - (iv) paragraph (g) of this rule applies.
- (b) An *eligible employee* to whom rule 4.3(a)(ii) applies and who otherwise fulfils the conditions for *membership* in rule 4.1 shall become a *member* of the *scheme* on the first day of the month following the acceptance in writing by the *trustee company* of an application for *membership*, or on such earlier date as the *trustee company* may in any particular case decide. Provided that:-
 - (i) where an *eligible employee* in *variable time employment* has made an application for *membership* before one month has elapsed since that person was first given written notice by that person's *employer* that his or her continuous employment (within the meaning of the *Employment Act*) was to any extent *eligible employment* for the purposes of the

scheme, any such *eligible employee* in *variable time employment* shall in any case be deemed to have been a *member* throughout any such period of continuous employment after 30th June 2000 which is *eligible employment* by an *institution* but if that person was a *member* for any part of that period up to and including 31st March 2003 by virtue of *eligible employment* with that *employer* that was not *variable time employment* as then defined, this proviso shall have effect with the substitution of 31st March 2003 for 30th June 2000; and

- (ii) any period of such continuous *variable time employment* which is a period of *eligible employment* of an *eligible employee*, but is not recognised as such by the *employer* during the lifetime of the *eligible employee*, shall be accepted as such on subsequent acceptance of the nature of that employment by the *employer* and on the application to the *trustee company* in that regard of that person's legal personal representatives and it shall be treated as such under the *rules* accordingly with effect from the date on which it commenced; and
 - (iii) that shall not however be taken to require any period of *variable time employment* completed prior to the calendar date specified in proviso (i) to be recognised by the *trustee company* as a period of *pensionable service*, although the *trustee company* may determine, in its discretion, so to treat a period of such employment if the relevant *employer* so requests and upon payment by the *employer* of such additional contributions under section 8 or by the *member* under section 7 (or both) as the *trustee company* may require on *actuarial advice*.
- (c) An individual who wishes to become a *member* of the *scheme* in respect of employment to which paragraph (a)(ii) above applies shall, on or before entering that *eligible employment*, apply to become a *member* and confirm in writing that contributions to all other pension schemes (as defined in Section 150 of the Finance Act 2004) to which employer contributions have been made in respect of that employment have ceased or will cease immediately prior to becoming a *member*. Such an *eligible employee* shall become a *member* of the *scheme* on the first day of the month following acceptance in writing by the *trustee company* of such application for *membership*, or on such earlier date as the *trustee company* may in any particular case decide.
- (d) An *eligible employee* to whom rule 4.4(c) applies who otherwise fulfils the conditions for *membership* in rule 4.1 and has complied with the requirements of rule 4.4(c) shall be deemed to become a *member* of the *scheme* on the date of re-entering *eligible employment*.
- (e) An *eligible employee* to whom rule 4.4(b) or (d) applies and who otherwise fulfils the conditions for *membership* in rule 4.1 shall become a *member* on the

first day of the month following acceptance by the *trustee company* of the application of such *eligible employee* for *membership* after compliance with the provisions and requirements of whichever paragraph is applicable to that *eligible employee*, or on such earlier date as the *trustee company* shall in any particular case decide.

- (f) The *trustee company* shall have power to waive or modify in any way in which it thinks fit the requirement contained in rule 4.4 for the *eligible employee* to declare or for the *trustee company* to be satisfied that, having regard to age and occupation, the *eligible employee* is in normal health.
- (g) Any *employer* which employs *eligible employees* in *variable time employment* may decide on written notice to the *trustee company* that paragraph (b) above shall apply to any *eligible employee* as regards the employment of that person in *variable time employment* instead of paragraph (a) above, but without prejudice to sub-paragraphs (i) to (iii) of paragraph (a) above. In such a case paragraph (c) shall only apply so as to require the confirmation to which it refers to be given in relation to contributions previously made to a pension scheme in respect of the *variable time employment* in question.

4.7 Membership

The *members* of the *scheme* shall be :-

- (a) each *eligible employee* who immediately before the *prescribed date* was a member of the *scheme* in accordance with the definition of member contained in the rules of the *scheme* then in force (including such an *eligible employee* whose membership of the *scheme* under those rules had been suspended but not terminated); and
- (b) each *eligible employee* who has become a *member* in accordance with rule 4.6;

and, subject to the right to withdraw under rule 4.9, *membership* shall continue while the *member* remains an *eligible employee*.

4.8 Written application for membership

- (a) Every *eligible employee* who is required by these *rules* to elect to become a *member* prior to being admitted as a *member* shall be bound to sign a written application for *membership* in such form as the *trustee company* shall from time to time prescribe.
- (b) Every other *eligible employee* who becomes a *member* of the *scheme* shall, at the request of the *trustee company*, sign a written application for, or acceptance of, *membership* in such form as the *trustee company* shall from

time to time require. If such an *eligible employee* persistently fails or refuses to sign such application or acceptance the *trustee company* may in its discretion decide that the *eligible employee* concerned has opted, in accordance with rule 4.9, for *alternative benefits*.

4.9 Withdrawal from membership

- (a) A *member* who becomes a *member* pursuant to rule 4.6(a) may within three months of becoming a *member* give notice in writing of retrospective withdrawal from the *scheme*, and upon the giving of such notice:
 - (i) on and after the repayment of contributions referred to in sub-paragraph (iii) below the *member* shall be deemed never to have been a *member* (but without prejudice to any *preserved benefits* in respect of any prior period of employment);
 - (ii) the *trustee company* may make such repayment of contributions to the *employer* as would not be an unauthorised employer payment within the meaning of Section 160(4) of the Finance Act 2004; and
 - (iii) the *trustee company* shall repay to the *member* the contributions paid under section 7 subject to the provisions of rules 18.3 and 19.10 and, insofar as appropriate, to such other deductions on account of tax or national insurance contributions either by the *trustee company* or the *employer* as will not prejudice the continued treatment of the *scheme* as a *contracted-out scheme* in relation to the *employer*.
- (b) A *member*, other than one to whom paragraph (a) above applies, who remains eligible for *membership* may at any time give not less than 28 days' notice in writing to the *employer* and the *trustee company* to cease to be a *member*, such notice to take effect at the end of the month in which the notice expires and thereupon the provisions of paragraph (d) below shall apply to that person; provided that where a *member* is a *member* in respect of more than one pensionable employment rule 12.3 shall have effect.
- (c) The *member's* notice given pursuant to paragraph (a) or (b) of this rule shall be deemed to be duly given on the date of delivery to the *employer* by recorded delivery post or personally or on such earlier date as the *trustee company* in its discretion shall allow.
- (d) Upon withdrawal taking effect in the circumstances to which paragraph (b) applies:-
 - (i) any *allocation* made pursuant to section 13 by the *former member* concerned shall be cancelled;

- (ii) that *former member* shall become entitled to benefits under section 9 and, in relation to a *member* whose withdrawal takes place at or after that person's attainment of the age of 65, rules 9.1 to 9.3, shall thereafter have effect for the purposes of this paragraph as if the *normal retirement age* for that *member* was not attained at the age of 65 but would be attained on the day of cessation of that person's *eligible employment* or (if earlier) on that immediately preceding the 75th anniversary of that person's birth, and benefits under section 9 shall in such a case come into payment to that person on that day;
- (iii) that *former member* shall have the right to rejoin the *scheme* within six months subject to making the declaration of health as required by rule 4.4(b); provided that, subject to rule 12.3, the period during which such *former member* was contributing to the provision of *alternative benefits* shall never be counted as a period of *pensionable service* nor shall the *salary* of the *former member* during such period be treated as *salary* for the purposes of the *scheme*; and
- (iv) where a refund has been paid pursuant to rule 9.2(b), or a cash equivalent has been paid pursuant to rule 9.2(e) or rule 9.8 and Chapter IV of Part IV of the *Pension Schemes Act*, in respect of a *member* to whom sub-paragraph (iii) applies then the prior period of *membership* to which such cash equivalent or refund related shall never be treated as a period of *pensionable service* or *active membership* but without prejudice to any *pensionable service* to be credited to that *former member* following receipt of a transfer payment pursuant to rules 5.3, 5.5 and 5.5A.
- (e) Where a *former member* ceased before 6th April 2006 to be a *member* because his or her continued *membership* would have prejudiced *approval*, that *former member* shall be entitled to benefits under section 9 in respect of *pensionable service* accrued or credited before that date.
- (f) Subject to paragraphs (a) to (e) above no *member* shall be entitled to withdraw from the *scheme* while remaining an *eligible employee*.

4.10 Notice of withdrawal

The *trustee company* may from time to time prescribe the form of written notice to the *trustee company* to be used by a *member* opting to withdraw from the *scheme*.

4.11 Pension sharing on divorce, nullity of marriage or civil partnership or dissolution of civil partnership

Benefits shall be payable in respect of *pension credit rights* in accordance with section 9A. Accordingly, no person who is an *ex-spouse* and no person whose rights

derive from an *ex-spouse*, whose *pension credit rights* are therefore governed by section 9A and by consequential amendments made to the *rules* under the 24th Deed of Amendment to these *rules*, shall thereby be entitled to *membership* of the *scheme*. The benefits payable to or in respect of a *member, former member or pensioner member* shall be reduced by any relevant *pension debit*. References in the *rules* to benefits payable "in respect of" a *member, former member or pensioner* shall not include references to *pension credit benefit* referable to rights previously attributable to any such person prior to the implementation of the relevant *pension sharing order* applicable to such rights or to any part of such rights.

Section 5 - Pensionable Service and its Calculation

5.1 Pensionable service

Pensionable service is the number of *years* which is to be used for the purpose of calculating benefits (whether immediate or deferred) and, subject to the following provisions of this section shall consist of:-

- (a) any period of *full-time service*;
- (b) any period which has been credited to the member as pensionable service in the manner described in section 23 or otherwise under any former provision of the *scheme* (to the extent in the latter case that the right to count such period as a period of pensionable service has been preserved by any deed amending the *scheme* or by operation of law);
- (c) any other period credited to a *member* under any reciprocal arrangement referred to in rule 23.3(c);
- (d) any period of additional *pensionable service* on *retirement* on the grounds of *total incapacity* or on death by reference to rule 10.4;
- (e) any period purchased by *AVCs* made pursuant to rule 7.3 or credited in pursuance of an election under rule 7.4(ff);
- (f) any period credited to a *member* by reason of a special contribution paid in accordance with rule 7.2(c) or rule 8.2 or in pursuance of the *trustee company's* exercise of its power under rule 20.12(b); and
- (g) any other period which is reckonable as *pensionable service* under the provisions of this section.

provided that:-

- (i) periods of *pensionable service* credited to a *member* under paragraph (e) or (f) above, or in consequence of any transfer payment being made to the *trustee company* under rules 5.3 to 5.5A, or in pursuance of rule Section 23(c), or by virtue of rule 23.2 and arising out of clause (7)(c) or (8) of Part II of Appendix A to the rules of the *scheme* as they had effect immediately before the *prescribed date*, shall be regarded as notional and not attributable to any particular period, unless the *trustee company* shall have determined otherwise in the exercise of its power under rule 20.12(b) or otherwise save insofar as any such attribution of *pensionable service* to any particular period may be made by the *trustee company* in order to comply with the

requirements of section 19 or by virtue of any requirements arising as a consequence of the Fourth Deed of Amendment to the rules of 22nd February 1995; and

- (ii) any other *pensionable service* shall be attributed to the period for which it is credited (whether before or after the *relevant date*) and *pensionable service* attributed to any period shall not exceed that period in duration unless it is credited wholly or partly under rule 5.2(f), rule 5.9 and rule 10.4(r); and
- (iii) any *pensionable service* in respect of which a *member* has before the *relevant date* become entitled to benefits, or in respect of which a *member* has become entitled to pension under rule 10.4 shall not be counted in the calculation of any other benefits except in pursuance of rules 5.6 to 5.8 or section 12 or when a *pensioner member* already in receipt of pension under rule 10.4 *retires* (or is treated as *retiring*) on the grounds of *total incapacity*;
- (iv) a credit of *pensionable service* to a *member* resulting from the application of rules 4.2A and 5.2(f) shall be given by the *trustee company* under those rules although it would result in the aggregate *pensionable service* arising from *eligible employment* in any year exceeding the total number of days in that year on which that *member* was (or is deemed to have been) in *eligible employment* in one or more offices, posts or employments; and
- (v) where rule 5.14 applies, *pensionable service* shall give entitlement to benefit in accordance with that rule and while no election is in force by a *member* under paragraph (aa) or (b) of rule 7.7, the *membership* of that *member* shall be suspended without its continuity being broken by the omission or revocation of such an election.

5.1A Modification of service

The *trustee company* may make such modifications or further modifications consistent with *approval* to any period of *service* of a *variable time employee* or of any other *employee* in *part-time service* for the purposes of determining the *pensionable service* attributable thereto as may be requisite or in its opinion appropriate to enable any *employer* to satisfy the terms of any order, declaration or recommendation of an Employment Tribunal made under Regulation 8(7) of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 relating to any matter concerning the *scheme* and to ensure compliance with those Regulations (with the consent of the *employer* and the *member*) or otherwise to give effect to any agreement designed to forestall or compromise any such proceedings between the *employer* and the *member*. This power is without prejudice to the *trustee company's* power to specify the *part-time service fraction* applicable to the service of a *variable time employee* in accordance with paragraph (d) of the

definition in section 24 of the expression *part-time service fraction*. Neither the consent of the *funding councils* nor that of the *joint negotiating committee* shall be required for any modification or further modification by the *trustee company* under this rule, but particulars relating to the exercise of the above powers shall be provided to the *joint negotiating committee*, on an anonymised basis if the *trustee company* considers this appropriate.

5.2 Part-time service

Where a *member* has a period of *service* which is *part-time service* then the following provisions shall apply:-

- (a) subject to paragraphs (f) and (g) below and subject to rule 7.2A.2, the *pensionable service* to be credited to the *member* for *part-time service* in any period shall be that period multiplied by the *part-time service fraction* applicable to it, but not by a number greater than 1;
- (b) where a *pensioner member* who retires with an *enhanced incapacity pension* was in *part-time service* at the *relevant date* the additional years of *pensionable service* to be credited to that *pensioner member* by reference to rule 10.4(k) shall be multiplied by whichever is the highest of:
 - (i) the aggregate of the *part-time service fractions* applicable at any such time to each *eligible employment* by virtue of which the *pensioner member* was then an *active member*;
 - (ii) the fraction arrived at by dividing the *pensionable service* (excluding any purchased by *AVCs*) to the date of *retirement* (after applying the *part-time service fraction* or *fractions*) by the aggregate of the number of *years* of *active membership*, the number of *years* to which rule 5.1(b) applies (before applying any *part-time service fraction* but excluding any such *years* purchased by *AVCs*) and the number of *years* of *pensionable service* credited to the *member* under rules 5.3 to 5.5A; and
 - (iii) where as a result of ill-health or infirmity or at the request of the *employer* (in either case notified to the *trustee company* at the time or at such later date as the *trustee company* may allow) and after the *member's* last period of *full-time service*, the *member* transferred from *part-time service* with a higher *part-time service fraction* to *part-time service* with a lower *part-time service fraction*, the higher or highest of those *part-time service fractions*;

provided that:-

- (A) if on the last occasion on which the *member* transferred from *full-time service* to *part-time service*, it was as a result of ill-health or infirmity or at the request of the *employer* (in either case notified to the *trustee company* at the time), then no multiplication of the additional *years* shall take place under this paragraph; and
- (B) if the additional *years* fall to be multiplied under this paragraph by the fraction determined under sub-paragraph (ii), the amount by which the resulting benefits exceed those which would have been payable had the additional *years* been multiplied by the *part-time service fraction* applicable at *retirement* shall be debited to and be a charge on the *supplementary section*; and
- (C) if a *member* was at *retirement* one to whom rule 4.2A applied, the *part-time service fraction* then applicable to that *member* in respect of any *variable time employment* or *eligible employment* to which that rule applied by virtue of paragraph (b) thereof, shall be the same as the fraction of a year determined for the purposes of that rule in relation to the period after the last *accounting date* prior to that *member's retirement* by applying the formula in paragraph (e) of that rule;
- (c) this rule shall take effect subject to the provisions of section 12 (multiple appointments);
- (d) this rule shall apply to an *FSSU member* who transferred to the *scheme* in such manner as the *trustee company*, acting on *actuarial advice*, shall decide;
- (e) notwithstanding that a *member* is or has been in *part-time service* or in other part-time employment, where any transfer payment received in respect of that *member* in pursuance of any of rules 5.3, 5.5 and 5.5A results in a credit of *pensionable service*, the *pensionable service* so credited shall be treated as *full-time service*; and
- (f) *pensionable service* shall be credited to a *member* in respect of a period for which rule 4.2A applies to that person in accordance with paragraph (d) of that rule and not otherwise, and the provisions of paragraph (c) of that rule shall have effect as if contained in this section.
- (g) The first reference to *pensionable service* in any of rules 10.4(1)(i) to (iii), 10.5(a)(i), 10.6, 11.3, 11.10(b) and 13.1(a) shall be taken to be to such period of *pensionable service* as would apart from paragraph (f) above have accrued under this section if *part-time service* falling within paragraph (a) above had been *full-time service*, but so that no period of concurrent *service* in different

eligible employments shall in construing this paragraph be counted more than once.

5.3 Club transfers

For the purpose of facilitating transfers between schemes participating in the *transfer club* the *trustee company* shall have the following powers, to be exercised, where appropriate, after taking *actuarial advice*:-

- (a) power to participate in the *transfer club* and receive transfer payments in accordance with its provisions;
- (b) power to agree to any amendment to the *transfer club* if the agreement of the *trustee company* is required;
- (c) power to withdraw from the *transfer club* upon giving any required notice; and
- (d) power to enter into any special arrangements with schemes participating in the *transfer club* where the balance of advantage would not be equitable between this *scheme* and any other of such schemes;

but so long as the *trustee company* participates in the *transfer club* it shall give effect to its requirements in priority to any other transfer procedures and in particular to those set out in rule 5.5 save that the *trustee company* may have regard to the fact that any transfer payment received under the *transfer club* pursuant to this rule is one to which rule 17.9 applies in whole or in part and may make such adjustments to the additional *pensionable service* credited on any such transfer in as the *trustee company* may think fit on *actuarial advice*. The provisions of rule 10.10 shall apply to any transfer between the *scheme* and another scheme which participates in the *transfer club* so far as is consistent with the requirements of the *transfer club*.

5.4 Transfers from European Communities pension arrangements

The *trustee company* will give effect to any transfer back from the European Communities pursuant to rule 9.9(f).

5.5 Other transfers to the scheme

If a *member* requests in writing that the *trustee company* accept a payment in respect of the transfer of rights of that individual under a *transfer arrangement*, the *trustee company* may receive from the trustees or administrator of that *transfer arrangement* such amount as may be so payable and in that case, and subject to the following provisions of this rule, hold that amount as part of the *fund*, so that:

- (a) the benefits to be provided by the *scheme* out of the *fund* in respect of such transfer payment shall, except to the extent that the transfer payment represents rights under the *transfer arrangement* attributable to a *pension credit* (which are provided for in rule 9A.6), be calculated as additional *pensionable service* by the *trustee company* in accordance with *actuarial advice* which may have regard to the fact that any such transfer payment is one to which rule 17.9 applies in whole or in part and where rule 10.10 is to apply to the benefits provided under this rule, those benefits shall be calculated on the assumption that they will be brought into payment on the *member's* attainment of *normal retirement age*;
- (b) the *trustee company* may, at the written request of the *member*, arrange for any part of a transfer payment which shall have been received from the trustees or administrator of a *retirement benefits scheme* in respect of that *member* and which is certified by those trustees or, as the case may be, that administrator as being derived from voluntary contributions paid by that *member* to secure additional benefits on a money purchase basis, to be included in the *money purchase AVC fund* and to be treated (except for the purposes of paragraph (d) of rule 7.4) as an *AVC* paid by that *member* under that rule, the *member's* request under this paragraph being treated as an election in pursuance of paragraph (b) of that rule;
- (c) if the amount of any transfer payment includes a sum to secure equivalent pension benefits under Part III of the National Insurance Act 1965 (including any corresponding Northern Ireland legislation and the previous corresponding enactments) the *trustee company* shall comply with all statutory and other obligations in relation thereto; and
- (d) the *trustee company*, acting on *actuarial advice*, may for the purpose of facilitating transfers between any schemes from whom transfer payments are regularly received enter into reciprocal or other arrangements for transfers to and from the *scheme* and any such arrangements while in force shall take precedence over any other provision of this rule.

5.5A Acceptance by the scheme of transfer payments from certain other retirement benefit schemes:

- (a) The *trustee company* shall have power to give effect to the absorption into the *scheme* of the assets and liabilities of any *transfer arrangement* in respect of which any *institution* is or has been the principal employer or a participating employer, or of such part of the assets and liabilities of such *transfer arrangement* and relating to such categories or classes of member of such scheme, as the *trustee company* may determine on *actuarial advice*. Any such transaction shall be effected by means of the transfer to the *fund* or (insofar as appropriate) to the *money purchase AVC fund* of the assets of such other *transfer arrangement* (or the relevant parts thereof) by the trustees or administrator of such *transfer arrangement*, such transferred assets to be held,

following such transfer, subject to the trusts of this *scheme* for the provision of such *relevant benefits* as are referred to at paragraph (d) but subject as provided by this rule. The *trustee company* shall not exercise this power unless the following conditions have been fulfilled:

- (i) the *trustee company* shall be satisfied on *actuarial advice* that at the effective date of such transaction the amount of assets transferred from that other *transfer arrangement* is likely to be sufficient in the normal course of events, and in such other relevant contingencies as the *trustee company* may determine, to provide those *relevant benefits*, whether in payment or prospectively payable, to be granted to and in respect of the relevant *members, deferred pensioners, ex-spouse participants* or *pensioners* under paragraph (d) below, together with any additional sum which the *trustee company* shall have required the relevant *institution* to agree to contribute under section 8;
 - (ii) where the rules of that other *transfer arrangement* so require, the consent of the affected members of that *transfer arrangement* to the transfer of their past service rights or *pension credit rights* to the *scheme* has been obtained or, where no such consent is required, that the requirements of regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 or, as the case may be, Regulation 10 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 have been met.
- (b) Without prejudice to the generality of paragraph (a) above, the *trustee company*, on *actuarial advice* and with the agreement of the relevant *institution*, may arrange for the absorption within or assumption by the *scheme* of either or both of the deferred pensioner and pensioner liabilities of any *transfer arrangement* of which that *institution* has been or is the principal employer or of which it is a participating employer by the conferring upon deferred pensioners or pensioners (or either or both) of the *transfer arrangement* rights to benefit as if they had been *members* of this *scheme*. The sums or investments transferred from any such *transfer arrangement* in pursuance of such arrangements shall for the purposes of this rule represent transfer payments received in respect of the liabilities so assumed, subject to satisfaction of all of those conditions referred to at paragraph (a) above.
- (c) The *trustee company* shall be empowered to enter into an agreement relating to any exercise of powers conferred under (as appropriate) paragraph (a) or (b) above with the trustees or administrator of the relevant *transfer arrangement* and with any relevant *institution*, upon such terms and conditions as it may think fit. These may include a requirement that the relevant *institution* make additional contributions to the *trustee company* under section 8 to ensure satisfaction of the condition at paragraph (a)(i) above. Any such agreement may take effect from such date (including a future date) as the *trustee company* may determine and it may exercise these powers concurrently with (or separately from) its powers under rule 5.3 or 5.5.

- (d) The *trustee company* shall on *actuarial advice* grant to any *member, ex-spouse participant* or *deferred pensioner* for whom liability has been so assumed by the *trustee company* by its exercise of any power under this rule, such transfer credits by way of additional *pensionable service* or by the grant of *relevant benefits* of equivalent actuarial value as it may on *actuarial advice* think fit, subject to rule 9A.9 and to section 19. In respect of any pensioner of such *transfer arrangement*, liability for whose pension has been so assumed and who accordingly becomes a *pensioner*, the *trustee company* shall grant a pension under the *scheme* of an amount and in identical or substantially the same terms as the pension previously payable under the *transfer arrangement* or with such modifications as the *trustee company* may determine and that pensioner may agree, but without diminution in the actuarial value of the pension rights concerned (as determined by the *trustee company* on *actuarial advice*) and as may be compatible with Section 67 of the Pensions Act 1995 and conform with Chapter I of Part IV of the *Pension Schemes Act*; and the *trustee company* may in particular provide for contributions under the *transfer arrangement* in respect of which payment is made into the *money purchase AVC fund* to be treated as made under rule 7.4.
- (e) Before giving effect to any exercise of the above powers the *trustee company* shall have obtained a certificate from the trustees or administrator of the *transfer arrangement* or other person empowered thereunder to make such transfer confirming:-
- (i) the period or periods of employment of each of the transferring members, deferred pensioners or pensioners of that scheme (called in this paragraph "transferees") to which the transfer relates; and
 - (ii) the amount of any lump sum to which each of the transferees is entitled or prospectively entitled under the *transfer arrangement*; and
 - (iii) the extent to which the transferred assets are attributable to contributions made or deemed to have been by each of the transferees, including the extent to which they are attributable to additional voluntary contributions so made; and
 - (iv) such other matters of relevance to the exercise by the *trustee company* of the above powers as it may think necessary or appropriate.
- (f) Assets transferred under this rule shall be regarded as the relevant transferee's contributions as a *member* only to the extent certified under paragraph (e)(iii) above.
- (g) Any restriction on the power to refund contributions to a member ceasing to be in relevant employment which was contained in the provisions of the *transfer arrangement* immediately before a transfer that was effected before 6th April 2006 under this rule shall after that transfer continue to apply to that

person in respect of any relevant part of the past service rights transferred to the *scheme* which is represented by the transferred assets referred to in paragraph (e)(ii) in relation to that person, to the extent that its disapplication would involve the *trustee company* making a payment not authorised for the purposes of Part 4 of the Finance Act 2004.

- (h) If the *trustee company* exercises any of those powers contained in this rule, it shall have power to indemnify the trustees of the *transfer arrangement* in respect of:
- (i) liabilities of any kind arising from such exercise and from any agreement giving effect to such exercise;
 - (ii) liabilities of any kind arising from any claims received by the trustees or administrators of the *transfer arrangement* after the effective date of the transaction the subject of such exercise, including any claims notified to the *trustee company* after the date of any agreement which evidences the exercise or intended exercise of the powers of the *trustee company* under this rule but which related to circumstances occurring prior to such effective date;
 - (iii) such other liabilities in connection with such exercise as the *trustee company* may think fit.

Provided always that any liability under such indemnities given by the *trustee company* shall be limited to and be expressed to be limited to the extent of the assets received from the other *transfer arrangement* with an accretion for an investment return thereon determined by the *trustee company* on *actuarial advice*, but otherwise shall be on such terms and conditions as the *trustee company* may think fit.

5.6 Ill-health pensioner rejoining

If any *pensioner* who has been in receipt of a pension on the grounds of *total incapacity* but whose pension has been withdrawn or suspended pursuant to rule 9.5(a) or rule 10.4(p) subsequently becomes an *eligible employee*, the *trustee company* may permit such person to resume *active membership* of the *scheme* on such terms and conditions in all respects (including the period which will count as *pensionable service* thereafter) and subject to such increased contributions as the *trustee company*, acting on *actuarial advice*, may decide and sections 9 to 12 shall thereafter apply to that *member* subject to this rule. Provided that the benefit payable to or in respect of a *member* in pursuance of this rule shall be at least equal in value to that to which entitlement would have arisen apart from this rule if no alternative had been provided to the short service benefits appropriate to that *member* under Chapter I of Part IV of the *Pension Schemes Act* and that nothing in this rule shall permit payment of a pension to which a *member* or *former member* has become entitled

under rule 10.4 to be made at any rate (including nil) such that it would in the circumstances be disqualified from the status of a scheme pension within the meaning of Part 4 of the Finance Act 2004.

5.7 Former member rejoining after less than one month's absence

Where a *former member* rejoins the *scheme* where a break in *service* does not exceed one month such period of absence shall not cause a break in the *member's* continued *membership* of the *scheme*, unless the *former member* was not in *contracted-out service* immediately before the break although the period of absence shall not count as a period of *pensionable service*. A break in *service* and *membership* shall be treated as having occurred, unless the *trustee company* decides otherwise, when an individual who is a *member* by virtue of employment which is not *contracted-out* by reference to the *scheme* commences employment as a *member* which is so *contracted-out*.

5.8 Deferred pensioner rejoining

- (a) Subject to the following provisions of this rule, where an *eligible employee* who is a *deferred pensioner* (whether the *member* became a *deferred pensioner* before or after the *prescribed date*) rejoins the *scheme* under the age of 60 as a *member*:-
- (i) the benefits to which the *member* is entitled or prospectively entitled under section 9 shall be cancelled; and
 - (ii) the *pensionable service* which counted for the purpose of calculating those benefits shall count as a period of *pensionable service* in addition to any other period which is reckonable as *pensionable service* under this section.
- (b) Paragraph (a) above shall not apply to any *eligible employee* who has a period of *alternative benefits service* subsequent to the period of *pensionable service* in respect of which the benefits referred to in that paragraph are payable unless that *eligible employee* rejoins the *scheme* within six months of such *alternative benefits service* commencing.
- (c) Paragraph (a) above shall not apply to an *eligible employee* who rejoins the *scheme* after a break in the continuity of his or her *membership* if before any payment has been made to or in respect of that *membership* under any of sections 9 and 10 to 12 of the *rules* that person gives notice in writing to the *trustee company* that it shall not do so. In that case that person's benefits under section 9 in respect of *pensionable service* accrued or credited at or before the beginning of the break shall remain payable as if *membership* had not been resumed.

- (d) Where paragraph (a) above does not apply to a *deferred pensioner* who rejoins the *scheme*, any benefits which become payable under any of sections 9 and 10 to 12 in respect of *pensionable service* of that person subsequent to rejoining shall be ignored in determining benefits payable under section 9 by virtue of rule 4.9(d)(ii) or (e) or of paragraph (c) above or of paragraph (f) below.
- (e) This rule has effect subject to section 17A.
- (f) Paragraph (a) above shall not apply, unless the *trustee company* so determines, in relation to a *member* who is in *contracted-out service* but was not in such service when the last previous period of *membership* ended. Where paragraph (a) is disappplied by this paragraph in relation to a *member*, that individual's benefits under section 9 in respect of *pensionable service* accrued or credited before the break shall remain payable subject to the terms of section 9 as if *membership* had not been resumed.
- (g) Where an *eligible employee* who is a *deferred pensioner* (whether the *member* became a *deferred pensioner* before or after the *prescribed date*) rejoins the *scheme* aged 60 or over as a *member*, the preceding provisions of this rule shall apply in respect of that part of that *member's preserved benefits* or deferred benefits which is referable to *pensionable service* after 30 November 2006.

5.9 Pensionable service after normal retirement age

A *member* who continues to pay contributions under rule 7.7(b) and such a *member* in respect of whom contributions are paid under rule 8.4 shall be credited with such additional period of *pensionable service* as the *trustee company* acting on *actuarial advice* shall consider appropriate.

5.10 Maternity, paternity or adoption leave

- (a) The provisions of this rule apply to any *member* in relation to any *eligible employment* from which that *member* is, or is to be treated in accordance with paragraph (b) below as being, absent because of *maternity, paternity or adoption leave* subject to compliance with the following requirements of this paragraph:-
 - (i) the *member* complies with the requirements of Chapter I, 1A or 3 of Part VIII of the *Employment Act* or with any contractual requirements under the *member's* terms and conditions of employment which are more favourable to the *member* relating to the notice of commencement of *maternity, paternity or adoption leave*, and with the statutory requirement to inform the *employer* of his or her *maternity, paternity, or adoption leave* and the date of childbirth, expected week

of childbirth (as defined in Section 235 of the *Employment Act*) or date of adoption and of any other matters specified under those Chapters and, if so requested by the *employer*, produces for inspection any such certificate of the expected week of childbirth or date of adoption or of any other matters as may be required by or under those Chapters; and

- (ii) the *member* continues to be employed by the *employer* until the date of the relevant childbirth or the date of the relevant adoption or until immediately before the earliest date on which the *member* has a right under the *Employment Act* to commence the *member's ordinary maternity leave period, paternity leave period or ordinary adoption leave period* or such earlier date as the *employer* shall previously have notified to the *trustee company*; and
- (iii) the *member* satisfies (or is expected to satisfy at the end of the current *ordinary adoption leave period*) the conditions prescribed or specified under Part VIII of the *Employment Act* for entitlement to be absent during an additional maternity leave period or an additional adoption leave period as there defined, or the *member* has been continuously in the employment of one or more *employers* for such minimum period as the *employer* shall have previously notified to the *trustee company*; or
- (iv) despite not fulfilling the conditions referred to in sub-paragraphs (ii) and (iii) above the *member* is within a period of *paid maternity absence, paid paternity absence or paid adoption absence*; or
- (v) notwithstanding that the *member* does not fulfil the preceding requirements of sub-paragraphs (iii) and (iv) above the *member* is entitled to have as part of the benefit of his or her terms and conditions of employment the continuation of *pensionable service* during the *member's ordinary maternity leave period, ordinary adoption leave period or paternity leave period* and for this purpose, in the case of a person who was a *member* of the *scheme* immediately prior to the commencement of that person's *maternity, paternity or adoption leave* from his or her *eligible employment*, the *trustee company* shall be entitled to assume for this purpose only that he or she was entitled to the benefit of that *membership* (subject to the *rules*) by virtue of that *member's* contract of employment with his or her *employer* unless and to the extent that that *employer* has notified the *trustee company* to the contrary and has furnished evidence which establishes to the satisfaction of the *trustee company* that he or she was not so entitled.

Provided that:

- (A) in sub-paragraphs (i) and (ii) above, "date of adoption" means in relation to any *member* the date on which the child in respect of whom *maternity, paternity or adoption leave* is to be taken by that *member* is

placed for adoption with that *member*, or with the spouse or *civil partner* or partner of that *member*, or with both, under the law of any part of the United Kingdom; but

- (B) where the adoption of that child is not to involve his or her placement for adoption under any such law, the date of adoption shall be treated, in a case where the duties of the *member's eligible employment* are carried out wholly or mainly in Great Britain, as meaning the date on which the child lawfully enters Great Britain in connection with or for the purposes of adoption, and in a case where the duties of the *member's eligible employment* are carried out wholly or mainly in Northern Ireland, as meaning the date on which the child lawfully enters Northern Ireland in connection with or for the purposes of adoption; and
 - (C) the *trustee company* may make regulations to modify the foregoing provisos to this paragraph in cases where the *member* is in *eligible employment* under a contract governed by the law of a place outside the United Kingdom, or where the *member* discharges the duties of his or her *eligible employment* wholly or mainly in Great Britain, or wholly or mainly in Northern Ireland, but is not resident, or has a spouse or *civil partner* or partner who is not resident, in that part of the United Kingdom.
- (b) A *member* to whom this rule applies shall not on the commencement of *maternity, paternity or adoption leave* be regarded as a person leaving *service* so as to come within the provisions of section 9 of the *rules* but shall be regarded as an *eligible employee* throughout his or her *maternity, paternity or adoption leave*. A *member* is to be treated for the purposes of this section as absent from an *eligible employment* on any day (subject to a maximum of ten days) of a period of that *member's maternity, paternity or adoption leave*, other than the first day of that period to which this rule applies, if any such activity as is carried out by that *member* on that day in relation to that *eligible employment* does not bring that period to an end.
 - (c) A *member* to whom this rule applies, and by whom contributions would have fallen to be made apart from absence on *maternity, paternity or adoption leave* (including days treated as days of absence under paragraph (b) above), shall make contributions at the rate set out in rule 7.1 (or at such other percentage of *salary* as is, apart from this rule, required of that *member* under any of rules 7.2, 7.2A and 7.6), and any contributions which have been agreed under rule 7.3, during any *paid maternity absence, paid paternity absence* or *paid adoption absence*, or during any period that is to be treated in accordance with paragraph (b) above as being *paid maternity absence, paid paternity absence* or *paid adoption absence*, only, and then as if his or her *salary* for that period were, for the purposes of those rules only, limited to so much thereof as does not exceed the amount of contractual remuneration or statutory maternity, paternity or adoption pay actually paid to or for that *member* in respect of that period, provided always that a *member* may elect in writing to the *employer*

before the commencement of his or her *maternity, paternity or adoption leave* that he or she will make no contributions to the *fund* for the period of that leave and in that case this rule shall have effect as if his or her *membership* were suspended under paragraph (e) hereof at the commencement of his or her *maternity, paternity or adoption leave*.

- (d) A *member* to whom this rule applies may elect with the consent of the *employer* to make on the resumption of *service* such additional contributions as, having regard to any additional contributions payable under rule 8.3(d), the *trustee company*, acting on *actuarial advice*, may determine in order that all or a specified part of the period of his or her *maternity, paternity or adoption leave* which would not otherwise be counted as *pensionable service* under this rule shall be so counted.
- (e) The *membership* of a *member* on *maternity, paternity or adoption leave* shall be suspended on the date on which:-
 - (i) the *member* ceases to pay contributions; or
 - (ii) his or her *ordinary maternity leave period, paternity leave period or ordinary adoption leave period* comes to an end,

whichever occurs later, and the *member's pensionable service* shall cease to accrue on that date if it would not already have ceased to do so by virtue of rule 7.2A or rule 7.7. Unless he or she ceases meanwhile to be a *member* his or her *membership* shall remain suspended until contributions are again being made to the *fund* in respect of that *member* or would have been apart from rule 7.7, but no such period of suspension shall be deemed to prejudice the continuity of a *member's membership*.

- (f) A *member* to whom this rules applies who, having commenced *maternity, paternity or adoption leave*, subsequently:-
 - (i) notifies an *employer* that he or she no longer intends to return to employment with the *employer*; or
 - (ii) in the case of a *member* to whom paragraph (a)(iii) applies, fails to return to employment with that *employer*:-
 - (A) on or before the day next following the end of the *member's* additional maternity leave or additional adoption leave (respectively) as defined under Section 73 and Section 75B of the *Employment Act*; or

- (B) at the expiration of such longer period during which either the *member* is contractually entitled to return or statutorily so entitled pursuant to Part VIII of the *Employment Act*, or
- (iii) in the case of any other *member* to whom this rule applies, fails to return to employment with that *employer*:-
 - (A) immediately the *member's ordinary maternity leave period, paternity leave period or ordinary adoption leave period* comes to an end in accordance with the *Employment Act*; or
 - (B) at the expiration of such longer period during which he or she is contractually entitled to return

shall be treated as having left the employment of that *employer* on the first day within a period of suspended *membership* by virtue of paragraph (e) above which falls after the notification of his or her intention not to return to work or after the expiry of the time limits specified in sub-paragraph (ii) or (iii) above (as the case may be) and the provisions of section 9 shall then apply subject to the modification set out in paragraph (g); provided that (I) if, on the day on which a *member* would under the foregoing provisions of this rule have been treated as having left any employment, there is subsisting in respect of that *member* and that employment an *ordinary maternity leave period, a paternity leave period or an ordinary adoption leave period* or a period of *paid maternity absence, paid paternity absence or paid adoption leave* or a period of parental leave which the *member* is taking in the exercise of his or her statutory right under Chapter II of Part VIII of the *Employment Act* or of a corresponding contractual right, the relevant time limit contained in this paragraph shall be extended until the end of that period; (II) when apart from this proviso an individual would have been treated by virtue of this paragraph as having left the employment of an *employer*, he or she shall not be treated as having then done so if apart from this rule that individual's absence from that employment immediately thereafter would have fallen within rule 5.11 or rule 5.12(b), but her *maternity, paternity or adoption leave* shall nevertheless come to an end then.

- (g) Where the *maternity, paternity or adoption leave* from *eligible employment* of a *member* to whom this rule applies is treated by virtue of paragraph (f) above as having ended with the cessation of that employment, any benefits to which that *member* may thereby become entitled under section 9 shall be calculated as if that *member* had left the employment of the *employer* on the date on which his or her *membership* was suspended or, if not suspended, ceased, but subject to any general increases in benefits under section 9 which may have been granted during any period of suspension.

- (h) Where a *member* ceases any *eligible employment* on the grounds of *incapacity* or dies during a period of *maternity, paternity or adoption leave* while his or her *membership* is suspended under paragraph (e), the amount of pension under rule 10.4 or the amount of the death benefits under section 11 shall be payable from the date of cessation of that *eligible employment* or (as the case may be) death but calculated as if that *eligible employment* had ceased or the *member* had died on the day before the period of suspension started.

- (j) Where during *maternity, paternity or adoption leave* (whether it is an *ordinary maternity leave period, a paternity leave period, an ordinary adoption leave period* or a period of *paid maternity absence, of paid paternity absence, of paid adoption absence* or of suspended membership), a *member* dies, for the purposes of rule 11.1(a), *salary* shall be the *salary* which the *member* would have had immediately prior to the *member's* death had that *member* continued working in the same post as that which that *member* held immediately prior to the commencement of that *member's maternity, paternity or adoption leave*.

- (k) Any contractual time limit referred to in paragraph (f)(ii)(B) or (f)(iii)(B) above shall be notified to the *trustee company* by an *employer* and thereafter the *trustee company* shall be entitled to require the payment of such additional contributions by that *employer* as it may, acting on *actuarial advice*, decide are necessary to meet the cost to the *scheme* of providing benefits under section 10 or section 11 in respect of *members* on *maternity, paternity or adoption leave* by reason of those time limits.

5.11 Involuntary absence due to sickness or other causes

- (a) This rule applies to the absence of any *member* from *eligible employment* in relation to which rule 5.10 does not apply if it is due to:
 - (i) sickness; or
 - (ii) the exercise of an express statutory right to time off work; or
 - (iii) any other cause which is beyond the control of the *member* and is approved by the *employer* and the *trustee company*.

- (b) Subject to paragraph (c) below during such period of absence as the *member* shall be in receipt of any remuneration from the *employer* the *membership* of the *member* shall not be suspended and contributions shall continue to be paid in respect of the *salary* of the *member* if they would have fallen to be made apart from the absence.

- (c) Notwithstanding the provisions of paragraph (b) above a *member* in receipt of Statutory Sick Pay but no other remuneration from the *employer* shall have the option to continue payment of contributions in accordance with paragraph (b) above but shall not be bound to do so.
- (d) After the *member* shall have ceased to be in receipt of remuneration from the *employer*, or if contributions shall cease by the exercise of the *member's* option under paragraph (c) above, the *employer* with the consent of the *trustee company*, may in its absolute discretion decide to continue payment to the *fund* of the contributions which would have been payable by and in respect of such *member* but for the absence, and any such period shall not be one of suspended *membership* provided that, on such *member* resuming employment, the *employer*, with the consent of the *member* and the *trustee company*, may make arrangements for the recoupment of any such contributions by a reduction in the remuneration of the *member* or a deduction from the benefits payable to such *member* by or of an amount not exceeding the contributions for which such *member* would have been liable but for such absence, with reasonable interest thereon.
- (e) During such period as is mentioned in paragraphs (b) and (d) above the *member's pensionable service* shall continue to accrue insofar as it would have done apart from the absence, but, for any other period during which this rule applies to that *member*, *membership* shall be suspended and, subject to the following provisions of this rule, shall remain so until contributions are again being made to the *fund* in respect of that *member* but no such period of suspension shall prejudice the continuity of a *member's membership* or bring that person within the provisions of section 9 as having left *service*.
- (f) Where a *member* ceases *eligible employment* on the grounds of *incapacity* or dies during a period when *membership* has been suspended under this rule the amount of pension under rule 10.4 or the amount of death benefits under section 11 shall be payable from the date of cessation of that *eligible employment* or (as the case may be) death but calculated as if that *eligible employment* had ceased or the *member* had died on the day before the period of suspension started.
- (g) Where a *member* to whom this rule applies leaves the *eligible employment* of an *employer* (except in circumstances to which paragraph (f) above applies) or withdraws from the *scheme*, *pensionable service* shall be calculated as if the *member* left that *eligible employment* on the date on which *membership* in respect of that employment was suspended. Benefits due in respect of that *eligible employment* will be payable only from actual *retirement* (or earlier death) and any *preserved benefits* to which the *member* becomes entitled on leaving that *eligible employment* shall be subject to any general increases in *preserved benefits* which may have been granted in the meantime.

5.12 Voluntary absence and secondment

- (a) This rule does not apply to any period of absence which falls under rule 5.10 or 5.11.
- (b) If a *member* is absent from employment with an *employer* for any reason of which that *employer* approves, but intends to return to *eligible employment*, or where the *employer* does not approve of the reason for the member's absence but the absence is in contemplation or furtherance of a lawful trade dispute or pursuant to industrial action in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992 and the *employer* does not terminate the contract of employment of the *eligible employee* who following such absence resumes *eligible employment*, then for such period (which shall not exceed that which is appropriate to such absence under paragraph (d) below) as the *employer* and the *trustee company* may agree, the *member* shall not be treated as ceasing to be in *eligible employment* and the *membership* of the *member* shall not cease but, subject to paragraphs (f) and (g) below, shall be suspended except when contributions are continued in respect of the *member* under paragraph (c) below or would have ceased under rule 7.7. Where the *member* is a *variable time employee*, such an agreement shall be deemed in every case to have been made in respect of the period ending, subject to paragraph (d), with the second *accounting date* following the last occasion before the beginning of the absence on which any *salary* became payable in respect of the relevant employment, or with the *member's* return to work for the *institution*, or with the *member's* commencement of work in a *greater appointment* with another *institution*, whichever first occurs. However, *membership* by virtue of that employment shall, subject to paragraphs (f) and (g) below be suspended except where contributions are continued in respect of the *member* under paragraph (c). No such period of suspension shall prejudice the continuity of a *member's membership* or bring that person within the provisions of section 9 as having left *service*.
- (c) For so long as, during a period of absence to which the *employer* and the *trustee company* have agreed that paragraph (b) above shall apply, the *member* to whom that paragraph applies does not become an active member of a registered pension scheme (as defined for the purposes of Part 4 of the Finance Act 2004) to which the *employer* makes contributions in respect of that *member*, the *employer* concerned shall be entitled to make arrangements with the *member's* agreement for payment of contributions by the *employer* during the period of absence appropriate to the *salary* of the member in respect of the relevant employment. If the *employer* makes such contributions in respect of the *member* in respect of that period of absence, the *member* shall be required to pay contributions under section 7 in respect of that period. On payment in full of such contributions by the *employer* and by the *member* under sections 7 and 8, the *pensionable service* of the *member* shall continue to accrue insofar as it would have done apart from the absence. Where the *member* is a *variable time employee* in the employment of an *institution*, such arrangements shall

be treated as having been in every case agreed and made in respect of that employment for the period for which paragraph (b) is deemed to apply to it.

Provided that if a *member* remains in *active membership* at the end of a *scheme year* at whose commencement arrangements were in effect under this paragraph in respect of employment with an *employer*, and if the *salary* of that *member* for that employment for that *scheme year* did not exceed £260, then those arrangements shall be treated as having come to an end immediately before that *scheme year* and the *member's membership* by virtue of that employment shall be suspended for that *scheme year*, the value of any contributions deducted from the *salary* of that employment being aggregated with the *member's* benefits.

- (d) The appropriate period for the purposes of paragraph (b) above is the *member's* lifetime or such shorter period as either the *member* retains an express statutory right to return to work for the *employer*, or the *employer* retains a definite expectation that the *member* will so return or would do so but for circumstances beyond the control of both *member* and *employer*, subject to a maximum as follows:-
- (i) if the period of absence is to enable the *member* to take up work of national importance the period may be unlimited;
 - (ii) if the period of absence is to enable the *member* to undergo full-time education connected with the employment, or to be seconded to another employer, the period may be for up to ten years or such longer period as the *trustee company* shall in any particular case agree; or
 - (iii) in any other case one year or such longer period as the *trustee company* may be prepared to agree.

The *employer* shall promptly notify the *trustee company* in writing as to when an appropriate period ends, unless it has done so, or will do so, on such date as has been agreed (or is deemed to have been agreed) under paragraph (b) above, and in default of such notification in respect of any period the *trustee company* shall be entitled to act on the presumption that that period is as originally agreed or deemed to be agreed.

- (e) A *member* or the *employer*, or both, may in respect of the period for which paragraph (b) above applies to them other than any part of it for which they have made arrangements under paragraph (c) above for the payment of contributions, enter into a written agreement with the *trustee company* to make such additional contributions as the *trustee company* may reasonably require to secure that if, during the period for which such agreement has effect, the *member* dies or becomes incapacitated in a manner which would, apart from the suspension of *membership* have resulted in *retirement* under rule 10.4, benefits are payable to or in respect of the *member* as if *active membership*

had continued until the happening of that event. Notwithstanding the preceding provisions of this paragraph, no period of suspension of *membership* under (b) above shall count as *pensionable service* and no agreement under this paragraph shall have effect after the *member* has become an active member of a registered pension scheme (as defined for the purposes of Part 4 of the Finance Act 2004) to which the *employer* makes contributions in respect of that *member*.

- (f) When a *member* to whom paragraph (b) above has applied does not, before ceasing to be such a *member*, resume employment with the *employer* to whom that paragraph has applied, whether or not that cessation gives rise to an entitlement to benefit under paragraph (e) above, that *member* shall be treated as having left the *eligible employment* of that *employer* on the date on which *membership* was suspended. No payment of benefit shall thereby become due for any time before paragraph (b) actually ceased to apply to the *member* but any benefits to which entitlement arises by reason of that paragraph ceasing so to apply shall be subject to any general increases which may have been granted previously but after the date on which *membership* was suspended.
- (g) If a *member* is absent from employment with an *employer* and any such period of absence is not one for which that *employer* and the *trustee company* have agreed that paragraph (b) above shall apply, then that individual shall cease at the beginning of that period to be a *member* in respect of that employment provided always that if, after last ceasing to be an *active member* at or after that time, the *member* concerned continued in *contracted-out employment* by reference to the *scheme* or was immediately after that cessation of *active membership* absent in furtherance of a trade dispute as defined for the purposes of Regulation 21(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, and if one or both of those conditions are satisfied at all times during the period thereafter before the individual concerned resumes *service*, then that individual's *service* or *contracted-out employment* immediately before any absence during that period in furtherance of such a dispute shall be treated for the purposes of determining *qualifying service* as continuous with that individual's *service* or *contracted-out employment* immediately after that absence.

5.13 Enhanced protection option

A *member's pensionable service* shall cease on the effective date of an election by the *member* under rule 7.2A.

5.14 Calculation of benefits in certain cases

- (a) This rule 5.14 applies to a *member* who has elected by notice in writing to the *trustee company* to pay contributions or, where the *member* has entered into a *salary sacrifice arrangement*, to be treated as paying such contributions under

rule 7.7(aa) in respect of *service* for which the *employer* has not elected to make corresponding contributions under rule 8.4(a).

- (b) The benefits payable to or in respect of that *member* under Section 9 and sections 10 to 12, insofar as calculated by reference to *pensionable service* in respect of the period of *service* to which this rule has applied, shall be such proportion of the benefits that would have been payable in respect of that period, and that would have been calculated by reference to such *pensionable service*, if the *employer* had elected to make those corresponding contributions, as shall be determined by the *actuary* from time to time, provided that no amount payable under any of rules 9.7(b)(i), 11.1(a)(i) and 11.3(a), or under the latter as applied by rule 11.8(a), shall be reduced by the operation of this rule.
- (c) The *trustee company* shall notify the *member* of the proportion referred to in paragraph (b) above applicable at the time of the *member's* election to pay contributions or, where the *member* has entered into a *salary sacrifice arrangement*, to be treated as paying such contributions under rule 7.7(aa) and that proportion shall remain applicable to that *member* in respect of the *member's* benefits which accrue throughout the period for which this rule 5.14 continues to apply to that *member*.

Section 6 - Calculation of Salary and Pensionable Salary

6.1 Calculation of salary

- (a) Subject to paragraphs (b) to (l), where the *employer* with the consent of the *trustee company* so determines:-
- (i) any part of a *member's* remuneration which is taken to consist of a fixed allowance agreed between the *member* and the *employer* for benefits taken in kind; and
 - (ii) any fluctuating emoluments which may be derived from the *member's* pensionable posts or employments under the *scheme* (including benefits in kind);

shall be included in *salary* for the purposes of the *scheme*. In so far as benefits in kind are to be included in *salary* by virtue of sub-paragraph (ii) of this paragraph, their amount shall be taken as what it is treated as being for the purposes of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 or, if they are not assessable to income tax as employment income, as determined by the *trustee company* with the consent of the *employer* and the *member* and, subject to paragraphs (b) to (l), it shall accordingly be that amount which is included in *salary* in respect of those benefits; but the *member* shall not be entitled to the inclusion of fluctuating emoluments in *salary* for a period before 6th April 2006 unless they were assessable for that period to income tax as employment income or fall within a category of remuneration to the inclusion of which the consent of *HMRC* was given generally before that date, and the *trustee company* shall not make a determination of the amount to be included for such a period otherwise than as permitted by *HMRC* immediately before that date.

The *trustee company* shall be entitled to give its consent referred to in this paragraph (a) (either generally or in any individual case or class of cases) subject to such terms and conditions as it may think fit.

- (b) There shall be excluded from *salary* any amount which the *trustee company* disregards in the calculation of *pensionable salary* in accordance with rule 6.3(b)(i) and such exclusion may be applied retrospectively. Any amount of such exclusion shall be deemed never to have been *salary* for the purposes of the *rules*, and any or all contributions paid by reference to such excluded amount shall be refunded to the *employer* and the *member* after making such deductions on account of income and other taxes as the *trustee company* shall decide to be appropriate.

- (c) There shall be excluded from the *salary* of any *1989 Act member* any amount which would result in such *salary* exceeding in relation to any year commencing 6th April (or part thereof) and ending before 6th April 2006 the *permitted maximum* for that year and *salary* shall be determined on and after that date in accordance with Section 17C where that section applies.
- (d) Where on the application of an *institution* the Board of Inland Revenue had registered a profit-related pay scheme under Chapter III of Part V of the *Taxes Act*, this paragraph shall apply to a *member* in relation to an *eligible employment* for so much of any period in relation to which the registration of that scheme had effect (whether or not on altered terms and even if subsequently cancelled with retrospective effect) as that *member* was in that *eligible employment* as an *active member* and was thereby within the meaning of the enactment referred to above an employee to whom that scheme related. Where in relation to an *eligible employment* a *member* has entered into a *salary sacrifice arrangement*, this paragraph shall apply for so much of any period in relation to which the *salary sacrifice arrangement* is effective as that *member* is in that *eligible employment* as an *active member*.
- (e) When paragraph (d) above applies to a *member* in relation to an *eligible employment* and, at the time immediately before it last began so to apply, the *gross fixed salary* for that *eligible employment* or any fixed allowance in respect of it was determined by or under an enactment but otherwise than by an instrument made by the *employer*, or was determined either by custom or contract in accordance with or by reference to any agreement of substantially national scope to which the Association of University Teachers or *UCU* and either *UUK* or any other relevant *employers'* organisation were parties, then where by reason of the said paragraph (d) applying to that *member* any alteration has taken place in the manner in which that *gross fixed salary* or (as the case may be) that fixed allowance is to be calculated, the *salary* of that *member* shall be calculated, in so far as appears to the *trustee company* reasonably practicable, as if that alteration had not taken place provided that where paragraph (d) above has applied continuously to a *member* in relation to an *eligible employment* from the time at which that *member's service* in that *eligible employment* began, then if that *member* had the option at or before that time to elect that paragraph (d) should not apply in relation to that *eligible employment*, this paragraph shall apply as if that election had been made but had been revoked immediately after the beginning of that *service*.
- (f) When paragraph (d) above applies to a *member* in relation to an *eligible employment*, but the conditions are not fulfilled in relation to that *eligible employment* for the full applicability of paragraph (e) above to the *gross fixed salary* for it or to a particular fixed allowance in respect of it, then, in so far as paragraph (e) above does not apply, and subject to paragraph (c) of this rule, the *salary* of that *member* shall be calculated as if that *gross fixed salary* or (as the case may be) that fixed allowance were such amounts as shall have been determined in accordance with an express written agreement between the *employer* and the *member* and in relation to a period for which a profit related

pay scheme was in effect for the purposes of paragraph (d), approved by the *trustee company*. Provided that if in relation to any fixed salary or fixed allowance there is no amount so determined and approved, then the *trustee company* will determine the *salary* of that *member* after consultation with the *advisory committee*.

- (g) While a *member* is absent from any employment and any of rules 5.10, 5.11(b) or (d) and 5.12(b) applies to that *member* by reason of that absence, any reduction in the *gross* fixed salary in respect of any post or office held by that *member* or in any fixed allowance in respect of any such post or office, whether at the commencement of the period of that absence or at any time during its continuance, shall have effect for the purposes of the *scheme* (other than rule 5.10(c)) only if and to the extent that the *trustee company* is satisfied that that reduction would have occurred at that time if the *member* had not been absent from that employment at any time during that period.
- (h) For the purposes of this rule, but without prejudice to the generality of the *institution's* obligation under the deed of covenant it has executed under rule 3.1, an *institution* to any of whose *eligible employees* paragraph (d) or (g) above applies shall submit to the *trustee company* such information as the *trustee company* may require, and at such times as the *trustee company* may request it, to enable the *trustee company* to:-
 - (i) calculate a *member's salary* for the purpose of paragraph (e) above; or
 - (ii) agree or determine a *member's salary* for the purpose of paragraph (f) above; or
 - (iii) be satisfied of a *member's salary* for the purpose of paragraph (g) above.

The information to be submitted pursuant to this paragraph shall be accompanied, if the *trustee company* so requires, by a certificate from the *institution's* auditors (in a form to be specified by the *trustee company*) as to the completeness and accuracy of such information.

- (j) In so far as the *salary* of a *member* for any period consists of fluctuating emoluments by virtue of paragraph (a)(ii) above its rate at a particular date within that period shall to that extent be taken to be the average rate of *salary* over the last twelve months of that period or over the whole of that period (if shorter).
- (i) Subject to paragraph (j) below, the *salary* of a *member* in respect of employment by an *employer* as a *variable time employee* shall be taken to have been, throughout the period of twelve complete and consecutive months immediately before the *calculation date* (except for any part of that period which is also part of another such period in which the last *calculation date* is

the *relevant date*), the aggregate of that *member's total remuneration* for that period and such other amounts as in pursuance of contractual arrangements entered into with that *employer* that *member* would have been entitled to receive for that employment during that period, but for absence from work to which rule 5.10 or rule 5.11 applied, provided that such *salary* shall include any emoluments taken in kind only if and to the extent that the *employer* shall have determined with the consent of the *trustee company* that they should be so included.

(j)

- (i) The calculation of the *salary* of a *member* under paragraph (i) above shall be modified in accordance with the following provisions of this paragraph.
- (ii) Where the period on the basis of which, apart from this paragraph, the *salary* for an employment would be calculated includes any period during which the *membership* of the *member* concerned was suspended in relation to that employment, there shall be substituted for it the last 365 days before the *calculation date* which were not days on which *membership* was so suspended (or, if those days included 29th February, the last 366 days).
- (iii) Subject to sub-paragraph (iv) below, where the *member* was not in *active membership* as a *variable time employee* of an *employer* at the beginning of the period on the basis of which that *member's salary* for that employment is to be calculated, that *salary* shall, for the purposes of rule 11.1(a), bear the same proportion to what it would have been apart from this and the following sub-paragraph as the whole of that period bears to that part of it which fell on or after the first day of it on which that *member* was in such *active membership*.
- (iv) Where the *member* dies in *active membership* as a *variable time employee* and without *qualifying service* (apart from any for which benefit is payable under rule 4.9(d)(ii) or (e) or rule 5.8(c)) that *member's salary* as a *variable time employee* shall, if the amount of benefit payable under section 11 would thereby be increased, be calculated as if that *member* had survived until the next *accounting date* following the date of actual death and had received the *salary* appropriate to the duties as a *variable time employee* which that *member* had contracted to discharge for the *employer* up to that date or which that *member* would in the opinion of the *trustee company* have been asked by the *trustee company* to discharge in that period if he or she had been capable of doing so.

- (k) The *trustee company* may make such modification to the calculation of the *salary* for any person's *service* as may be requisite or in its opinion appropriate to enable any *employer* or former *employer* of that person to satisfy the terms of any order, declaration or recommendation made under Regulation 8(7) of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 relating to any matter concerning the *scheme*, or, with the consent of the *institution* and of the *member* (or *former member*), concerned, to give effect to any agreement designed to forestall or compromise any such proceedings between them or otherwise to ensure compliance with those regulations. Neither the consent of the *funding councils* nor that of the *joint negotiating committee* shall be required for any modification by the *trustee company* under this rule, but particulars relating to the exercise of the above power shall be provided to the *joint negotiating committee* on an anonymised basis if the *trustee company* considers this appropriate.
- (l) When a *member's* election made or treated as made under paragraph (a) of rule 7.6 has effect, the *salary* of that *member* shall be adjusted in accordance with that rule.

6.2 Pensionable salary

Subject to any adjustments which may be made pursuant to rule 6.3, *pensionable salary* means in relation to a *member* the higher of:-

- (a) the *member's* highest *salary* (in respect of the *eligible employment* which ceased on the *relevant date*) for any period of twelve complete months ending on the last day of a month during the last three years before the *relevant date*; and
- (b) the highest yearly average of the total *salary* (in respect of the *eligible employment* which ceased on the *relevant date*) of the *member* for any three consecutive *years* ending at the end of any month which falls not earlier than ten years before the *relevant date*;

and so that for the purposes of this rule *salary* for any year except the last before the *relevant date*, shall be increased in proportion to any increase over the *RPI* published at the last day of that year by the *RPI* published at the *relevant date* but *salary* shall not for these purposes include any amount in respect of *variable time employment* to which rule 4.2A applies or of other *eligible employment* to which that rule applies by virtue of paragraph (b) thereof.

6.3 Adjustments to pensionable salary

- (a) *Pensionable salary* may be adjusted, if appropriate, in accordance with rule 7.6 or in any of the following cases:-
- (i) as long as *approval* is not affected then, on the written advice of the *Funding Council* in the case of *institutions* in receipt of grants therefrom, or in the case of any other *institution* by agreement between it and the *trustee company*, a notional higher amount may be substituted for actual *salary* either generally or for such limited period or in such other limited circumstances as the *trustee company* may in its absolute discretion think fit;
 - (ii) where a notional higher amount is substituted under sub-paragraph (i) above, rule 6.2, insofar as it provides for *salary* to be increased by reference to the *RPI*, shall not apply;
 - (iii) where a *member's service* has ceased, and there is less than one *year's salary* on which *pensionable salary* be calculated under rule 6.2, then, except in the case covered by sub-paragraph (iv) below or in that covered by rule 6.1(j)(iii), *salary* for the purposes of rule 6.2 shall be the *salary* for the whole of the *member's service* and the *salary* which would have been attributable to the *member* if *service* had continued at the same rate of *salary* as at the date of cessation until it amounted to a complete year;
 - (iv) subject to sub-paragraphs (v) to (vii) below where the circumstances set out in sub-paragraph (iii) apply, but the *member* has a prior period of employment which counts as *pensionable service* under rule 5.8 and such employment ended not more than six months prior to the recommencement of *active membership*, the *member's salary* for the purposes of rule 6.2(a) shall be *salary* for the last twelve months of *service* with that part of the *salary* for any part of that period more than twelve months before the cessation of *service* being increased in accordance with the provisions of rule 6.2.
 - (v) if at the *relevant date* the *membership* of the *member* has been suspended, *pensionable salary* shall be calculated at the date on which the contributions to the *scheme* ceased in respect of the *member*;
 - (vi) remuneration for *alternative benefits service*, or for any prior period of *pensionable service* in respect of which a *member* has become entitled to benefits as a *deferred pensioner* which have not been cancelled under rule 5.8 or in respect of which a payment, refund, or transfer has been made from the *scheme* and to which section 14 continues to

apply, shall not be *salary* to be taken into account for the purposes of the calculation of *pensionable salary* under rule 6.2; and

- (vii) where a *member's membership* is not suspended at the *relevant date* but has been suspended for any period during the thirteen years ending on the *relevant date*, for the purposes of rule 6.2, the *member's salary* during such periods of suspension shall be deemed to have been nil.
- (b) Where there is a non-standard increase in a *member's* emoluments then for the purpose of calculating such *member's pensionable salary* the *trustee company* shall have the following powers:-
- (i) the *trustee company* may disallow as *salary* any non-standard increase or part of a non-standard increase in the *member's* emoluments which appears to the *trustee company* (A) to have as its main object, or one of its main objects, the enhancement of benefits under the *scheme* for such *member* or (B) to relate to *service* with an *employer* other than, and subsequent to, a period in respect of which the *member* had agreed with the same or an *associated employer* (or with a body to any of whose functions such an *employer* has succeeded), to an abatement of *salary* in connection with an increase in the rate of that *member's* other emoluments;
 - (ii) the *trustee company* may determine in cases where it is not appropriate to exercise the powers under sub-paragraph (i) above that such non-standard increase shall be treated as *salary* for the purposes of calculating *pensionable salary*, but that the *member's pensionable salary* shall be calculated under rule 6.2(b) to the exclusion of rule 6.2(a); and
 - (iii) the *trustee company* may require as a condition of accepting that any non-standard increase in a *member's* emoluments will be treated subject to the provisions of rule 6.1 as *salary* for the purpose of calculating *pensionable salary* that the *employer* and the *member*, or either of them, shall make such additional contributions to the *fund* of such amount or amounts as the *trustee company*, acting on *actuarial advice*, shall determine to be the cost of the increase in benefits payable to such *member* by reason of the non-standard increase in emoluments being treated as *salary* for the purpose of calculating *pensionable salary*.
- (bb) Where there is a non-standard decrease in a *member's* remuneration then for the purpose of calculating such *member's pensionable salary* the *trustee company* shall have the following powers:-
- (i) the *trustee company* may disregard for the purposes of calculating *salary* any non-standard decrease or part of a non-standard decrease

in the *member's* remuneration which appears to the *trustee company* to have as its main object, or one of its main objects, a reduction in the amount of contributions payable to the *fund* either by the *member* or by the *employer* or by both provided that in disregarding such a non-standard decrease there shall be no adverse effect on the entitlement or accrued rights of the member in respect of *service* prior to the effective date of the non-standard decrease;

- (ii) the *trustee company* may require as a condition of accepting that any non-standard decrease in a *member's* remuneration will be taken into account in calculating the *member's salary* under rule 6.1 for the purpose of calculating *pensionable salary* that the *employer* and the *member*, or either of them, shall make such additional contributions as the *trustee company*, acting on *actuarial advice*, shall determine to be the amount of the loss of additional contributions which would have been payable to the *fund* had there been no non-standard decrease in the *member's* remuneration.
- (c) Provided that this paragraph (c) shall apply to a *member* to whom rule 7.2A applies only if the *trustee company* so decides in its absolute discretion, an increase in emoluments shall be treated as a standard increase in emoluments which is not subject to paragraph (b) above:-
- (i) where the calculation of *pensionable salary* falls to be made on the death of a *member* in *service* (unless the increase falls within (B) of paragraph (b)(i) above and not within sub-paragraph (iv) below); or
 - (ii) where the increase in emoluments arises out of a nationally negotiated pay settlement and is not made or received in contemplation of *retirement*; or
 - (iii) where the increase, although not the result of a nationally negotiated pay settlement, arises out of a new appointment which is permanent or a promotion, regrading, merit award or regular review of *salary* not made or received in contemplation of *retirement*; or
 - (iv) where the increase arises in relation to an *eligible employment* from rule 6.1(d) ceasing to apply in respect of that employment to a *member* to whom it previously so applied.
- (cc) A decrease in remuneration shall be treated as a standard decrease in remuneration which is not subject to paragraph (bb) above:-
- (i) where the decrease in remuneration arises from a *member* relinquishing an appointment and taking up another with demonstrably

lighter responsibilities or graded at a lower level under an appropriate job evaluation scheme; or

- (ii) where the decrease in remuneration is caused by a reduction in responsibilities or regrading under an appropriate job evaluation scheme within an existing appointment and such reduction is not made in contemplation of *retirement*;
- (d) Where a non-standard increase in emoluments arises from a substantial but temporary increase in responsibilities undertaken by a *member* (and not in contemplation of *retirement*) then that increase shall not be disallowed as *salary* under paragraph (b) above but, on the *retirement* or death of that *member* within three years of such temporary increase being terminated, the *pensionable salary* of that *member* shall be whichever is the higher of:-
- (i) the amount calculated under rule 6.2(a), but excluding the non-standard increase from *salary*; and
 - (ii) the amount calculated under rule 6.2(b) including (subject to the provisions of rule 6.1) the non-standard increase as *salary*.
- (e) An allowance for emoluments taken in kind which has been determined to be included in a *member's salary* in respect of any *eligible employment* shall be taken to form part of the emoluments which that *member* derives and is entitled to receive from that *eligible employment* and non-standard increases or non-standard decreases in emoluments may accordingly arise for the purposes of this rule from the first provision or the cessation of any emoluments in kind or from any increase or decrease in the amount of any allowance for them made under rule 6.1(a).
- (f) The *trustee company* may at the request of the *employer* or the *member* confirm in writing whether or not it will treat any particular increase in remuneration payable to a *member* as a standard increase or as an increase to which paragraph (d) above applies, or whether it will treat any particular decrease in remuneration payable to a *member* as a standard decrease, and, if it confirms that the increase will be treated as a standard increase, or that the decrease will be treated as a standard decrease, the powers of the *trustee company* under paragraphs (b) and (d) above in respect of that increase, or (as the case may be) under paragraph (bb) in respect of that decrease, shall lapse.
- (g) In exercising its powers under the foregoing provisions this rule the *trustee company* shall be entitled to have regard to the views of the *employer* and of *UUK* without being bound by them.
- (h) *Pensionable salary* shall be limited by reference to the *scheme specific cap* insofar as the provisions of sections 17A to 17C so require.

6.4 Pensionable salary and part-time service

Where a *member* has a period of *part-time service*:-

- (a) Subject to paragraphs (b) and (c) below the *salary* of such *member* in respect of any period of *part-time service* shall for the purpose of calculating *pensionable salary* be taken to be an amount equal to *salary* for that period divided by the appropriate *part-time service fraction*;
- (b) Where such *member* receives, in addition to remuneration in respect of part-time employment, additional remuneration which would not, but for this paragraph, affect the *part-time service fraction* because it is referable to such *member's* total employment (such as a merit award) or is not fixed remuneration for that part-time employment, and such additional remuneration counts as *salary* for the purposes of the *scheme*, then the *part-time service fraction* shall be calculated as set out in paragraph (b) or, as the case may be, paragraphs (c) or (d) of the definition of that expression in section 24; and
- (c) No account shall be taken of this rule when determining *pensionable salary* for the purposes of rules 11.2(c)(i) and 11.3(a) and (b).

6.5 Pensionable salary and continued rights

- (a) This rule does not affect the *pensionable salary* of any *member* or *former member* for whom no *relevant date* occurred before 6th April 2006 who has neither received nor become entitled to remuneration which was in excess of the *permitted maximum* in or for any tax year before that date or which was before that date at an annual rate in excess of the *permitted maximum* either before or after joining the *scheme*.
- (b) Where under any of the rules 17.7 to 17.10 or, by virtue of any determination made by the *trustee company* under rule 17.11(b), a fraction of the *final remuneration* of a *member* is to be calculated by reference to any period of *pensionable service* in accordance with paragraph A of the definition of *final remuneration* in section 24, rule 6.1(c) shall not apply to the *salary* of that *member* for that period, and where under any of those rules a fraction of the *final remuneration* of a *member* is to be calculated by reference to any *pensionable service* or *supplementary service* in accordance with paragraph B of that definition then the same fraction of the *pensionable salary* of that *member* shall be calculated as if *salary* had been at all times limited to the *permitted maximum* and the calculations of benefits under sections 9 to 12 shall be made accordingly.

6.6 Enhanced protection option

A member's pensionable salary shall be subject to the limits provided in rule 7.2A where rule 7.2A applies to the member.

Section 7 - Members' Contributions

7.1 Ordinary contributions

Subject to the provisions of section 5 and of this section a *member* shall contribute to the *fund* at the rate of 6.35% of *salary* for the time being.

7.2 Additional contributions in special cases

- (a) Subject to the following provisions of this section, a *member* to whom rule 4.4(d) applies shall not contribute to the *fund* under rule 7.1 but shall contribute under this rule such higher amount as the *trustee company* shall decide.
- (b) If the *trustee company* shall consider that there are special circumstances applicable to the *member* the *trustee company*, acting on *actuarial advice*, may require or permit such *member* to make, instead of contributions under rule 7.1 or rule 7.2A such contributions under this rule as it shall decide and, without limiting the effect of this rule, may do so in a case to which paragraph (c) of this rule or any of rules 3.3A(b), 4.2A, 4.2B, 4.5(c), 5.6, 5.10(d), 5.11(d), 5.12(c) or (e) or 6.3(b)(iii) applies.
- (c) For the purposes only of this section an individual in respect of whom an *institution* has paid or is to pay a contribution or series of contributions under rule 8.2(c), (whether or not that individual is currently in the employment of any *institution*) may be treated as a *member* if contributions to the *fund* are ordered by a Court or tribunal of competent jurisdiction to be made by that individual so that a period of past employment with the *institution* making that contribution under rule 8.2(c) may be recognised as giving rise to *pensionable service* under the *scheme*, or if an agreement reached between that individual and that *institution* includes a term that actual or potential proceedings on that subject shall be compromised on a footing that includes payment of such contributions by that individual, such contributions to be paid at such time and in such manner as the *trustee company* and the individual shall agree. Rule 7.8 shall not apply to any contributions made by an individual under this paragraph.

7.2A Enhanced protection option

7.2A.1 A *member* may elect by one month's prior notice in writing to the *trustee company*, or such lesser or greater period of notice as the *trustee company* may agree, (such notice to take effect in each case on a date specified in the notice not earlier than 6 April 2006) to terminate the *member's* contributions and liability to contribute to the *fund* under rules 7.1, 7.2, 7.3, 7.4 (and the two month notice period in 7.4(e) shall not apply for this purpose) and 7.6 and 5.10 to 5.12, save in respect of any employment to which rule 4.2A applies, and to

terminate the *member's pensionable service*, save for any period under rule 5.1(d) or rule 5.2(f), upon the basis that the provisions of this rule 7.2A shall apply to the *member*, provided that the *trustee company* is satisfied that the *member* has given, or will give, notice of intention to *HMRC* to rely on paragraph 12 of schedule 36 to the Finance Act 2004 in accordance with that paragraph.

7.2A.2 Notwithstanding the termination of *pensionable service* under 7.2A.1 above, but subject to section 5 (apart from rule 5.2(a)), the *member* shall remain in *service* following an election under 7.2A.1 above, but periods of *service* after the date of such election shall not count as *service* for the purposes of paragraphs (c) to (f) of rule 12.1 or of rule 5.2(a).

7.2A.3 Following an election made in accordance with 7.2A.1 above, the *member* shall continue in *membership* notwithstanding the termination of the *member's pensionable service*, subject to the value of the benefits payable in respect of the *member* not exceeding the maximum compatible with the availability of *enhanced protection* where notice of intended reliance on it has been given and not revoked, and the benefits payable in respect of the *member* under sections 9 to 12 shall be determined, subject to the following provisions of this rule 7.2A, by reference to the *member's pensionable service* up to the effective date of the *member's* election in accordance with 7.2A.1 above and to the *member's pensionable salary* determined as at the date of the *member's* retirement or death or earlier withdrawal from *membership*, subject to the *trustee company's* powers under rule 6.3(b) in relation to non-standard increases. The *trustee company* shall determine on *actuarial advice*, and subject to section 19, how the limits under this rule on benefits payable to or in respect of a *member* or *former member*, other than the limit on *pensionable service*, are to be applied to the amount of pension and lump sum respectively and in so doing the *trustee company* shall so far as reasonably practicable act in accordance with the wishes notified to it by the *member* or *former member*.

7.2A.4 Subject to the following provisions of this rule 7.2A, benefits shall be payable in respect of a *member* to whom this rule 7.2A applies under rules 11.1, 11.3(a) and (b), 11.4, 11.5, 11.8, 11.9 and 11.11 provided that the *member* pays the contributions to the *fund* which are required by 7.2A.5 below.

7.2A.5 Subject to rule 7.7 and to rule 7.10, a *member* who has made an election under 7.2A.1 shall from the effective date of that election contribute to the *fund* at the rate of 1% of *salary*, or at such other rate as may be determined from time to time by the *actuary*, subject to rules 7.2(b) and 6.3(b)(iii).

7.2A.6 Benefits will be payable under rules 10.4 and 11.2 to or in respect of a *member* to whom this rule 7.2A applies who *retires* on the grounds of *total incapacity*, subject to the *trustee company's* powers under rule 6.3(b) in relation to non-standard increases. These benefits shall be determined by reference only to the *member's pensionable service* up to the effective date of the *member's* election under 7.2A.1 above and to the *member's pensionable salary*

determined as at the date of the *member's retirement* or death or earlier withdrawal from *membership*.

7.2A.7 The death in service benefits payable under each of rules 11.1, 11.4, 11.5, 11.8 and 11.9 in respect of a *member* to whom rule 7.2A applies shall be determined by reference to the *member's pensionable service* up to the effective date of the *member's* election in accordance with 7.2A.1 above together with any additional *pensionable service* and *supplementary service* that would have been notionally credited to that *member* under rule 10.4 if that effective date had been the *relevant date* and by reference to the *member's pensionable salary* as at the date of the *member's* death, subject to the *trustee company's* powers under rule 6.3(b) in relation to non-standard increases, which will be as determined by the *trustee company* from time to time.

7.2A.8 A *member* shall have no right to revoke or vary an election under this rule 7.2A, but the *trustee company* may in its absolute discretion revoke such an election.

7.3 AVCs to buy additional benefits

- (a) A *member* may pay AVCs which do not exceed to the *maximum contribution* either:-
 - (i) by way of regular instalments at such rate or rates as the *member* may agree with the *trustee company*; or
 - (ii) of such other amount or amounts (not being regular instalments) as the *member* may agree with the *trustee company*.
- (b) On the payment of AVCs under this rule the *member* shall be credited with *pensionable service* or such additional benefits in such form as the *trustee company* may decide and sections 9 to 12 shall accordingly have effect subject to this rule. The *trustee company* may, on *actuarial advice*, issue tables of rates of contributions and the corresponding amounts of additional *pensionable service* which they will secure and may, on *actuarial advice*, issue new tables at any time but without prejudice to the benefits arising from regular contributions which have then already commenced or *lump sum* AVCs which have then already been paid.
- (c) If a *member* dies or is in receipt of an *enhanced incapacity pension* at the date when the *member's* AVCs are used to buy additional benefits under this rule 7.3 then the *pensionable service* or additional benefits which had been prospectively credited to that *member* shall not be reduced unless any *lump sum* AVC was paid within one year prior to death or *retirement*, or that *member* made an agreement under paragraph (a)(i) above under which payments commenced within five years of death or *retirement*; but if these conditions are not fulfilled the *trustee company*, acting on *actuarial advice*,

shall decide what credit shall be allowed in respect of the AVCs or those of them paid within one year (in the case of *lump sum AVCs*) or commenced within five years (in the case of regular payments) prior to death or *retirement*.

- (d) Subject to paragraph (c) above, where a *member* prior to attaining *normal retirement age* (or any other date on which such *member* duly specified contributions under this rule were to cease) ceases to pay or reduces the rate of regular contributions, the *trustee company*, acting on *actuarial advice*, shall decide what number of *years of pensionable service* or additional benefits are to be credited to the *member* in respect of the AVCs which have already been paid in lieu of the number of *years of pensionable service* or additional benefits for which contributions were previously being made. A date later than *normal retirement age* is not duly specified as that on which contributions under this rule are to cease unless it has been agreed to by the *trustee company*.

- (e) Where a *member* who has been making AVCs under this rule is in receipt of a pension, and is not in receipt of an *enhanced incapacity pension*, at the date when the *member's AVCs* are used to buy additional benefits under this rule 7.3 or ceases to be in *service*:
 - (i) the *member* shall be entitled to be credited with the full number of *years* of additional *pensionable service* for which a *lump sum AVC* has previously been made provided that where the *member retires* with an immediate pension at an age earlier than *normal retirement age* (or than such later date as that on which that *member* duly specified that contributions under this rule were to cease) the pension and the corresponding lump sum may be reduced by the *trustee company* acting on *actuarial advice* to take account of early payment;

 - (ii) if the *member* leaves *service* with entitlement to benefits under section 9, the additional *years of pensionable service* in respect of regular payments made under an agreement under paragraph (a)(i) above paid up to the date of cessation of *service* may not be reduced to less than that number of *years of pensionable service* which bears the same proportion to the additional *years of pensionable service* for which such *member* was contributing as the period between the time when the first payment became due and the date of cessation of *service* bears to the whole period over which regular payments were to be made under that agreement; and

 - (iii) subject as provided in sub-paragraphs (i) and (ii) above the *trustee company* acting on *actuarial advice* may decide what number of *years* of additional *pensionable service* or additional benefits are to be credited to the *member* in respect of AVCs which have been paid by such *member* up to the date of *retirement* or leaving *service*.

7.4 Money Purchase AVCs

- (a) The *trustee company* may conclude with an *AVC provider* such agreements or arrangements as will permit a *member* to pay *AVCs*, subject as provided in this rule and in rule 7.5, in order to secure on a money purchase basis additional *relevant benefits* payable in accordance with this rule on *retirement* or death or otherwise in accordance with paragraph (h) below;

- (b) A *member* may elect to pay *AVCs* under this rule at any time prior to attaining the age of 75 years by giving written notice to an *employer*. The *employer* shall forward a copy of that notice, or the material information contained in it, to the *trustee company* in accordance with arrangements made between them. Such notice shall specify when those *AVCs* are to commence (which shall be after at least two months beginning with the date on which the *employer* receives the notice or at such earlier date as the *trustee company* may in any particular case allow), the *AVC provider* through or by which the *member* wishes them to be invested, and whether or not they are to be made by one or more lump sums. A notice in which the *member* specifies more than one *AVC provider* shall specify in what proportions the *AVCs* which the *member* is to pay, in pursuance of the relevant election under this paragraph, are to be allocated to those different *AVC providers*; and where any *AVC provider* so specified makes available, in pursuance of any agreement or arrangement under paragraph (a) above, more than one *sector fund*, that notice shall specify in what proportions the *AVCs* allocated to that *AVC provider* shall be applied to those different *sector funds*. Any such agreements or arrangements concluded by the *trustee company* by way of investment with one or more *AVC providers* shall provide or allow as follows:
 - (i) the *member* may from time to time vary the proportions in which *AVCs* are payable between two or more *AVC providers* in a notice given under this paragraph, by giving written notice of such variation at least two months before that variation is to take effect or at such later date as the *trustee company* may in a particular case allow, but such a notice must be given to the *institution* which will be liable to deduct the relevant *AVCs* from *salary* immediately after the variation is to take effect and forwarded by that *institution* to the *trustee company* in accordance with arrangements made between them; and

 - (ii) if in respect of any *AVCs* made by a *member*, no valid specification has been made by that *member* as to the *AVC provider* in respect of whose *investment* the *AVCs* are to be invested under this rule, or as to the *sector funds* to which they are to be applied, then the *trustee company* shall not be bound under the *scheme* or pursuant to the terms of the *investment* to invest those *AVCs* unless and until a valid specification in the relevant matter has been made by the *member* under this rule; and

- (iii) at any time before a *relevant benefit* becomes payable in respect of the relevant *member's fund*, a *member* or *former member* may, by election notified in writing to the *trustee company*, where permitted by and subject to the terms of the relevant agreements or arrangements made with *AVC providers*, require the transfer from one *investment* to another *investment* with a specified *AVC provider* and, where applicable, in a specified *sector fund*, of all or a specified part of the assets which would constitute the *member's fund* if the *member* or *former member* were to die immediately before the election would have taken effect, and for the purposes of paragraph (c) of this rule, such assets shall be treated as *AVCs*; and
 - (iv) the *member* shall not, without the prior consent of the *trustee company* in writing, nominate a date to be the nominated date for the end of any input period for the purposes of Section 238 of the Finance Act 2004 in relation to the relevant arrangement under the *scheme* between that *member* and the *trustee company*.
- (c) The *trustee company* shall make arrangements with the *AVC provider* to ensure that *AVCs* paid by a *member* in pursuance of an election under paragraph (b) above are applied to any *investment* or *sector fund* as specified in a notice duly given by that *member* under that paragraph and notified to it by a relevant *institution* where that paragraph so requires, provided always:
- (i) that the *trustee company* shall not be bound to apply such *AVCs* to one or more *sector funds* and may prevent any such application of those *AVCs* by instruction to the *AVC provider* or otherwise, if and to the extent that the *trustee company* shall be of the opinion that in so applying or permitting the application of those *AVCs* in accordance with that *member's* notice it would or could be put in breach, or at risk of breach, of any of its duties at law relating to the investment of the *AVCs* concerned (including without prejudice to the generality of the foregoing, the requirements of Section 36 of the Pensions Act 1995); and
 - (ii) that where proviso (i) applies the *member's* notice shall be regarded as of no effect and it shall be as if the *member* had made no valid specification under paragraph (b) above, sub-paragraph (ii) of which shall apply accordingly; and
 - (iii) that the *trustee company* shall be under no duty obligation or liability to the *member* (nor to any person whose benefits under the *scheme* arise from the death of that *member* or from a *pension sharing order* affecting the rights of that *member*) in respect of any loss or reduction in value of the *member's fund* which results from the investment by the *trustee company* of the *AVCs* in accordance with the *member's* specification under this rule nor in respect of any delay in the

investment of the *member's AVCs* which results from a failure by the *member* under paragraph (b)(ii) above to have made a valid specification; and this paragraph shall take effect subject to Section 33 of the Pensions Act 1995 and, so far as applicable, to Section 34(4) of that Act.

- (d) *AVCs* to be paid by a *member* under this rule shall be deducted from that *member's salary* by the *employer*, or (if there is more than one) by the one originally notified under paragraph (b) above of the first election to pay them, or (if that body is no longer an *employer* of the *member*) by such *employer* as the *trustee company* shall decide in consultation with that *member* and that *member's employers*, or by such *employers* in such proportions as the *trustee company* may so decide. Where that *member* has elected under paragraph (b) above to pay any *AVCs* by a lump sum, those *AVCs* shall be so deducted in such manner as the *employer* notified of that election may agree with the *member* from time to time. Otherwise, subject to paragraph (e) of this rule, *AVCs* shall be deducted from each amount of *salary* becoming payable to that *member* by a relevant *employer* on or after the date of commencement notified in accordance with paragraph (b) above. All amounts so deducted shall be paid or transferred by the relevant *employer* in accordance with rule 8.5 and, subject to that rule, as directed by the *trustee company*. Such a direction by the *trustee company* may require the *employer* to pay the *AVCs* so deducted from the *member's salary* directly to the *AVC provider* as agent for the *trustee company* and the time limits applicable under rule 8.5 shall apply equally to any payments so made.
- (e) *AVCs* being paid under this rule, except in so far as paid by one or more lump sums in accordance with the *member's* election under paragraph (b) above, and subject to the following provisions of this paragraph, shall continue until the day before the *member* attains the age of 75 years or until such earlier date as the *member* ceases to be in *membership* or under this paragraph shall have notified as the date of cessation of those *AVCs* or under rule 7.2A shall have given notice to terminate contributions. Notice under this paragraph of cessation of *AVCs* may be included in the first notice under paragraph (b) above of election to pay them. Otherwise, such notice shall be given in writing to the *institution* which will be the *employer* at the date the cessation is to take effect and at least two months before that date or at such later date as the *trustee company* may in a particular case allow; notice thus given to an *institution* (or the material particulars contained in it) shall be forwarded by that *institution* to the *trustee company* in accordance with arrangements made between them. Without prejudice to the generality of its powers under proviso (i) to paragraph (c) above, the *trustee company* may require that *AVCs* paid by a *member* under this rule be terminated or reduced if the making of such contributions would cause a breach of the limits imposed by rule 7.5, provided that in requiring any such reduction the *trustee company* shall have regard to any relevant notice of variation it has received under sub-paragraph (i) of paragraph (b) above but may exercise its power under proviso (i) to paragraph (c) to impose such reduction in the proportion of that *member's*

AVCs applied to any one or more *investments* (including a reduction to nil) as it may in its discretion decide.

- (f) The benefits provided in respect of a *member's AVCs* paid under this rule, may take the form of either or both of a lump sum and periodic benefits, and shall be:
 - (i) of such amounts and in such form as will ensure that benefits so provided by way of a lump sum payment (other than under rule 16.3) to the *member* do not exceed the *authorised maximum* and that the *scheme* conforms to the preservation requirements referred to in Chapter I of Part IV of the *Pension Schemes Act* and the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991; and
 - (ii) of at least such value as the *trustee company*, acting on *actuarial advice*, considers reasonable having regard to the *AVCs* paid by the *member* under this rule.

- (ff) A *member* or *former member* may, where permitted by and subject to the terms of any relevant agreement or arrangements with an *AVC provider*, elect by written notice to the *trustee company* not more than three months, nor less than one month, before a *relevant benefit* is first to become payable to that person (or at such other time as the *trustee company* may in its absolute discretion permit), that all or a specified proportion of the relevant *member's fund* be transferred to the *main section* of the *fund* for the purchase of such additional *pensionable service* or such additional benefits as the *trustee company* shall determine on *actuarial advice*, having regard to the amount of the *member's fund* or to the proportion of it transferred. Provided that
 - (i) the *trustee company* shall, after receipt of a request in writing from a *member* or *former member* to do so, issue to that person as soon as reasonably practicable a quotation of the *conversion rate* it has determined on *actuarial advice* to be applicable to that person as at the date on which that quotation is issued and it may recover from the *member's fund* of that person, or otherwise from that person, such charges as it may require in accordance with tables it shall have published before that person's request was made; and
 - (ii) the amount of additional *pensionable service* or additional benefits to be credited in respect of any election under this paragraph (ff) shall be computed as at the date on which the *fund* receives from the *AVC provider* payment in full of the amount of the *member's fund* or of the proportion of it to be transferred under this paragraph (ff), determined according to the value of the *member's fund* or of that proportion of it to be transferred as at that date and to the *conversion rate* quoted under proviso (i) above, and the corresponding credit shall take effect on the date which is immediately before the first date for which the

relevant benefit referred to in this paragraph (ff) is to be paid or, in a case where an election has been permitted by the *trustee company* outside the limits expressly described in this paragraph (ff), or where payment of the amount or proportion of the *member's fund* referred to above is not received by the *fund* from the *AVC provider* by that date, from such other date as the *trustee company* shall determine; and

- (iii) a transfer of any part of a *member's fund* to the *main section* of the *fund* under this paragraph (ff) shall be treated for the purposes of rule 2.4 as a provision of benefits under this rule 7.4 , but the benefits under sections 9 to 12 derived from such a transfer shall not be treated as arising or payable under this rule or under an *investment* for the purposes of paragraph (n) below or otherwise, nor shall rights or entitlements to such benefits be treated as having accrued under this rule 7.4; and
 - (iv) where the *member's fund* transferred under this paragraph is applied for the purchase of additional *pensionable service*, the benefits to be provided in respect of that additional *pensionable service* shall, subject to rule 10.8, comprise a pension and a lump sum in the same proportions as the *relevant benefit* to which this paragraph refers; and
 - (v) a *member* or *former member* who has made an election under this paragraph (ff) may not vary or revoke it, and may not make a further such election, unless in any case the *trustee company* in its absolute discretion so permits.
- (g) On the death of a *member* before *retirement*, or of a *former member* with a deferred right to an annuity under this rule, the *member's fund* shall, subject to paragraph (f) above, be applied in accordance with the directions of that individual or, if there are none, in accordance with the directions of that individual's personal representatives. If, however, neither that individual nor that individual's personal representatives shall have given any directions in writing to the *trustee company*, the *trustee company* shall hold the *member's fund*, and any lump sum life assurance benefits secured by the *member's* or *former member's AVCs* pursuant to an election under paragraph (b) above, on the *discretionary trusts*.
- (h)
- (i) On the *retirement* of a *member*, or on deferred benefit becoming payable to a *former member*, the *member's fund* shall, subject to paragraphs (f) and (ff) above, be applied by the *trustee company* in accordance with the directions of the *member* or *former member* or, if that individual has not made any such direction in writing to the *trustee company*, the *trustee company* shall be entitled to apply the *member's fund* in providing such *relevant benefits* for the *member* or *former*

member, that individual's *relatives*, *dependants* or personal representatives as the *trustee company* may, subject to the following provisions of this paragraph, decide.

- (ii) A *member* or *former member* may defer for any period ending before that individual's 75th birthday the purchase of an annuity pursuant to the terms of any *investment* effected by the *trustee company* under this rule so far as attributable to that member's or former member's *AVCs* paid under this rule, provided that that member or former member gives notice in writing to the provider of the investment and to the trustee company of the period of that deferral and that no annuity shall be purchased with any of the relevant *member's fund* within a period so notified unless the *member* or *former member* shall have applied for the making of that purchase to the *AVC provider* and to the *trustee company* not more than two months nor less than fourteen days before its intended effective date or within such other period as the *trustee company* may in a particular case permit and so far as is compatible with *approval*.
 - (iii) Where a *member* or *former member* dies after the benefits for which section 10 or, as the case may be, sections 9 or 12 provide have become payable and purchase of annuity in relation to the *member's fund* has been deferred under this paragraph, the *member's fund* shall be applied by the *trustee company* in accordance with the directions of the *member* or in the absence of such directions as the *trustee company* may determine in the provision of such *relevant benefits* capable of provision with the *member's fund* and of a kind payable under section 11 on death in *retirement* as may be the subject of such directions or determination.
- (j) If a *member* has ceased to be in the *service* without becoming entitled to an immediate pension under section 10 or section 12, then;
- (i) if a *member* to whom this paragraph applies is entitled under rule 9.2 to and elects to take a refund of contributions, an amount equal to the *AVCs* paid by the *member* under this rule with the investment return thereon shall be refunded to the *member* subject to deduction of tax pursuant to rule 18.3;
 - (ii) if a *member* to whom this paragraph applies elects that a transfer premium be made pursuant to rules 9.2, 9.8 or 9.9 the *member's fund* shall be included in the transfer payment and may at the *member's* election be paid to any money purchase additional voluntary contribution facility maintained in conjunction with any *transfer scheme* to which such transfer payment is made; and
 - (iii) subject to the preceding sub-paragraphs the *member's fund* shall be applied in providing benefits in accordance with paragraph (g) above

or in accordance with paragraph (h) above at *normal retirement age* or later *retirement* or such earlier date on which any benefit commences to be payable to the *member* under section 9.

- (k) All benefits secured by the *trustee company* in accordance with the preceding paragraphs of this rule shall be additional to the benefits which would otherwise be provided under the *rules* and sections 9 to 12 shall accordingly have effect subject to this rule.
- (l) If an *institution* withdraws from the *scheme* pursuant to rule 22.1, no further *AVCs* shall be paid in respect of employment with that *retiring institution*, and the *member's fund* shall be applied in accordance with paragraph (j) above.
- (m) On a winding up of the *scheme* in pursuance of rule 22.2 the *member's fund* shall not be applied as provided in rule 22.5 but shall, subject to rule 22.6, be held by the *trustee company* to provide *relevant benefits* for the relevant *former members* and for those claiming through them insofar as these can be provided out of the proceeds of the *member's fund* and, to the extent that the limits specified in section 17 are applicable to the circumstances insofar as, when aggregated with benefits secured for that *member* not under this paragraph but under rule 22.7, they fall within those limits.
- (n) No moneys arising from a winding up of the *scheme* under rule 22.5 shall be applied in augmenting any of the benefits payable under this rule.

7.5 Limitations on money purchase AVCs

A *member* shall not pay in any tax year any *AVC* under rule 7.4 of an amount which would cause the total amount of such *AVCs* made by that individual to the *scheme* in that year to exceed, when aggregated with all other contributions by the *member* under the *scheme* during that year, the *salary* of that individual for the *reference period* for that year, or the annual allowance specified for that year by or under Section 228 of the Finance Act 2004, if between receipt by the *trustee company* of the *member's* proposal to pay that *AVC* (or the beginning of that *reference period*, if later) and the end of that *reference period*, the *member's* employment, *membership* and *salary* remained unaltered, or changed only to such extent as could reasonably be foreseen by the *trustee company* at the time it received that proposal (or at the beginning of that *reference period*, if later).

7.6 Salary reduction

- (a) Subject to the following provisions of this rule, any *active member* who on any day during the ten years immediately preceding *normal retirement age* has a *salary* lower than that which applied to that person's *eligible employment* on the immediately preceding day of *active membership* may within three months of such reduction coming into effect (or such longer period as the *trustee*

company may allow in any particular case) elect in writing to the *employer* and to the *trustee company* to be treated for all purposes of the *scheme*, but not for the purposes of rule 7.5, as retaining that higher *salary*, until such date as it falls below the *salary* which that *member* would have had apart from that election or until such earlier date as that election is revoked by the *member* in writing.

- (b) While a *member's* election under paragraph (a) above has effect, that *member* shall not be treated as making contributions under rule 7.1 or rule 7.2 but shall, subject to rule 7.10, make contributions under this rule of the same proportion of the retained *salary* as apart from the election that *member* would have been liable under either of those rules or under rule 7.2A where it applies to pay of the *salary* which would in that case have applied.
- (c) An election made by a *member* under paragraph (a) above shall take effect only with the consent of the *trustee company* and of the *institution* which was the *member's employer* at the date from which the election is to take effect:
 - (i) if there is a break of more than eight months in the continuity of that *member's membership* between the employments to which the higher and lower rates of *salary* relate; or
 - (ii) if the higher *salary* related, at least in part, to employment by an *institution* which was not that *member's employer* at the date from which the election is to take effect, unless that *employer* was then the successor to an undertaking of the former *institution* or of an *associated employer* thereof or itself an *associated employer* of that *institution*, or unless at that date that *employer* had *control*, or was under the *control*, of that *institution*.
- (d) An election made by a *member* under paragraph (a) above shall cease to have effect if that *member* enters the *eligible employment* of an *institution* which was not that *member's employer* at the date from which the election first took effect, unless either:
 - (i) that *institution* and the *trustee company* give their consent to that election remaining in effect; or
 - (ii) that *institution* is an *associated employer* of one which was an *employer* of the *member* at the date from which the election first took effect, or which has *control* over, or is under the *control* or a successor of, any such *employer*; or
 - (iii) sub-paragraph (ii) above would apply if the references therein to an *employer* of the *member* at the date from which the election first took effect were to an *institution* which previously gave its consent under

sub-paragraph (i) above in relation to the same election or to an *institution* in respect of *eligible employment* by whom the *member* has previously made contributions under this rule in pursuance of the same election by virtue of sub-paragraph (ii) or of this sub-paragraph.

- (e) An election made under rule 7.6 before 22nd June 1999 shall be treated for the purposes of paragraph (b) of this rule, but not for those of paragraphs (c) and (d), as made under paragraph (a) above; sub-paragraph (i) of paragraph (c) above shall not apply to a break in the continuity of a *member's membership* which shall have begun before that date; and any *member* who immediately before that date was entitled to make an election under rule 7.6 as it then had effect may do so under paragraph (a) as if no time limit was prescribed by that paragraph but otherwise subject to the remaining provisions of this rule.
- (f) For the purposes of this rule "*salary*" shall exclude that of a *member* to whom rule 4.2A applies for the time being insofar as it is that for any *eligible employment* as a *variable time employee* or to which that rule applies by virtue of paragraph (b) thereof, and the *salary* for any other *eligible employment* shall be determined as at any date for the purposes of applying the formula in rule 4.2A(e) as if no election had been in effect under this rule at that date.

7.7 Duration of contributions

- (a) Subject to rule 7.10, on completion of forty years' *pensionable service*, or, in the case of an *MHO* or a *special class member* who in either case is over age 55, forty five years' *pensionable service*, (excluding in each case any *pensionable service* credited under rule 5.1(e) which is derived from an agreement or election that first took effect after 5th April 2006) a *member* shall, subject to paragraph (aa) cease making contributions to the *fund* and shall cease to be in *service*, unless the *member* has duly opted before 6th April 2006, or elects after 5th April 2006, with the consent of the *trustee company*, to continue to pay contributions under either or both of rule 7.3 or 7.4; provided always that:
 - (i) where aggregate *pensionable service* derived from *service* in any year exceeds 365 days or the total number of days in that year on which that *member* was (or is deemed to have been) in *eligible employment* in one or more offices, posts or employments, the excess shall not be reckoned in determining whether the period of forty years (or forty five years, as the case may be) referred to above has been completed;
 - (ii) additional *pensionable service* credited to an *MHO* by reference to duration of employment as an *MHO* is for the purpose of this paragraph to be treated as not derived from *service*; and

- (iii) this paragraph (a) shall apply after 5th April 2006 to a *member* who completed forty years' (or in the case of an *MHO* or a *special class member* forty five years') *pensionable service* prior to 6th April 2006 and either (A) ceased to pay contributions before 6th April 2006 but remained a *member* without any break in *membership* and without attaining age 65, or (B) ceased *eligible employment* and *active membership* before 6th April 2006, but did not become a *pensioner member* otherwise than under rule 10.4(d) or section 12, and re-entered *eligible employment* and *active membership* before 6th April 2006 and before attaining age 60.

- (aa) A *member* to whom paragraph (a) applies may elect, by two months' notice in writing to the *trustee company* (or such lesser period of notice as the *trustee company* may in its discretion agree to accept), to recommence or continue (as appropriate) to pay contributions under any of rules 7.1, 7.2 or 7.6, until the earliest of:
 - (i) the *member's normal retirement age*;
 - (ii) the *member's earlier retirement* or cessation of *service*; and
 - (iii) the expiry of two months' notice in writing by the *member* to the *trustee company* (or such lesser period of notice as the *trustee company* may in its discretion agree to accept) of election to cease payment of contributions under this paragraph,

and such a *member* who has entered into a *salary sacrifice arrangement* may in like manner make an election that liability to pay such contributions be treated for the purposes of this paragraph (aa) as if it would have been incurred by that *member* (or would have ceased) but for that entry into that *salary sacrifice arrangement*, provided that once a *member* has made an election to cease such contributions that *member* shall not be entitled to make a subsequent election to recommence payment of such contributions. Benefits in respect of a *member* to whom this paragraph applies but in respect of whom an *employer* does not elect to contribute under rule 8.4(a) shall be calculated in accordance with rule 5.14. If this paragraph (aa) would not otherwise do so, it shall apply to a *member* who completed forty years' (or in the case of an *MHO* or a *special class member* forty five years') *pensionable service* prior to 6th April 2006 and either (A) ceased to pay contributions before 6th April 2006 but has remained a *member* without any break in *membership* and without attaining *normal retirement age*, or (B) ceased *eligible employment* and *active membership* before 6th April 2006, but did not become a *pensioner member* otherwise than under rule 10.4(d) or section 12, and has again been an *active member* since before 6th April 2006 and before attaining age 60. Nothing in this paragraph (aa) shall create any, or any additional, obligation on a *member* to contribute to the *scheme*.

- (ab) A *member* shall cease to be in the *service* for the purposes of any arrangement under the *scheme* when a payment is made to that person under rule 16.3(a) in respect of that arrangement, and contributions shall not be made by that person in respect of that arrangement, for any period thereafter, even if notice of cessation of *AVCs* may not have been given as required under rule 7.4(e).

- (b) A *member* who was in *service* immediately before attaining *normal retirement age* may either:-
 - (i) cease to pay contributions at that age; or
 - (ii) elect to continue to pay contributions under any of rules 7.1, 7.2 and 7.6 except that the *member's* contributions must cease on the earlier of *retirement*, and cessation of *service*; or
 - (iii) if a *salary sacrifice arrangement* applied to that *member* at that time, elect whether to be treated as having fallen, apart from that arrangement, within sub-paragraph (i) of this paragraph or within sub-paragraph (ii) hereof.

Having ceased to pay contributions at *normal retirement age* before the date of the Thirteenth Supplemental Amending Deed, a *member* may elect, within the three months beginning with that date, or such longer period as the *trustee company* may allow, to resume contributions under sub-paragraph (ii) above until the earlier of *retirement* and cessation of *service*, or, on entry into a *salary sacrifice arrangement* to which rule 7.10 applies, to be treated as if he or she had so resumed contributions.

- (c) Where a *member* elects to continue to pay contributions after *normal retirement age* or to be treated as if such payment would have been made but for entry into a *salary sacrifice arrangement*, but the *employer* does not elect to pay corresponding contributions after *normal retirement age* under rule 8.4(a), such pension and lump sum shall be paid in respect of those contributions as the *trustee company*, acting on *actuarial advice*, shall decide.

- (d) In determining the amount of *supplementary service* to be credited to a *member* it shall be assumed that contributions would but for the cessation of the *member's service* have continued to *normal retirement age* under rule 7.1 (or, as the case may be, rule 7.2 or rule 7.6), or would have done so but for the *member's* entry into a *salary sacrifice arrangement*, but that no contributions would have been made under either of rules 7.3 and 8.2, other than those previously agreed that no *pensionable service* would have been credited in pursuance of an election under rule 7.4(ff), and that no transfer payment would have been received in respect of that *member*, in any of the above cases, after the actual *relevant date*. Where a *member* has died in *service*, and contributions were payable by that *member* under rule 7.2A immediately before the *relevant date*, or would have been so but for the *member's* entry

into a *salary sacrifice arrangement*, it shall be assumed for the purposes of calculating the benefits that from the first date in respect of which benefits are actually to become payable in respect of that *member* contributions would have been paid by that *member* under rule 7.1 and continued to be paid to *normal retirement age*.

7.8 Deduction of contributions

Contributions payable under the preceding provisions of this section shall be deducted by the *employer* from *salary* becoming payable to the *member* and shall then become a debt due by the *employer* to the *trustee company*: they shall be paid by the *employer* in accordance with rule 8.5.

7.9 Additional contributions to meet tax liability

- (a) Subject to the following provisions of this rule 7.9, the *trustee company* may require a *member* to pay such additional contributions to the *fund* as the *trustee company* may in its absolute discretion determine where a *benefit crystallisation event* has occurred in relation to the *member*, in order to discharge the liability of the *trustee company* for the *lifetime allowance charge* in relation to the benefits payable in respect of that *member* which will not in the opinion of the *trustee company* be discharged by the application of any or all of rules 10.8A, 10.9, 18.3 and 18.4.
- (b) A *member* to whom 7.9.1 above applies may agree with the *member's employer*, subject to the consent of the *Funding Council*, that the *employer* shall pay some or all of the additional contributions otherwise payable by the *member* under 7.9.1 above in place of the *member*.
- (c) In the event that the additional contributions paid under 7.9.1 and 7.9.2 above exceed the amount which is required to discharge the liability of the *trustee company* for the *lifetime allowance charge* in relation to the benefits payable in respect of the *member* apart from this rule 7.9, additional benefits that the *actuary* has certified to be of equal value to that excess shall be payable under the *scheme*, subject to the powers of the *trustee company* under rules 18.3 and 18.4, in such form as the *member* shall have specified in writing to the *trustee company* or, if no such specification has been made within one month after the *member* has been invited by the *trustee company* to make one, to the *member* in such form as the *trustee company* may in its absolute discretion then decide.

7.10 Salary sacrifice for pension contributions

Notwithstanding any other provision of this section, where a *member* has entered into a *salary sacrifice arrangement* under which the *employer* has agreed to pay additional contributions to the *scheme* under rule 8.4(c), the *member* shall not be required to pay any contributions to the *scheme* under any of rules 7.1, 7.2, 7.2A, 7.6 or 7.7 above.

Section 8 - Employers' Contributions

8.1 Ordinary contributions

Each *employer* shall contribute to the *fund* during the continuance of the *scheme* the amounts determined by the *trustee company*, acting on *actuarial advice*, to be required to satisfy the rights of *members* to benefit under the *scheme*, and such additional amounts on account of late payment as are referred to in rule 8.5.

8.2 Additional special contributions

An *employer* may at any time, and from time to time, pay any single or periodic sum or sums by way of special contribution subject to the following requirements of this rule:-

- (a) on paying such sum or sums the *employer* shall state the purpose for which such payment is being made but so that such purpose shall not be inconsistent with the purpose of the *scheme* in providing *relevant benefits*;
- (b) such payment may be either in augmentation of the *fund* for the general purposes of the *scheme* or for a particular purpose specified by the *employer*;
- (c) where an *employer* specifies that the purpose of any contributions under this rule is to provide *relevant benefits* for or in respect of an individual, the consent of the *Funding Council* is required to the contributions;
- (d) the *trustee company*, acting on *actuarial advice*, shall determine the amount of benefit provided to or in respect of an individual's employment by such contributions, but that individual shall be afforded the opportunity to specify by written notice to the *trustee company* a maximum for any lump sum so provided, and for the initial rate of any pension so provided, and that individual shall not acquire entitlement to actual receipt of any such benefit unless he or she has been afforded the opportunity to give such a notice and shall not acquire such entitlement in respect of benefit in excess of any maximum reasonably so specified (except in so far as the excess arises from an increase in benefit under section 15 or from *preserved benefits* having been *indexed*);
- (e) the *trustee company* may decline to accept a contribution under this rule if to do so would not be consistent with the efficient administration of the *scheme*; and
- (f) the *employer* of a *member* to whom rule 10.5(d) applies may make such contributions to negate the effect of that rule as are determined by the *trustee company*, acting on *actuarial advice*, to be appropriate.

8.3 Contributions for members temporarily absent

- (a) The *employer* of a *member* to whom rule 5.10 applies shall make the following contributions so long as the *pensionable service* of the *member* has not been suspended:-
 - (i) contributions at the rate from time to time specified under rule 8.1 based on the *salary* of the *member* determined as if the *member* had continued working in the same post as that which the *member* held immediately prior to the commencement of his or her *maternity, paternity or adoption leave*;
 - (ii) the amount which would have been payable by the *member* had the *member* been contributing under rule 7.1 or rule 7.2 on the *salary* referred to in sub-paragraph (i) above less the amount (if any) payable by the *member* under rule 5.10(c) above; and
 - (iii) any amount required by the *trustee company* under rule 5.10(k).
- (b) The *employer* shall also make contributions consistent with the provisions of paragraph (a) above in respect of any *member* who is on paid family leave pursuant to paragraph 6 of Schedule 5 to the Social Security Act 1989.
- (c) Subject to paragraph (b) the *employer* of a *member* to whom rule 5.11(d) or rule 5.12(c) or (e) applies shall make contributions in accordance with the arrangements made pursuant thereto.
- (d) The *employer* of a *member* who elects to make contributions under rule 5.10(d) or 5.11(c) shall make contributions to the *fund* under rule 8.1 appropriate to the *salary* of that *member*.
- (e) Notwithstanding the preceding provisions of this rule, no contributions shall be made in respect of any arrangement under the *scheme* for a period after a payment has been made in respect of that arrangement to the relevant *member* under rule 16.3(a).

8.4 Contributions in other cases

- (a) An *employer* may contribute to the *fund* in respect of a *member* who is for the time being paying contributions under paragraph (aa) or (b) of rule 7.7.
- (b) An *employer* of a *member* who has elected to pay contributions under rule 7.6 on a former higher *salary* shall pay contributions determined by reference to that same higher *salary* for as long as that election has effect and contributions

are still payable by the *employer* in respect of that *member* apart from this paragraph.

- (c) An *employer* which has entered into a *salary sacrifice arrangement* with a *member*, under which the *employer* has agreed with the *member* to pay additional contributions to the *scheme*, shall pay additional contributions to the *scheme* of amounts which are equal to the contributions which the *member* would have been liable to pay under whichever of any one or more of rules 7.1, 7.2, 7.2A, 7.6 or 7.7 is or are applicable, had the *member* not entered into the *salary sacrifice arrangement*. An *employer* which has entered into a *salary sacrifice arrangement*, under which the *employer* has agreed with one or more *members* to pay additional contributions to the *scheme*, shall, in addition to those contributions, pay such amounts to the *scheme* as may be payable by virtue of a supplementary deed of accession in respect of the *salary sacrifice arrangement* or as may be determined by the *trustee company* to represent additional costs arising from the administration of the procedures specified in rule 6.1(h).
- (d) In the event that an *institution* becomes a *retiring institution* under rule 22.1 in circumstances where no debt is immediately payable by that *institution* under Section 75 or 75A of the Pensions Act and/or the Occupational Pension Schemes (Employer Debt) Regulations 2005 (as amended), that *institution* shall make such additional immediate contributions to the *scheme* as the *trustee company*, acting on *actuarial advice*, shall determine to be required to meet the costs and expenses to the *fund* of that *institution's* withdrawal.

8.5 Payment of contributions

- (a) The *trustee company* shall, as required by or under Section 58 of the Pensions Act 1995, set the dates on which the contributions which it is, or may become, entitled under the *rules* to receive are to be paid to it by *institutions* and shall communicate those dates to *institutions*. Any date so set for the payment of any contribution deducted by the *employer* from a *member's* remuneration shall be not later than the expiry of such period as may be prescribed for that payment under section 49(8) of the Pensions Act 1995. Contributions under rule 8.1 and contributions deducted under section 7 shall be payable on a monthly basis and the dates set under this paragraph shall be set accordingly. Where an *institution* is liable to pay to the *trustee company* any amount deducted from a *member's salary* by way of contribution under the *rules*, any amount paid to the *trustee company* by that *institution* shall be applied in satisfaction of that liability before it is applied to any other purpose.
- (b) Without prejudice to the provisions of paragraph (a) above, the *trustee company* may specify dates in relation to the contributions which it is, or may become, entitled under the *rules* to receive (which dates may be the same as, or either earlier or later than, those set under paragraph (a) above), with effect from which interest will be chargeable on the amount of such of those

contributions as have then become payable by an *institution* but have not then been received by the *trustee company*, at such rates as the *trustee company* on *actuarial advice* decide to be reasonable, and the *trustee company* may then charge interest accordingly and may in addition levy an administration charge on any *institution* by which interest has fallen to be paid under this paragraph. Save in respect of any contribution or payment which falls due from an *institution* under section 22 or under Section 75 of the Pensions Act 1995, no date shall be set under this paragraph in relation to a contribution which is, in the case of a contribution payable monthly, before the first day of the month following that in respect of which it is to be paid or, in the case of any other contribution, before 30 days shall have elapsed from the date on which the obligation to make it arose.

- (c) Without prejudice to rule 22.1(a), the *trustee company* shall have power to determine that an *institution* shall cease to participate in the *scheme* if it shall in the opinion of the *trustee company* persistently have failed to pay contributions in accordance with paragraph (a) of this rule, and if the *trustee company* so determines, the *institution* shall become a *retiring institution* to which rule 22.1 applies with effect from such date and subject to such terms and modifications as the *trustee company* may decide.

8.6 UUK to be institutions' representative for consultation on scheme funding

UUK is the person nominated by the *rules* to act as the representative of the *institutions* for the purposes of the consultation required by the *trustee company* with the *institutions* under Section 229 of the Pensions Act 2004 as modified by paragraphs 2 and 9 of Schedule 2 to the Occupational Pension Schemes (Scheme Funding) Regulations 2005.

Section 9 - Benefits on Cessation of Service

9.1 Application of this section

This section applies to a *former member* whose *service* has ceased (otherwise than by death) before attaining *normal retirement age*, and to whom an immediate pension does not then become payable under the *rules*.

9.2 Refund of contributions

- (a) This rule applies to a *former member* whose *service* has ceased but who does not then have *qualifying service*.
- (b) A *former member* to whom this rule applies shall be entitled to receive a refund of the *member's* contributions provided that any refund shall be subject to the deductions referred to in rule 18.3 and rule 19.10(b), provided that a *former member* shall not have the right to a return of contributions to a *transfer scheme* if that would breach an undertaking duly given by the *trustee company* to the trustees or administrator of that scheme when those contributions were transferred into the *fund*.
- (c) A *former member* entitled to a refund of contributions shall also be entitled to receive *compound interest* at the rate of 4% per annum (or such other rate as the *trustee company* may from time to time in its absolute discretion decide) on the amount of those contributions and no interest shall be allowed on intermediate payments of contributions.
- (d) Notwithstanding the provisions of paragraph (b) of this rule a *former member* to whom this rule applies may elect not to take a refund of contributions in which case the amounts referred to in paragraphs (b) and (c) of this rule shall (subject to paragraph (e) below) be applied in the provision of a pension and lump sum for the *former member* on attainment of *normal retirement age* and corresponding payments on death for a *former member's* spouse, or *civil partner dependants* and *eligible children* all such benefits to be of such amounts as may be determined by the *trustee company*, acting on *actuarial advice*.
- (e) A *former member* who has made an election under paragraph (d) above may opt to have a transfer payment made to a *transfer arrangement* as if rule 9.8 and Chapter IV of Part IV of the *Pension Schemes Act* were applicable to such *former member* and the transfer payment shall be calculated by reference to *pensionable service* and *pensionable salary* at the date of cessation of *service*.

- (f) Any contribution made by an *employer* under rule 8.4(c) in respect of a *member* who has become a *former member* to whom this rule applies shall be treated as if it had been made by that individual and as if that individual had made such an election as is mentioned in paragraph (d) above, but shall be so treated only for the purposes of that paragraph and of paragraphs (b) and (c) above in so far as they fall to be applied by that paragraph (d).

9.3 Preserved benefits

A *member* who on cessation of *service* has *qualifying service* shall become entitled to *indexed preserved benefits* of:-

- (a) a pension for life at the annual rate of 1/80th; and
- (b) a lump sum of 3/80ths;

of *pensionable salary* for each year of *pensionable service* accrued up to the date of cessation of *service* but any benefits under this rule shall be reduced by the amount of any corresponding benefit which is payable under section 10 in respect of the same *pensionable service*.

9.4 Additional benefits and other credits

Preserved benefits shall include all additional benefits to which the *member* would be entitled as *long service benefits* including any additional benefit which represents a transfer of accrued rights from another scheme provided that in the case of:-

- (a) an additional benefit for which the *member* is to contribute the whole or a part of the cost, where such whole or part has not been fully contributed by the time of cessation of *service*; and
- (b) an additional benefit to which the *member* has not contributed and which is not granted under the provisions of section 23;

preserved benefits shall include only such proportion of the additional benefit as the period of *service* since the date on which the benefit commenced to accrue to the date of cessation of *service* bears to the period from the earlier date until *normal retirement age*, but the *trustee company* may within three months of the cessation of *service* accept a payment, calculated on *actuarial advice* from the *member* in settlement of any contributions outstanding under paragraph (a) above.

9.5 Date of payment of preserved benefits

Preserved benefits shall be payable at the same time and upon the happening of the same events as the corresponding *long service benefits* would be payable but:-

- (a) if a *former member* applies to the *trustee company*, in a form acceptable to the *trustee company*, for benefits under this rule 9.5(a) (or if the *trustee company* determines that the requirements of regulation 8(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 are satisfied) and the *trustee company* determines that the *former member* who has become entitled to *preserved benefits* is suffering from *total incapacity*, it may bring those *preserved benefits* into payment before *normal retirement age* without any adjustment for early payment, but the *trustee company* may discontinue a pension so brought into payment for any period up to *normal retirement age* if it determines that the *pensioner member* is no longer suffering from *total incapacity*, and may reinstate it if it determines that *total incapacity* has returned, provided that in any case paragraphs (v) and (w) of rule 10.4 shall apply for the purposes of this paragraph as if any reference there to that rule were to this paragraph;
- (b) in the case of a *former member* who left *service* over the age of 50 but did not then become entitled to a pension under rule 10.5(b)(i) and who subsequently ceases to be in employment by reason of *redundancy* the *trustee company* shall have discretion to bring *preserved benefits* into payment immediately without any adjustment for early payment provided that no such benefits may be brought into payment on or after 6th April 2010 unless the *former member* has attained the age of 55 or a *protected pension age*, provided that, if those *preserved benefits* include any that are attributable to *pensionable service* credited to the *former member* under rule 5.3 or 5.5, the provisions of rule 10.10 shall apply to those *preserved benefits* as if they were benefits under section 10, in so far as they would have applied to the pension under rule 10.5(b)(i), had it come into payment on the relevant cessation of *service*;
- (c) if a *deferred pensioner*, being a person who was entitled to an immediate pension under rule 10.5 but elected not to receive it, requests the *trustee company* in writing to bring the *preserved benefits* into payment, then the *trustee company* shall bring those *preserved benefits* into payment as soon as practicable following receipt of the *deferred pensioner's* request and without any adjustment for early payment except any that might have been required under rule 10.5(d) or rule 10.10 if the *deferred pensioner* had commenced to draw such immediate pension at the date of leaving provided that the *trustee company* shall not accede on or after 6th April 2010 to any request made under this paragraph unless the *deferred pensioner* has attained the age of 55 or a *protected pension age*, or was entitled to immediate payment of benefits on request under this paragraph at 16th March 2006; and

- (d) where a *former member* to whom paragraph (c) does not apply is aged 60 or over, that *member* will have the right to require the *trustee company* to bring the *preserved benefits* into payment on a date specified by the *member*; and where such a *former member* is aged 50 but under 60 and requests the *trustee company* to bring the *preserved benefits* into payment on a date specified by that *former member*, then the *trustee company* will have a discretion to do so, unless the date so specified is after 5th April 2010 and at a time when the *former member* will have attained neither the age of 55 nor, if there is one, the *protected pension age*; in each case the terms on which the *preserved benefits* may be brought into payment shall be such as the *trustee company*, acting on *actuarial advice* (but without prejudice to its discretion under paragraphs (a) and (b) above), shall decide, provided:-
- (i) that the *trustee company* is reasonably satisfied on *actuarial advice* that any such benefits which are brought into payment otherwise than at the *former member's* normal pension age (within the meaning of the *Pension Schemes Act*) are at least equal in the value to the *preserved benefits* which could have been brought into payment on the *former member's* attainment of that age had none been paid earlier, and
- (ii) that the *preserved benefits* shall not be brought into payment early if the result would be that the pension payable to the *member* would be reduced below the *guaranteed minimum pension*.

9.6 Conversion of deferred lump sum into pension and of deferred pension into deferred lump sum and allocation of preserved benefits

- (a) Either of the options for which paragraphs (b) and (c) of rule 10.8 provide may be exercised by a person entitled under this section to *preserved benefits* as if any reference in that rule to a *member* or to that *member's retirement* included a reference to any *former member* or, as the case might be, to the bringing into payment under rule 9.5 of that person's benefits. A *former member* may make an election under rule 10.9, and the provisions of that rule shall apply accordingly.
- (b) The provisions of section 13 (*allocation*) shall apply to a *former member* entitled to benefits under this section.

9.7 Death with entitlement to preserved benefits

On the death of a *deferred pensioner*, unless benefits become payable in respect of that person under section 11:-

- (a) if the *deferred pensioner* was entitled to *preserved benefits* there shall be raised out of the *fund* and held by the *trustee company*, upon the *discretionary trusts*, a sum equal to the lump sum referred to in rule 9.3(b) *indexed*;

- (b)
- (i) during the first three months following the death of a *deferred pensioner* entitled to *preserved benefits* who has five or more years' *qualifying service*, the surviving spouse or *civil partner* shall be entitled to an *indexed* pension of 1/80th of the *deferred pensioner's pensionable salary* for each year of *pensionable service*; and
 - (ii) from the date of death or from the later expiration of the period during which a pension is payable under sub-paragraph (i) above, the surviving spouse or *civil partner* of a *deferred pensioner* entitled to *preserved benefits* shall become entitled to an *indexed* pension of 1/160th of *pensionable salary* for each year of *pensionable service*;
- (c) the benefits payable on the death of a *deferred pensioner* entitled to benefit under rule 9.2(d) shall be of such amount as the *trustee company* acting on *actuarial advice* shall have specified;
- (d) where a *deferred pensioner* entitled to *preserved benefits* was not married at the time of death and no pension is payable to a *civil partner* of the *deferred member*, the *trustee company* shall have a discretion to pay to a *dependant* of the deceased *deferred pensioner* (other than an *eligible child*) by way of pension, for such period as it shall in its absolute discretion determine, an amount not exceeding the amount of pension which would have been payable for that period under paragraph (b) in respect of that *deferred pensioner* if there had been a surviving spouse or *civil partner* of that person and in exercising the discretion vested in it by this paragraph, the *trustee company* shall have regard to, but shall not be bound by, any wishes of the *deferred pensioner* expressed in writing;
- (e) annuities shall become payable to or for the benefit of the *eligible children* of a *deferred pensioner* entitled to *preserved benefits* in accordance with the following sub-paragraphs:-
- (i) there shall be payable by way of annuity benefit 3/640ths of the *deferred pensioner's pensionable salary* for each year of *pensionable service* multiplied by the number of *eligible children* for the time being not exceeding two;
 - (ii) if there is no pension payable for the time being to the surviving spouse or *civil partner* or *dependant* of the *deferred pensioner* under either of the preceding paragraphs (b) and (d), for the fraction of "3/640ths" in sub-paragraph (i) above there shall be substituted the fraction of "1/160th";

- (iii) the annuity benefit payable under this rule may be split into a number of separate annuity benefits and the annuity benefit or any such separate annuity benefits may be paid at the discretion of the *trustee company* to any person or persons approved of by it who undertakes to apply such annuity benefit or benefits for the maintenance or benefit of all or any one or more of the *eligible children* of the *deferred pensioner*; and in making such payment the *trustee company* shall not be under any obligation to see to the application of any such annuity or annuities;
- (iv) where a surviving spouse or *civil partner* continues to receive the *guaranteed minimum pension* pursuant to rule 19.4 but no other benefits are payable to such spouse or *civil partner* or to any *dependant* under either of paragraphs (b) and (d) of this rule, the surviving spouse or *civil partner* concerned shall for the purposes of sub-paragraph (ii) of this paragraph be deemed to have ceased to benefit; provided that the actual amount of *guaranteed minimum pension* receivable pursuant to rule 19.4 shall be deducted from the higher annuity payable under sub-paragraph (ii) of this paragraph, but not so as to bring the annuity payable to the *eligible child* or *eligible children* below the annuity which would otherwise have been payable under sub-paragraph (i) of this paragraph;
- (v) where an *eligible child* who has been in receipt of an annuity is an *eligible child* by virtue of some incapacity, but becomes able to carry on some remunerative employment so as to be self-supporting, and subsequently becomes an *eligible child* again by virtue of the same incapacity, the period during which such *eligible child* was self-supporting shall be treated as a period during which the annuity applicable to the *eligible child* was suspended; and
- (vi) that part of the annuities payable under this paragraph equal to, in the case of an annuity payable under sub-paragraph (i), 1/640th and, in the case of an annuity payable under sub-paragraph (ii), 1/480th of the *deferred pensioner's pensionable salary* for each year of *pensionable service* shall be debited to and a charge on the *supplementary section*; and
- (f) any pension payable to a surviving spouse or *civil partner* under this rule shall continue until the date of the death of the surviving spouse, or *civil partner* provided that the *trustee company* may, in its absolute discretion, revive the whole or any part of a pension which ceases or has ceased to be payable under the provisions of this paragraph as it applied prior to 1st January 1997.
- (g) in relation to any *deferred pensioner* for whom the *relevant date* was before 22 June 1999, the following provisions shall override those of the foregoing paragraphs of this rule where there is any *eligible child* of that *deferred*

pensioner who qualifies as such by virtue only of being accepted as a member of the family by that person:

- (i) that individual shall not be treated as an *eligible child* for the purposes of paragraph (d) of this rule; and
 - (ii) that individual shall not be treated for the purposes of paragraph (e) of this rule as an *eligible child* at any time while there is more than one *eligible child* of that *deferred pensioner* who qualifies as such on grounds other than such acceptance as a member of the family; and
 - (iii) while there is one, but only one, *eligible child* of that *deferred pensioner* who qualifies as such on those grounds, that individual shall be eligible for benefit under the provisions of paragraph (e) of this rule subject to the right of that other *eligible child* to such benefit as if he or she were the only one
- (h) An individual shall be taken for the purposes of this rule as it applies to any arrangement in respect of that individual under the *scheme*, to be a *deferred pensioner* if a payment has been made under rule 16.3(a) in respect of that arrangement, unless that individual is within the definition of a *pensioner member* for the purposes of section 11.

9.8 Statutory alternatives to preserved benefits

Where the *pensionable service* of a *member* ceases one year or more before *normal retirement age*, and on the date when it ceases the *member* becomes entitled to *preserved benefits* under this section, that *deferred pensioner* may in lieu of *preserved benefits* opt to apply in accordance with Chapter IV of Part IV of the *Pension Schemes Act* for the guaranteed cash equivalent of the benefits payable under this section at the date of cessation of *service*, or at such later date as an application is made pursuant to Chapter IV of Part IV, to be applied to the provision of alternatives to *preserved benefits* in the form of a transfer to a *transfer arrangement*, and on making such application the statutory requirements of Chapter IV of Part IV shall apply but without prejudice to the provision of any greater benefits in accordance with rule 9.9.

9.9 Transfers as an alternative to preserved benefits

Where a *deferred pensioner* elects for a guaranteed cash equivalent to be paid pursuant to rule 9.8 and for such amount to be transferred to a *transfer arrangement*, then:-

- (a) where the *trustee company* has entered into any special reciprocal arrangements pursuant to rule 5.3 or 5.5(d) those arrangements shall apply to

any transfer to another scheme which participates in those arrangements and the amount to be transferred shall be calculated in accordance with them;

- (b) where a *member* has withdrawn from the *scheme* under rule 4.9 the *trustee company* may only be required to make a transfer to a *transfer arrangement* in respect of that part of the *deferred pensioner's* accrued benefits which is referable to *pensionable service* after 5th April 1988, but the *trustee company* shall have discretion to make a transfer in respect of any greater part (or all) of that person's accrued benefits;
- (c) such a transfer payment shall only be made to the trustees or administrator of a *transfer arrangement*;
- (d) if a payment is to be made to a *transfer scheme* the *trustee company* shall certify to the trustees or administrator of any such *transfer scheme* the amount included in the transfer payment which represents employees' contributions and interest and may require the trustees or administrator of such *transfer scheme* to undertake to treat only such amounts as employees' contributions in any such *transfer scheme*;
- (e) if the *trustee company* retains the liability for payment of equivalent pension benefits under Part III of the National Insurance Act 1965 (including any corresponding Northern Ireland legislation and previous corresponding enactments) because the trustees or administrator of a *transfer arrangement* do not undertake liability for payment of them, the amount required to secure such equivalent pension benefits in the *scheme* (to be determined by the *trustee company* on *actuarial advice*) shall be retained out of any transfer payment which would have otherwise been due;
- (f) where a *deferred pensioner* has entered the service of the European Communities and becomes entitled to participate in the pension scheme for staff of the European Communities such transfer may be made on terms that if the *deferred pensioner* should subsequently leave the service of the European Communities without qualifying for a preserved pension from the pension scheme for the staff of the European Communities the *trustee company* shall be required and entitled to receive from the administrator of the pension scheme for staff of the European Communities the amount of the transfer payment made to that scheme by the *trustee company* together with accrued interest thereon, and on receipt of such transfer payment the *former member* shall be treated as a *deferred pensioner* who left *service* on the date when such *deferred pensioner* ceased to be in the employment of the *employer* and then became entitled to *preserved benefits* under this section.
- (g) where the *deferred pensioner* has been subject to a *pension debit* and that person's rights under the *scheme* have been affected thereby, the *trustee company* shall give full details of that *pension debit*, together with a lump sum

certificate specifying any limit to the lump sum that may be paid under the *rules* to the trustees or administrator of the *transfer arrangement*; and

- (h) notwithstanding the provisions of rule 9.8 and the foregoing provisions of this rule, the *trustee company* may decline to make a transfer payment in respect of a *deferred pensioner* who has *pension credit rights* if no notice has been given under either or both of rule 9A.7 and Section 101F of the *Pension Schemes Act* to use an amount equal to the cash equivalent of that person's *pension credit* benefit for a purpose authorised under that enactment; except that when so required the *trustee company* shall in any case make such a payment to the trustees or administrator of a *transfer arrangement* of which the deferred pensioner is an active member within the meaning of Part I of the Pensions Act 1995 if that *transfer arrangement* is an unfunded public service pension scheme to which paragraph 2 of Schedule 5 to the *Welfare Reform Act* applies.

9.10 Trustee company's right to buy-out preserved benefits

Where benefits are preserved in the *scheme*, the *trustee company* shall nevertheless have the right to purchase a policy which satisfies the requirements of Section 19 of the *Pension Schemes Act* in order to discharge its liability in whole or in part to, and in respect of, the *deferred pensioner*, with or without the consent of that *deferred pensioner*, in accordance with and subject to the provisions of Regulation 9 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, where applicable, and any other applicable law from time to time in force.

The *trustee company* shall not purchase any policy under this rule unless it is reasonably satisfied on *actuarial advice* that the payment it makes to the *insurance company* in respect of that policy is at least equal in value to the *preserved benefits* in respect of which the liability of the *trustee company* is to be discharged accrued to or in respect of the *deferred pensioner* under the *scheme*.

9.11 Augmentation of preserved benefits

If on a *member's* ceasing to be in *eligible employment*, any of the benefits payable or prospectively payable from the *fund* in respect of that *member* under this section have fallen to be reduced by the operation of section 17, then, subject to rule 17.4 and to the limits imposed by section 17 by reference to *aggregate retirement benefit*, the *trustee company* shall, so far as practicable, augment by the amount it determines on *actuarial advice* to be equivalent to that reduction such other of those benefits as it shall select. In selecting benefits to be augmented under this rule by reason of a restriction of those which have become payable under rule 9.7, the *trustee company* shall have regard to any written expression of wish by the *deferred pensioner* or by that person's personal representatives but shall not be bound thereby.

Section 9A - Benefits from Pension Sharing on Divorce, Nullity of Marriage or Civil Partnership or Dissolution of Civil Partnership

9A.1 Application of this section

- (a) This section applies where a person has acquired entitlement to a *pension credit* as against the *trustee company* or has sought to acquire *pension credit rights* by arranging for a transfer payment to the *trustee company*.
- (b) It is hereby provided that where the *trustee company* shall have discharged its liability in respect of a *pension credit* by conferring *pension credit rights*, or has conferred *pension credit rights* in pursuance of a transfer payment which it has received, *pension credit benefit* for any individual entitled to such rights shall be treated as provided separately from any benefits provided under the *scheme* for the same individual as a *member*, *deferred pensioner* or *pensioner member* or as the surviving spouse or *civil partner*, *dependant*, *eligible child* or *beneficiary* of any person.

9A.2 Discharge of liability for pension credits

- (a) The *trustee company* shall discharge its liability in respect of an *ex-spouse's pension credit* in accordance with the following provisions of this rule.
- (b) The *trustee company* shall by notice in writing offer to transfer the *pension credit* to a *transfer arrangement* of the *ex-spouse's* choice and in default of any such choice, to a *transfer arrangement* of its own choosing.
- (c) The *trustee company* shall by notice in writing offer the *ex-spouse* the opportunity to consent to the *pension credit* being converted into *pension credit rights* after receipt of its notice under paragraph (b) above.
- (d) The *trustee company* shall by notice in writing offer the *ex-spouse* the opportunity to elect that a guarantee period should apply to any pension payable to that person under rule 9A.3 or rule 9A.4. Where it appears to the *trustee company* that the proportion of any *pension credit rights* conferred on the *ex-spouse* under paragraph (f) below which would be attributable to *safeguarded rights* would be such that benefits payable in respect of that person under paragraph (g) of rule 9A.5 would be restricted by virtue of rule 19.14 the *trustee company* shall by notice in writing also offer the *ex-spouse* the opportunity to intimate an intention to direct for the purposes of Regulation 9(8)(b) of the Pension Sharing (Safeguarded Rights) Regulations 2000 that benefits under that paragraph may be paid out of *safeguarded rights* to any *dependant* of that person or to any of that person's *eligible children* or to any *dependant* (other than an *eligible child*) of that person.

- (e) If the *ex-spouse* notifies to the *trustee company* a wish to proceed with an option offered under paragraph (b) above and completes at the appropriate time such form of instruction and discharge as the *trustee company* may specify for such cases then the *trustee company* shall arrange for the requisite payment to be made to the trustees or administrator of the *transfer arrangement* chosen under that paragraph.
- (f) In the absence of any such notification as is mentioned in paragraph (e) above, or in the event of cancellation of such a notification by the *ex-spouse* being accepted by the *trustee company* before the requisite payment has been made under that paragraph, *pension credit rights* shall be conferred on that *ex-spouse*, who shall thereby become an *ex-spouse participant* if not already one.

9A.3 Benefits for ex-spouse participants from normal benefit age

- (a) An *ex-spouse participant* shall be entitled, with effect (subject to paragraph (b) below) from attainment of *normal benefit age*, to a pension for life at an annual rate equal to the aggregate of:
 - (i) such amount as shall have been determined by the *trustee company* on *actuarial advice* to be of sufficient value as at the date on which that *ex-spouse participant* became entitled to the relevant *pension credit*, after taking account of the other benefits which may become payable out of the *fund* under this section in respect of that *pension credit*, to represent the appropriate rights which would have been required by paragraph 5 of Schedule 5 to the *Welfare Reform Act* to be conferred on that *ex-spouse* in order that the liability of the *trustee company* for that *pension credit* be discharged under paragraph 1(2) of that Schedule and it shall be assumed for the purpose of this determination that the corresponding *pension debit* had been reduced by that proportion of it attributable to rights in the *money purchase AVC fund*; and
 - (ii) such additional amount as is to be provided out of the *fund* by way of pension in accordance with rule 9A.6 in pursuance of a transfer payment accepted by the *trustee company* under that rule;

Provided always:

- (A) that in calculating for the purposes of sub-paragraph (i) above the value of the other benefits which may become payable out of the *fund* under this section in respect of the *pension credit*, regard shall be had to any election for a guarantee period referred to in rule 9A.5(h) and to any direction for the purposes of Regulation 9(8)(b) of the Pension Sharing (Safeguarded Rights) Regulations 2000 of whose intended making intimation was given before the *trustee company* discharged its liability for that *pension credit*, and which was made and notified to the *trustee*

company within two months of that event (even if, where the direction was made in favour of a class, one or more members of that class were specified later, or if different individuals were substituted later for those specified in the previous direction); and

- (B) that in the calculation mentioned in proviso (A), regard may at the discretion of the *trustee company* be had to such a direction as is mentioned in that proviso, notwithstanding that intimation of intention to make it or notification of its making was received by the *trustee company* outside the time limits specified in that proviso; and
 - (C) that if an *ex-spouse participant* has become entitled as against the *trustee company* to a *pension credit* in pursuance of more than one *pension sharing order*, the amount referred to in sub-paragraph (i) above shall be calculated separately in relation to each *pension credit*.
- (b) Where an *ex-spouse participant* became entitled to a *pension credit* after attaining *normal benefit age*, paragraph (a) shall have effect as if a reference to the date of becoming so entitled were substituted for the reference to attainment of *normal benefit age*, provided that if immediately before that entitlement date that person was already an *ex-spouse participant*, then the *pension credit benefit* payable in respect of that entitlement shall be calculated, subject to rules 9A.9 and 19.14, separately from that payable in respect of other *pension credits*.
 - (c) Subject to paragraphs (d) and (e) below, an *ex-spouse participant*, before becoming entitled to actual receipt of pension under paragraph (a) above, may elect by notice in writing to the *trustee company* to commute part of that pension for a lump sum. The lump sum payable shall, in so far as the fraction of that pension which is to be commuted does not exceed one-fifth, be twelve times the amount to be commuted, and otherwise such multiple of that amount as the *trustee company* shall on *actuarial advice* have determined.
 - (d) Where immediately before an *ex-spouse participant* became entitled to a *pension credit* the individual from whose rights that *pension credit* was derived was a *pensioner member*, paragraph (c) above shall apply as if a reduction, proportionate to the extent to which the value of that individual's rights under the *scheme* was then attributable to *pensionable service* in respect of which benefits were then in payment out of the *fund*, were applied to that part of that *ex-spouse participant's* pension which is calculated under sub-paragraph (i) of paragraph (a) above.

- (e) Paragraph (c) above shall have effect as if the pension to which the *ex-spouse participant* has become entitled under paragraph (a) above were reduced to the proportionate extent that the *pension credit rights* of that person (calculated without regard to any notional reduction under paragraph (d) above but also without taking account of any rights in the *money purchase AVC fund*) are attributable to:
- (i) a transfer payment, or to that part of a transfer payment, in respect of which the trustees or administrator of the *transfer arrangement* certified to the *trustee company* that no lump sum benefit might be paid without prejudicing *approval* but in respect of which no payment has been made to the *money purchase AVC fund* under rule 9A.6(e); and
 - (ii) a disqualifying pension credit as defined in paragraph 2(3) of Schedule 29 to the Finance Act 2004.

9A.4 Early payment of pension credit benefit

- (a) If an *ex-spouse participant* who has attained the age of 50 requests the *trustee company* to bring into payment all the *pension credit benefit* to which that individual is prospectively entitled as an *ex-spouse*, the *trustee company* shall have discretion to do so, but may not arrange for payment of it to commence on or after 6th April 2010 other than at a time when the *ex-spouse participant* will have attained the age of 55 or that person's *protected pension age*.
- (b) If an *ex-spouse participant* has attained the age of 60, that person may by notice in writing require the *trustee company* to bring into payment all the *pension credit benefit* to which that individual is prospectively entitled as an *ex-spouse* with effect from a date specified in the notice which is earlier than *normal benefit age* but not earlier than the *ex-spouse participant's* 60th birthday and not more than two months prior to the date on which the *trustee company* receives the notice.
- (c) When the *trustee company* brings *pension credit benefit* into payment in pursuance of paragraph (a) or (b) above, the terms on which it does so shall be such as the *trustee company*, acting on *actuarial advice*, shall decide, provided that the *trustee company* is reasonably satisfied on *actuarial advice* that, when the *pension credit benefit* becomes payable to the *ex-spouse participant* entitled to it, the benefits provided under this rule are at least equal in value to the corresponding *pension credit benefit* which could have been brought into payment under rule 9A.3(a) on that person's attainment of *normal benefit age*.
- (d) Where a *member* who is concurrently an *ex-spouse participant* is to retire with an immediate pension under rule 10.4, that person shall be entitled to require the *trustee company* by notice in writing to bring the *pension credit benefit* to which that individual is prospectively entitled under rule 9A.3(a) into payment

from the date from which the pension under rule 10.4 is to be paid, provided always that:

- (i) such notice by a person who has had an entitlement under this paragraph, even if given after that person's *service* has ended, may be acted upon by the *trustee company* insofar as that is lawful; and
- (ii) subject to rule 19.14, the *trustee company* may, in any case where *pension credit benefit* has become payable to an *ex-spouse participant* under this paragraph, withdraw or suspend payments of that benefit for any period if it has determined, having regard to a *medical opinion*, that the *ex-spouse participant* is no longer suffering from *incapacity* or *total incapacity*, as the case may be, except that the benefit payable under this paragraph shall not be reduced after that individual has attained *normal benefit age* and if it has been withdrawn or suspended under this sub-paragraph, a pension shall from *normal benefit age* be paid to the *ex-spouse participant* at such rate as at that time the *trustee company* may decide, having obtained *actuarial advice* and having regard to the period for which payment of the *pension credit benefit* was so withdrawn or suspended.

9A.5 Benefits on the death of an ex-spouse

- (a) On the death of an *ex-spouse participant* without *pension credit benefit* having become payable to that person benefits shall become payable, subject to rule 19.14, in accordance with paragraphs (b) to (e) of this rule provided that no payment shall be made in respect of *safeguarded rights* unless the *trustee company* is satisfied that it would not jeopardise the *contracted-out* status of any employment under the *scheme*.
- (b) There shall be raised out of the fund and held on the *discretionary trusts* a lump sum equal to 2.4 times the annual rate of pension which would have become payable under rule 9A.3(a) to that *ex-spouse participant* at *normal benefit age* if that age had been attained immediately before the actual date of death, apart from any commutation or *allocation*.
- (c) From the date of the death referred to in paragraph (a) above the surviving spouse or *civil partner* of the deceased *ex-spouse participant* shall be entitled to a pension for life at 40 per cent of the annual rate at which pension would have become payable under rule 9A.3(a) to that *ex-spouse participant* at *normal benefit age* if that age had been attained immediately before the actual date of death, apart from any commutation or *allocation*.
- (d) Where an *ex-spouse participant* was not married at the time of death and no pension is payable to a *civil partner* of the *ex-spouse participant*, the *trustee company* shall have discretion to pay to a *dependant* of that *ex-spouse*

participant (other than an *eligible child*) by way of pension, for such period as it shall in its discretion determine, an amount not exceeding that which would have been payable to any surviving spouse or *civil partner* of the deceased under paragraph (c) above, and in exercising the discretion vested in it by this paragraph, the *trustee company* shall have regard to, but shall not be bound by, any wishes of the *ex-spouse participant* expressed in writing.

- (e) Annuities shall become payable to or for the benefit of the *eligible children* of a deceased *ex-spouse participant* at the rates set in the following sub-paragraphs:
 - (i) there shall be payable 75 per cent of the amount referred to in paragraph (c) above as payable to the surviving spouse or *civil partner* under that paragraph, multiplied by the number of *eligible children* not exceeding two;
 - (ii) if no pension is for the time being payable to the surviving spouse or *civil partner* or to a *dependant* of the deceased under paragraph (c) or (d) above, sub-paragraph (i) above shall apply with the substitution of “100” for “75”;
 - (iii) sub-paragraphs (iii) and (iv) of paragraph (e) of rule 9.7 shall apply for the purposes of this rule with the substitution of the expression “*ex-spouse participant*” for the expression “*deferred pensioner*”.
- (f) On the death of an *ex-spouse participant* to whom a pension had become payable under rule 9A.3 or rule 9A.4, benefits shall become payable, subject to rule 19.14, in accordance with paragraphs (g) and (h) below.
- (g) Paragraphs (c) to (e) above shall apply to benefits payable in respect of a death referred to in paragraph (f) above as if references to paragraph (a) were to that paragraph (f) and references to paragraph (c) were to this paragraph, except that the *trustee company* shall not under paragraph (d) or (e) pay any amount which under rule 19.14 could not have been paid but for a direction for the purposes of Regulation 9(8)(b) of the Pension Sharing (Safeguarded Rights) Regulations 2000 to any person not included in that direction.
- (h) This paragraph applies where an *ex-spouse* has elected by notice in writing to the *trustee company* prior to the *trustee company*'s discharge of its liability for a *pension credit* in respect of that person, or within such further or other period as the *trustee company* may allow, that a guarantee period should apply to the pension paid to that person under rule 9A.3 or rule 9A.4. In those circumstances, the *trustee company* shall on that person's death determine, on such assumptions as the *trustee company* may think proper on *actuarial advice*, the amount (if any) which would have become payable under rule 11.2 in respect of a hypothetical *pensioner member* of the same age as that *ex-spouse participant* to which *pensioner member* benefit had been paid under

rule 9.5 (and not otherwise) at the same times and of the same amounts as *pension credit benefit* had been payable to that *ex-spouse participant*. The trustee company shall then raise that amount and hold it on the *discretionary trusts*, so however that in so far as, but for Regulation 9(8)(b) of the Pension Sharing (Safeguarded Rights) Regulations 2000, rule 19.14 would restrict or preclude any payment under this paragraph, the *trustee company* shall only make such payment to the surviving spouse or *civil partner* or legal personal representatives of the deceased and to such persons as are included in a direction for the purposes of that Regulation made by the deceased at any time after becoming an *ex-spouse participant*.

- (j) If an *ex-spouse* dies after a *pension sharing order* has taken effect but before the *trustee company* has discharged its liability for the resulting *pension credit*, the foregoing provisions of this rule and rule 9A.10(a) shall have effect as if immediately before death that *ex-spouse* had acquired *pension credit rights* in respect of that *pension credit* but without thereby becoming entitled to immediate payment of *pension credit benefit* under rule 9A.3 or rule 9A.4.

9A.6 Inward transfers of rights attributable to pension credits

- (a) The *trustee company* may at its discretion agree to accept a transfer payment at any time in respect of an *active member* which it is informed consists wholly or partly of rights under the *transfer arrangement* which are attributable (directly or indirectly) to *pension credits* to which that person was entitled.
- (b) If the *trustee company* is informed by the trustees or administrator of a *transfer arrangement* that a transfer value consists wholly or partly of rights under that *transfer arrangement* which are attributable (directly or indirectly) to *pension credits*, it shall identify that transfer payment, or that part of it relating to the rights so attributable to *pension credits*, separately from other funds held for the benefit of the same individual as a *member*, *deferred pensioner* or *pensioner member*.
- (c) When a payment is at any time accepted under paragraph (a) above, and the *member* in respect of whom it is accepted is not at that time an *ex-spouse participant*, then that person shall thereby become an *ex-spouse participant* and rule 9A.1(b) shall apply to the *pension credit rights* then conferred on that person, as it also applies to any other *pension credit rights* derived from a transfer payment.
- (d) On a payment being accepted under paragraph (a) above, *pension credit rights* shall be conferred on the relevant *ex-spouse participant*. Except in so far as the transfer payment shall have been dealt with under paragraph (e) below, these rights shall be satisfied by the provision of *pension credit benefit* for the purposes of rule 9A.3(a)(ii) in the form of a pension for life, calculated as at the date of receipt of that transfer payment and increased in line with *RPI* from

that date up to *normal benefit age*, and of such other benefits as are provided for in rules 9A.4 and 9A.5 and calculated by direct or indirect reference to rule 9A.3(a), but in the calculation of those benefits the *trustee company* shall not have regard to any direction for the purposes of Regulation 9(8)(b) of the Pension Sharing (Safeguarded Rights) Regulations 2000 unless either:

- (i) it has been notified to the *trustee company* in writing within two months of the *trustee company* having offered the relevant *ex-spouse* the opportunity by notice in writing to make that direction, or within such further period as the *trustee company* may in any particular case allow; or
 - (ii) it deals only with the disposition of any benefit payable under rule 9A.5(h), or, where a direction falling within sub-paragraph (i) of this paragraph was made in favour of a class, it specifies one or more members of that class, or substitutes different individuals for those specified in the previous direction.
- (e) Where any part of a transfer payment accepted under paragraph (a) above is certified by the trustees or administrator of the *transfer arrangement* to be attributable to voluntary contributions made to secure additional benefits on a money purchase basis by a person from whose rights under a pension arrangement there was derived a *pension credit* to which the *ex-spouse participant* was entitled, then that part of that transfer payment shall be paid by the *trustee company* as the *active member* may in writing direct and within such period as the *trustee company* may determine into the *fund* or into the *money purchase AVC fund* but in the absence of any such direction into the *fund*.

9A.7 Outward transfers of pension credit rights

- (a) Within three months following a date by reference to which the *trustee company* has provided in writing to an *ex-spouse participant* a calculation which has been made in accordance with the provisions of Chapter II of Part IVA of the *Pension Schemes Act* of the cash equivalent of the *pension credit benefit* to which that an *ex-spouse participant* is entitled, that person may, by giving valid notice in writing require the *trustee company* to use an amount equal to that cash equivalent for such of the purposes authorised by or under Section 101F of the *Pension Schemes Act* as may be specified in the notice.
- (b) A notice given by an *ex-spouse participant* is not valid for the purposes of paragraph (a) above unless it is given to the *trustee company* when there is a year or more to go until that individual attains *normal benefit age*, and it is not valid if it is given after the date with effect from which any part of the *pension credit benefit* to which that individual is entitled has or will come into payment. A notice is not invalidated for the purposes of paragraph (a) above by reason of the circumstance that the person giving it may remain a *member*,

deferred pensioner or *pensioner member* after a transfer payment has been made in pursuance of it.

- (c) The *trustee company* shall comply with a valid notice under paragraph (a) above in the manner and within the time provided by or under Chapter II of Part IVA of the *Pension Schemes Act* and shall also act in relation to it in conformity with rule 9A.9(n).
- (d) If the *pension credit rights* of the *ex-spouse participant* include *safeguarded rights*, the *trustee company* shall act in relation to a valid notice under paragraph (a) above in conformity with rule 19.14 and with Regulation 9 of the Pension Sharing (Safeguarded Rights) Regulations 2000.

9A.8 Pension credit rights in respect of money purchase AVCs

- (a) To the extent to which any part of the *pension credit* to which an *ex-spouse* is entitled is attributable to rights previously accrued in the *money purchase AVC fund* to a *member* or *former member*, that *ex-spouse* shall thereafter be deemed alone to have specified the *AVC providers* to whom it is allocated, the *sector funds* to which it is applied and the proportions in which it is so allocated and applied.
- (b) Where a request is made under rule 9A.6(e) that a part of the *pension credit rights* conferred on an *ex-spouse participant* in pursuance of a transfer payment be paid into the *money purchase AVC fund*, that request shall be treated as if it were notice of a lump sum *AVC* given by a *member* under rule 7.4(b) and shall therefore be required to specify the same matters as such a notice, but rule 7.4(d) shall not apply to the deemed *AVC*.
- (c) Rule 7.4(b)(iii) shall apply to an *ex-spouse participant* and to what are deemed under paragraphs (a) and (b) above to be that person's *investments* as if that person were a *member*.
- (d) The *pension credit benefit* secured by what are deemed under the foregoing provisions of this rule to be *investments* shall be of such amounts and in such form as will ensure that the *scheme* conforms to the requirements of Schedule 5 to the *Welfare Reform Act* and of Part IIIA of the *Pension Schemes Act*.
- (e) Subject to the provisions of paragraph (d) above and of rule 9A.9, on the death of an *ex-spouse* without *pension credit benefit* having become payable to that person as an *ex-spouse participant*, the amount which would be the *member's fund* of that person if in the definition of that expression in section 24 "member" included "ex-spouse" shall be applied in accordance with the directions of the deceased for the provision of *relevant benefits* or, if there are no such directions of the deceased, with those of that individual's legal

personal representatives. In the absence of any such directions the *trustee company* shall hold that amount on the *discretionary trusts*.

- (f) On *pension credit benefit* becoming payable to an *ex-spouse participant*, the amount which would be the *member's fund* of that person if in the definition of that expression in section 24 "*member*" included "*ex-spouse participant*" shall be applied in accordance with paragraph (h) of rule 7.4 as if for the purposes of that rule that person were a *member*, as if the benefits for which section 9 provides included those payable under rules 9A.3 and 9A.4, and as if the benefits payable under paragraphs (g) and (h) of rule 9A.5 were of a kind payable under section 11 on death in *retirement*.
- (g) Paragraph (m) of rule 7.4 shall apply in relation to *ex-spouse participants* and to those claiming through them as if an *ex-spouse participant* fell within the definitions in section 24 of the expressions "*member*" and "*former member*" and as if the reference in that paragraph to section 17 were to rule 9A.9. No moneys arising from a winding-up of the *scheme* under rule 22.5 shall be applied in augmenting any of the benefits payable under this rule.

9A.9 Limits on pension credit benefit

- (a) Notwithstanding the preceding provisions of this section, which are overridden by this rule in so far as inconsistent with it, the payment of *pension credit benefit* is, subject to compliance with social security legislation, constrained in the ways and limited to the amounts specified in the following paragraphs of this rule.
- (b) No pension may be paid to an *ex-spouse participant* at any time before that person attains the age of 50, unless that person is simultaneously taking benefits on *incapacity* grounds arising from *service* as an *active member* of the *scheme*. Any deferred pension to which an *ex-spouse* is entitled by way of *pension credit benefit* shall come into payment on that person's 75th birthday if it has not done so before.
- (c) No pension may be commuted, surrendered or assigned except in accordance with the *rules* and any pension payable to an *ex-spouse participant* under this section must be payable for life unless it ceases under paragraph (k) of this rule, is commuted in full in accordance with either of paragraphs (l) and (m) of this rule, or is withdrawn or suspended under rule 9A.4(d)(ii).
- (d) No lump sum payment may be made to an *ex-spouse participant* in connection with a pension becoming payable to that individual under this section if it would result in the *authorised maximum* being exceeded in relation to that pension.

- (e) Rule 18.4 shall apply in relation to the acquisition by an *ex-spouse participant* of an entitlement to actual receipt of a pension under the *scheme* as it applies to the acquisition by a *member* of such an entitlement, and to the attainment of the age of 75 by an *ex-spouse* as it does to the attainment of that age by a *former member*.
- (f) When an *ex-spouse participant* died before 6th April 2006 and before *pension credit benefit* had come into payment, the lump sum payable under this section is limited to 25 per cent of what would have been the cash equivalent of the *pension credit benefit* at the *ex-spouse participant's* death or to such greater amount as would not have prejudiced *approval* had tax law and the practice of *HMRC* remained as they were on 5th April 2006.
- (g) The amount of pension payable under this section to the surviving spouse or *civil partner* or to a *dependant* or *eligible child* of an *ex-spouse participant* who died before 6th April 2006 and before *pension credit benefit* comes into payment is limited to a maximum of two-thirds of the amount of the pension which 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, or to such greater amount as would not have prejudiced *approval* had tax law and the practice of *HMRC* remained as they were on 5th April 2006. For the purposes of determining the pension which could have been paid to the *ex-spouse participant* in pursuance of that purchase, it should be assumed that that person was aged 50 at the date of death where he or she died at a younger age. Where more than one pension is to be paid in respect of the death of an *ex-spouse participant* before 6th April 2006 the total of all those pensions shall not exceed either the amount of the pension that could have been paid to the *ex-spouse participant*, or the balance after the payment of any lump sum benefit of what would have been the cash equivalent of the *pension credit rights* at the *ex-spouse participant's* death, provided that such greater amount may be paid as would not have prejudiced *approval* had tax law and the practice of *HMRC* remained as they were on 5th April 2006.
- (h) If an *ex-spouse* dies after a *pension sharing order* has been made but before the liability of the *trustee company* to that person for the resulting *pension credit* has been discharged, paragraphs (f) and (g) shall have effect as if immediately before death the *ex-spouse* had become entitled to the appropriate *pension credit rights* without becoming entitled to immediate payment of pension, except that no assumption shall be made for the purposes of paragraph (g) that the age of the *ex-spouse* was greater than it was.
- (j) Where an *ex-spouse participant* dies after a pension under this section has come into payment to that person, no lump sum may be paid by way of *pension credit benefit* if it would be a scheme chargeable payment within the meaning of Section 241 of the Finance Act 2004.

- (k) The amount of pension payable by reason of death of an *ex-spouse participant* before 6th April 2006 to the surviving spouse or *civil partner* or to a *dependant* or *eligible child* of that *ex-spouse participant* is limited to a maximum of two-thirds of the amount of the initial annual pension which was paid to the *ex-spouse participant* as increased in accordance with rule 17.12 since the commencement of the *ex-spouse participant's* pension or to such greater amount as would not have prejudiced *approval* had tax law and the practice of *HMRC* remained as they have on 5th April 2006. For these purposes initial annual pension shall be calculated on the same bases as for paragraph (e) above and any pension paid must be for the same duration as if referred to in that paragraph.
- (l) Where at a time when no *pension credit benefit* has become payable to a *pension credit member* in pursuance of an arrangement under the *scheme*, the *trustee company* has received a *medical opinion* that that *pension credit member* was expected to live for less than one year beginning with the date on which that *medical opinion* was given, the *trustee company* may, in its absolute discretion, commute the whole of the benefit that would otherwise be payable to that *pension credit member* under that arrangement for a lump sum payment not exceeding the actuarial value of that benefit, provided that, for the purposes only of calculating the actuarial value of the benefit to be commuted, the recipient shall be deemed to be in normal health.
- (m) Where the *pension credit rights* of any person are of a *trivial amount* their full commutation is permitted under this paragraph when pension first becomes payable in respect of them, provided that where an *ex-spouse* has also accrued rights to benefits under the *scheme* from *pensionable service* as an *eligible employee*,
- (i) for the purposes of determining under rule 16.3(b)(i) the aggregate value of the total benefits payable to any person in respect of a *member*, benefits derived from the *member's pension credits* must be included in those benefits; and
 - (ii) full commutation under this paragraph of a person's *pension credit rights* is permissible only where that person's benefits arising from that relevant *member's pensionable service* whilst in *eligible employment* are simultaneously fully commuted.
- (n) Where the *pension credit rights* of an *ex-spouse participant* are to be transferred by a payment from the *trustee company* to a *transfer arrangement*, the *trustee company* shall confirm to the trustees or administrator of that *transfer arrangement* that the transfer value consists wholly or partly of *pension credit rights* for the benefit of an *ex-spouse participant*.

9A.10 Augmentation and allocation

- (a) If any of the benefits payable or prospectively payable out of the *fund* in respect of an *ex-spouse participant* falls to be restricted by the operation of rule 9A.9 (except paragraph (e) of that rule) then the *trustee* company shall, so far as practicable and where that *ex-spouse participant* died or attained *normal benefit age* before 6th April 2006, as far as would have been consistent with *approval* had tax law and the practice of *HMRC* remained as they were on 5th April 2006 augment by the amount it determines on *actuarial advice* to be equivalent to that reduction such other of those benefits as it shall select. In selecting benefits to be augmented under this rule by reason of a restriction of those which have become payable in respect of an *ex-spouse participant* under rule 9A.5, the *trustee company* shall have regard to any written expression of wish by that *ex-spouse participant* or by that individual's legal personal representatives but shall not be bound thereby.

- (b) The provisions of section 13 (allocation) shall apply to an *ex-spouse participant*.

Section 10 - Benefits on Retirement

10.1 Entitlement to benefit

Subject to rule 10.3(a), every *member* who *retires* and either has attained *normal retirement age* or (having attained the age of 60) is entitled to *retire* on pension in accordance with the terms of appointment or contract of employment applicable to that *member* shall be entitled to an annual pension for life calculated in accordance with rule 10.2 and commencing from actual *retirement* provided that:-

- (a) a *member* who has not *retired* before attaining the age of 75 shall be deemed to have *retired* immediately upon attaining that age; and
- (b) subject to proviso (a) above no part of the *member's* retirement benefit shall be paid in advance of actual *retirement* except to the extent necessary to comply with the requirements of the *Pension Schemes Act*.

10.2 Benefits on normal retirement

On *retirement* under rule 10.1, but subject to rule 10.10, a *member* shall become entitled to:-

- (a) a pension for life at the annual rate of 1/80th; and
- (b) a lump sum of 3/80ths;

of *pensionable salary* for each *year of pensionable service*.

10.3 Retirement of member after normal retirement age

- (a) A *member* to whom this rule applies shall not be entitled to a benefit under either of rules 10.1 and 10.2.
- (b) A *member* who has attained *normal retirement age* before 1st December 2006 and who remains in *service* after 30th November 2006 pursuant to an arrangement between the *member* and the *employer* shall, on actual *retirement* or (if earlier) on the day immediately preceding the *member's* 75th birthday, be entitled to receive the following benefits:
 - (i) in respect of *pensionable service* accrued or credited before 1st December 2006 the same pension and lump sum in all respects as would have been received on attaining *normal retirement age* if the *member* had then *retired* but increased by such amount as the *trustee company*, acting on *actuarial advice*, may decide to be appropriate;

provided that no increase shall be made under this sub-paragraph (i) to any pension or lump sum which is derived from contributions paid under rule 7.7(b)(ii) in respect of a period before 1st December 2006 or from corresponding contributions under rule 8.4(a), but the benefits payable in respect of those contributions shall be determined in accordance with rule 7.7(c); and

- (ii) subject to paragraph (d) below, in respect of *pensionable service* accrued or credited after 30th November 2006, the same benefits as would, apart from paragraph (a) above, be payable under rules 10.1 and 10.2 in respect of that *pensionable service*;

but for a *1989 Act member* the aggregate value of the pensions and lump sums payable on *retirement* after *normal retirement age* under rule 7.7(c) and this paragraph shall not exceed the limit specified in rule 17.3(a) if that individual attained *normal retirement age* before 6th April 2006.

- (c) A *member* who attains (or has attained) *normal retirement age* after 30th November 2006 and who remains in *service* pursuant to an arrangement between the *member* and the *employer* shall, on actual *retirement* or (if earlier) on the day immediately preceding the *member's* 75th birthday, be entitled to receive the following benefits:
 - (i) in respect of *pensionable service* accrued or credited before *normal retirement age*, benefits that are calculated in the same way as that in which benefits in respect of *pensionable service* accrued or credited before 1st December 2006 are calculated under sub-paragraph (b)(i) above; and
 - (ii) subject to paragraph (d) below, in respect of *pensionable service* accrued or credited after *normal retirement age*, the same benefits as would, apart from paragraph (a) above, be payable under rules 10.1 and 10.2 in respect of that *pensionable service*.
- (d) Where no contributions were made under rule 8.4(a) in respect of a *member* for a period after that *member* attained *normal retirement age*, the benefits payable to that *member* under this rule in respect of contributions which were made under rule 7.7(b)(ii) after 30th November 2006 (or are to be treated as having fallen within that paragraph apart from a *salary sacrifice arrangement*), or otherwise in respect of the *pensionable service* accrued or credited to that *member* for that period, shall be determined in accordance with rule 7.7(c) and not in accordance with paragraph (b) or (c) above.

10.4 Enhanced and non-enhanced incapacity pensions

- (a) This rule 10.4 provides for two categories of pension as follows:
- (i) an *enhanced incapacity pension* calculated according to and payable in the circumstances provided in paragraphs (k) to (m), (q) and (r) below; and
 - (ii) a *non-enhanced incapacity pension* calculated according to and payable in the circumstances provided in paragraph (d) below.
- (b) This rule 10.4 applies to any *member* who:
- (i) has satisfied one of the requirements of paragraph (c) below; and
 - (ii) is in the opinion of the *employer* suffering from *incapacity*; and
 - (iii) is determined by the *trustee company* to be suffering from *total incapacity* or *partial incapacity*; and
 - (iv) *retires* or ceases one or more *eligible employments* on the grounds of *total incapacity* or *partial incapacity*, as the case may be and as determined by the *trustee company*, before *normal retirement age*, and in a case of *total incapacity*, without continuing in any other *eligible employment*; and
 - (v) applies to the *trustee company*, in a form acceptable to the *trustee company*, for benefits under this rule 10.4, unless the *trustee company* determines that the requirements of regulation 8(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 are satisfied.
- (c) The requirements of this paragraph (c) are that the *member*:
- (i) has completed two years' *active membership*; or
 - (ii) has completed two consecutive years in aggregate of *active membership* and membership of any *comparable scheme* and has at all times during that two year period been in the employment of one or more *institutions*, and in the opinion of the *trustee company* there has been no material break in that period during which the *member* was neither an *active member* in the *eligible employment* of the *employer* nor in membership of a *comparable scheme* by virtue of employment by the *employer*; or

(iii) the *member* was after 10th December 1999 a member of a *comparable scheme* by virtue of employment either by:

- (A) a university domiciled within the United Kingdom; or
- (B) a higher education corporation within the meaning of section 123 of the Education Reform Act 1988; or
- (C) an institution designated under section 44 of the Further and Higher Education (Scotland) Act 1992; or
- (D) a comparable body in Northern Ireland;

and subject to satisfying any qualifying conditions imposed under the terms of that *comparable scheme* regarding ill health, infirmity or incapacity, would have been entitled on retirement on the date of cessation of *eligible employment* to an immediate pension under that scheme, without actuarial reduction for early payment, if all periods of that person's *active membership* after first ceasing after 10th December 1999 to be a member of that *comparable scheme* had been pensionable service within the meaning of the *Pension Schemes Act* in relation to that *member* for the purposes of that scheme.

- (d) Subject to the provisions of this rule 10.4 a *member* to whom this rule 10.4 applies on *retirement* or ceasing one or more *eligible employments* on the grounds of *partial incapacity* or *total incapacity* shall then be entitled to a *non-enhanced incapacity pension* for life at the annual rate of 1/80th, and a lump sum of 3/80ths, of *pensionable salary* for each year of *pensionable service* without any adjustment for early payment.
- (e) The requirements of this paragraph in relation to any *member* are that, subject to paragraphs (f) to (h) below:
 - (i) less than five years have elapsed since that *member* last became an *active member*; and
 - (ii) that *member* has less than five consecutive years in aggregate of *active membership* and membership of any *comparable scheme*; and
 - (iii) that *member retires* or ceases the relevant *eligible employment* as a result of a medical condition which was known to the *member* or the *member's employer* when the *member* last became an *active member*.

- (f) For the purposes of determining whether a *member* has less than five consecutive years in aggregate of *active membership* and membership of any *comparable scheme* within the meaning of paragraph (e)(ii) above, a *member* will only be treated as having five or more such consecutive years if the *member* has at all times during that five year period been in the employment of the same *employer*, or in an employment to be treated as that of the same *employer*, and in the opinion of the *trustee company* there has been no material break in that period during which the *member* was neither an *active member* in the *eligible employment* of the *employer* nor in membership of a *comparable scheme* by virtue of employment by the *employer*. Where at the *relevant date* a *member* is an *active member* by reference to two or more separate appointments, the requirements of paragraph (e) above shall be applied separately to each of those appointments, so that in determining in each case whether the requirements of sub-paragraph (iii) of that paragraph (but not those of sub-paragraphs (i) or (ii) thereof) are then satisfied, *active membership* by reference to any other appointment shall be disregarded.
- (g) Where a *pensioner member* has been concurrently in receipt of a *non-enhanced incapacity pension* by reference to the cessation of one appointment and in *active membership* by reference to another appointment, that *pensioner member* shall be deemed, for the purposes of paragraphs (e) and (h) of this rule, to have last become an *active member* by reference to the latter appointment at the time, if it is earlier, when that individual last became (or is deemed under this paragraph to have last become) an *active member* by reference to the former, provided that the interval between that cessation of that former appointment and the date at which the individual concerned actually last became an *active member* by reference to the latter appointment does not exceed two years.
- (h) Paragraph 10.4(e)(iii) above shall not be satisfied in respect of a *member* who *retires* or ceases the relevant *eligible employment* as a result of a medical condition, details of which the *member* or the *member's employer* notified to the *trustee company* in writing before or at the time that *active membership* last commenced in the relevant *eligible employment* or within what the *trustee company* decides to be a reasonable period thereafter, and which the *trustee company* determined at that time was not likely to cause the member to *retire* or cease that *eligible employment* on the grounds of *incapacity* in the period of five years from the date when the *member* last commenced *active membership*.
- (j) A *member* shall have the right to require the *trustee company* to make a determination under paragraph (h) above on the *member* joining the *scheme* or taking up an additional employment or within a reasonable period thereafter, provided that the *member* meets the reasonable expenses of the *trustee company* in obtaining a *medical opinion*.

- (k) On *retirement* on the grounds of *total incapacity* under this rule 10.4 of a *member*, an *enhanced incapacity pension* will be payable to the *member*, in addition to the *non-enhanced incapacity pension*, which will be calculated on the basis of additional *pensionable service* of the *member* of the lesser of:
 - (i) the number of additional *years of service* which the *member* would have accrued if *eligible employment* (except any in respect of which all of the requirements of paragraph (e) above are satisfied) had continued from *retirement* without alteration of the rate or method of remuneration to *normal retirement age* or until such earlier date as the *member's pensionable service* amounted in aggregate to 40 years; and
 - (ii) the number of years of *pensionable service* applicable under paragraph (l) below
- (l) The number of years of *pensionable service* applicable under this paragraph , for the purposes of calculating an *enhanced incapacity pension*, shall be either:
 - (i) if the *member* has five or more years', but less than ten years', *pensionable service*, a number of *years* equal to the number of *years of pensionable service* at *retirement*; or
 - (ii) if the *member* has ten or more years', but less than twenty years', *pensionable service*, the greater of:
 - (A) a number of *years* equal to the difference between twenty years and the number of *years of pensionable service*; and
 - (B) six and two-thirds years; or
 - (iii) if the *member* has twenty or more years' *pensionable service*, six and two-thirds years.
- (m) A member to whom paragraph (k) above applies shall be entitled on *retirement* under paragraph (k) to an *enhanced incapacity pension* for life at the annual rate of 1/80th, and a lump sum of 3/80ths, of *pensionable salary* for each year of additional *pensionable service* comprising the enhancement applicable under paragraph (k) and for each year of *supplementary service*. In any calculation for the purposes of determining the amount of an *enhanced incapacity pension* the number of *years* to be taken into account under paragraph (k) shall be determined before the number of *years of supplementary service*. That part of this pension and lump sum which is derived from *supplementary service* shall be debited to, and shall be a charge on, the *supplementary section*.

- (n) Where a *member* has ceased to be in an *eligible employment* before the *trustee company* has determined that the *member*:
- (i) is, and was at the date of last ceasing to be in that *eligible employment*, suffering from *incapacity*; and
 - (ii) has *retired* or ceased that *eligible employment* on the grounds of *incapacity* in accordance with sub-paragraph (b)(iv) above,
- the *trustee company*, having first consulted with the *employer*, may nevertheless decide, after that date of cessation of that *eligible employment*, that this rule 10.4 is to apply to the *member* from that earlier date.
- (o) Subject to rule 5.6, where this rule 10.4 applies by virtue of a decision under paragraph (n) above:
- (i) no further *pensionable service* shall be credited to the *member* in respect of the *eligible employment* referred to in that paragraph, and no contributions shall be payable, or may be paid, by the *member* to the *scheme*, in respect of that *eligible employment* for periods after the date when the *member* ceased to be an *eligible employee*; and
 - (ii) any *preserved benefits* derived from that *eligible employment*, which are being paid to the *member*, or to the payment of which the *member* has become entitled, shall be treated as having been paid to the *member* on account of the pension payable to the *member* under this rule 10.4, and the amount of the further benefits payable to the *member* under this rule 10.4 shall be equal to the amount of those benefits which would have been payable to the *member* under this rule 10.4 apart from this paragraph, less the amount of any *preserved benefits* which have been paid to the *former member* up to the date of the *trustee company's* decision under paragraph (n) above.
- (p) Where a *pensioner member*, who has become entitled to a pension under this rule 10.4, has not attained *normal retirement age*, the *trustee company* may:
- (i) withdraw or suspend that pension for periods up to *normal retirement age* if the *trustee company* determines that the *pensioner member* is no longer suffering from *incapacity*; or
 - (ii) withdraw an *enhanced incapacity pension* but continue to pay to the *pensioner member* a *non-enhanced incapacity pension* calculated in accordance with paragraph (d) above, if the *trustee company* determines that the *pensioner member* is suffering from *partial incapacity* and not *total incapacity*.

- (q) If the *trustee company* determines that a *pensioner member* who is in receipt of a *non-enhanced incapacity pension* under paragraph (d) above is suffering, not merely from *partial incapacity*, but from *total incapacity*, and that person has not attained *normal retirement age* then the *trustee company* may, subject to paragraph (r), pay an *enhanced incapacity pension* under paragraph (m) above at the level at which it would be payable if the *pensioner member* had *retired* on the grounds of *total incapacity* under paragraph (k) above at the time when this rule 10.4 first became applicable to that individual by reference to a cessation of *eligible employment*. Subject to paragraph (r) below, the *trustee company* may further increase the *enhanced incapacity pension* so payable under paragraph (m) by an amount which the *trustee company* determines, having obtained *actuarial advice*, to be equivalent to a lump sum equal to:
- (i) the lump sum which would have been payable under paragraph (m) at the level at which it would have been payable if the *pensioner member* had *retired* on the grounds of *total incapacity* when this rule first became applicable to that individual by reference to a cessation of *eligible employment*; less
 - (ii) the greater of:
 - (A) the amount of any lump sum already paid to the *pensioner member* under paragraph (d) above; and
 - (B) that lump sum which would have been so paid but for an election by the *pensioner member* under rule 10.8(b) and but for any abatement under either of rules 10.8A and 18.3.
- (r) With a view to providing benefits, which are in the opinion of the *trustee company* fair and reasonable in the circumstances, to a *pensioner member* to whom paragraph (q) above applies, in the circumstances where that individual has continued or resumed *active membership* while entitled to a *non-enhanced incapacity pension*, the *trustee company* may make regulations, subject to the consent of the *joint negotiating committee*, for modifying the amount of *enhanced incapacity pension* to which such a *pensioner member* is entitled, by altering the number of either *years* of additional *pensionable service* (subject to a maximum of 10 in all), or *years* of *supplementary service*, or both, which would apart from this paragraph have been taken into account in relation to that *pensioner member* for the purposes of paragraph (m) of this rule, as applied by paragraph (q).
- (s) Where the *trustee company* has withdrawn a pension under paragraph (p) above, the *trustee company* may at any time up to *normal retirement age* resume payment of it, if the *trustee company* determines that the *pensioner member* is suffering from *partial incapacity* or *total incapacity*, as applicable.

- (t) The *trustee company* shall make any determination for the purposes of paragraph (p), (q) or (s) above by applying the definitions of *total incapacity* or *partial incapacity* to the *pensioner member* as at the date of that determination.
- (u) Where a *pensioner member* was entitled to a pension under this rule 10.4 which was withdrawn without being subsequently reinstated prior to *normal retirement age*, a pension shall be paid to the *pensioner member* from *normal retirement age* at a rate at least equal to the *non-enhanced incapacity pension* which would have been payable under paragraph (d) to the *pensioner member* if that person's *retirement* had been on the grounds of *partial incapacity*, or in the case of a *member* who has not *retired* if that person had done so on those grounds immediately before *normal retirement age*, but that pension shall be paid at a rate not greater than the pension which was payable immediately before *normal retirement age*, or which would have been payable but for any withdrawal of *enhanced incapacity pension* under paragraph (p)(ii) above, provided that the *trustee company* may, in the case of a *pensioner member* who *retired* from *service* on the grounds of *total incapacity*, treat as a payment made on account of that minimum rate of pension an amount determined by the *trustee company*, after obtaining *actuarial advice*, to be of equivalent value to the amount by which the lump sum paid to the *pensioner member* under this rule 10.4 exceeds the lump sum which could have been so payable if that person's *retirement* had been on the grounds of *partial incapacity* and no election had been made under rule 10.8(c) or section 23 in respect of that *retirement*.
- (v) Notwithstanding paragraphs (p) and (u), the pension payable to a *member* under this rule 10.4 shall, on the *member* attaining normal pension age (as defined in section 180 of the *Pension Schemes Act*), be not less than the minimum pension which would have been payable to the *member* in accordance with the preservation requirements of Chapter I of Part IV of the *Pension Schemes Act* had this rule 10.4 never applied and payment of a pension to which a *member* or *former member* has become entitled under this rule shall not be made at any rate (including nil) such that it would in the circumstances be disqualified from the status of a scheme pension within the meaning of Part 4 of the Finance Act 2004.
- (w) Any determination made by the *trustee company* for the purposes of this rule 10.4 shall be made on the balance of probabilities having regard to a *medical opinion*.

10.5 Permitted early retirement

- (a) This rule applies to a *member* who:-
 - (i) has five or more *years' pensionable service*;

- (ii) has attained the age of 50 (and, in the case of a *member* leaving *eligible employment* on or after 6th April 2010, has attained the age of 55 or a *protected pension age*;
 - (iii) leaves *eligible employment* in one of the circumstances set out in paragraph (b) below and ceases to be an *eligible employee*; and
 - (iv) has not in respect of that *eligible employment* become entitled to a pension under the preceding provisions of this section.
- (b) The circumstances referred to in paragraph (a)(iii) above are:-
- (i) the employment concerned is terminated by reason of *redundancy*;
 - (ii) the *member's* employment is terminated in the interests of the efficient exercise of the *institution's* functions (unless the *employer* dismissed such *member* for good cause other than by reason of the physical or mental incapacity of the *member* and other than by reason of *redundancy*) and the *employer* gives its consent to payment of the benefits; or
 - (iii) the *member* has attained the age of 60 and *retires* with the consent of the *employer* such consent not to be unreasonably withheld.
- (c) Subject to paragraph (d) of this rule and to rule 10.10 below, a *member* to whom this rule applies may elect to receive:-
- (i) a pension for life commencing on *retirement* at the annual rate of 1/80th; and
 - (ii) a lump sum of 3/80ths;
- of *pensionable salary* for each year of *pensionable service*.
- (d) If the conditions set out in sub-paragraphs (i) to (v) below apply that part of the benefits payable under paragraph (c), which is attributable to *pensionable service* credited to the *member* under rule 5.3 or 5.5, may at the discretion of the *trustee company* be reduced by such amount as the *trustee company*, acting on *actuarial advice*, shall decide to be appropriate; and the conditions referred to above are:-
- (i) a transfer payment has been received in respect of the *member* pursuant to rule 5.3 or 5.5;

- (ii) if such transfer payment was received not more than a year after the *member* first joined the *scheme* with a right to request such transfer under the relevant *transfer arrangement*, the *member* has less than seven years' *active membership* and, otherwise, the *member* has less than seven years' *active membership* from the date such transfer payment was received;
- (iii) the *member's* date of *retirement* is earlier than the *trustee company* assumed when determining the additional years of *pensionable service* to be credited to the *member* on receipt of such transfer payment;
- (iv) the *employer* has not paid an additional contribution to negate the effect of this paragraph pursuant to rule 8.2(f); and
- (v) the *pensionable service* is credited by reference to a transfer payment which is received by the *trustee company* before 1 April 2009, or if within five months beginning with that date (or such longer period as the *trustee company* may allow) the *trustee company* has provided a *member* with an offer of *pensionable service* in anticipation of a transfer payment under the terms of this sub-paragraph, and acceptance of such an offer is made within a period of three months of the date the offer was made, in which case this paragraph shall apply in place of rule 10.10.

10.6 Other early retirement

Subject to rule 10.10, any *member* who has attained the age of 60 having five or more years' *pensionable service* and leaves employment otherwise than under rule 10.1, 10.4 or 10.5 may elect to receive:-

- (i) a pension for life commencing on *retirement* at the annual rate of 1/80th; and
- (ii) a lump sum of 3/80ths;

of *pensionable salary* for each year of *pensionable service* but so that, if the pension commences to be payable before the age of 63 years and 6 months (or such lower age as the *trustee company* acting on *actuarial advice* and with the consent of the *Joint Negotiating Committee* shall from time to time decide), such pension and lump sum shall be reduced by such amount as the *trustee company*, acting on *actuarial advice*, shall decide to be appropriate.

10.7 Augmentation of retirement benefits

If any of the benefits payable from the *fund* to a *member* on *retirement* under this section are reduced by the operation of section 17, then, subject to rule 17.4 and to the

limits imposed by section 17 by reference to *aggregate retirement benefit*, the *trustee company* shall, so far as practicable, augment by the amount it determines on *actuarial advice* to be equivalent to that reduction such other benefits as it shall select from those which are or may become payable out of the *fund* to or in respect of that *member*. In selecting benefits to be augmented under this rule by reason of a restriction of those which have become payable under this section, the *trustee company* shall have regard to any written expression of wish by the *member*.

10.8 Conversion of lump sum into pension and of pension into lump sum

- (a) A *member* who will on *retirement* have an entitlement to any *relevant benefits* may exercise either of the options referred to at paragraphs (b) and (c) by giving notice in writing to the *trustee company* in accordance with paragraph (d) below.
- (b)
 - (i) A *member* to whom this rule applies and who has not exercised an option to convert pension into lump sum under paragraph (c) below or under rule 23.1(f) or rule 23.2(c), may opt under this paragraph to convert the whole of the lump sum to which that *member* will be or is entitled, or such part of that lump sum as the *member* may determine, into additional pension on a basis of conversion approved from time to time by the *trustee company* on *actuarial advice*, such basis having regard to the nature of the additional pension resulting from the exercise of this option. The increased pension so resulting, when aggregated with the value determined by the *trustee company* on *actuarial advice* of the unconverted part of the lump sum remaining after the above option has been exercised, shall not exceed any limits on the *member's aggregate retirement benefit* which apply under section 17.
 - (ii) The exercise by a *member* of an option under this paragraph shall not carry with it any entitlement on that *member's* death to any additional benefit, unless under rule 11.2, for the *member's* surviving spouse, or *civil partner dependants* or *eligible children*, in excess of that to which any such person would have been entitled but for the exercise of the option.
- (c) A *member* to whom this rule applies and who has not exercised an option under paragraph (b) above, may opt under this paragraph to convert such part of any periodic pension to which the *member* will be or is entitled under the *rules* as the *member* shall determine into an additional sum payable on that *member's retirement* which the *trustee company* determines on *actuarial advice* to be equivalent to the annual amount of pension forgone by virtue of the exercise of that option. The increased lump sum resulting from the exercise of options under one or more of rules 23.1(f) and 23.2(c) and this

paragraph shall not be such as to cause the lump sum benefit to actual receipt of which the *member* is to become entitled in connection with becoming entitled to that pension to exceed the *authorised maximum*.

- (d) A *member* who gives notice in accordance with this paragraph to exercise either of the options provided for under this rule shall do so by giving it to the *trustee company*, in such form as it may prescribe for the purpose, no later than one month prior to the anticipated date of that *member's retirement* or within such later period, prior to the *member* becoming entitled to actual receipt of the pension to be commuted, or, as the case may be, entitled to the lump sum to be converted, as the *trustee company* may allow.
- (e) The *trustee company* may in its discretion permit a *member* who has exercised such an option as is referred to in paragraph (b) above or who has exercised such an option as is referred to in rule 23.1(f) or 23.2(c) or such an option as is referred to in paragraph (c) above to revoke the exercise of the option concerned on written notice to the *trustee company* no later than the fifteenth day prior to the anticipated date of that *member's retirement* or within such later period, prior to the *member* becoming entitled to actual receipt of the pension to be commuted, or, as the case may be, entitled to the lump sum to be converted, as the *trustee company* may allow. If the exercise of an option is so revoked, it shall be treated as never having happened. If a *member*, having exercised such an option as is referred to in this paragraph dies on or after 6th April 2006 at a time when the *trustee company* would have had the discretion to permit revocation of that option if it had then received written notice to do so, that option shall be treated as having never been exercised by that *member*.
- (f) Rules 23.1(f) and 23.2(c) shall not apply to the extent that a *member* to whom either of those provisions applies has exercised an option under paragraph (c) above but without prejudice to any prior exercise by a *member* of the option for which either of the former rules provides.
- (g) Paragraphs (c) to (e) of this rule shall apply as if a *pensioner member* to whom an *enhanced incapacity pension* or lump sum is granted by the *trustee company* under paragraph (q) of that rule *retires* on the date on which that pension or lump sum is granted.

10.8A Commutation of pension benefits in excess of the available lifetime allowance

- (a) Subject to the provisions of section 19 and to the following provisions of this rule 10.8A a *member* may elect, by notice in writing to the *trustee company*, one month or longer before that *member* will become entitled to actual receipt of a pension under the *scheme* (or such other time before that acquisition of entitlement as the *trustee company* may allow), to convert into an additional lump sum the whole or such part of that pension as the *trustee company* deems to be equal in value to the *chargeable amount* that will fall to be due in respect

of that *member's* entitlement to the remainder of that pension. That additional lump sum shall not be payable until the *member* has become entitled to actual receipt of that remaining pension.

- (b) Notwithstanding any other provision in these *rules*, a *member* may not convert all or any part of an additional lump sum payable under 10.8A(a) above into a pension.

10.9 Member elections to discharge tax liability

- (a) Subject to the provisions of section 19 and to the following provisions of this rule 10.9, a *member* may by notice in writing to the *trustee company* elect, prior to the *member* becoming entitled to a pension under the *scheme*, to meet an expected liability to *lifetime allowance charge* by reducing the amount of that pension which would otherwise be payable apart from this rule 10.9, as specified by the *member* in the notice. That election shall take effect only when the *trustee company* approves it, and such approval may be given only if the *trustee company* determines that the acquisition by the *member* of an entitlement to receive that pension will give rise to liability for the *lifetime allowance charge*.
- (b) If the amount of the pension set aside to meet expected liability to *lifetime allowance charge* under this rule 10.9 proves to exceed the amount of that liability, additional benefits that the *actuary* has certified to be of equal value to that excess shall be payable under the *scheme*, subject to the powers of the *trustee company* under rules 18.3 and 18.4, in such form as the *member* shall have specified in writing to the *trustee company* or, if no such specification has been made within one month after the *member* has been invited by the *trustee company* to make one, to the *member* in such form as the *trustee company* may in its absolute discretion then decide.
- (c) An election under this rule 10.9 is not a commutation for the purpose of rule 10.8 and shall have effect notwithstanding any limit imposed by that rule.

10.10 Transferred in service

That part of the benefits payable under this section which is attributable to *pensionable service* credited to the *member* under rule 5.3 or 5.5 by reference to a transfer payment which is received by the *trustee company* after 31 March 2009 shall, except where the *member* has elected for rule 10.5(d)(v), be subject to actuarial reduction, as determined by the *trustee company* on *actuarial advice*, in so far as those benefits are brought into payment before *normal retirement age*, save on the grounds of *incapacity*.

Section 11 - Benefits on Death

11.1 Lump sum benefits on death in service

- (a) In the event of the death of any *member* while in *active membership* the *trustee company* shall raise out of the *fund* and hold upon the *discretionary trusts* a sum equal to whichever is the greater of:-
- (i) three times the annual rate of the *salary* of the *member* at the date of death.
 - (ii) the lump sum which would have been payable under section 10 in respect of *pensionable service* if the *member* had *retired* on the grounds of *total incapacity* on the day immediately preceding the date of death together with any lump sum which would apart from this rule have been payable under rule 9.7(a).
- (b) On the death of a *member* in *active membership* before attaining *normal retirement age* without leaving any spouse or *civil partner*, *dependant* or child entitled to benefit under any of the provisions of rules 11.3 to 11.9, there shall be raised out of the *fund* and held upon the *discretionary trusts* an additional sum determined by the *trustee company*, acting on *actuarial advice*, to be equal to the value of the pension which would, apart from rule 11.8, have become payable under rule 11.4 to a surviving spouse or *civil partner* of the *member* but calculated only by reference to the *supplementary service* (if any) which would have been taken into account in the computation of a spouse's or *civil partner's* pension.

11.2 Lump sum benefits on death after retirement

- (a) In the event of the death of a *pensioner member* then, if the actual amounts received by way of pension and lump sum benefit calculated by reference to *pensionable service* have not exceeded the benefits which would have been payable in respect of that person under rule 11.1(a) if the *pensioner member* had died in *active membership* on the day before the date of *retirement* or, if the *pensioner member* attained *normal retirement age* prior to the date of the Thirteenth Supplemental Amending Deed, on the day before the *pensioner member's normal retirement age* (if earlier), the shortfall shall be raised out of the *fund* and held upon the *discretionary trusts*.
- (b) On the death before *normal retirement age* of a *pensioner member* who is in receipt of a pension under rule 10.4 the *trustee company* shall raise out of the *fund* and hold upon the *discretionary trusts* the amount, if any, by which the sum calculated in accordance with paragraph (c) below exceeds the amount of any benefit payable under paragraph (a) above; provided that no payment shall be made under this paragraph in respect of a *pensioner member* whose benefits

have been commuted under rule 16.3(a) or to whom rule 10.4(e) applied. Benefits becoming payable under this paragraph shall be debited to and be a charge on the *supplementary section*.

- (c) The sum referred to in paragraph (b) above is the aggregate of the amounts specified in sub-paragraphs (i) and (ii) below after deducting from that aggregate amount the amount calculated in accordance with sub-paragraph (iii) below, namely:-
- (i) three times such *pensioner member's pensionable salary* (determined, where the *pensioner member* had been in *part-time service*, in accordance with rule 6.4(c)) at the date of *retirement* increased to the date of death as if it were a lump sum payable in respect of that *retirement*;
 - (ii) the amount by which the benefit payable or prospectively payable in respect of the *pensioner member* under rule 11.3 (or under rule 11.8(a) by reference to rule 11.3) falls short of the amount which would have been so payable or prospectively payable had that person remained in the *service* until death without change of post after actual *retirement*;
 - (iii) the amount by which the benefits received by a *pensioner member* out of the *fund* in respect of lump sum and pension prior to the date of death exceed what would have been the *salary* of the *pensioner member* for the period between the date of actual *retirement* and the date of death on the assumption that the *pensioner member* had worked throughout that time without change of post;
- (d) Where a *pensioner member* was at the time of death actually or prospectively entitled to two or more separate pensions under section 9, 10 or 12, the amount payable under this rule shall not exceed that amount by which pension and lump sum benefits paid to that individual fell short of what would have been paid to or in respect of that individual by way of lump sum and pension under any of the provisions of rules 9.2(d) and 9.3 to 9.6 and sections 10 and 12 if each separate pension brought into payment under any of those provisions to that individual had been payable for five years irrespective of the individual's survival, but for no longer. A pension is separate from others for this purpose if it is an *enhanced incapacity pension* or is to be calculated by reference to *pensionable service* which is not to be aggregated with that by reference to which any other pension is to be calculated.

11.3 Initial surviving spouse's or civil partner's pension

During the first three months following the date of death of a *member* or *pensioner member* the pension payable under this rule to the surviving spouse or *civil partner* of

a *member* or *pensioner member* who has completed five or more *years' pensionable service* shall be:-

- (a) in the case of the death of a *member* in *active membership* the rate of *pensionable salary* (determined, where the *member* had been in *part-time service*, in accordance with rule 6.4(c)) which would have been used in calculating a pension under rule 10.4 if *retirement* on pension had taken place on the grounds of *incapacity* on the day immediately preceding the date of death and no payment had been made under rule 16.3(a);
- (b) in the case of the death of a *member* in *active membership* after attaining *normal retirement age* the rate of *pensionable salary* (determined, where the *member* had been in *part-time service*, in accordance with rule 6.4(c)) and calculated at the date of death;
- (c) in the case of the death of a *pensioner member* the rate of pension being paid to the *pensioner member* in respect of *pensionable service* (including any enhancement for the purposes of rule 10.4(k)) and *supplementary service* or which would have been so paid if any *allocation* made by the *pensioner member* pursuant to section 13 were disregarded and if no reduction had been made to that pension under either of sections 14 and 18.

11.4 Surviving spouse's or civil partner's pension on death of a member in service before normal retirement age

Subject to rules 11.7 and 11.8(b), the surviving spouse or *civil partner* of a *member* who dies in *active membership* before attaining *normal retirement age* shall be entitled to receive a pension which shall be the aggregate of:-

- (a) 1/160th of the *member's pensionable salary* calculated at the date of death for each *year* of *pensionable service* (including any added *years* of *pensionable service* which would have been credited to the *member* under rule 10.4 if *retirement* under that rule had taken place on the grounds of *total incapacity* on the day preceding the date of death); and
- (b) if *supplementary service* is applicable to the member, 1/160th of the member's pensionable salary for each year of *supplementary service*.

11.5 Surviving spouse's or civil partner's pension on death in active membership after normal retirement age

Where a *member* dies in *active membership* after *normal retirement age*, a pension shall, subject to rule 11.7, be payable to the surviving spouse or *civil partner* of that *member* at one-half of the rate at which pension would have been payable to that *member* as at the date of the *member's retirement* under rule 10.3 as if the *member*

had *retired*, on the day immediately preceding the date of death, without having made any election under any of rules 10.8 to 10.9, 23.1(f) and 23.2(c) or any *allocation* under section 13, and without any provision of any of sections 14, 16 and 18 becoming (or having become) applicable to that *member*.

11.6 Surviving spouse's or civil partner's pension on death of a pensioner member

- (a) Subject to paragraph (b) below and to rules 11.7 and 11.8(b) the surviving spouse or *civil partner* of a *pensioner member* shall be entitled to receive a pension equal to:-
 - (i) 1/160th of the *pensionable salary* used for the purpose of calculating the *pensioner member's* pension for each *year* of *pensionable service*; and
 - (ii) if the *pensioner member* *retired* on the grounds of *total incapacity* 1/160th of the *pensionable salary* for each *year* of *supplementary service* used for the purpose of calculating the *pensioner member's* pension immediately before the date of death.
- (b) Where a *pensioner* or *pensioner member* dies and a pension was payable to that individual under rule 10.3 (or would have been but for the operation of any of rules 10.8A, 10.9, 16.1, 16.2 and 16.3(a)), the surviving spouse or *civil partner* of that individual shall not be entitled to a pension under paragraph (a) above, but to a pension at a rate equal to one-half of that at which that individual would have been entitled to pension as at the date of that individual's *retirement* under rule 10.3 if he or she had neither made any election under any of rules 10.8 to 10.9, 23.1(f) and 23.2(c), nor made any *allocation* under section 13, and no provision of any of sections 14, 16 and 18 had become applicable to that individual.

11.7 Duration of spouse's or civil partner's pension

The pensions payable under rules 11.4 to 11.6 inclusive shall commence on the date of death or, if later, the date of expiration of any pension payable under rule 11.3, and shall continue until the date of death of the surviving spouse, or *civil partner* provided that the *trustee company* may in its absolute discretion revive the whole or any part of a pension which has ceased to be payable under the provisions of this rule as it applied prior to 1st January 1997.

11.8 Dependant's pension

- (a) Where at the time of death no pension is payable to a *civil partner* of a *member* or *pensioner member* and a *member* or *pensioner member* was not

married the *trustee company* shall have discretion to pay to a *dependant* of the deceased *member* or *pensioner member* a pension of an amount not exceeding that which would have been payable to any surviving spouse or *civil partner* of that *member* or *pensioner member* under rule 11.3 and for a period not exceeding three months following the death of that *member* or *pensioner member* and it shall thereafter have a discretion to pay to any such *dependant*, for such period as in its absolute discretion it shall determine, a pension of an amount not exceeding that which would have been payable to any surviving spouse or *civil partner* of the relevant *member* or *pensioner member* under rules 11.4 to 11.6 (to the extent that pensions under those rules are calculated by reference to *pensionable service*).

- (b) Where a *member* or *pensioner member* was not at the date of death living with the lawful spouse or *civil partner* of the *member* or *pensioner member* (and whether or not that spouse or *civil partner* was then or is a *dependant*) the *trustee company* shall have a discretion to pay by way of pension for such period as it shall in its absolute discretion determine to any *dependant* (other than that spouse or *civil partner* or *eligible child*) an annuity not exceeding the amount of pension payable under rule 11.4 or 11.6 by reference to the *member's* or *pensioner member's supplementary service*. To the extent that the *trustee company* exercises its discretion under this paragraph the rights of the surviving spouse or *civil partner* (if any) of the *member* or *pensioner member* shall be abrogated in whole or in part, as the case may be.
- (c) In exercising its discretion under this rule the *trustee company* shall have regard to, but shall not be bound by, any wishes of the *member* or *pensioner member* expressed in writing.
- (d) Notwithstanding the provisions of paragraph (b) of this rule, where in relation to a *former member* for whom the *relevant date* was before 22 June 1999 an individual is an *eligible child* by virtue only of being accepted by that *former member* as a member of the family, that individual shall not be treated as an *eligible child* for the purposes of that paragraph.

11.9 Eligible children's benefit

On the death of a *member in service* or otherwise in *active membership* or on the death of a *pensioner member* an annuity shall become payable to or for the benefit of an *eligible child* or *children* of that person in accordance with the following provisions of this rule:-

- (a) subject to paragraph (b) below the annuity benefit payable in respect of each *eligible child* (not exceeding two) shall be at the rate of 3/640ths of the *member's* or *pensioner member's pensionable salary* for each year of *pensionable service* (including any added years of *pensionable service* which have been or would have been credited to the *pensioner member* or *member* for the purposes of rule 10.4(k) if, in the case of a *member*, retirement on the

grounds of *total incapacity* under that rule had taken place on the date preceding the date of death) and, if applicable, *supplementary service*;

- (b) where a *pensioner* or *pensioner member* dies to whom a pension was payable under rule 10.3 (or would have been but for the operation of any of rules 10.8A, 10.9, 16.1, 16.2 and 16.3(a)), or where a *member* dies who would have been such an individual if he or she had *retired* immediately prior to the date of his or her death, the annuity benefit shall not be as specified in paragraph (a) above, but in respect of each *eligible child* (not exceeding two) three eighths of the pension to which the deceased would have been entitled as at the date of the *pensioner* or *pensioner member's retirement* if he or she had been a *pensioner member* and had neither made any election under any of rules 10.8 to 10.9, 23.1(f) and 23.2(c), nor made any *allocation* under section 13, and no provision of any of sections 14, 16 and 18 had become applicable to that individual;
- (c) where the *member* or *pensioner member* does not leave a surviving spouse or *civil partner* or *dependant* who benefits under the provisions of this section or if there is not any surviving spouse or *civil partner* or *dependant* for the time being receiving such benefit then, for the fraction of '3/640ths' in paragraph (a) above, there shall be substituted the fraction of '1/160th', and for the fraction of "three eighths" in paragraph (b) above, there shall be substituted the fraction "one half";
- (d) the annuity benefit payable under this rule may be split into a number of separate annuity benefits and the annuity benefit or any such separate annuity benefits may be paid at the discretion of the *trustee company* to any one or more persons approved of by it who undertakes to apply such annuity benefit or benefits for the maintenance or benefit of all or any one or more of the *eligible children* of the *member* or *pensioner member*; and in making such payment the *trustee company* shall not be under any obligation to see to the application of any such annuity or annuities;
- (e) where a surviving spouse or *civil partner* continues to receive a *guaranteed minimum pension* but no other benefits under this section then for the purposes of paragraph (c) above the surviving spouse or *civil partner* shall be deemed not to be receiving benefit under this rule provided that the actual amount of the *guaranteed minimum pension* receivable by the surviving spouse or *civil partner* shall be deducted from the higher amount payable by reference to paragraph (c) above but not so as to bring the amount payable to or in respect of the *eligible child* or *eligible children* below the amount which would have been so payable without the application of paragraph (c) above; and
- (f) where an *eligible child* who has been in receipt of an annuity is an *eligible child* by virtue of some incapacity, but becomes able to carry on some remunerative employment so as to be self-supporting and subsequently becomes an *eligible child* again by virtue of the same incapacity, the period

during which such *eligible child* was self-supporting shall be treated as a period during which the annuity applicable to the *eligible child* was suspended.

- (g) notwithstanding the foregoing provisions of this rule where the *relevant date* was before 22 June 1999 in relation to a deceased *member* or *pensioner member* in respect of whom a pension under this rule is payable, an individual who is an *eligible child* of the deceased by reason only of having been accepted as a member of the family shall not be treated as such at any time while there is more than one *eligible child* of the deceased who qualifies as such on other grounds, and while there is one (but only one) other *eligible child* of the deceased who qualifies as such on other grounds shall be eligible for benefit under the foregoing provisions of this rule subject to the right of that other *eligible child* to benefit as if he or she were the only one.

11.10 Supplementary benefits

The following benefits under this section shall be debited to, and be a charge on, the *supplementary section*:-

- (a) benefits payable by reference to *supplementary service*;
- (b) benefits payable in respect of a *member* who died in *service* with less than five years' *pensionable service*; and
- (c) in addition, that part of the benefit:-
- (i) under rule 11.9(a) equal to 1/640th; and
- (ii) under rule 11.9(c) equal to 1/480th

of *pensionable salary* for each *year* of *pensionable service* in respect of each *eligible child* not exceeding two.

11.11 Augmentation of death benefits

If any of the benefits payable on the death of a *member* or *pensioner member* under this section are reduced by the operation of section 17, then, subject to rules 17.4 and 17.5, the *trustee company* shall, so far as practicable, augment by the amount which it determines on *actuarial advice* to be equivalent to that reduction such other of those benefits as it shall select. In selecting benefits to be augmented under this rule the *trustee company* shall have regard to any written expression of wish by the *member* or *pensioner member* or by that person's personal representatives but shall not be bound thereby.

Section 12 - Multiple Appointments

12.1 Member holding more than one pensionable appointment

In cases where a *member* holds two or more separate appointments as an *eligible employee* whether with the same *institution* or not then the following provisions shall apply:-

- (a) subject to paragraphs (d) and (e) below the *member* shall not be entitled to count contemporaneous periods of *service* in each appointment as separate periods of *pensionable service* and if any of those appointments was *full-time service*, or if the sum of the *part time service fractions* for those appointments would apart from this paragraph amount to 1 or more, then rule 5.2(b) shall apply to that period as if it were a period of *full-time service* and not a period of *part-time service*;
- (b) the *member's* contributions shall be based on the aggregate *salary* from all such appointments;
- (c) subject to rule 7.2A.2 where a *member* ceases to hold the appointments or any one or more of them in order to take up a new appointment with the same or another *institution* the *member* shall not thereupon be entitled to any pension in respect of the appointment or appointments given up, but the period of *service* in such appointment, or if the *member* has given up both or all appointments the period of *service* in that held the longer or longest, shall count as a period of *pensionable service* for the purposes of the *scheme*;
- (d) subject to rule 7.2A.2 where a *member* who has held a *lesser appointment* for a period of not less than two years ceases to hold or withdraws in respect of that *lesser appointment* while retaining and continuing in *active membership* in respect of the *greater appointment*, the *member* may (subject to paragraph (e) below) be granted *preserved benefits* in respect of such *lesser appointment* consisting of:-
 - (i) a pension commencing at *normal retirement age* and then payable for life at the annual rate of 1/80th; and
 - (ii) a lump sum payable at *normal retirement age* equal to 3/80ths

of the *final average net pay* for the *lesser appointment* for each year of *service* in such *lesser appointment*, and thereafter (subject as provided in paragraph (g) below and notwithstanding the provisions of rule 5.8) the *salary* of the *member* in respect of the *lesser appointment* shall be disregarded for the purposes of determining *pensionable salary*, *pensionable service* shall not include any period of *service* while engaged solely in the lesser appointment and benefits from the *member's* remaining *pensionable service* shall be

ignored in determining benefits under section 9 in respect of the *lesser appointment*;

- (e) subject to rule 7.2A.2 where a *member* ceases to hold the *greater appointment* and then would, but for the retention of the *lesser appointment*, fulfil the qualification for obtaining an immediate pension under section 10 the *member* shall at that time have the option to take an immediate pension and lump sum in respect of the appointment given up of an amount set out in paragraph (g) below, but if the *member* ceases to hold the *greater appointment* without then fulfilling the conditions for obtaining an immediate pension or if the *member* does not exercise the option to receive such a pension, that cessation shall in that case be treated as falling within paragraph (d) above but with the substitution of '*greater appointment*' for '*lesser appointment*' and vice versa;
- (f) subject to rule 7.2A.2 where a *member* in accordance with paragraph (e) above draws an immediate pension then, subject to the *member* satisfying the *trustee company* and the *employer* that it is unlikely that such *member* will enter employment of any *institution* or other person which will when aggregated with the *lesser appointment* amount substantially to full-time employment, the benefits payable on relinquishing the *greater appointment* shall be:-

- (i) a pension for life at the annual rate of 1/80th; and

- (ii) a lump sum of 3/80ths

of *final average net pay* in respect of the *greater appointment* for each year of *service* in such *greater appointment* and thereafter the *pensionable salary* of the *member* shall be calculated upon the *salary* of the *member* in respect of the *lesser appointment* (or if the *member* has held more than two appointments, the remaining appointments) and *pensionable service* shall not include any period of *service* while engaged solely in the *greater appointment*;

- (g) in the case of a *member* to whom *preserved benefits* have been granted under paragraph (d) or paragraph (e) above and who subsequently takes up a new pensionable appointment of a significantly higher grade in place of, or as additional to, the remaining appointment or appointments as the case may be, the *preserved benefits* previously granted to the *member* will be cancelled and the case shall be treated as if it fell within paragraph (c) above;
- (h) in the case of a *member* to whom *preserved benefits* have been granted under paragraph (d) above and in respect of whom rule 9.7 subsequently becomes applicable, benefits under rule 9.7 shall be calculated as if references in that rule to *pensionable salary* were references to the *member's final average net pay* for the *lesser appointment* and references to *pensionable service* were to *years of the member's service* in such *lesser appointment* and the preceding provisions of this paragraph shall apply to a *member* to whom *preserved*

benefits have been granted under paragraph (e) but with the substitution of '*greater appointment*' for '*lesser appointment*'; and

- (j) where *preserved benefits* have been granted to a *member* under paragraph (e) above on ceasing to hold the *greater appointment*, and immediately after that cessation that *member* was not one to whom rule 4.2A then applied, then any *pensionable service* previously credited to that person under rule 4.2A(d) and rule 5.2(f) shall be treated as having accrued in respect of the *greater appointment* if that person so elects on ceasing to hold the *greater appointment* or within such period thereafter as the *trustee company* may allow.

12.2 Calculation of final remuneration

- (a) Section 17 shall apply to each pension and its corresponding lump sum granted under this section before 6th April 2006 as if the date on which each relevant appointment was relinquished was a *relevant date* but so that for the purpose of calculating *final remuneration* there shall be excluded from the calculation of *total remuneration* any remuneration received in respect of any appointment retained, or any *net pay* in respect of any appointment previously relinquished, as the case may be.
- (b) Subject to paragraph (a) above, rule 10.7 shall apply to benefits granted under this section as if they were payable on *retirement* under section 10.
- (c) Rule 10.8 shall apply to any *member* who has the option to take an immediate pension under rule 12.1(e) as if any reference in the former rule to a *member's retirement* included a reference to that *member's* ceasing to hold the *greater appointment*.

12.3 Effect of member withdrawing

If an individual who is or who would, but for the provisions of this rule, be a *member* by virtue of two or more separate appointments exercises a right of withdrawal under rule 4.9 or elects not to join the *scheme* when first eligible to do so in respect of any separate appointment then:-

- (a) if the individual has exercised a right of withdrawal or elected not to join in respect of the *greater appointment* the individual shall be deemed also to have exercised a right of withdrawal in respect of the *lesser appointment* or appointments and to have ceased to be an *active member* but subject to paragraph (c) below;
- (b) if the individual has exercised a right of withdrawal or elected not to join in respect of a *lesser appointment* then, subject to paragraphs (c) and (d) below, that individual shall not be entitled in respect of that appointment or any

appointment replacing it to exercise any right to rejoin the *scheme* under rules 4.4 and 4.6;

- (c) an individual to whom paragraph (a) or (b) above applies shall have the right within the appropriate time limit to rejoin the *scheme* under rule 4.9(d)(iii) in respect of the appointments in respect of which they had withdrawn from the *scheme*;
- (d) an individual to whom paragraph (a) above applies, but who cannot rejoin the *scheme* under paragraph (c) above may do so in respect of their *greater appointment* or all their appointments in accordance with the appropriate provisions of rules 4.4 and 4.6; and
- (e) remuneration received in respect of a *lesser appointment* to which paragraph (b) above applies shall not be *salary* for the purposes of the *scheme* whether before or after the date of withdrawal but without prejudice to a *member's* rights to *preserved benefits* under rule 12.1(d).

12.4 Trustee company's power to make regulations

For the purposes of implementing the provisions of this section the *trustee company* shall be entitled to make regulations either generally or in relation to a particular *member* or *institution* and in particular, but without prejudice to the generality of the foregoing, may make regulations for the purposes of determining:-

- (a) when a *member* has accepted an appointment of a significantly higher grade;
- (b) whether a *member* has permanently discontinued the *greater* or *lesser appointment*;
- (c) whether the period spent in two or more appointments should be treated as successive periods of *service* in a *greater appointment* or a *lesser appointment* as the case may be; and
- (d) whether two or more appointments should be treated as successive even though there is an interval between them.

Section 13 - Allocation

13.1 Eligibility for allocation

Subject to sub-paragraphs (i), to (vii) below this section shall apply to:-

- (a) a *member* with five or more *years' pensionable service* who is in *service* and over the age of 50;
- (b) a *pensioner member* or an *ex-spouse participant* who marries or enters into a registered *civil partnership* after that person's pension has come into payment;
- (c) a *pensioner member* whose marriage or registered *civil partnership* is dissolved or annulled or in respect of whom a decree of judicial separation is made after the pension has come into payment;
- (d) a *former member* who is entitled to *preserved benefits*, and who is over the age of 50 and whose benefits have not come into payment; and
- (e) an *ex-spouse participant* who is over 50 and whose *pension credit benefit* under the *scheme* has not come into payment

but this section shall not apply to:-

- (i) a *member* or a *former member* who is *retiring* or has *retired* on the grounds of *incapacity* (but this shall not affect any *allocation* validly made prior to such *incapacity*);
- (ii) a *member* or a *former member* during the period when *membership* is suspended under rule 5.12 or such person is absent from work owing to sickness;
- (iii) any additional benefits to be provided for a *member* or a *former member* by virtue of contributions paid under the provisions of paragraph (g) of rule 8.2 as that rule had effect on 31 March 2009;
- (iv) any additional pension payable by virtue of the exercise of any option for the purposes of rule 10.8(b);
- (v) such part of any pension payable under paragraphed (a) of rule 9A.3 as would be required at the election of the *ex-spouse participant* under paragraph (c) of that rule to be commuted for a lump sum of twelve times its amount.

- (vi) any *pensioner member* who has been in *active membership* on or after 6th April 2006 and who first became entitled to receive the pension (excluding any part of the pension consisting of *guaranteed minimum pension*) on or after that date; or
- (vii) an *ex-spouse participant* in receipt of a pension derived from *pension credit rights* conferred on that *ex-spouse participant* on or after 6th April 2006.

13.2 Application of this section

A *member* or other person to whom this section applies may at the times specified in rule 13.3 make a written application to the *trustee company* which shall comply with the provisions of rule 13.5.

13.3 Time limits

An application for an *allocation* may be made by a person to whom this section applies:-

- (a) at any time prior to the part of the person's pension to which the application relates coming into payment; and
- (b) in the case of a *pensioner member* or *ex-spouse participant* to whom rule 13.1(b) or (c) applies within six months of the marriage, registered *civil partnership*, dissolution, annulment or decree of judicial separation, as the case may be.

13.4 Interpretation

For the purposes of rules 13.5 to 13.11 the word '*member*' shall, where the context so requires or permits be deemed to include a reference to a *former member* an *ex-spouse participant* and a *pensioner member*, as the case may be.

13.5 Form of application for allocation

An application in accordance with this section shall be made in a form specified from time to time by the *trustee company* and shall state or include:-

- (a) whether the *allocation* is to be calculated on the assumption that either:-
 - (i) the *member's* pension is to be permanently reduced, even if the *beneficiary* predeceases the *member*; or

- (ii) the *allocation* is to be cancelled if the *beneficiary* predeceases the *member* so that the *member's* pension would then be restored to its full amount from the date of the *beneficiary's* death;
- (b) whether the deferred annuity shall be for the life of the *beneficiary* or subject to the prior agreement of the *trustee company* for a limited period ending at a specified age, or on the happening of a specified event;
- (c) a report from the *member's* own medical adviser (obtained by the *member* at the *member's* own expense) in a form specified from time to time by the *trustee company*;
- (d) the name of the *beneficiary* and (where the *beneficiary* is not the spouse or *civil partner* of the *member*) the nature of the dependency of the *beneficiary* on the *member*;
- (e) where the *member* is actually or prospectively entitled to receive more than one pension under the *scheme*, a specification of the pension in respect of which the *allocation* is applied for; and
- (f) the amount or proportion of the *member's* pension (other than *supplementary benefits*) which is to be surrendered.

13.6 Number of beneficiaries

A *member* may make a number of applications for *allocations* either in favour of the same *beneficiary* or different beneficiaries.

13.7 Procedure on receipt of application for allocation

On receipt of a valid application and any such further information as the *trustee company* may reasonably require in any particular case, the *trustee company* shall accept such application unless:-

- (a) the *member* shall in writing have withdrawn the application before receipt of the written acceptance;
- (b) the medical report is not satisfactory to the *trustee company*;
- (c) the amount surrendered would result in the amount of the annuity becoming payable, when aggregated with all other annuities under this section resulting from an *allocation* or *allocations* by the *member*, exceeding the pension remaining payable to the *member*;

- (d) the person nominated as a *beneficiary* does not fall within the definition thereof;
- (e) the *allocation* would be in breach of rule 19.8(b) or rule 19.14; or
- (f) the application does not conform with this section or with any regulations made under rule 13.12.

13.8 Form of acceptance or rejection

Any acceptance or rejection of the application shall be in writing and in the case of an acceptance shall be binding at the time of the receipt by the *member*, and any rejection shall give the *trustee company's* reasons for it.

13.9 Amount of annuity and reduction in pension

The consideration for an *allocation* shall be a prospective reduction in the pension payable to the *member* or the pension actually payable to the *member* of such amount as may be specified pursuant to rule 13.5(f) and the amount of the deferred annuity payable to the *beneficiary* shall be determined by the *trustee company* acting on *actuarial advice*.

13.10 Medical reports

In the event of the *trustee company* rejecting an application on the grounds that the medical report is not satisfactory to it, the *member* shall have the right, at the *member's* own expense, to ask that a further medical report (following medical examination if the *trustee company* so requires) shall be provided by a medical adviser selected by the *trustee company*.

After considering such further report the *trustee company* shall decide either:-

- (a) to reject the application;
- (b) to accept the application on normal terms; or
- (c) subject to the agreement in writing of the *member* within twenty one days of being notified of the *trustee company's* decision to accept the application on such special terms as it considers appropriate.

If the *member* becomes entitled to receive any benefits under the *scheme* that would, if this rule did not apply, fall to be reduced if an application that has been made under rule 13.5 were to be accepted, the amount of that benefit shall be abated as if that application has been so accepted, but shall be restored as if never abated by reason of

that application if and when the *trustee company* decides not to accept that application or rule 13.7(a) applies to it.

13.11 Cancellation of allocation

In addition to the circumstances set out in rule 13.5(a) an *allocation* shall be cancelled and the deferred annuity shall not become payable on the happening of one of the following events:-

- (a) where a *member* ceases to be in *service* without an immediate pension becoming payable, but so that if such a *member* then becomes entitled to benefits under section 9 otherwise than by virtue of rule 22.4, the *member* shall be entitled to make a subsequent *allocation* in accordance with this section and if such an *allocation* is made within six months of cessation of *service* the *member* shall not be required to produce a medical report under rule 13.5(c);
- (b) where a *member* requests, and the *trustee company* in its absolute discretion agrees, that the *allocation* shall be cancelled; provided that:-
 - (i) in exercising the absolute discretion vested in it, the *trustee company* may have regard to any representation made by or on behalf of the *member* or the *beneficiary* but without in any way being bound by such representations; and
 - (ii) in any case where an *allocation* is cancelled in accordance with this rule the *trustee company*, acting on *actuarial advice*, shall recalculate the pension or other benefits payable to or in respect of the *member* to take account of the risk already borne by the *fund* during the period when the *allocation* was accepted and not cancelled.
- (c) if the *member* dies or *retires* on the grounds of *incapacity* within twelve months of the receipt by the *trustee company* of the application for the *allocation*, and it is proved to the satisfaction of the *trustee company* that the medical report supplied by the *member* under rule 13.5(c) of this section was misleading or the medical report provided under rule 13.10 was based on misleading information supplied by the *member*; or
- (d) if the *member* opts for the payment of the cash equivalent as described in rule 9.8 or rule 9A.7 or requests a transfer pursuant to rule 9.9.

13.12 Regulations

The *trustee company* shall have power from time to time to make such regulations as it may, in its absolute discretion, determine to be necessary for the efficient operation of this section.

Section 14 - Deductions on Account of Aggregable Benefits

14.1 Application of this section

Notwithstanding anything in sections 9 and 10 to 12 inclusive there shall be deducted from the benefits payable thereunder the amounts specified in this section.

14.2 Benefits affected by this section

This section applies where any benefits have been received from the *scheme*, or have been received or are receivable from any other *retirement benefits scheme* of which the *member* or *former member* has been a member during a period of employment which counts automatically as a period of *pensionable service* for the purpose of calculating the benefits referred to in rule 14.1.

14.3 Deductions on account of aggregable benefits

The *trustee company* shall (subject to rule 19.8(c)) deduct the value of the benefits referred to in rule 14.2 from the corresponding benefits of the like nature payable under sections 9 and 10 to 12 inclusive but, if the value of the benefits referred to in rule 14.2 exceeds the amount of the corresponding benefits or rule 19.8(c) applies the *trustee company* shall make such adjustments in the other benefits payable to, or in respect of the *member* or *former member* concerned as it shall, acting on *actuarial advice*, decide.

14.4 Value of benefits

For the purposes of rule 14.3 the value of the benefits to be deducted (which to the extent they include a refund of the *member's* or *former member's* contributions shall be deemed for the purposes of this rule to include the amount of any tax deducted from such refund under rule 18.3) shall be determined by the *trustee company*, acting on *actuarial advice*, but so that where the benefits were received in cash or in some other form of money's worth the value shall be calculated by adding to the amount of benefits received *compound interest* at 4% per annum (or such other rate as the *trustee company*, acting on *actuarial advice*, shall from time to time decide) from the date of receipt.

14.5 SERPS provisions

This section shall apply to any part of the additional pension payable to a *member* or *former member* under Section 44 of the Social Security Contributions and Benefits Act 1992 which is earned during a period of employment which counts towards the reckoning of *pensionable service*.

14.6 Exclusions

This section shall not apply:-

- (a) where the *member* or *former member* has made a payment or transfer of assets to the *trustee company* to negate the provisions of this section to the extent of the value of such payment or transfer;
- (b) to benefits received from another scheme where the employment to which that other scheme relates does not count for the purpose of calculating *pensionable service* even though it is contemporaneous with a period of *service* which is taken into account in calculating *pensionable service*;
- (c) to benefits from a scheme supplementing the benefits of a *member* or *former member* pursuant to a contract between the *institution* and that individual;
- (d) to benefits receivable in respect of additional voluntary contributions paid to another scheme where the ordinary benefits arising from compulsory contributions of either the *member* or *former member* or the *member's* or *former member's* employer to that other scheme are taken into account either under this section or by virtue of a transfer payment to the *scheme* pursuant to any of rules 5.3, 5.5 and 5.5A, and the level of compulsory contributions to that other scheme has been reasonably comparable with the level of contributions to this *scheme*;
- (e) to any benefits paid under any *retirement benefits scheme* which is neither a *relevant scheme*, nor a relevant statutory scheme as defined in Section 611A of the *Taxes Act*;
- (f) to benefits payable under an *FSAVC scheme*;
- (g) to benefits payable from the *money purchase AVC fund*;
- (h) to *pension credit benefit*; or
- (i) to any benefits received from the *scheme* that were not derived from *pensionable service* which would fall to be taken into account in the calculation of the corresponding benefits mentioned in rule 14.3.

Section 15 - Pension Increases and Interest

15.1 Increases in current pensions and preserved benefits

- (a) Any pension benefits currently payable out of the *fund* (other than *supplementary benefits*) and any other benefits coming into payment shall be increased at the same time and with effect from the same date and to the same extent permissible and subject to the same conditions as if such benefits were official pensions and were increased under Part I of the Pensions (Increase) Act 1971 as from time to time amended subject to paragraph (b) below.
- (b) Where the *relevant date* for calculation of the benefits payable or prospectively payable in respect of any *member* or *former member* was before 22nd March 1997, paragraph (a) of this rule shall have effect in relation to those benefits as if the amount by which official pensions were permitted to be increased by the Pensions Increase (Review) Order 1997 had been 3 per cent instead of 2.1 per cent (or where the *relevant date* was on or after 22nd April 1996, that percentage which bears the same proportion to 3 per cent as the increase permitted by that Order for official pensions which are deemed for the purposes of the Pensions (Increase) Act 1971 to have begun on the day following the *relevant date*, bears to 2.1 per cent). To the amount of pension payable out of the *fund* by virtue of this paragraph to any *pensioner* entitled to an additional pension in a long-term benefit under the Social Security Contributions and Benefits Act 1992, there shall be added an amount equal to that (if any) by which that additional pension insofar as derived from *contracted-out service* under the *scheme*, would have been further increased if the percentage increase directed by Article 4(4) of the Social Security Benefits Up-rating Order 1997 to be applied to the sums specified in that enactment had been 3 per cent instead of 2.1 per cent.
- (c) Where the *relevant date* for calculation of the benefits payable or prospectively payable in respect of any *member* or *former member* was before 25th March 2000, paragraph (a) of this rule shall have effect in relation to those benefits as if the amount by which official pensions were permitted to be increased by the Pensions Increase (Review) Order 2000 had been 2.1 per cent instead of 1.1 per cent (or where the *relevant date* was on or after 25th April 1999, that percentage which bears the same proportion to 2.1 per cent as the increase permitted by that Order for official pensions which are deemed for the purposes of the Pensions (Increase) Act 1971 to have begun on the day following the *relevant date*, bears to 1.1 per cent). To the amount of pension payable out of the *fund* by virtue of this paragraph to any *pensioner* entitled to an additional pension in a long-term benefit under the Social Security Contributions and Benefits Act 1992, there shall be added an amount equal to that (if any) by which that additional pension insofar as derived from *contracted-out service* under the *scheme*, would have been further increased if the percentage increase directed by Article 4(4) of the Social Security Benefits

Up-rating Order 2000 to be applied to the sums specified in that enactment had been 2.1 per cent instead of 1.1 per cent.

15.2 Increases in lump sum benefits

- (a) Any lump sum (other than *supplementary benefits*) becoming payable in respect of the death or *retirement* of a *former member*, or in respect of the coming into payment of *pension credit benefit* under the *scheme* shall be increased to the same extent, and subject to the same conditions, as if it were a lump sum benefit to which Section 9 of the Pensions (Increase) Act 1971 applied subject to paragraph (b) below.
- (b) paragraphs (b) and (c) of rule 15.1 shall have effect in relation to any lump sum payable to or in respect of a *former member* as they have effect in relation to other benefits so payable.

15.3 Statutory provisions

- (a) Notwithstanding the provisions of rule 15.1, Section 59 of the Social Security Pensions Act 1975 (which is deemed to be incorporated in Part I of the Pensions (Increase) Act 1971) shall not have the effect of reducing the total amount of pension increases payable to a *pensioner* under this section (when aggregated with the amount (if any) by which that part of the *pensioner's* entitlement to additional pension under Section 44 of the Social Security Contributions and Benefits Act 1992 has been increased by any direction under Section 151(1) of the Social Security Administration Act 1992, or under the former corresponding provisions, in respect of that *pensioner's* period of *contracted-out service* in the *scheme*) to less than the amount of pension increases which would have been payable under this section had Section 59(5) of the Social Security Pensions Act 1975 not been passed.
- (b) *Contracted-out service* in or under the *scheme* shall be taken for the purposes of this section of the *rules* to include any period of *contracted-out employment* insofar, but only insofar, as *guaranteed minimum pension* or protected rights accrued during that period for which the *trustee company* has any liability.
- (c) Rules 15.1 and 15.2 shall have effect as if Section 8(2)(a) of the Pensions (Increase) Act 1971 were omitted from that Act.

15.4 Increases in supplementary benefits

Any pension benefits currently or prospectively payable which are *supplementary benefits* may be increased from time to time having regard to rises in the *RPI* to such extent as the *trustee company*, acting on *actuarial advice*, shall decide and having regard to the liabilities attributable to the *supplementary section* when compared with the assets of that section.

15.5 Statutory increases

Notwithstanding the preceding provisions of this rule effect shall be given to Chapters II and III of Part IV of the *Pension Schemes Act*, and to Section 51 of the Pensions Act 1995 and to regulations made under Section 40 of the *Welfare Reform Act* in relation to pensions, *preserved benefits* or *pension credit benefit* thereunder to which they apply in such cases (if any) as the preceding rules of this section do not give higher increases.

15.6 Money purchase AVCs

Notwithstanding the preceding provisions of this section no increases shall be made pursuant to those provisions to any benefits which are or become payable from the *money purchase AVC fund*.

15.7 Interest on late payments

- (a) In cases where any payment due from the *trustee company* under the *rules* is not paid within the period specified in paragraph (b) below and whether or not any such delay is the fault of the *trustee company*, interest shall be paid for the period from the expiration of the appropriate time limit specified in paragraph (b) up to the date of payment at the rate or rates determined in accordance with paragraph (c) below.
- (b) The period referred to in paragraph (a) above is six months or such shorter period as the *trustee company* shall in any particular case decide.
- (c) The rate at which interest is payable shall be determined from time to time by reference to such short-term rates and subject to such further adjustments as the *trustee company*, acting on *actuarial advice*, shall decide.

Section 16 - Forfeiture, Commutation and Alienation

16.1 Lien and forfeiture

Notwithstanding anything herein contained a *member's employer* shall be entitled to a charge or lien on or set off against (as may be appropriate) any benefit to which the *member* may become entitled under the provisions of the *rules* for the purpose of enabling the *employer* to obtain the discharge by the *member* of some monetary obligation due to the *employer* and arising out of a criminal, negligent or fraudulent act or omission of the *member*, provided that:-

- (a) in respect of any such obligation the amount recovered or retained out of the *fund* shall be limited to the actuarial value of the *member's* actual or prospective benefits (other than benefits accruing pursuant to a transfer payment made pursuant to rules 5.3, 5.5, 23.1 or 23.2) at the time of such recovery or retainer, or the amount of the obligation, whichever shall be the less (subject to any different agreement in writing between the *employer* and the *member*);
- (b) the *member* shall be entitled to a certificate showing the amount retained or recovered and its effect on the *member's* benefits; and
- (c) in the event of any dispute as to the amount to be retained or recovered, the *employer* shall not be entitled to enforce such charge, lien or set off except after the 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.

This rule shall apply equally to any benefit to which a *former member* or *pensioner member* may become entitled under the provisions of the *rules*.

16.2 Trustee company's rights of charge, lien and set-off

The *trustee company* shall be entitled to charge or lien on, and a right of set-off against any *relevant benefit* to which a *member*, *former member*, *pensioner member* or *ex-spouse participant* is (or to which such person may become) entitled under the *rules* for the purpose of discharging some monetary obligation due from that person to the *trustee company* and arising out of a criminal, negligent or fraudulent act or omission by that person. The exercise of any such charge, lien or right of set-off by the *trustee company*:

- (a) shall be subject to those same provisos as apply to the entitlement of the *employer* under rule 16.1 above, except as regards agreement between *employer* and *member*;

- (b) shall be subject to the requirements of Section 91(6) of the Pensions Act 1995;
- (c) is subject to Section 159 of the *Pension Schemes Act*;
- (d) shall not prejudice or affect any right which would otherwise be afforded to any individual by virtue of rule 20.13 to be exonerated or indemnified whilst acting in a fiduciary capacity;
- (e) shall not be exercised where the *trustee company* has a right of action against the *institution* currently or formerly employing that *member, former member, pensioner member* or *ex-spouse participant* where the act or omission of that that *member, former member, pensioner member* or *ex-spouse participant* otherwise conferring rights exercisable by the *trustee company* under this rule was carried out within the actual or ostensible scope of that individual's authority as an employee or officer (or former employee or officer) of that *institution*;
- (f) shall not be made in the circumstances prescribed by Regulation 4 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc) Regulations 1997 (namely where the monetary obligation owed to the *scheme* arises out of a breach of trust by the *member* that *member, former member, pensioner member* or *ex-spouse participant* and the Court has relieved that individual wholly or partly from personal liability under Section 61 of the Trustee Act 1925).

16.3 Commutation of benefits

- (a) the *trustee company* may at any time when no pension has become payable to a *member* or *former member* by virtue of an arrangement under the *scheme*, commute for a lump sum not exceeding the actuarial value of all the benefits payable (or prospectively payable) to that person under that arrangement, when aggregated with the actuarial value of any lump sum that might on that person's death fall under that arrangement to be held on the *discretionary trusts*, if in respect of that person the *trustee company* has received a *medical opinion* that he or she was expected to live for less than one year beginning with the date on which that *medical opinion* was given, provided that
 - (i) for the purposes only of calculating the actuarial equivalent of the future benefits to be commuted or cancelled, the recipient shall be deemed to be in normal health; and
 - (ii) notwithstanding anything elsewhere in the *rules* to the contrary, no amount shall be raised out of the *fund* on the death of a *member* or *former member* to whom a payment has been made under this paragraph to be held on the *discretionary trusts* on account of the arrangement to which this paragraph refers; and

- (iii) in respect of a *member* the *member's service* and contributions in respect of the arrangement shall cease when a payment is made to the *member* under this paragraph as provided in rule 7.7(ab).
- (b) at the time when a pension becomes payable out of the *fund*, the *trustee company* may commute for a lump sum payment not exceeding the actuarial equivalent of the pension concerned, any pension which does not exceed the *trivial amount* and any pension contingent thereon which does not immediately exceed the *trivial amount* and so that for the purpose of determining whether a pension exceeds the *trivial amount*:-
 - (i) it shall be aggregated with any other pension benefits in respect of the same employment and with any *pension credit benefit* under the *scheme*, including in each case the pension equivalent of benefits not in pension form; and
 - (ii) the *guaranteed minimum pension* must be revalued up to *state pension age* in accordance with the provisions of the *Pension Schemes Act*.
- (c) at the time when a pension becomes payable from the *fund*, the *trustee company* may commute for a lump sum payment not exceeding the actuarial equivalent of the pension concerned any benefits to which a *member* or *former member* is actually or prospectively entitled and which represent equivalent pension benefits under Part III of the National Insurance Act 1965 (including any corresponding Northern Ireland legislation and the previous corresponding enactments) provided that it is lawful to do so by virtue of regulations made under Section 91(5)(c) of the Pensions Act 1995; and
- (d) the payment of a lump sum under this rule will, if made under paragraph (a), extinguish all claims of the recipient against the *fund* (or, as the case may be, the *money purchase AVC fund*) in respect of the relevant arrangement; if made under paragraph (b) will extinguish all rights to any payment under the *scheme* to or in respect of the recipient arising from that person's participation in the *scheme* as a *member* or *ex-spouse*; and if made under paragraph (c) extinguish all claims against the *fund* for the benefits commuted thereby.

16.4 Restrictions on alienation

- (a) Subject as provided elsewhere in the *rules* and by the Pensions Act 1995, no benefit arising under the *scheme* is capable of being assigned or otherwise applied in a manner which is prohibited by Section 91(1) of the Pensions Act 1995 and an agreement to effect any such assignment or other such application of any benefit arising under the *scheme* not permitted by the *rules* is unenforceable.

(b) Subject as provided elsewhere in the *rules* and by the Pensions Act 1995, no benefit arising under the *scheme* is capable of being forfeited. Provided that the *trustee company* shall have power exercisable at its absolute discretion by any instrument in writing to terminate all or any of the *relevant benefits* in question with immediate effect:-

(i) when the *member, former member, pensioner member* or *ex-spouse participant* has purported to assign commute or surrender any accrued right or entitlement to any *relevant benefit* under the *scheme* or otherwise deal with such right or entitlement in a manner which is not permitted under the *rules* by virtue of Section 91 of the Pensions Act 1995 or is otherwise of no legal effect or unenforceable;

whether or not the event occurred before or after that person's pension or lump sum became payable.

(c) The *relevant benefits* which would apart from this paragraph be payable in respect of a *member, former member, pensioner member* or *ex-spouse participant* to any person under the *rules* (including under the *discretionary trusts*) shall be forfeit if that person is convicted of the offence of murder or manslaughter of that *member, former member, pensioner member* or *ex-spouse participant* or of any other offence of which unlawful killing of that latter individual is an element as provided in Regulation 6 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997.

(d) Nothing in this rule shall be taken to prejudice or affect:-

(i) any agreement for which the *rules* provide to effect any assignment, surrender or commutation of any kind referred to in paragraphs (a) to (c) inclusive of Section 91(5) of the Pensions Act 1995;

(ii) the exercise by an *employer* of its rights under rule 16.1;

(iii) the exercise by the *trustee company* of its rights under rule 16.2;

(iv) compliance by the *trustee company* with any order of the Court enforceable against it under or by virtue of the Matrimonial Causes Act 1973 or the Civil Partnership Act 2004 or so enforceable under any other legislation relating to divorce, nullity of marriage or of registered *civil partnerships* or dissolution of registered *civil partnerships*;

(v) the payment by the *trustee company* to any person of any benefit in accordance with rule 20.15.

(e) In the event of any *relevant benefit* of or in respect of a *member, former member, pensioner member* or *ex-spouse participant* arising under the *scheme*

being terminated by the trustee company in accordance with the proviso to paragraph (b) of this rule or being forfeit under paragraph (c) of this rule, an amount equal to the value determined by the *actuary* of the benefit forfeited which was payable, or would but for the forfeiture have become payable, may, if the *trustee company* in its absolute discretion so determines, be paid by the *trustee company* to or between all or any of the following in such manner and proportions as the *trustee company* may determine without prejudicing approval:-

- (i) the *member, former member, pensioner member* or *ex-spouse participant* to or in respect of whom the *relevant benefit* was payable or would in the absence of such forfeiture have become so;
 - (ii) the spouse or *civil partner*, or the surviving spouse or *civil partner* of that person;
 - (iii) any *dependant* of that person;
 - (iv) any other person not referred to in any of sub-paragraphs (i) to (iii) above to whom such *relevant benefit* was paid or could have been paid but for such forfeiture.
- (f) For the purposes of this rule:-
- (i) an individual whose benefit has been the subject of forfeiture shall nonetheless be regarded as a *member, former member, pensioner member* or *ex-spouse participant* so as to permit this rule to have effect but not further or otherwise; and
 - (ii) the *relevant benefits* of a *member, former member, pensioner member* or *ex-spouse participant* (as the case may be) who has that status immediately prior to the event giving rise to forfeiture shall be forfeited in the circumstances for which rules 16.1 and 16.2 provide where the relevant powers of any *employer* or of the *trustee company* have been lawfully exercised in accordance with their terms.

Section 17 - Inland Revenue Limits

17.1 General rule as to Inland Revenue limitations

- (a) Sections 17A to 17C shall apply to benefits calculated for or in respect of a *member* by reference to a *relevant date* on or after 6th April 2006 and the following provisions of this Section 17 shall not apply to them.
- (b) Notwithstanding anything to the contrary contained in the *rules*, the benefits payable to a *member*, to the *member's* surviving spouse, or *civil partner*, or *dependants* or to any other person in respect of the *member* in circumstances where such benefits are calculated by reference to a *relevant date* before 6th April 2006 shall not, when aggregated with the value, determined as at that date by the *trustee company* on *actuarial* advice, of all benefits payable to or in respect of the same *member* provided under all other *associated schemes* and any *FSAVC scheme*, exceed the appropriate limits applicable to that *member* except with the approval of *HMRC* or of the *funding council*, provided always that any departure from the appropriate limits that has not been approved by *HMRC* shall be void to the extent that it would result in the *trustee company* being required to make a payment that would not be authorised for the purposes of Part 4 of the Finance Act 2004.
- (c) The question of whether *approval* will be prejudiced shall be determined for the purposes of the following provisions of this section on the basis that the extent to which any part of an individual's *aggregate retirement benefit* may be paid as a lump sum is limited only by the *rules* apart from those provisions, but tax law and the practice of *HMRC* shall for the purposes of the following provisions of this section and for the purposes of rule 9A.9 be taken to remain otherwise unchanged from 5th April 2006 onwards and the *trustee company* shall determine what would have been the practice of *HMRC* for those purposes in any case of doubt.

17.2 Member's aggregate retirement benefit - limits for pre-1989 Act members

This rule sets out the limits applicable to *pre-1989 Act members* so that *aggregate retirement benefit* on becoming a *pensioner member* shall not exceed:-

- (a) on *retirement* at or before *normal retirement age* a pension of 1/60th of *final remuneration* for each year of *service* (not exceeding 40 years) or such greater amount (not exceeding two-thirds of *final remuneration*) as will not prejudice *approval*; or

- (b) on *retirement* after *normal retirement age* a pension of the greatest of:-
 - (i) the amount calculated in accordance with paragraph (a) above on the basis that the actual date of *retirement* was the *pensioner member's normal retirement age*;
 - (ii) the amount which could have been provided in accordance with paragraph (a) above if the *pensioner member* had *retired* at *normal retirement age* increased either actuarially in respect of the period of deferment or in proportion to any increase in the *RPI* from the date of attainment of *normal retirement age* to the actual date of *retirement*; or
 - (iii) where the *pensioner member's* total *service* with the *employer* has exceeded 40 years, the aggregate of 1/60th of *final remuneration* (computed as at the date of *retirement*) for each year of *service* before *normal retirement age* (not exceeding 40 such years) and of a further 1/60th of that *final remuneration* for each year of *service* after *normal retirement age*, with an overall maximum *service* of 45 years;
- (c) on cessation of *service* before *normal retirement age* a pension payable at or before *normal retirement age* of 1/60th of *final remuneration* for each year of *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 *RPI* which has occurred between the cessation of *service* and the date on which the pension begins to be payable, and any further increase necessary to comply with requirements of the *Pension Schemes Act* is also allowable.

17.3 Member's aggregate retirement benefit - limits for 1989 Act members

This rule sets out the limits applicable to *1989 Act members* so that *aggregate retirement benefit* on becoming a *pensioner member* shall not exceed:-

- (a) on *retirement* at any time after attaining the age of 50, or on attaining the age of 75, 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*;
- (b) on *retirement* at any time before *normal retirement age* under rule 10.4 a pension of the amount which could have been provided at *normal retirement age* in accordance with paragraph (a) above, but with *final remuneration* being computed at the actual date of *retirement*; or
- (c) on cessation of *service* before attaining the age of 75 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*. The amount computed as

aforesaid may be increased in proportion to any increase in the *RPI* which has occurred between the date of cessation of *service* and the date on which the pension begins to be payable, and any further increase required in accordance with the *Pension Schemes Act* is also allowable.

17.4 Lump sum death benefits - limits

The lump sum benefit (exclusive of any refund of the *member's* own contributions and any interest thereon) payable on the death of a *member* while in *service* or on the death of a *former member* who left *service* with a right to benefits under section 9 before those benefits have come into payment shall not, when aggregated with all like benefits under *associated schemes* in respect of employment that terminated before 6th April 2006 and of any credits that were purchased or awarded before that date, exceed the greater of:-

- (a) £5,000; and
- (b) four times the *member's final remuneration* less (if the aggregate of the lump sums (if any) referred to in (i) and (ii) below exceeds £2,500):-
 - (i) any lump sum (other than a refund of such *member's* contributions and any interest thereon) payable on the death of the *member* under a *relevant scheme* in respect of employment that terminated before 6th April 2006 and was not concurrent with *service*; and
 - (ii) any lump sum life assurance benefit which is payable on the death of the *member* under a retirement annuity contract or trust scheme approved under Chapter III, or a personal pension approved under Chapter IV, of Part XIV of the *Taxes Act* in relation to employment (including self-employment) of that *member* which terminated before 6th April 2006, which was not concurrent with that *member's service* and which is not derived from a return of the fund accumulated in respect of that *member* under the relevant contract or scheme.

17.5 Surviving spouses' or civil partners' and dependants' pensions - limits

Any pension for a surviving spouse or *civil partner*, *eligible child* or *dependant*, when aggregated with the pensions (other than those provided by surrender of the *member's* own pension) payable or prospectively payable to that surviving spouse or *civil partner*, *eligible child* or *dependant* under all *associated schemes* in respect of employment that terminated before 6th April 2006 and of any credits that were purchased or awarded before that date shall not exceed an amount equal to two thirds of the appropriate *aggregate retirement benefit* payable or prospectively payable at whichever is applicable of:-

- (a) in the case of a *pensioner member*, the date of death (inclusive of any pensions increases added to pension under section 15 before the date of death);
- (b) in the case of a *deferred pensioner* who is:-
 - (i) a *pre-1989 Act member*, the *normal retirement age*;
 - (ii) a *1989 Act member*, the age of 50 or the later date of death;
- (c) in the case of a *member* who dies in *service* on or before *normal retirement age*, the day before the date of death on the assumption that the *member* had *retired* on the grounds of *total incapacity* on that day and had received a credit for the remainder of *service* up to *normal retirement age* (and on the assumption that such *member* remained in receipt of *salary* up to *normal retirement age* at the rate of *salary* in force immediately before death);
- (d) in the case of a *member* who dies in *service* after *normal retirement age*, the day before the date of death on the basis that the *member* had then *retired*;

or such greater amount as will not prejudice *approval*.

If pensions are payable to more than one of the *member's*, *pensioner member's* or *deferred pensioner's* surviving spouse or *civil partner*, *eligible children* and *dependants*, the aggregate of all pensions so payable in respect of the *member* under this and all *associated schemes* shall not exceed the full amount of whichever is the appropriate *aggregate retirement benefit* payable at the dates specified in paragraphs (a) to (d) above or such greater sum as will not prejudice *approval*.

17.6 Option to adopt 1989 Act member's limits

Any *pre-1989 Act member* may give an irrevocable notice in writing to the *trustee company* before any benefits become payable, in such form as the *trustee company* may prescribe, that with effect from and including 1st June 1989 the *member* is to be treated as a *1989 Act member* and on receipt of such notice the *member* shall be treated accordingly.

17.7 Continued rights in certain cases where service continues

- (a) This rule applies with effect from the first occasion on or after 1st June 1989 when the conditions specified herein obtain to a *member* who, having been or being in the *service* of a *pre-1989 institution* as a *pre-1989 Act member*, then leaves or has left *eligible employment* with that *institution* but remains in *active membership* solely on account of *eligible employment* with a *post-1989 institution* (not being an *associated employer* of that *pre-1989 institution*)

otherwise than in circumstances to which rule 17.2 applies, but this rule shall not apply to a *member* who has exercised the option conferred by rule 17.6.

- (b) The *final remuneration* of any *member* to whom this rule applies shall be calculated as at the *relevant date* in two parts related to *pensionable service* accrued including any reckonable *supplementary service* as follows:-
 - (i) insofar as permitted by a *Regulation 8 direction* received by the *trustee company*, paragraph A of the definition of *final remuneration* in section 24 shall apply to the fraction equal to that of *pensionable service* and reckonable *supplementary service* accrued before this rule took effect or shall take effect in relation to the *member*; and
 - (ii) subject to rule 17.9(c)(i) paragraph B of that definition shall apply to the remaining fraction of *pensionable service* and of reckonable *supplementary service*.
- (c) Any *member* to whom this rule applies shall be a *1989 Act member* for all purposes connected with the calculation of benefits and the limits contained in this section (but with the variations permitted by paragraph (b) of this rule and such variations as may have effect by virtue of a *Regulation 8 direction*) and shall remain so regardless of whether that *member* subsequently enters *service* with a *pre-1989 institution*.

17.8 Continued rights in the case of the certain deferred pensioners

- (a) This rule shall apply where:-
 - (i) rule 5.8 applies in the case of an *eligible employee* who was a *pre-1989 Act member* in respect of any of the period of *pensionable service* giving rise to the entitlement to a deferred pension under rule 9.3 which is cancelled by virtue of rule 5.8(a); and
 - (ii) the *eligible employee* rejoins or has rejoined the *scheme* on or after 1st June 1989; and
 - (iii) the *eligible employee* rejoins or has rejoined the *scheme* within three months following the termination of that person's prior period of *pensionable service*.
- (b) Where this rule applies to a *member* and where required a *Regulation 8 direction* has been received by the *trustee company* to this effect, paragraph A of the definition of *final remuneration* in section 24 shall apply subject only to rule 17.6 in relation to the fraction of that *member's pensionable service* (including any reckonable *supplementary service*) which is not referable to a transfer payment falling within rule 17.9.

- (c) Where the conditions referred to in sub-paragraphs (i) and (ii) of paragraph (a) above are satisfied in relation to a *member* but not that in sub-paragraph (iii) and a *Regulation 8 direction* has been received by the *trustee company* to this effect, the *final remuneration* of such a *member* shall be calculated as at the *relevant date* in two parts related to *pensionable service* accrued (including any reckonable *supplementary service*) as follows:-
 - (i) paragraph A of the definition of *final remuneration* in section 24 shall apply to the fraction equal to that of *pensionable service* (including any reckonable *supplementary service*) referable to *service* before this rule has taken effect in relation to the *member*; and
 - (ii) subject to rule 17.9(c)(i) paragraph B of that definition shall apply to the remaining fraction of *pensionable service* and of any reckonable *supplementary service*.

17.9 Continued rights in certain cases on transfer-in

- (a) This rule applies to any *member* who has joined or re-joined or joins or re-joins the *scheme* on or after 1st June 1989 if at the time of joining or re-joining or at any time whilst this is permitted in accordance with whichever of rules 5.3, 5.5 and 5.5A applies there is received by the *trustee company* a transfer payment from any *transfer scheme* in respect of such *member* and if in relation to the whole or the relevant part of the prior service under such *transfer scheme* the remuneration of that *member* has not been subject to the *earnings cap*.
- (b) This rule also applies to any *member* who has joined or joins the *scheme* on or after 1st June 1989 and in respect of whom there is received by the *trustee company* pursuant to whichever of rules 5.3, 5.5 and 5.5A applies a transfer payment from the *transfer scheme* where the following additional conditions are fulfilled namely:-
 - (i) the service of the *member* which was pensionable under that *transfer scheme* (disregarding any service which would not have become pensionable under the *scheme* if it had not fallen within sub-paragraph (ii) below) was based on remuneration which was subject to the *earnings cap* under that *transfer scheme*; and
 - (ii) the *member* had a prior period of service other than the period referred to in paragraph (a) above under any scheme which is or was a *transfer scheme* in relation to the *transfer scheme* mentioned in paragraph (a) above and the remuneration in respect of that prior period was not subject to the *earnings cap*; and

- (iii) the accrued value of the *member's* past service rights (whether in whole or in part) under the *transfer scheme* first mentioned in sub-paragraph (ii) above was transferred to the *transfer scheme* last mentioned in that sub-paragraph and under the rules of the latter scheme the transfer credits granted to the *member* by that scheme in respect of the period of service previously pensionable under the other *transfer scheme* were granted on the basis that the remuneration attributable to service under that other *transfer scheme* was not subject to the *earnings cap* (whether by virtue of either or both of Regulations 5 and 8 of the *Continued Rights Regulations* or otherwise); and
 - (iv) a *Regulation 8 direction* has been received by the *trustee company* permitting this paragraph (b) to apply to the *member*.
- (c) The *final remuneration* of a *member* to whom this rule applies shall be calculated as at the *relevant date* in two parts related to *pensionable service* (including any reckonable *supplementary service*) accrued or credited as follows:-
- (i) paragraph A of the definition of *final remuneration* in section 24 shall apply in relation to that fraction of *pensionable service* (including any reckonable *supplementary service*) credited to a *member* by virtue of a transfer payment to which paragraph (a) above relates and to that fraction referable to service to which sub-paragraph (ii) of paragraph (b) above relates
 - (ii) subject to rule 17.7(b)(i) and to paragraphs (b) and (c)(i) of rule 17.8 paragraph B of that definition shall apply in relation to the remaining fraction of *pensionable service* and of reckonable *supplementary service*.
- (d) Where by virtue of either or both of this rule and Regulation 5 of the *Continued Rights Regulations* any *member* to whom either rule 17.7 or 17.8 applies is entitled to have *final remuneration* calculated in the manner provided in either of those rules, nothing in this rule 17.9 shall be taken to prejudice or affect the method of calculation under this rule of that part of *final remuneration* which relates to any period of *pensionable service* credited to that *member* on transfer-in accordance with any of rules 5.3, 5.5 and 5.5A and referable to a transfer payment to which either such rule relates.

17.10 Continued rights on certain mergers and amalgamations of institutions

- (a) This rule shall apply where either or both of the following conditions are fulfilled:-
- (i) an *institution* amalgamates with or is absorbed by another *institution*;
 - (ii) any teaching, research, administrative or library function (or any function which is comparable to any of the above functions) is transferred in whole or in part from one *institution* to another *institution* whether or not as a result of any such amalgamation or absorption as is referred to in sub-paragraph (i) above;

and as a result of such amalgamation, absorption or transfer of function an *institution* which began to participate in the *scheme* on or after 14th March 1989 becomes the *employer of eligible employees* who are *active members*.

- (b) Where the *institution* from whose employment a *member* is transferred by reason of an event to which paragraph (a) above refers was a *pre-1989 institution* in relation to that *member* immediately before that event, and the said event was the first involving that *member* to which that paragraph has referred, that *member*, if a *pre-1989 Act member* immediately before that event, shall not cease to be so by reason of the event; and, if that *member* was a *1989 Act member* immediately before that event occurred, the *salary* of that *member* shall be subject to the *earnings cap* to the same extent that it would have been so subject irrespective of the occurrence of the said event.
- (c) Where this rule applies to a *member* in relation to an event to which paragraph (a) above applies, but paragraph (b) above does not so apply, the *salary* of that *member* shall be, in so far as any of Regulations 3, 3A and 5 of the *Continued Rights Regulations* or a *Regulation 8 direction* received by the *trustee company* may allow, not subject to the *earnings cap*.
- (d) Where paragraph (c) above applies to a *member* and either regulation 5 of the *Continued Rights Regulations* or a *Regulation 8 direction* so requires or permits, the *final remuneration* of such a *member* shall be calculated as at the *relevant date* in two parts related to *pensionable service* accrued (including any reckonable *supplementary service*) as follows:
- (i) paragraph A of the definition of *final remuneration* in section 24 shall apply to the fraction equal to that fraction of total *pensionable service* (including any reckonable *supplementary service*) represented by the *pensionable service* by reference to which the *member's final remuneration* was calculated under that paragraph A immediately before the event to which paragraph (a) refers or to such greater

fraction as may be allowed by any of Regulations 3, 3A and 5 of the *Continued Rights Regulations* or by a *Regulation 8 direction*; and

- (ii) paragraph B of that definition shall apply to the remaining fraction of *pensionable service* and of reckonable *supplementary service*.

17.11 Further provisions in relation to Continued Rights

- (a) The *trustee company* shall if it considers this to be necessary or advisable in the circumstances use all reasonable endeavours to obtain a *Regulation 8 direction* in cases falling within any of rules 17.7 to 17.10 inclusive. Subject to the prior consent of the affected *member*, an application for such a direction may be made at any time prior or subsequent to the relevant event or circumstances giving rise to the operation of whichever of those rules applies.
- (b) The *trustee company* may with the prior consent of the affected *member* make a determination of the kind referred to in paragraph (c) below in any circumstances to which none of the rules 17.7 to 17.10 inclusive applies, or in which any of those Rules could apply only by virtue of a determination to modify the relevant rule under this paragraph, but in which the effect of either or both of paragraphs 20 and 22 of Schedule 6 to the Finance Act 1989 (which detail those circumstances in which the *earnings cap* applies) do not apply by virtue of Regulation 3 or Regulation 3A of the *Continued Rights Regulations* or may be modified or overridden by a *Regulation 8 direction*.
- (c) A determination of a kind referred to in paragraph (b) above is one under which the *member's pensionable salary* and the benefits payable to or in respect of that *member* are calculated by the *trustee company* in such manner as may be consistent with the statutory provisions referred to in paragraph (b) above and subject thereto as the *trustee company* may think fit on *actuarial advice* without prejudicing *approval*. In any circumstances to which paragraph (b) above applies, the *trustee company* may if it thinks fit (but without limiting the generality of its power under this paragraph) determine that any of rules 17.7 to 17.10 shall be modified so that with the modifications so made the relevant rule applies to any particular case provided that (where this is required) a *Regulation 8 direction* is first obtained by the *trustee company*. Neither the consent of the *funding councils* nor that of the *joint negotiating committee* shall be required for any such modification by the *trustee company* under this rule.

17.12 Pension increases - limits

The maximum amount of pension ascertained in accordance with this section or rule 9A.9 less any pension which has been commuted for a lump sum or surrendered to provide a *beneficiary's* pension under section 13, may be increased by the

percentage increase in the *RPI* which has occurred since the pension commenced to be paid or by such greater amount as will not prejudice *approval*.

17.13 Limits for pension debit members

- (a) Notwithstanding any other provisions of the *rules*, including the foregoing provisions of this section, the benefits for a *pension debit member* calculated by reference to the last *relevant date* before 6th April 2006 are additionally subject to the following limits, subject to compliance with social security legislation.
- (b) The pension shall not exceed the limit to *aggregate retirement benefit* specified in rule 17.2 or, as the case may be, rule 17.3, less the *negative deferred pension* in this and any *associated scheme* and furthermore, in the case of a *1989 Act member*, the *negative deferred pension* in any *connected scheme*.
- (c) On the death of a *pension debit member* to whom this rule applies, any pension for a surviving spouse or *civil partner*, *eligible child* or *dependant* shall not exceed two-thirds of the appropriate limit to *aggregate retirement benefit* determined in accordance with rule 17.2 or rule 17.3 as if there had been no *pension debit*, less the *negative deferred pension* in this and any *associated scheme* and furthermore, in the case of a *1989 Act member*, the *negative deferred pension* in any *connected scheme*. Where more than one pension is to be paid to which this paragraph applies the total of all those pensions shall not exceed the appropriate *aggregate retirement benefit* limit determined in accordance with rule 17.2 or rule 17.3 as if there had been no *pension debit*, less the *negative deferred pension* in this and any *associated scheme* and furthermore, in the case of a *1989 Act member*, the *negative deferred pension* in any *connected scheme*.

17.14 Interpretation

- (a) For the purposes of this section a *1989 Act member's service* shall be deemed to include any period in *associated employment* and any period of employment by reason of which benefit is actually or prospectively payable under a *connected scheme*.
- (b) The remuneration of a *member* shall be taken to have been subject to the *earnings cap* in relation to a *retirement benefits scheme* only so long and to the extent that such *member* is or was a person to whose benefits or contributions subject to any modification permitted under this *scheme* and by virtue of the *Continued Rights Regulations* either or both of paragraphs 20 and 22 of Schedule 6 to the Finance Act 1989 apply or have applied in relation to that scheme.

- (c) Contributions made (or due) by or in respect of a *pre-1989 Act member* shall not be subject to revision with retrospective effect solely by reason of that *member* having subsequently become a *1989 Act member*, whether by virtue of rule 17.6 or of any of rules 17.7 to 17.11. Nothing in this paragraph shall however prevent the *trustee company* (retrospectively if necessary) from making such adjustments to a *member's* contributions for any period (consistent with *approval*) as will ensure that these conform to the limits applying by virtue of Schedule 6 to the Finance Act 1989 as modified by the *Continued Rights Regulations*.

Section 17A - Capping of salary for benefit purposes on and after 6th April 2006

17A.1 Application of sections 17A to 17C

These sections 17A to 17C apply in relation to any *member* or *former member* on or after 6th April 2006 to benefits which that individual is actually or prospectively entitled to receive out of the *fund* and which fall (or will fall) to be calculated by reference to a *relevant date* on or after that date.

17A.2 Capped and uncapped benefits

The benefits paid out of the *fund* to or in respect of the *member* or *former member* to which this section 17A applies shall be calculated as follows:

- (a) in so far as those benefits would, apart from this section, be calculated by reference to the *pensionable service* of the *member* or *former member* concerned that:
 - (i) accrued or was credited to that individual in respect of any period of *eligible employment* by an *institution* as a *member* for which the *salary* was subject to the *earnings cap*, or
 - (ii) was credited to that individual under rule 5.1(b) when the *salary* of that individual was subject to the *earnings cap* and to which entitlement has not arisen by reason of a transfer payment (and would not have so arisen apart from rule 5.1(b)), or
 - (iii) was credited to that individual under rule 5.1(f) prior to 6th April 2006 and in respect of a period or periods of employment for which the remuneration would have been subject to the *earnings cap* if he or she had first joined the *scheme* at the beginning of the earliest such period, or
 - (iv) was credited to that individual prior to 6th April 2006 in respect of a transfer payment from a *relevant scheme* (or would have been so credited apart from rule 5.1(b)), in so far as it derived from any period of employment for which the remuneration was subject to the *earnings cap*, or from bonus or purchased credits (within the meaning of Section 75 of the *Pension Schemes Act*) awarded by a *transfer arrangement* at a time when remuneration relevant to that arrangement was subject to the *earnings cap*, or
 - (v) if the *salary* of the individual was ever subject to the *earnings cap*, was credited to that individual under rule 7.3 after it first became so but before 6th April 2006, or would, if the *service* of that individual

had ceased on 5th April 2006, have been credited under rule 7.3(e) on that account,

benefits shall be calculated by reference to that *pensionable service* and to the *pensionable salary* of the *member* or *former member*, subject to a maximum of the *scheme specific cap*, unless section 17B applies; and

- (b) in so far as those benefits would, apart from this section, be calculated by reference to the *pensionable service* (and, where applicable, *supplementary service*) of the *member* or *former member* concerned that:
- (i) accrued or was credited to that individual in respect of any period of *eligible employment* by an *institution* as a *member* for which the *salary* was not subject to the *earnings cap*, or
 - (ii) was credited to that individual under rule 5.1(b) when the *salary* of that individual was not subject to the *earnings cap* and to which entitlement has not arisen by reason of a transfer payment (and would not have so arisen apart from rule 5.1(b)), or
 - (iii) was credited to that individual under rule 5.1(f) prior to 6th April 2006 and in respect of a period or periods of employment for which the remuneration would not have been subject to the *earnings cap* if he or she had first joined the *scheme* at the beginning of the earliest such period, or
 - (iv) was credited to that individual prior to 6th April 2006 in respect of a transfer payment from a *relevant scheme* (or would have been so credited apart from rule 5.1(b)), in so far as it derived from any period of employment for which the remuneration was not subject to the *earnings cap*, or from bonus or purchased credits (within the meaning of Section 75 of the *Pension Schemes Act*) awarded by a *transfer arrangement* at a time when remuneration relevant to that arrangement was not subject to the *earnings cap*, or
 - (v) that was credited to that individual under rule 7.3 before the *salary* of that individual was subject to the *earnings cap* in relation to the *scheme* and before 6th April 2006, or, if the remuneration of the individual was never subject to the *earnings cap* in relation to this *scheme*, would, if the *service* of that individual had ceased on 5th April 2006, have been credited under rule 7.3(e) on that account, or
 - (vi) accrued or was credited to that individual after 5th April 2006 (excluding any that would, if the *service* of that individual had ceased on 5th April 2006, have been credited under rule 7.3(e) on that account),

benefits shall be calculated by reference to that *pensionable service* (and, where applicable, that *supplementary service*) and to the *pensionable salary*

of the *member* or *former member* without any limitation by reference to the *earnings cap* or to the *scheme specific cap*.

Section 17B - Removing the earnings cap for pre-6th April 2006 service

17B.1 Scope of section 17B

This section 17B applies to any *member* or *former member* who had a period of *active membership* prior to 6th April 2006 and a period of *active membership* on or after that date, if there was no break in *membership* between those periods and there is continuity of *membership* under rule 5.8 or otherwise, but it shall not apply to any *member* to whom benefits are, or have at any time been, in payment out of the *fund* by reference to a *relevant date* in relation to that individual that was before 6th April 2006. A return of contributions is not to be treated as a benefit for the purposes of this paragraph.

17B.2 Employer election

Subject to the following provisions of this section 17B, an *employer* may, with the consent of a *member* or *former member* to whom this section 17B applies, elect by notice in writing to the *trustee company* at any time, that the *scheme specific cap* shall not apply to the *pensionable salary* of that *member* or *former member* for the purposes of the calculation of *salary* or *pensionable salary* as at any subsequent *relevant date*. Such an election by an *institution* in respect of an individual who has ceased to be in the *eligible employment* of that *institution* must be made within six months of that individual so ceasing or within such longer period thereafter as the *trustee company* may allow.

17B.3 Additional employer contribution

An election under this section 17B shall not take effect unless and until the *trustee company* has secured agreement in writing from the electing *employer* that an additional special contribution will be paid by the *employer* under rule 8.2 which the *trustee company* shall have determined on *actuarial advice* to be sufficient, when aggregated with any contribution to which rule 17B.4 below applies, to meet the cost to the *fund* of disapplying the *scheme specific cap* in accordance with that election, nor unless and until the *trustee company* is satisfied that a payment under this rule would meet the requirements for payment under rule 8.2. Such a contribution may be paid at such times and in such amounts and instalments as the *trustee company* may require.

17B.4 Additional member contribution

Where an *employer* makes an election under this section 17B in relation to a *member* or *former member*, that individual may elect with the agreement of the *employer* to pay an additional special contribution to the *scheme* the amount of which shall fall to be deducted, once paid, from the amount of the additional special contribution which

would otherwise have fallen due from the *employer* under rule 17B.2 above. Rule 7.8 shall not apply to any contribution made under this rule.

17B.5 Total or partial election

Any election made under this section 17B may apply to the whole or any specified proportion of the *member's* or *former member's pensionable service* for which the *salary* was subject to the *earnings cap*. Where an election has been made by an *employer* under this section 17B in relation to a *member* or *former member*, no further election may be made under this section in relation to that *member* or *former member*, whether by the same or any other *employer*, unless and until all such elections under section 17C shall have been revoked in accordance with rule 17C.3. Where elections are made under this section by more than one *employer* in relation to one individual, the reference in this rule to the *member's pensionable service* shall for the purposes of the second and any subsequent elections so made be treated as that proportion of that *pensionable service* in respect of which no election has already been made under this section.

17B.6 Capped benefits for post-5th April 2006 service

No election may be made under this section 17B by an *employer* in respect of any of its *eligible employees* which has elected under section 17C below to apply the *scheme specific cap* to the *salary* of that individual.

17B.7 Multiple employments

For the purposes of this section 17B an *institution* shall be treated as an *employer* of a *member* or *former member* who has been a *member* by reference to *eligible employment* by that *institution*, even if that individual, on or after ceasing to be such a *member*, remained or became a *member* by reference to *eligible employment* by another *institution*.

Section 17C - Application of the scheme specific cap for post-5th April 2006 service

17C.1 Scope of section 17C

This section 17C applies where a *member* had a period of *active membership* prior to 6th April 2006 for which the *salary* was subject to the *earnings cap*, and a period of *active membership* on or after that date by reference to *eligible employment*, and there was no break in *membership* between those periods. In those circumstances an election may, subject to the following provisions of this section 17C, be made in relation to that *member* under this rule by any *institution* which was an *employer* of that *member* both at the end of the former period and at the beginning of the latter period.

17C.2 Form and timing of election

The *employer* may, with the consent of the *member* and of the *trustee company*, elect as soon as is reasonably practicable by notice in writing to the *trustee company* that the *scheme specific cap* shall apply to the *member's salary* in respect of that *member's pensionable service* completed on or after 6th April 2006. Where a *member* has more than one concurrent *eligible employment*, any one *employer* may make an election under rule 17C.1 in respect of all those concurrent *eligible employments*.

17C.3 Revocation of election

An election under rule 17C.1 may be revoked by the *employer* at any time with the written consent of the *member* and of the *trustee company* and shall, on being revoked, be treated, for the purposes of section 17B only, as if it had not been made. Where an election is made under rule 17C.1 in respect of more than one concurrent *eligible employment* of a *member*, that election may be revoked under this rule 17C.3 notwithstanding that the *institution* which made it is no longer an *employer* of the *member*, provided that all the *institutions* which then currently employ the *member* agree to that election being revoked.

17C.4 Election before 6 April 2006

The *trustee company* may treat as a notice under this section an intimation from the relevant *institution* given before this rule comes into effect of an intention to apply the *scheme specific cap* to the future *service* in its *eligible employment* of a specified individual, or such an intimation given at a time when that individual was not a *member* by reference to *eligible employment* by that *institution*, provided that rule 17C.1 above subsequently becomes applicable to that individual. If the *trustee company* treats such an intimation as a notice under rule 17C.2 above, that deemed notice shall be treated as given on the first day on which a valid notice could have been given in accordance with rule 17C.2.

Section 18 - Undertakings to Inland Revenue and Taxation

18.1 Undertakings to the Inland Revenue

For the purpose of enabling the *scheme* to secure, or retain, *approval* the *trustee company* may give to the Inland Revenue such undertaking or undertakings as they see fit and may vary any such undertaking or undertakings.

18.2 Effect of undertakings

The provisions of any undertaking which may be given pursuant to the foregoing provisions of this section shall be deemed to be incorporated in these *rules*, and to the extent that they are inconsistent with any other provision of the *scheme* (including any apart from this rule which otherwise would have the effect of overriding it) they shall override that provision.

18.3 Taxation deductions

There shall be deducted from amounts payable under the *rules* to the *member* or the *member's* personal representatives or to any other annuitant (other than pension income within the meaning of tax legislation) a sum equal to the liability of the *trustee company* as trustee of the *fund* or as trustee of the *money purchase AVC fund* to *HMRC* in respect of payments so made provided that the *trustee company* may waive such deduction in whole or in part if it considers that there are special circumstances to warrant it. Deductions made from such amounts liable to tax will not confer on any *former member*, *ex-spouse* or on such an individual's personal representatives any ground for a claim for repayment of income tax.

18.4 Discharge of liability for lifetime allowance charge

- (a) If the *trustee company* determines that the acquisition by a *member* or *former member* of an entitlement to actual receipt of a pension (including any increases in an existing pension), or the attainment by a *member* or *former member* of age 75, will give rise to a liability for the *lifetime allowance charge* that will not be extinguished under rule 10.9, the *trustee company* shall, before making payment of any part of that pension or of the relevant pension (whenever any contingent or prospective right to it accrued), subject to section 19 and to the following provisions of this rule 18.4, withhold, to the extent that this is permitted by sections 67 and 91 to 94 of the Pensions Act 1995, such proportion of that pension as it determines on *actuarial advice* to be equivalent on normal actuarial principles to the amount it estimates to be that of the *lifetime allowance charge* that will fall due in respect of that pension (or, if applicable, to that amount less the amount set aside under

rule 10.9 to meet the *lifetime allowance charge*), and it shall apply the amount so estimated in or towards the discharge of that liability.

- (b) The *trustee company* may modify its estimate of the relevant *lifetime allowance charge* in respect of a pension, and revise its determination of the proportion of that pension to be withheld under 18.4.1 above, at any time before the *member* or *former member* becomes entitled to actual receipt of that pension, or before the *member* or *former member* attains age 75, as the case may be, but not thereafter. In the event that the amount of the relevant *lifetime allowance charge* is exceeded by the amount available to discharge the liability for it, the rate of the pension in payment shall be increased by such a proportion as the *trustee company* determines on *actuarial advice* to correspond to that excess.
- (c) When the *trustee company* has determined the proportion of a pension that is to be withheld in accordance with the preceding provisions of this rule 18.4, or has determined that no relevant liability for *lifetime allowance charge* will arise in respect of that pension, the *member* or *former member* shall be entitled to actual receipt of that pension, insofar as it has not been withheld under this rule 18.4 or abated by rule 10.9, forthwith or (if later) at the same time as that person would have been so entitled apart from this rule 18.4.

Section 19 - Contracting-Out

19.1 Application of this section

- (a) Insofar as the *rules* contained in this section require that provision be made under this *scheme* for the accrual, provision or securing of a *guaranteed minimum pension* in relation to any *member* they shall apply only if the employment of that *member* was *contracted-out employment* by reference to this *scheme* before 6th April 1997 in accordance with Section 9(2A) of the *Pension Schemes Act* and accordingly in respect of *guaranteed minimum pensions* accrued in respect of *service* prior to that date and in respect of transfer credits granted to a *member* by reason of a payment made to the *trustee company* under section 5 in respect of *guaranteed minimum pension* or protected rights derived from service completed in a *transfer arrangement* prior to 6th April 1997.
- (b) The *trustee company* shall operate the *scheme* in accordance with the requirements of the *Pension Schemes Act* relating to salary-related contracted-out schemes and these *rules* shall accordingly be deemed to include such additional rule (if any) as must be included for compliance with Section 9(2B) of that Act in order that the *scheme* can continue to be contracted-out on a salary-related basis in respect of the accrual of *relevant benefits* under the scheme based on *service* on and after 6th April 1997.
- (c) Section 21 shall apply in respect of any alteration, repeal or modification to any part of this section which shall be made only to the extent permitted by Section 37 of the *Pension Schemes Act* in the circumstances prescribed under that section (which as at 6th April 1997 were prescribed by Regulation 42 of the Occupational Pension Schemes (Contracting-Out) Regulations 1996).

19.2 Interpretation of this section

Where the context so permits, the words and expressions defined or used in the *Pension Schemes Act* shall have the same meanings when used in this section.

19.3 Power of trustee company to act

For the purposes of this section, and of any enactment relating to contracting-out for the purposes of Part III of the *Pension Schemes Act*, the *trustee company* shall have power to act on behalf of all *institutions* participating in the *scheme*.

19.4 Provision of guaranteed minimum pensions

If a *member* has a guaranteed minimum in relation to his or her pension under this *scheme* in accordance with Section 14 of the *Pension Schemes Act*:-

- (a) the *member* shall be entitled to receive from the *scheme* at *state pension age* a pension payable for the remainder of such *member's* lifetime at a rate equivalent to a weekly rate of not less than that guaranteed minimum;
- (b) if the *member* is a man and dies leaving a widow the weekly rate of pension provided or to be provided for her in respect of his *membership* of this *scheme* shall not be less than half his guaranteed minimum notwithstanding that she might not otherwise qualify for any pension under sections 9 or 11;
- (c) if a *member* is a woman and dies leaving a widower, or a *member* dies leaving a surviving *civil partner*, entitled in either case under Section 17(6) of the *Pension Schemes Act* to a *guaranteed minimum pension*, the weekly rate of pension provided for that widower or surviving *civil partner* shall not be less than half of that part of the *member's* guaranteed minimum which is attributable to earnings for the tax year 1988/89 and subsequent tax years, and such pension shall continue for the prescribed period laid down in the said Section 17(6);
- (d) the *guaranteed minimum pensions* referred to in this rule shall, insofar as they are attributable to earnings in the tax years from 1988/89 to 1996/97 (both inclusive), be increased in accordance with the requirements of Section 109 of the *Pension Schemes Act*;
- (e) where a transfer payment has been made to the *scheme* which includes entitlement to a guaranteed minimum pension under a money purchase contracted-out scheme or to “pre-97 protected rights” as defined in Regulation 1 of the Protected Rights (Transfer Payment) Regulations 1996, the guaranteed minimum pension payable from the *scheme* shall include an amount equal to the *guaranteed minimum pension* or protected rights to which the *member* or the *member's* spouse or *civil partner* would have been entitled by virtue of the *member's* membership of the *transfer arrangement* had the transfer payment not been made; and

19.5 No duplication of benefits

Any entitlement hereunder is inclusive of any entitlement to a pension under the *scheme* other than entitlement to equivalent pension benefits under Part III of the National Insurance Act 1965 (including any corresponding Northern Ireland legislation and the previous corresponding enactments).

19.6 Retirement after state pension age

Where any *member* remains in *service* and so remains a *member* of the *scheme* after attaining *state pension age*, the payment of the *guaranteed minimum pension* shall be postponed until whichever is the earlier of cessation of *service* and the expiration of a further period of five years but so that in the event of that *member* not having become entitled to a pension calculated under rules 10.2 to 10.6 inclusive, at the end of that period of postponement the payment of the *guaranteed minimum pension* may be further postponed with the *member's* consent but not beyond the date on which the *member* attains the age of 75.

19.7 Increase in the event of late retirement

In the event of postponement of payment of the *guaranteed minimum pension* for more than seven weeks after attaining *state pension age* the *guaranteed minimum pension* shall for each complete week of postponement be increased by 1/7% of the amount thereof calculated at *state pension age* or by such other percentage or in such other proportion as may be prescribed by the *Pension Schemes Act*, and so that for the purpose of this rule:-

- (a) week means any period of seven consecutive days; and
- (b) the periods of seven weeks and seven days shall be automatically varied if the *Pension Schemes Act* shall be varied in relation to those periods.

19.8 Effect of this section on other provisions in the rules

Without prejudice to the generality of the overriding provisions of this section referred to in rule 19.1 above:-

- (a) The *trustee company* shall not exercise its discretion under rule 11.8(b) in relation to the surviving spouse or *civil partner* of a *member* or *pensioner member* in such a way as to reduce the pension payable to that person under section 11 to less than the spouse's or *civil partner's* *guaranteed minimum pension*;
- (b) the *member* shall not be entitled to make an *allocation* under section 13 to the extent that it would reduce the *member's* pension to less than the *guaranteed minimum pension*;
- (c) no deduction shall be made under section 14 which would have the effect of reducing the *member's* pension or any surviving spouse's or *civil partner's* pension below the level of the *guaranteed minimum pension* applicable to the *member* or as the case may be the surviving spouse or *civil partner*;

- (d) rule 16.1 shall not apply so as to reduce the amount of pension payable under the rules to less than the *guaranteed minimum pension*;
- (e) rule 16.3(a) shall apply to the *guaranteed minimum pension* payable to the *member* under this section; and
- (f) the right to commute part of the pension payable to a *member* in order to provide an additional lump sum under rules 10.8(c), 10.8A, 23.1 or 23.2, and the right to elect a reduced pension under rule 10.9 shall be restricted so that the pension payable to the *member* is not less than the *guaranteed minimum pension*.

19.9 Transfer premiums

Where a transfer premium was paid under the provisions of this rule (and under the legislation referred to there) as they were in force prior to 6th April 1997, the accrued rights to *guaranteed minimum pension* of the *former member* concerned shall be extinguished.

19.10 Contributions equivalent premium

- (a) Where any *member* without *qualifying service* either dies or ceases to be in *service* there may be paid in respect of that *member* a contributions equivalent premium in accordance with Sections 55(2) and 57 of the *Pension Schemes Act*, and on payment thereof the *guaranteed minimum pension* or pensions payable in respect of that *member's pensionable service* shall be extinguished and any ancillary benefits contingent on death or otherwise that are related to the amount of the *guaranteed minimum pension* concerned shall cease to be payable (unless and to the extent that the *trustee company* in the case of any such *guaranteed minimum pensions* or benefits contingent thereon shall in its absolute discretion decide otherwise) provided that, if a transfer payment falls to be made in respect of the *member* under rules 9.8 and 9.9, then whether or not a transfer premium has prior to 6th April 1997 been paid under Section 55(3) of the *Pension Schemes Act* in respect of that *member* no contributions equivalent premium shall be paid.
- (b) Where a payment of contributions equivalent premium has been made under paragraph (a) by the *trustee company* in respect of a *member* who has ceased to be in *service* with a refund of contributions under rule 9.2 the *trustee company* shall be entitled to recover from the amount of any refund of the *member's* contributions an amount not exceeding the amount certified by *HMRC* under Section 63(1)(d) of the *Pension Schemes Act* as being the *member's* share of that contributions equivalent premium paid in respect of such *member*.

19.11 Revaluation of guaranteed minimum pension for early leavers

Where a *guaranteed minimum pension* is preserved in the *fund* under section 9 it shall be revalued yearly in accordance with orders made under Section 148 of the Social Security Administration Act 1992 (or a corresponding previous enactment) and if the *guaranteed minimum pension* at *state pension age* shall be greater than the pension otherwise payable out of the *fund*, as increased in accordance with section 15, then the higher amount of the *guaranteed minimum pension* as so revalued shall be payable.

19.12 Guaranteed minimum pension greater than pension

Where on the retirement of a *member* the *guaranteed minimum pension* (increased if appropriate under rule 19.7 or 19.11) is greater than the pension which would otherwise be payable under rule 9.3 or 10.2 there shall be deducted from the lump sum otherwise payable under rule 9.3 or 10.2 such sum as the *trustee company*, acting on *actuarial advice*, shall decide to be the cost of providing the excess of the *guaranteed minimum pension* over the pension otherwise payable.

19.13 Purchase of annuity

Any policy or contract purchased under the provisions of rule 20.17 to satisfy any annuity arising after 6th April 1978, or any policy or contract purchased under Chapter IV of Part IV of the *Pension Schemes Act* and which is intended to secure the amount of the *member's guaranteed minimum pension*, or that of a *member's spouse* or *civil partner*, shall comply with the following conditions:-

- (a) the *insurance company* with which the policy is taken out or the annuity contract entered into assumes an obligation to the *member*, and if appropriate the *member's surviving spouse* or *civil partner*, to pay the benefits secured by the policy or contract;
- (b) the policy or contract contains or is endorsed with terms so as to provide that:-
 - (i) it may not be assigned or surrendered except on conditions that satisfy such requirements as may be prescribed under Section 19(4)(b) of the *Pension Schemes Act*;
 - (ii) the annuity to be paid thereunder to or for the *member's benefit* will be at least equal to the *guaranteed minimum pension* due to the *member* or, as the case may be, prospectively due to the *member* at *state pension age*, subject to any increase or revaluation under Section 15 or Section 16 of the *Pension Schemes Act*.

- (iii) if the *member* dies or has died leaving a surviving spouse or *civil partner* the annuity to be paid thereunder will be at least equal to the *guaranteed minimum pension* due or prospectively due to such surviving spouse or *civil partner*; and
- (iv) the amount payable under it may not be commuted except on conditions which satisfy such requirements as may be prescribed under Section 19(4)(c) of the *Pension Schemes Act*;
- (c) the policy or contract is endorsed with a statement of the total length of the period or periods of *service* which gave rise to the benefits secured by the policy or contract, or where the total length exceeds two years, a statement to that effect.
- (d) such policy or contract must meet such of the requirements of or prescribed under Section 19(5) of the *Pension Schemes Act* as apply to the *scheme*.
- (e) Insofar as any policy or contract purchased under the provisions of rule 20.17 extends to rights to *relevant benefits* which were required to accrue under the *scheme* so as to comply with Section 9(2B) of the *Pension Schemes Act* on or after 6th April 1997, it shall meet those conditions prescribed for this purpose under Section 12C of the *Pension Schemes Act* (which as at 6th April 1997 were prescribed by Part III of the Occupational Pension Schemes (Discharge of Liability) Regulations 1997).

19.14 Giving effect to safeguarded rights

- (a) The *trustee company* shall separately identify the proportion of any *pension credit* and of any *pension credit rights* conferred in pursuance of a transfer payment and any *safeguarded rights* shall be administered in accordance with the Pension Sharing (Safeguarded Rights) Regulations 2000. These *rules* shall be deemed to include such additional rule (if any) as may be required to ensure compliance with the Pension Sharing (Safeguarded Rights) Regulations 2000.
- (b) In so far as the *pension credit rights* of an *ex-spouse participant*, after deducting from them any *safeguarded rights*, are not of sufficient value to provide in full for such benefits as would be payable under rule 9A.5 apart from this rule but may not be used to give effect to *safeguarded rights*, the shortfall shall reduce and, if the case arises, exhaust benefits payable under each of the following provisions of that rule in the order in which they are here set out:
 - (i) provision for annuities for *eligible children* under paragraph (e) or (g);
 - (ii) provision for a *dependant* (other than an *eligible child*) under paragraph (d) or (g);

- (iii) provision for a surviving spouse or *civil partner* under paragraph (c);
- (iv) provision for a lump sum benefit under paragraph (b).

Section 20 - Administration

20.1 Trustee company

- (a) The *trustee company* is the trustee of the *scheme*.
- (b) The statutory power of appointing new trustees shall apply but so that a corporate body may be appointed a sole trustee of the *scheme* notwithstanding that it is not a trust corporation provided that a new trustee shall not be appointed unless and until the appointment has been approved by resolution of the *joint negotiating committee*.
- (c) The *trustee company* shall, subject to these *rules*, have sole and absolute control of the *fund* and its administration, and determine (within the limits laid down by these *rules*) the investments in which it shall be laid out from time to time.
- (d) The *trustee company* or any other trustee for the time being of the *scheme* (being a corporate body) shall be repaid out of the *fund* all expenses and costs which may be incurred by it and shall be entitled to such remuneration (if any) as may from time to time be agreed between the *trustee company* and the *joint negotiating committee*.
- (e) The *trustee company* may act by resolution of its *management committee*, and any consent, decision, notice or other document or instrument of whatsoever nature shall be deemed to be sufficient to comply with the *rules* if signed on behalf of the *trustee company* by any two members of the *management committee*, or any one member of the *management committee* and the secretary of the *trustee company*.
- (f) No *member* and no *eligible employee* or officer of an *institution* who is, or shall be for the time being, a director or other officer of the *trustee company* shall be disqualified from exercising any power or discretion vested in the *trustee company* by this or any other rule by reason of such dual capacity.
- (g) The *trustee company* shall be entitled to appoint as officers or servants of the *scheme* such persons as the *trustee company* shall from time to time require for its proper administration, and to pay the remuneration and other expenses properly attributable to their employment out of the *fund*.

20.2 Administrator

The *trustee company*, with the consent of the *joint negotiating committee*, may appoint a corporate body or one or more individuals to act as administrator of the *scheme* for the purposes of Part 4 of the Finance Act 2004 but unless and until a

separate administrator is appointed the *trustee company* shall carry out the administrator's functions and obligations.

20.3 Joint negotiating committee

- (a) The *joint negotiating committee* for the purposes of the *scheme* is established under and shall be governed by the remaining paragraphs of this rule and shall exercise the functions set out in paragraph (1) of this rule.
- (b) The *joint negotiating committee* shall consist of eleven persons of whom five shall be appointed by *UUK* (individually a '*UUK* appointee'), five by the *UCU* (individually an '*UCU* appointee') and there shall be one independent member to act as chairman.
- (c)
 - (i) The appointment of any member on the *joint negotiating committee* (except for the independent committee member) may be terminated at any time by the body which made it and that body may appoint any other person in place of one whose appointment is so terminated, or in place of one who has died, retired or resigned. Any such removal from or appointment to the committee shall take effect only if it has been notified in writing to the chairman of the committee under the hand of a person duly authorised for the purpose by the appointing body.
 - (ii) The independent committee member may be removed by a resolution of the *joint negotiating committee* at which at least three *UUK* appointees and at least three *UCU* appointees shall have voted in favour of removal. A new independent committee member shall be elected in like manner but, in case the *joint negotiating committee* cannot agree upon any appointment, the Secretary of State for the Department for Education shall be asked to nominate the independent committee member who, upon nomination shall become the independent committee member and chairman of the *joint negotiating committee*.
 - (iii) Any committee member may resign from office by notice in writing given to the chairman of the *joint negotiating committee* or, if the chairman, to the committee as a body, and if any other member notice shall also be given in writing to the body by which such person was nominated.
 - (iv) Any committee member may from time to time by notice in writing to the *joint negotiating committee* appoint any other person to act as an alternate at any meeting of the *joint negotiating committee* from which such committee member is absent, and may in like manner remove any

person so appointed. An alternate committee member so appointed may also be removed from office by notice in writing to the chairman of the *joint negotiating committee* by the committee members other than the one by whom such alternate committee member was appointed. The independent committee member may only appoint an alternate to act if such alternate is acceptable to a majority of both the *UUK* appointees and the *UCU* appointees. An alternate appointed under this paragraph shall be entitled, whilst holding office as such, to receive notice of meetings of the *joint negotiating committee* and to attend and vote thereat in place of, and in the absence of, the committee member who made such appointment. Any committee member who is appointed an alternate by a colleague shall be entitled to vote at a meeting of the *joint negotiating committee* on behalf of the committee member making such appointment as distinct from the vote to which such alternate is entitled as a committee member, and shall also be considered as two committee members for the purpose of making a quorum.

- (v) Neither *membership* of the *scheme* nor being a member of any one or more of the *management committee*, the *advisory committee* or the *investment committee* shall be a disqualification for membership of the committee.
- (d) If a significant number of non-university *institutions* participate in the *scheme* *UUK* and the *UCU* may agree that one each of their respective nominees shall be appointed so as to represent the interests of such non-university *institutions* and their *eligible employees* respectively.
- (e) The *joint negotiating committee* may meet together for the despatch of business, adjourn or otherwise regulate meetings as it thinks fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined five committee members shall constitute a quorum of whom two shall be *UUK* appointees and two shall be *UCU* appointees and except at any meeting to remove the independent committee member or to appoint a new independent committee member, one shall be the independent chairman. A resolution in writing signed by each member of the *joint negotiating committee* or on that member's behalf by the duly appointed alternate member shall be valid and effectual as if it had been passed at a meeting of that committee duly convened and held. Such resolution may consist of several documents in like form signed by one or more members of the committee (or as the case may be, the alternate of any such member). The committee may delegate the exercise of any of its powers to a sub-committee of its members (provided that such sub-committee includes at least one member appointed by *UUK*, or that member's alternate) and the business of that sub-committee shall be conducted in such manner as the *joint negotiating committee* may stipulate but otherwise at the sub-committee's discretion. A written resolution signed by the members of that sub-committee shall be as

valid and effectual in like manner as a written resolution of the entire committee.

- (f) A committee member may at any time convene a meeting of the *joint negotiating committee* to be held at the offices of the *trustee company* or at such other place as the *joint negotiating committee* may determine. A meeting shall be convened at the request of the *trustee company* to consider any proposal by the *trustee company* which requires the consent of the *joint negotiating committee*.
- (g) Questions arising at any meeting shall be decided by a majority of votes and in case of an equality of votes the chairman shall have a second or casting vote.
- (h) A committee member normally resident in the United Kingdom shall not be entitled to require that notice of any meeting of the *joint negotiating committee* shall be served on such committee member at an address outside the United Kingdom.
- (i) A meeting of the *joint negotiating committee* at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by these presents vested in the *joint negotiating committee*.
- (j) The *joint negotiating committee* shall cause proper minutes to be kept and entered in a book provided for that purpose of its resolutions and proceedings, and any such minutes of any meeting of the *joint negotiating committee*, if purporting to be signed by the chairman of such meeting, or by the chairman of the next succeeding meeting, shall be received as prima facie evidence of the matters stated in such minutes.
- (k) The *trustee company* shall make available to the *joint negotiating committee* such secretarial and other services as the *joint negotiating committee* shall reasonably require, and the reasonable expenses of the *joint negotiating committee*, including the cost of seeking independent professional advice, shall be payable out of the *fund*.
- (l) The functions of the *joint negotiating committee* shall be:-
 - (i) to approve any amendment to the *rules* proposed by the *trustee company*;
 - (ii) to initiate or to consider alterations to the *rules* and, in the event of the *joint negotiating committee* recommending any alteration to the *trustee company* the *trustee company* shall, in accordance with section 21, take steps to implement such recommendation unless it shall appear to the *trustee company*, acting on *actuarial advice*, to:-

- (A) prejudice unfairly any one or more groups of *members* when compared with another or other groups;
 - (B) impose any unfair liability upon any one or more of the *institutions* or upon the *trustee company*;
 - (C) cause *approval* to be prejudiced or to be inconsistent with the constitution of the *scheme* as an irrevocable trust;
 - (D) be undesirable for any other reason which the *trustee company* shall notify in a reasoned written statement to the *joint negotiating committee*; or
- (iii) to consider any alterations proposed by the *advisory committee* arising out of the operation of the *rules* which the *advisory committee* recommend should be altered or modified.

20.4 Advisory committee

- (a) The *advisory committee* is established under and shall be governed by the remaining paragraphs of this rule and shall exercise the functions and powers set out in the remainder of this rule.
- (b) The *advisory committee*, when exercising all those functions and powers referred to in paragraph (g) below, shall have an ordinary membership of six persons of whom three shall be appointed by *UUK* and three by *UCU*. Two additional members shall be appointed for the purpose of enabling the Committee to discharge those functions and powers referred to in paragraph (c) below, one by the *UUK directors* from among their number and one by the *UCU directors* from among their number. Those additional members shall not participate in the business of the *advisory committee* except when it has to be constituted as provided in, and for the purposes referred to in, paragraph (c) below and may only serve in that capacity on the *advisory committee* whilst holding office as members of the *management committee*. If neither of the above additional members is able to participate in the above business referred to in paragraph (c) below and neither of their alternates (appointed under paragraph (e) below) can participate in that business, the *management committee* may appoint any *co-opted director* to the *advisory committee* on a temporary basis to enable the relevant business of the committee to be concluded.
- (c) When the *advisory committee* is exercising, or arranging to exercise, any function or power on behalf of the *management committee* under paragraph (h) of this rule, that committee shall be constituted under this paragraph. The *advisory committee* is constituted under this paragraph when, in addition to its ordinary membership (or a quorum thereof) referred to in

paragraph (b) above, at least one of the additional members referred to in that paragraph participates in the business of that committee (or the alternate of such a member does so) or when a *co-opted director* participates in that business, not being otherwise a member of the *advisory committee*, and having been appointed by the *management committee* to do so in accordance with paragraph (b) above. Subject to rule 20.23, the *management committee* shall resolve any doubt or disagreement as to whether or not the *advisory committee* has in particular circumstances to be constituted under this paragraph.

- (d) The *advisory committee* may meet together for the despatch of business, adjourn or otherwise regulate meetings as it thinks fit and may determine the quorum necessary for the transaction of business. Until otherwise determined, four ordinary members of the committee shall constitute a quorum of whom two shall be *UUK* appointees and two shall be *UCU* appointees. When the *advisory committee* has to be constituted under paragraph (c), no meeting of that committee shall be quorate without the presence of either an additional member or an alternate of such member or a *co-opted director* appointed to the committee in accordance with this rule. A decision of the *advisory committee* may be made either by a majority of those members present and voting at a quorate meeting thereof or by a written resolution signed by each member who would have been entitled to vote at a meeting of the *advisory committee* held to conduct the relevant business or on that member's behalf by the duly appointed alternate member. The signature of a member who is also alternate for another shall be treated as the signature of both. Any such written resolution shall be as valid and effectual as if it had been passed at a meeting of the *advisory committee* duly convened and held and may consist of several documents in like form each signed by one or more of its members. All decisions of the *advisory committee* shall be notified to the *trustee company*.
- (e) The provisions of paragraph (c) of rule 20.3 (other than sub-paragraph (ii) of that paragraph) shall apply *mutatis mutandis* to the removal and appointment of members of the *advisory committee* as they apply to the removal and appointment of members of the *joint negotiating committee* subject to the following variations:-
- (i) the additional members of the *advisory committee* referred to at paragraph (b) above shall be capable of removal (as the case may be) by the *UUK directors* or the *UCU directors*, dependent on which was the appointing body, or in the case of a *co-opted director* by the *management committee*, excluding the *co-opted director* to be so removed; and
- (ii) an additional member of the *advisory committee* may not appoint an alternate from the ordinary membership of that committee, and may only appoint an alternate who is a member of the *management committee*. Any alternate duly appointed by such a member may be removed only by that member or by the *management committee*,

excluding the alternate to be so removed, and the *management committee* shall be deemed to have removed any such alternate who is no longer a member of the *management committee*; and

- (iii) a *co-opted director* appointed to the *advisory committee* under paragraph (b) of this rule to serve on that committee in connection with any matter referred to in paragraph (h) below may not appoint an alternate for that committee; and
 - (iv) the *UUK directors* and the *UCU directors* shall each be treated for the purposes of the powers of appointment and removal conferred on them under paragraph (b) above and under this paragraph as a single continuing body notwithstanding changes from time to time in the composition of that body and each may act by written agreement of the majority of its members.
- (f) The provisions of rule 20.3(f) to (k) inclusive shall apply to regulate the meetings of the *advisory committee* in the same manner as they are expressed to regulate the meetings of the *joint negotiating committee*, but so that :-
- (i) the *advisory committee* shall appoint one of their own number to be chairman of the committee and such person shall not have a casting vote; and
 - (ii) at the request of the *management committee* or of a duly authorised officer of the *trustee company*, a meeting of the *advisory committee* shall be convened to consider any matter on which the *management committee* requires the advice or a decision of the *advisory committee*.
- (g) The functions of the *advisory committee* shall be to advise the *trustee company*:-
- (i) on the exercise of its powers and discretions (subject to paragraph (l) of this rule);
 - (ii) on matters of difficulty in the implementation or application of the *rules*;
 - (iii) on any complaints received from *members, former members, pensioner members* or *ex-spouse participants* or from *institutions* and to recommend how such complaints shall be dealt with; and
 - (iv) on any other matters on which the *trustee company* requires advice.

- (h) The *advisory committee* shall also exercise such functions and powers as may from time to time be delegated to it by the *management committee* in connection with arrangements made under Section 50 of the Pensions Act 1995 to resolve such disagreements in relation to the *scheme* as are referred to in that section. The functions and powers so delegated may include the power to exercise any or all powers and to fulfil any or all duties conferred or imposed upon the *trustee company* under section 50(2)(b) of the Pensions Act 1995.
- (i) This paragraph shall apply where, in the opinion of both those members of the *management committee* who are participating in the *advisory committee* only by virtue of paragraph (c) above or where in the circumstances for which paragraph (b) above provides a *co-opted director* is appointed to the *advisory committee* by the *management committee* in the opinion of that *co-opted director* (whether or not this opinion is shared by any of the remaining members of the *advisory committee*), a decision on the matter in question by the *advisory committee* on behalf of the *trustee company* under Section 50(2)(b) of the Pensions Act 1995, would or does involve a significant issue of principle or policy or other matter which, in the opinion of those *management committee* members of the *advisory committee*, or in the opinion of that *co-opted director*, as the case may be, should be referred to the *management committee* for consideration or determination under Section 50(2)(b) of the Pensions Act 1995. In such circumstances, the above members of the *management committee* (or as the case may be the *co-opted director* referred to in this paragraph) shall have power to require the *advisory committee* to refer the matter to the *management committee*, with the *advisory committee's* views, if any. The power referred to in this paragraph may be exercised at any time prior to a decision of the *advisory committee* on the matter in question or, subject to paragraph (j) below, within two days (excluding any Saturday, Sunday or bank holiday) next following the day of that decision and shall be taken to be exercised as soon as notification of its exercise has been given by each additional member participating in the relevant business, either orally at a quorate meeting of the *advisory committee*, or in writing to the *trustee company*. This paragraph and paragraph (j) below shall have effect subject to the requirements of the Occupational Pension Schemes (Internal Dispute Resolution) Regulations 1996.
- (j) No decision of the *advisory committee* made under paragraph (h) above for the purposes of Section 50(2)(b) of the Pensions Act 1995 shall take effect at a time when the power referred to in paragraph (i) above may still be exercised in respect of it. Where that power of referral is exercised in relation to any matter, any decision of the *advisory committee* on that matter shall be regarded as suspended and revocable pending consideration of the matter by the *management committee* which shall have power to confirm, revoke or vary that decision or remit it for further consideration and determination by the *advisory committee*, as the *management committee* may in its absolute discretion decide. The *advisory committee* shall have power in its absolute discretion, acting however in any case with the consent of those of its

members who would otherwise have in relation to that case the power referred to above, to determine that its decision in that case shall take immediate effect and where the *advisory committee* has made that determination in any case, no power of referral to the *management committee* may be exercised under paragraph (i) above in respect of that case after a decision has been made on it by the *advisory committee*.

- (k) If the *trustee company* shall in any particular case decline to accept the advice of the *advisory committee* given under paragraphs (g) or (i), the *advisory committee* shall be entitled to inform the *joint negotiating committee* of the matter in dispute and, if such matter can be rectified by an amendment of the rules, the *advisory committee* may request the *joint negotiating committee* to propose such amendment under the provisions of rule 20.3.
- (l) Except pursuant to its functions under paragraph (h), the *advisory committee* shall have no right to make any recommendation or to tender any advice on any matter falling within jurisdiction of the *investment committee* under the provisions of rule 20.5.

20.5 Investment committee

- (a) The *investment committee* of the *management committee* is established under the articles of association of the *trustee company* to advise the *trustee company* on all questions relating to the investment of the assets for the time being of the *fund*.
- (b) The *investment committee* shall consist of not less than three nor more than eight persons of whom not less than one shall be a member of the *management committee* (hereinafter called 'the ordinary sub-committee members') and not more than five (hereinafter called 'the special sub-committee members') shall be persons whom the *management committee* may decide to co-opt because they have special skills or are able to give competent advice to the *trustee company* on the policy to be adopted from time to time for investment of the *fund*.
- (c) A member of the *management committee* who has the special skills required for a special sub-committee member may be appointed a special sub-committee member.
- (d) The *management committee* may for any reason which it considers adequate remove a member of the *investment committee* from office. In the event of a vacancy occurring in the membership of the *investment committee* such place may be filled or left vacant as the *management committee* shall decide, and the *management committee* may from time to time appoint additional members of the investment committee so long as the minimum and maximum numbers of sub-committee members and each class thereof are observed.

- (e) The *investment committee* shall meet not less than once in every quarter and shall make a written report to the *management committee* of its deliberations and decisions.
- (f) The provisions of the articles of association of the *trustee company* shall apply to regulate the conduct of the meetings of the *investment committee*. Unless and until otherwise determined the quorum shall consist of three members of the *investment committee* of whom at least one shall be an ordinary sub-committee member and two shall be special sub-committee members.
- (g) The *management committee*, as the governing body of the *trustee company*, shall retain the overall power of investment in relation to the *fund* but may from time to time delegate on such terms as it may impose to the *investment committee* the power of the *trustee company* to decide the investment policy of the *fund*. Any changes in the investment policy will be notified to the *management committee* in accordance with paragraph (e) of this rule.
- (h) The *trustee company*, acting on the advice of the *investment committee*, shall be entitled to appoint one or more investment manager of the *scheme* who shall be paid out of the *fund*, and may delegate to an investment manager so appointed all or any of the powers of investment (other than the power to decide overall investment policy) under the provisions of rule 20.8(b). The investment manager shall, if required, report to each meeting of the *investment committee* all details of transactions authorised by such investment manager since the date of the investment manager's last report and produce such further information as the *investment committee* shall require and such investment manager's report (if any) shall be included in the *investment committee's* report to the *management committee* under the provisions of paragraph (e) of this rule. The *trustee company*, acting on the advice of the *investment committee*, may remove any investment manager so appointed and appoint another person as investment manager.
- (i) Subject to the approval of the *management committee* the investment manager shall be entitled to employ as servants of the *scheme* such persons as the investment manager considers necessary to carry out the investment manager's duties effectively, who will be remunerated for their services out of the *fund*.

20.6 Remuneration of committee members and others

The *trustee company* shall, subject to the *approval* of the *joint negotiating committee*, have power to remunerate out of the *fund* for their services any one or more of the members of the *management committee*, the *members* of the *joint negotiating committee*, the *advisory committee* and the *investment committee* and to reimburse any of them (whether remunerated or not) for all travelling, hotel and other expenses properly incurred in attending or returning from meetings or otherwise in connection with the *scheme*.

20.6A Personal dealing in investments

- (a) The *management committee* (or a duly authorised sub-committee of that body) shall adopt a code of conduct (and may from time to time amend that code) which shall regulate the terms on which any officer or employee of the *trustee company* specified in that code may engage in dealings in any investment otherwise than for or on behalf of the *scheme* or the *trustee company*. That code may impose on any such person an obligation to use best endeavours to secure that any other person with a connection to that person of a kind specified in the code complies with such of its provisions as are specified therein as relevant to that obligation. For the purposes of this rule officers of the *trustee company* shall be taken to include directors thereof and members of any sub-committee of the *management committee* and 'director' has in this rule the meaning it has in the Financial Services and Markets Act 2000 in relation to bodies corporate.
- (b) Any amendment to any such code of conduct that may be made by a sub-committee may be made by an individual member of that sub-committee to whom that function has been delegated by that sub-committee, provided that no amendment made by such an individual member shall continue to have effect if it has not been confirmed or ratified by that sub-committee or by the *management committee* within the four months beginning with the date on which it was so made. If, however, any such amendment is so made by any such individual as is referred to in the preceding sentence but that amendment is not subsequently so confirmed or ratified, any personal dealing made pursuant to that code as so amended on an interim basis shall not subsequently be regarded as in breach of that amended code, provided that such amendment is not itself in breach of any legal requirement imposed on the *trustee company*.
- (c) Subject to paragraph (d) of this rule, the code shall apply to all such employees and officers of the *trustee company* as the *trustee company* may think fit and may be so applied by the *trustee company* at its discretion whether or not the *trustee company* shall have delegated to, or otherwise conferred upon, any such individual the authority to exercise the *trustee company's* powers (or any of them) under rule 20.8 on the *trustee company's* behalf.
- (d) The code shall comply with the relevant requirements of all rules, regulations, codes of conduct, directions and guidance (whether or not legally binding) of the Financial Services Authority under the Financial Services and Markets Act 2000 and those of any other regulatory body exercising functions under that Act in relation to the *trustee company*. The code shall expressly prohibit any personal dealing by any person to whom it applies which would amount to a breach of Part V of the Criminal Justice Act 1993 (insider dealing). It may contain such provisions as the *management committee* shall consider appropriate, framed by reference to the kind of investments involved or

otherwise, for cases where any personal dealing is proposed that could give rise to a conflict with the interests of the *scheme* or of the *trustee company*.

- (e) That code may confer authority on any person approved by or on behalf of the *management committee* to give or withhold the consent of the *trustee company* to such personal dealings in accordance with the code. Any person vested with such authority may include (without limitation) any officer or employee of the *trustee company*, whether or not such individual is also subject to the terms of the code in respect of that individual's own personal dealings, and any one or more members of the *management committee* or of any duly authorised sub-committee of the *management committee*. The conferral or withholding of that consent may be made subject to such terms and conditions, consistent with this rule, as the *management committee* may think fit.
- (f) The *management committee* (or a duly authorised sub-committee of that committee) shall keep under review the operation of the code.
- (g) Where the *management committee* entrusts to any sub-committee of itself the review of the operation of the code, the *management committee* shall require that sub-committee to report to it at least annually on that subject or at such more frequent intervals as the *management committee* may in its discretion decide. The *management committee* (or a duly authorised sub-committee on its behalf) shall have power at its absolute discretion to relax any provision of the code and to ratify a personal dealing made otherwise than in accordance with that code (including power retrospectively to give any consent which was required under the code but which was not obtained by any individual subject to the code when originally required).
- (h) Where any individual to whom the code applies makes a personal dealing in accordance with the code (or where any absence of prior consent under the code or other breach of it is ratified by, or otherwise remedied to the satisfaction of, the *trustee company* after the event under paragraph (g) above), no such individual shall be required to account to the *trustee company* for any investment acquired by virtue of that personal dealing nor for any profit or benefit derived from any retention of, or subsequent dealing with, that investment made in accordance with that code or otherwise confirmed or ratified under this rule.

20.7 Accounts, audit and reports

- (a) The *trustee company* shall cause proper books of account to be kept showing all the dealings with the assets of the *fund* and an income and expenditure account and balance sheet of the *fund* made up to the *accounting date* (or to such other day as the *trustee company* shall from time to time decide) shall be prepared and audited in accordance with the requirements of the *Pension Schemes Act*.

- (b) There shall be annexed to the accounts and balance sheet a report of the *trustee company* on the *scheme* including its administration and a report of the activities of the *joint negotiating committee*, the *advisory committee* and the *investment committee*.
- (c) As soon as possible after the accounts and balance sheet of the *fund* shall have been made up and audited, the *trustee company* shall cause to be circulated to each of the *institutions* participating in the *scheme*, and to the *UUK* and *UCU*, a copy of the accounts and balance sheet of the *fund*, together with a copy of the auditor's report, the reports referred to in paragraph (b) of this rule, and the report and accounts of the *trustee company* prepared in accordance with the Companies Act 1985.

20.8 Investment powers

- (a) All trust moneys belonging to the *fund* shall either be placed on current or deposit account with a bank, or invested in the name or under the legal control of the *trustee company* in the purchase or at interest upon the security of such stocks, funds, shares, securities or other investments or property of whatsoever nature and wheresoever and whether involving liability or not and whether producing income or not or upon such personal credit with or without security as the *trustee company* shall in its absolute discretion think fit, to the intent that the *trustee company* shall have the same full and unrestricted powers of investing and transposing investments in all respects as if it was absolutely entitled thereto beneficially, and so that without prejudice to the generality of the foregoing trust moneys may:-
 - (i) be invested in or upon any securities the holding of which is restricted to a particular class of persons, the *trustee company* being a member of that class;
 - (ii) be invested in or upon any of the securities of any of the *institutions* or of any corporate body which is for the time being a trustee hereof;
 - (iii) be lent (with or without security) to any body corporate which is for the time being a trustee of the *fund* and whose business comprises the business of banking, without such trustee being liable to account for any profits made in respect thereof;
 - (iv) be invested in holdings of foreign currencies or in loans, bonds or other investments denominated in such currencies;
 - (v) be used for entering into or meeting liabilities under underwriting or sub-underwriting contracts of all kinds and whether resulting in the actual investment of trust moneys or not;

- (vi) be used for entering into or meeting liabilities under any other contracts of whatsoever nature (including traded options, financial futures and forward currency transactions) which the *trustee company* shall consider appropriate for the purpose of augmenting the capital or income of the *fund*, or protecting the *fund* against the possibility of loss of capital or income, and such as not to expose the *fund* to undue risks and notwithstanding that any such contract may not involve the acquisition of pre-existing property or rights or may require the temporary deposit, or a temporary delegation of, the management of assets forming part of the *fund*;
- (vii) be invested by effecting with one or more *insurance companies* deferred annuity policies, annuity policies or contracts for the purpose of providing pensions or benefits whether immediate or future and whether contingent or otherwise for the purposes of the *scheme* and the *trustee company* shall have full power to deal with and dispose of any policy effected by it whether by sale, surrender or otherwise in such manner in all respects as the *trustee company* shall in its absolute discretion think fit; and
- (viii) be applied in effecting any form of investment which may come to be developed as a new form of investment and is recognised and adopted as such in reputable financial circles;

and for the prevention of doubt it is hereby recorded that the *trustee company* shall in respect of property other than money comprised in the *fund* have the like powers of lending the same at interest, or using the same for the purpose of effecting or facilitating contracts or otherwise applying the same as if such property were money.

- (b) The *trustee company* shall have power from time to time to delegate all or any of its powers of making and managing investments, and of keeping a register thereof, to any person, firm or company whom it considers competent to do so, and to pay to such person, firm or company such fees as may be agreed, provided the *trustee company* considers such fees to be reasonable in all the circumstances. Where any asset held for the benefit of the *fund* is vested in a partnership in which the *trustee company* is a partner, the *trustee company* may arrange or agree that the management of that partnership and its investments be carried on by another person who is a partner therein (or by a person appointed by such partner as the manager of that partnership) subject to such terms and conditions as the *trustee company* may think fit (which may include remuneration for that management wholly or partly by a share in the profits of that partnership).

- (c)
- (i) The *trustee company* shall in relation to any *land* held as an investment of the *fund* have the same full and unrestricted powers of dealing with and disposing of such *land* as if it were the absolute beneficial owner thereof.
 - (ii) The *trustee company* shall have power (without prejudice to the generality of its investment powers) to enter into or form any partnership (whether a general partnership or a limited partnership) which has as its objective investment in *land* or the development of *land* for investment purposes and may transfer any *land* to any partner of such partnership (or nominee for such partnership) to be held on the terms of such partnership.
- (d) The *trustee company* may permit all or any part of the assets of the *fund* to be held in the name of nominees for the *trustee company* if it considers it expedient so to do for the more efficient management of the investment of the *fund*.
- (e) Without prejudice to the generality of the powers conferred on the *trustee company* under paragraphs (a) and (b) above, the *trustee company* shall have power to conclude and implement any stock lending arrangements as that expression is defined in Section 263B of the Taxation of Chargeable Gains Act 1992 provided that such arrangements shall have been approved by the *trustee company* and for that purpose to appoint such bank or other financial institution authorised by law as the agent or delegate (or both) of the *trustee company* in connection with the carrying into effect of those arrangements as the *trustee company* may think fit.

The *trustee company* shall have power to delegate all or any of its own powers in this connection to such bank or financial institution (and to authorise the sub-delegation of those powers) and to conclude such agreements in connection with those arrangements and for the protection of the *fund* (including but not limited to agreements as regards to the provision to the *trustee company* of appropriate collateral to secure the obligations owed to it under those arrangements) as the *trustee company* may think fit.

- (f) In connection with any exercise of its powers of investment (including in respect of the retention or development of any freehold land or leasehold property in which it has any interest) the *trustee company* may enter into such indemnities and provide such guarantees as the *trustee company* may consider requisite or desirable and upon such terms and conditions as the *trustee company* may think fit for this purpose.

20.9 Power to borrow

- (a) The *trustee company* shall have power to raise any money required for the purposes of the *scheme* by the sale, conversion, calling in, mortgage or charge of all or any part of the *fund* for the time being in its possession in the same manner and to the same extent as if the *trustee company* were the absolute and beneficial owner thereof, and generally shall have power to borrow for the purposes of the *scheme*.
- (b) The *trustee company* may delegate the exercise of the foregoing power of borrowing to any person to whom the *trustee company's* power of investment has been delegated under rule 20.8(b) upon such terms and subject to such limitations as the *trustee company* shall think fit for the purpose of facilitating the making and transposing of investments by such person on behalf of the *trustee company* (and any borrowing effected pursuant to the delegation of the power of borrowing shall be repaid and all interest shall be paid at the expense of the *fund* or the income of the *fund* as the case may be).

20.10 Notices

- (a) Any notice to any person in receipt of or entitled to any benefit hereunder may be given by sending the same through the post in a letter addressed to such person at their last known place of abode, and any notice so sent shall be deemed to be served on the second day following that on which it is posted.
- (b) Notice shall be given in writing to the *trustee company* by every *member*, every *pensioner* and every *former member* or *ex-spouse participant* prospectively entitled to benefit under the *scheme*, of the place of that individual's residence at the time of first falling within this paragraph, and each such individual shall thereafter give immediate notice in writing to the *trustee company* of any change of residence.

20.11 Interested professional parties

Any member of the *management committee* or an officer of the *trustee company*, member of the *joint negotiating committee*, *advisory committee* or *investment committee* who is a solicitor, accountant, stockbroker or other person engaged in any profession or business may act either alone or jointly with one or more partners or through any person, firm or company, in a professional capacity for the *trustee company* or the said committees and shall be entitled to charge and be paid for all such work done for or on account thereof.

20.12 Costs and expenses and Claims against the Trustee Company

- (a) Subject to the provisions of Section 31 of the Pensions Act 1995, and to paragraph (g) below, all costs and expenses of managing and administering the *scheme* incurred by the *trustee company* from time to time shall be paid out of the *fund* except to the extent that they may be paid or borne by the *institutions* and in such costs and expenses may be included any sum which the Pensions Ombudsman (or any regulatory authority in which the functions of the Pensions Ombudsman may become vested) directs the *trustee company* to pay or to consider for payment by way of compensation or otherwise for any act or omission for which the *trustee company* is found responsible by such ombudsman or regulatory authority. Where any such costs and expenses arise from the violation by an *institution* of any law requiring treatment of part-time workers which is no less favourable than that accorded to full-time workers, or from the failure of an *institution* to provide timely and accurate information to enable the *trustee company* to determine a *part-time service fraction*, they shall be borne by that *institution* and recovered from it by the *trustee company*.
- (b) The *trustee company* shall have power, subject as provided in paragraph (c) below, to compromise or satisfy any claim brought against it by any *member*, *former member*, *ex-spouse participant* or *pensioner* or by any person claiming in respect of any such *member*, *former member*, *ex-spouse participant* or *pensioner* in respect of any loss or other injustice suffered by such person (including distress or inconvenience within the limits permitted by law) caused by or arising from any act committed or omission made in good faith by the *trustee company* in the actual or purported administration of the *scheme* (including any act or omission on its part which could give rise in its opinion to a sustainable claim against the *trustee company* under Part X of the *Pension Schemes Act*). Where the *trustee company* has this power, it may exercise it by augmenting the *relevant benefits* of any person or providing that person with *relevant benefits* under the *scheme* to the extent that it considers necessary or advisable to compensate that person for the loss or injustice suffered on that account. The *trustee company* may also exercise this power by making to that person another payment out of the *fund*, or by taking such other step in relation to that person as is open to it under Section 15 of the Trustee Act 1925, or in the exercise of the right of recourse conferred on it by paragraph (a) above.
- (c) The following conditions shall apply to any exercise of the power conferred on the *trustee company* under paragraph (b) above:
- (i) the power shall not be exercised in respect of a claim that relates to a disagreement the arrangements for whose resolution have been delegated under rule 20.4(h), unless the *advisory committee* shall have concurred in the exercise of the power in respect of that claim, or shall have agreed to its exercise in relation to a specified class of claims into which, in the written opinion of the chairman of the *advisory*

committee, the particular claim falls, provided that consideration by the *advisory committee* of whether so to concur shall be treated as if it were a function of that committee under rule 20.4(h); and

- (ii) the consent of the *joint negotiating committee* shall not be required for the exercise by the *trustee company* of the above power;
 - (iii) the power shall not be exercised in relation to any claim in such a way that its exercise would involve a cost to the *scheme* or to any *institution*, unless the *funding council* shall have concurred in such an exercise thereof in that case, or shall have agreed to such an exercise thereof in relation to a class of cases into which that case falls, provided that membership of such a class shall be defined by reference to one or more specified criteria, which may include the cost to the *scheme* of exercising the power in a case, as determined in that case by the *trustee company* (on *actuarial advice* where appropriate), or the facts and circumstances giving rise to the claim in a case; and
 - (iv) nothing in paragraph (b) above shall permit the *trustee company* a right of recourse to the assets of the *fund* in any circumstance in which it is denied such right by rule 20.13 but to the extent that the exoneration provisions of the *scheme* contained in rule 20.13 would or could in the opinion of the *trustee company* prevent the *trustee company* from having any legal liability to the person in whose favour it would otherwise be contemplating exercising its power under paragraph (b) above the *trustee company* shall have the power (but no obligation) to waive its right to an indemnity under those provisions to the strict extent necessary to permit such exercise to take effect.
- (d) The power in paragraph (b) above is capable of exercise without prejudice to the following but so that compensation shall not be paid twice in respect of the same loss:
- (i) the power of the person or persons appointed by the *trustee company* for the purposes of Section 50(2)(a) of the Pensions Act 1995;
 - (ii) the powers of the *advisory committee* under the *rules* and in particular the power conferred on that committee under rule 20.4(h);
 - (iii) the powers of the *trustee company* under Section 15 of the Trustee Act 1925 which may be exercised concurrently with the power conferred under paragraph (b) above;
 - (iv) the obligation of the *trustee company* to pay interest in accordance with rule 15.7.

- (e) Where in the opinion of the *trustee company* loss has arisen to any person by reason of an act or omission, in compensation for which it contemplates exercising the power conferred on it by paragraph (b) above and that loss was wholly or in part attributable to the act or omission of an *institution*, it may consult with that *institution* as to what contribution (if any) under rule 8.2 it would be appropriate for that *institution* to make, and if following such consultation the *trustee company* decides in that case to exercise its power under paragraph (b), it may require that institution to make such a contribution to the *fund* (or, in so far as the *trustee company* may deem appropriate, to the *money purchase AVC fund*) of an amount which the *trustee company* determines to be equal to, or less than, the amount of such of its costs arising from that exercise of its powers as are attributable to that act or omission of the *institution*; provided that:
- (i) that *institution* shall be treated for the purposes of this paragraph as the *employer* of any *member* or *former member* in respect of whose *membership* the claim was made which gave rise to a cost to the *trustee company* and hence to the *institution's* contribution in pursuance of this paragraph; and
 - (ii) the cost to the *trustee company* of any exercise of its powers under paragraph (b) shall be determined for the purposes of this paragraph as if all rights to indemnity under rule 20.13(a) had been waived.
- (f) The *trustee company* may in such circumstances, and to such extent, as it considers appropriate treat any sum paid or the cost of the provision of any or any additional *relevant benefit* under paragraph (b) above as an expense of the *scheme* to which paragraph (a) of this rule applies.
- (g) Subject to the provisions of the Pensions on Divorce etc. (Charging) Regulations 2000, the *trustee company* may make such charges as it considers appropriate for providing information or taking other steps necessary to facilitate the making or implementation of any *pension sharing orders* in respect of the rights of any individual under the *scheme* or earmarking orders made under the Pensions Act 1995.

20.13 Indemnity

- (a) Without prejudice to any right of indemnity given to them by law the *trustee company*, each of the members of the *management committee*, the *joint negotiating committee*, the *advisory committee* and *investment committee* shall be entitled to an indemnity against the assets of the *fund* in respect of:-
- (i) all liabilities of any description incurred by them in the performance or purported performance of their obligations hereunder or in the administration of the *scheme* so long as those liabilities shall have been

incurred in good faith and without any fraudulent or wrongful intent or culpable negligence on their part and so long as such indemnification would not be prohibited by Section 31 of the Pensions Act 1995; and

- (ii) all expenses properly incurred by them in the execution of the trusts hereof including all expenses incurred in connection with any such liability for which they may be indemnified and as is referred to in subparagraph (i) above or in connection with any breach of trust for which they are exonerated from liability by virtue of paragraph (b) below.
- (b) The *trustee company*, each of the members of the *management committee*, the *joint negotiating committee*, the *advisory committee* and the *investment committee* shall not be liable for any breach of trust of whatever nature whether omitted or committed by any person; provided that this paragraph shall not operate to release any liability attaching to any director or employee of the *trustee company* or any member of such committees in respect of:-
- (i) that person's fraud or deliberate or culpable disregard of the interests of those actually, prospectively or contingently entitled to any *relevant benefit* under the *scheme*; or
 - (ii) any liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions under the *scheme* in the circumstances referred to in Section 33 of the Pensions Act 1995;

and provided further that no such director or employee of the *trustee company* nor any member of such committee shall be liable for any act or default of any fund manager (as defined in Section 124(1) of the Pensions Act 1995) where the requirements of Section 34(4) or Section 34(6) of the Pensions Act 1995, as the case may be, have been met.

- (c) The *trustee company* shall in making any investment which requires an indemnity to be given by the *trustee company* against liabilities arising in the event of loss of *approval* have power to bind the *fund*, notwithstanding that such indemnity may only become operative by reason of some act or omission which constitutes a breach of trust on the part of the *trustee company*.
- (d) The *trustee company* may enter into such agreements and give such undertakings, indemnities or guarantees which are binding upon the *fund* as the *trustee company* shall, in its absolute discretion, decide are necessary or desirable for the proper and efficient administration of the *scheme*.

20.14 Payment of pensions

- (a) All pensions shall be payable at such periods as the *trustee company* shall from time to time either generally or in any particular case decide, and any pension may be paid in advance if the *trustee company* thinks fit.
- (b) In respect of the period from the date upon which an individual becomes entitled to draw a pension under the *scheme* up to the end of the month in which that date occurs, that individual will be entitled to a full month's pension calculated in accordance with the *rules*. After an instalment of pension has been paid, no further instalment of pensions shall be apportioned up to the date of death or the date upon which it otherwise ceases to be payable and if paid in arrear or partly in arrear the *pensioner* concerned and such person's personal representatives shall then have no claim against the *trustee company* or the *fund* for payment up to the date of cessation of the pension provided that this paragraph shall not apply if payment of the pension is in arrear in respect of a period of one month or more.
- (c) Pensions are payable only to an account maintained by the *pensioner* at a bank, or in such other manner as the *trustee company* thinks fit, and any agreement for a payment through the post or otherwise which may in any particular case be made by the *trustee company* shall be at the risk of the *pensioner* concerned.
- (d) Before making or sanctioning any payment out of the *fund* in respect of any *member*, *former member* or *ex-spouse participant* the *trustee company* may require the production of a certificate or such other evidence as it may think fit of the birth, marriage, registered *civil partnership* or death of a *member*, *ex-spouse participant* or *pensioner*, that person's spouse or *civil partner* or *dependants* (including *eligible children*) or the identity of any person named in a certificate or any other material fact.
- (e) The exercise by the *trustee company* of a discretion to pay a pension from the date of death of a *member*, *former member*, *ex-spouse participant* or *pensioner member* and in respect of that person shall be treated for the purposes of calculating any benefit payable out of the *fund* as having taken place immediately following that death.

20.15 Incapacity of beneficiary

If the *trustee company* is of the opinion that any person entitled to benefit under the *scheme* is incapable of managing his or her own affairs due to physical or mental infirmity (whether or not such person is a patient for the purposes of Part VII of the Mental Health Act 1983), the *trustee company* shall be entitled, at its discretion, to pay any such benefit to any person approved by it who undertakes to apply the benefit payable to or for the maintenance or benefit of the person concerned, and the *trustee*

company shall not be under any obligation to see to the application of any benefit so payable and paid to such approved person.

20.16 Restriction of members' rights

- (a) No person shall have any claim or right to any benefit save if and so far as the *fund* allows and in accordance with the *rules*.
- (b) Nothing herein shall in any way restrict the rights of any of the *institutions* or their appropriate officials to determine the employment of any *member*.
- (c) Any sum which may have become due to a *member, former member, ex-spouse participant* or a person claiming through or in respect of such *member, former member* or *ex-spouse participant* shall be forfeited if it has not been claimed during a period of at least six years from the date upon which that sum became due, but if the sum formed one payment of a pension or annuity the right to such pension or annuity shall not thereby be extinguished.

20.17 Insurance policy to satisfy members' or pensioners' rights

The *trustee company*, acting in its discretion but on *actuarial advice*, may at any time and from time to time purchase from any *insurance company* a policy of insurance securing any deferred or immediate benefits payable under the *rules*, and so that any such policy:-

- (a) shall, where the policy benefits are secured for a *member, former member, ex-spouse participant* or *pensioner member*, include provision for a *beneficiary* corresponding to that made under section 13;
- (b) may be purchased in the name of the *member, former member, ex-spouse participant* or *pensioner* for whom the benefits are secured but only with the consent of that person; and
- (c) if so purchased as set out in paragraph (b) above, shall not form part of the *fund* and shall be in complete satisfaction of the benefits to which any such person has been entitled under the *rules* and such person shall thereafter have no claim or interest in the *fund* in respect of those benefits.

20.18 Effect of mis-statements

If any *member* or any other person entitled to benefit shall make any incorrect, untrue or misleading statement as to any of the matters referred to in the *rules* the *trustee company*, on discovering that such statement is incorrect, untrue or misleading shall have power, acting on *actuarial advice*, to make such arrangements as it shall

consider fair by way of adjustment of any pension, annuity or other money payable out of the *fund*.

20.19 Disclosure of information

- (a) The *trustee company* shall comply with the requirements of the *Pension Schemes Act*, the Pensions Acts of 1995 and 2004 and the *Welfare Reform Act* concerning the documents and information to be made available to *members* and others in relation to the *scheme*.
- (b) The *trustee company* may require each *institution* to take all such steps as the *trustee company* may reasonably require to disseminate to *members* in that *institution's* employment all such information as the *trustee company* may be required to provide to comply with all or any of the *trustee company's* obligations pursuant to paragraph (a) above and any further information which the *trustee company* may determine that it is necessary or desirable for such *members* to have in connection with the *scheme*.

20.20 Actuarial investigation

- (a) There shall be an actuarial investigation of the *scheme* at intervals of not more than three years, such investigations to be carried out by the *actuary* appointed for the purpose and qualified to give *actuarial advice*.
- (b) Following each actuarial investigation the *actuary* who carried it out shall report to the *trustee company* on the financial condition of the *scheme* and shall make recommendations regarding the contributions to be payable by the *employers* under the provisions of rule 8.1 and shall make such other comments and recommendations as the *actuary* shall think fit.
- (c) The actuarial valuation and the actuarial statement to be prepared by the *actuary* from time to time shall comply and be carried out in accordance with the provisions of the Pensions Act 1995 and shall be sufficient to enable the *trustee company* to comply with its obligations under Section 57 and Sections 58 to 61 of the Pensions Act 1995.
- (d) In the event of the actuarial investigation disclosing that an alteration in or addition to the *scheme* is desirable then the *trustee company*, in consultation with the *joint negotiating committee* and in accordance with section 21, shall take such steps as it shall consider appropriate to achieve such alteration or addition.

20.21 Acts of the institutions

Where under the provisions of these *rules* a discretion or power is conferred, or an obligation is imposed, on any of the *institutions* then unless under the provisions of these *rules* the *institution* concerned must execute an instrument as a deed for the purpose, such discretion or power may be exercised or obligation may be complied with:-

- (a) by a resolution of its board of directors, governing body or management council or by a written document signed by all the members thereof; or
- (b) by some person duly nominated by such a resolution to exercise the powers and discretions conferred upon such *institution*.

20.22 Liability of institutions

The *institutions* shall not be under any liability whatsoever in connection with the *scheme* except as expressly provided in the *rules* and except for any liability incurred by an *institution* under the Pensions Act 1995 or other duty which may not by law be excluded by express provision.

20.23 Dispute Resolution

- (a) The *trustee company* shall make and maintain arrangements for an internal dispute resolution procedure in accordance with Section 50 of the Pensions Act 1995 and until all stages of that procedure have been exhausted in relation to any disagreement within its scope, including those steps contemplated under paragraph (h) and, where applicable, paragraph (i) of rule 20.4, the *trustee company* shall not, subject to paragraphs (c) to (e) below, consent to that disagreement being referred to outside arbitration.
- (b) Except in so far as the resolution of any disagreement or other matter of doubt is otherwise provided for by these *rules* or by Part X of the *Pensions Schemes Act*, any disagreement arising under these *rules* or in relation to the *fund* may by consent of the parties to or affected by such disagreement or matter of doubt, be referred to arbitration in accordance with the Arbitration Act 1996. If the *trustee company* is a party thereto then, unless the parties otherwise agree, the seat of arbitration shall be in England and there shall be a single arbitrator appointed by the President for the time being of the Law Society of England and Wales.

- (c) Where the disagreement is between an *active member*, *former member*, *pensioner member* or other beneficiary under the *scheme*, the *trustee company*, or any *employer* or any employer which formerly participated in the *scheme* as to:
- (i) the existence or nature of a right to a "contractual pension age" within the meaning in paragraph (d) below or its effect on entitlements under the *scheme*;
 - (ii) the adequacy of the evidence required as to sub-paragraph (i) above; or
 - (iii) the amount of any adjustment to any *relevant benefits* or of any compensatory cash sum payable in relation to sub-paragraph (i) above, other than a matter of actuarial science and practice (which shall be determined by the *actuary*),

the parties to the disagreement may, without prejudice to their rights to seek a Judgment or order of the Court or of a tribunal of competent jurisdiction, agree to refer the matter to arbitration by an appropriately experienced independent Counsel of at least 10 years' standing, such person to be nominated by the *trustee company*, and to act as an arbitrator, not as an expert, the costs of such referral to be borne by such parties in such proportions as the arbitrator shall in the arbitrator's absolute discretion see fit.

- (d) For the purposes of paragraph (c) above "contractual pension age" means in relation to an individual within paragraph (e) below, either:
- (i) the age at which, immediately prior to the termination of the relevant individual's relevant *pensionable service*, the individual had the express or implied right to retire on an immediate pension, at any time at or after age 60 and before age 65, under the terms of the last contract of employment or terms of appointment applicable to the individual's latest employment as an *active member* under the *scheme* in respect of which *membership* the individual accrued *pensionable service*; or
 - (ii) in respect of a *former member* entitled to *preserved benefits* under or by virtue of rules 12.1(d) or (e) or rule 5.8(b) or (c) of the *rules* or any similar or corresponding provision either of the *rules* or of the rules of the *scheme* that had effect at any time prior to the *prescribed date*, the relevant individual's contractual pension age shall be taken in relation to the employment or appointment in question to be any earlier age than that arrived at under sub-paragraph (i) above (but not before age 60) at which the individual had an express or implied right to retire on an immediate pension under the terms of the last contract of employment or terms of appointment applicable to the last employment of that individual as an *active member* from which the

individual accrued any *pensionable service* that does not fall to be aggregated with any *pensionable service* that accrued from subsequent *active membership*.

- (e) An individual is within this paragraph if he or she is an *active member*, a *former member* or a *pensioner member* within one or more of the following categories:
- (i) a male *active member* with *pensionable service* prior to 17th May 1990 who on leaving *pensionable service* comprising the *member's* relevant employment as referred to in the definition of contractual pension age will have a contractual pension age of less than 65 years; or
 - (ii) an *active member* with *pensionable service* after 31st March 1995 who on leaving *pensionable service* comprising the *member's* relevant employment as referred to in the definition of contractual pension age will have a contractual pension age of less than 63 years and six months; or
 - (iii) a *former member* with prior periods of *pensionable service* and one or more contractual pension ages as set out in either or both of sub-paragraphs (i) and (ii) above whose benefits have not yet been brought into payment under the *rules* or under the rules of the *scheme* that had effect at any time prior to the *prescribed date*; or
 - (iv) a *pensioner member* who was a *former member* with prior periods of *pensionable service* and one or more contractual pension ages as set out in either or both of sub-paragraphs (i) and (ii) above and whose benefits have been brought into payment under the *rules* or under the rules of the *scheme* that had effect at any time prior to the *prescribed date*; or
 - (v) a *former member* with prior periods of *pensionable service* and one or more contractual pension ages as set out in either or both of sub-paragraphs (i) and (ii) above who has exercised the *former member's* statutory right or right under the *scheme* to take a transfer payment of the *former member's* accrued past service rights under the *scheme* to a *transfer scheme* where the amount of the transfer value was calculated on the assumption of a normal pension age (as defined in Section 180 of the *Pension Schemes Act*) of more than 60 years (whether or not the benefits attributable to those rights have yet been brought into payment).

Section 21 - Alterations In and Additions to Rules

21.1 Power of alteration

Subject to the remaining rules of this section the *trustee company* may at any time and from time to time by deed alter or repeal all or any of the *rules* for the time being in force or make any new rules to the exclusion of or in addition to all or any of the existing *rules* aforesaid, and any rules so made shall be deemed to be rules of the same validity as if originally embodied herein and shall be subject in like manner to be altered or modified.

21.2 Effect on existing benefits

No alteration or addition shall prejudice or affect any pension or annuity then payable under the *scheme* or the rights of any *member, former member, ex-spouse participant* or *pensioner* who is then excused from or not liable for contributions.

21.3 Alterations not to affect purpose of the scheme

There shall be no alteration which shall have the effect of altering the purpose of the *scheme* which shall continue to be the provision of *relevant benefits* as defined in the *tax code* for *eligible employees* and their *relatives* and *dependants* and in favour of any other person whose rights under the *scheme* derive from a *pension sharing order*.

21.4 No return to institutions of any part of the fund

There shall be no alteration which shall result in the return to any of the *institutions* of any part of the *fund*, but subject to the provisions of rule 22.5(e).

21.5 Consent of the joint negotiating committee and Funding Council

There shall be no alteration without the consent in writing of the *joint negotiating committee* and the *Funding Council* except that the consent of the *Funding Council* shall not be required to any amendment or to any changes of *rules* relating to or affecting only *supplementary benefits* and so that if any consent required to be given to any alteration made hereunder is duly given to an alteration declared to be effective from the date on which the *trustee company* shall have executed the deed of alteration (or some other specified date) and such date shall be earlier than the date of the last such consent then the alteration in question shall take effect from such earlier date unless any of the consents required has been given subject to an express stipulation that the alteration is not to operate until all relevant consents have been obtained.

21.6 Restrictions imposed by the Pensions Act 1995

Any exercise of power to modify the *scheme* taking effect or purporting to take effect on or after 6th April 1997 must satisfy the requirements of Section 67 of the Pensions Act 1995.

Section 22 - Cessation of Participation and Winding-Up

22.1 Cessation of participation by institutions

- (a) A *retiring institution* is an *institution* in respect of which one or more of the following conditions shall have been fulfilled namely:-
- (i) the *institution* shall have ceased to be resident in the United Kingdom;
 - (ii) the *institution* shall have ceased to fall within any category of body which the *trustee company* may approve for participation in the *scheme*;
 - (iii) it has been found by such *institution* or the *trustee company* to be impracticable or inexpedient for it to continue to participate in the *scheme*; or
 - (iv) becomes a *retiring institution* in accordance with rule 3.5; or
 - (v) a proposal is made to the creditors of the *institution* by its directors, or by other appropriate members of the *institution*, for a voluntary arrangement under Part 1 of the Insolvency Act 1986, or a trust deed is drawn up on behalf of the *institution* for its creditors; or
 - (vi) an instrument is drawn up appointing a receiver or an administrative receiver of the *institution*, which will, if all the statutory requirements are met, have effect under Part 2 (or, as the case may be, Part 3) of the Insolvency Act 1986; or
 - (vii) a resolution is duly proposed to the members of the *institution* under Section 84 of the Insolvency Act 1986 for the winding up of that *institution*; or
 - (viii) a petition is presented to a court of competent jurisdiction for the winding up of the *institution* under Part 4 or 5 of the Insolvency Act 1986 or, where the *institution* is not to be treated as a company or an unregistered company for the purposes of either of those Parts of that Act, an application is made, or a petition presented, to the Accountant in Bankruptcy for the sequestration of the estate of the *institution* under Section 6 of the Bankruptcy (Scotland) Act 1985,

provided that:

- (A) if at any time a "relevant event" within the meaning of Section 75(6A) of the Pensions Act 1995 occurs in relation to

an *institution* which is not then a *retiring institution* under the foregoing provisions of this paragraph (a), that *institution* shall be treated as having become a *retiring institution* on the day immediately preceding the day of that event; and

- (B) if at any time it appears to the *trustee company* that the fulfilment by the *institution* of the conditions in any of subparagraphs (v) to (viii) of this paragraph has not resulted, and is unlikely to result, in the occurrence in relation to that *institution* of a "relevant event" (as defined in (A) above), it may treat any such conditions as not having been so fulfilled.
- (b) An *institution* on becoming a *retiring institution* shall, with immediate effect, withdraw from the *scheme* and cease to participate in it, provided that the *trustee company* shall have discretion, to permit that *institution* to continue to participate in the *scheme* for such period as it may determine so as to postpone the effective date of that withdrawal. Between the time at which the *institution* becomes a *retiring institution* and the effective date of its withdrawal from the *scheme*, the *trustee company* may administer the *scheme* on the basis that those persons who would otherwise be *eligible employees* of the *retiring institution* shall not by virtue of that employment be eligible to become *members* of the *scheme*.
- (c) Subject to paragraph (h) below, those persons who were *active members* by virtue of *eligible employment* by a *retiring institution* immediately before its withdrawal from the *scheme* shall be treated as *deferred pensioners* with effect from the effective date of the withdrawal and shall be entitled to benefits in that capacity in accordance with section 9 or section 12 of the *rules* as appropriate.
- (d) The *retiring institution* shall as soon as practicable make in full any payment for which it is liable under section 8 of the *rules* (including by virtue of paragraph (e) below) and, on receipt of a written demand from the *trustee company*, make in full any payment for which it is liable under Section 75 or 75A of the Pensions Act 1995 and/or the Occupational Pension Schemes (Employer Debt) Regulations 2005 (as amended) unless the *trustee company* has entered not an approved withdrawal arrangement, or a withdrawal arrangement, with the *retiring institution* pursuant to paragraph (h) of this rule, or the Pensions Regulator has issued directions under regulation 7(1) of those Regulations to the effect that the debt payable under Section 75 or 75A of the Pensions Act 1995 is unenforceable for a period with a view to enabling the *retiring institution* to seek agreement with the *trustee company* on the terms of an approved withdrawal arrangement, and/or the *trustee company* has entered into a scheme apportionment arrangement with the *retiring institution* pursuant to paragraph (hh) of this rule.

(e)

- (i) This paragraph shall apply only where paragraph (f) below applies. It shall be a condition of a body's participation in the *scheme* as an *institution* (which shall also bind that body after it shall have become a *retiring institution*) that it shall pay to the *trustee company* under section 8, such additional contributions as shall be determined by the *trustee company* on *actuarial advice* and having regard to such factors and on such bases and assumptions as the *trustee company* may on such advice consider appropriate. Without prejudice to the generality of its powers under this paragraph, the *trustee company* may have regard to the additional amount which is required by the *trustee company* on *actuarial advice* to fund the resultant increase attributable to such additional *relevant benefits* or which would be required in the absence of a surplus disclosed by the most recent actuarial valuation or funding review relating to the *scheme*. The *trustee company* may determine that such cost or amount resulting from the application of paragraph (f) shall not be a charge on or be otherwise borne out of such surplus. In determining the additional contributions payable by an *institution* by virtue of this paragraph, it shall be assumed that the *supplementary section* shall bear such part of such increase as relates to *supplementary benefits*. That part of that increase shall accordingly and to that extent be left out of account when the *trustee company* is determining the additional employer contributions required from the *institution* under this paragraph.
- (ii) Where any action or policy of an *institution* has led to contributions being paid under rule 6.3(b)(iii) or under rule 8.2, or to a payment or payments being received by the *trustee company* pursuant to a contribution notice issued under Section 38 of the Pensions Act 2004, the *trustee company* shall, in computing the amount payable by that *institution* under this paragraph, subtract the amount of contributions under those other provisions, and the amount of any payments received pursuant to such a contribution notice, from the amount which would otherwise have been due from that *institution* under this paragraph by reason of that action or policy having given rise, in whole or in part, to a determination that paragraph (f) below shall apply.
- (f) Subject to paragraph (g) below, and without prejudice to the generality of paragraph (d) above, this paragraph shall apply where in the reasonable opinion of the *trustee company* an *institution* which has become a *retiring institution* has, in anticipation or otherwise in contemplation of withdrawal from the *scheme*, taken any action or pursued any policy with regard to the employment, *retirement* or *redundancy* of any of its *eligible employees* which has had as its main object, or as one of its main objects, an increase in the accrued rights and entitlements as at the effective date of that withdrawal from the *scheme* of that institution relating to those *eligible employees*.

- (g) Where, subject to this paragraph, the *trustee company* has determined, or proposes to determine, that paragraph (f) above applies to an *institution*, and accordingly that paragraph (e) above shall apply, it shall give that *institution* the opportunity to make to it representations as to whether any of the *institution's* actions or policies is or was such as to enable the *trustee company* properly to determine that the said paragraph (f) shall apply. Subject to due consideration by the *trustee company* of any such representations, its determination under paragraph (f) above in relation to an *institution* shall be final and binding and the additional contributions accordingly determined under paragraph (e) above shall fall due from that *institution* in accordance with section 8. The *trustee company* shall have power to defer its determination under paragraph (f) above pending receipt and consideration of any representations under this paragraph and in the light of such representations to vary or revoke either wholly or in part any determination made in relation to the relevant *institution* under that paragraph.
- (h) Where Section 75 or 75A and/or the Occupational Pension Schemes (Employer Debt) Regulations 2005 (as amended) have effect in relation to the *scheme*, the *trustee company* may, on a request from the *retiring institution*, enter into an approved withdrawal arrangement or a withdrawal arrangement as defined in those Regulations on such terms as it shall in its absolute discretion agree with the *retiring institution* and, in the case of an approved withdrawal arrangement, as shall be approved by the Pensions Regulator.
- (hh) The *trustee company* may, with the agreement of the *retiring institution*, enter into a scheme apportionment arrangement (as defined in the Occupational Pension Schemes (Employer Debt) Regulations 2005 (as amended)) on such terms as the *trustee company* may in its absolute discretion decide, provided that the resulting amount of the debt due from that *retiring institution* to the *trustee company* under Section 75 or 75A of the Pensions Act 1995 and/or the Occupational Pension Schemes (Employer Debt) Regulations 2005 (as amended) is greater than or equal to what it would otherwise have been.
- (j) Those persons who were *active members* by virtue of *eligible employment* by a *retiring institution* immediately prior to its withdrawal from the *scheme* and who would otherwise become *deferred pensioners* under paragraph (c) above shall remain *active members* if with effect from the date of that withdrawal they enter the *service* of another *institution* and their continued participation as *active members* is deemed appropriate by the *trustee company*.
- (k) Neither the *trustee company* nor any *institution* shall have the power to effect a partial winding up of the *scheme*, whether by reason of any *institution* ceasing to participate in the *scheme* or otherwise.

22.2 Total winding-up and determination of scheme

The *scheme* shall be determined and wound-up on the happening of any of the following events:-

- (a) if all the *institutions* agree to that effect in writing;
- (b) if a majority of the *institutions* agree to that effect in writing and the *trustee company* and the *joint negotiating committee* concur;
- (c) if the *trustee company* and the *joint negotiating committee* so decide on the grounds that the objects for which the *scheme* was established no longer exist, or that the administration thereof cannot conveniently be carried on;
- (d) at the expiration of the *perpetuity period*.
- (e) if an order to that effect is made by the Pensions Regulator under Section 11 of the Pensions Act 1995.

22.3 Operation of the scheme as a closed scheme on determination

- (a) On the occurrence of any of the events referred to in rule 22.2 and notwithstanding the provisions of that rule, the *trustee company*, with the prior written consent of the *Funding Council* and of the *joint negotiating committee* and, where paragraph (e) of rule 22.2 applies, of the Pensions Regulator, but otherwise in its absolute discretion, instead of proceeding to wind up the *scheme* in accordance with the remaining provisions of this *rule*, may elect to defer the winding-up for such period as it may lawfully determine. In that event, the *trustee company* shall continue to administer the *scheme* as a closed scheme namely closed to new entrants and for further accrual of benefits;
- (b) Such of the trusts, powers and provisions of the *scheme* as the *trustee company* shall consider requisite or desirable to facilitate either the winding-up of the *scheme* in accordance with this section or its continuance as a closed scheme (including all powers of amendment and of modification of the *scheme* vested in the *trustee company*, subject to those consents which apply as referred to in section 21) shall remain in force and exercisable beyond the effective date of commencement of winding-up until the winding-up of the *scheme* has been completed.

22.4 Vesting of benefits on winding-up

- (a) Upon the commencement of the winding-up of the *scheme*, *active members* who have not attained *normal retirement age* shall be treated as if their *active membership* had then ceased and as if they were *former members* to whom section 9 applied; provided that:-
- (i) any *former member* who would otherwise have become entitled to a refund of contributions shall be deemed to have made an election under rule 9.2(d) until such time as that deemed election is expressly revoked; and
 - (ii) notwithstanding the provisions of Section 98(6) of the *Pension Schemes Act*, rules 9.8 and 9.9 shall apply to a *former member* as if (where that is not the case in law) Chapter IV of Part IV of that Act continues to apply to the *scheme* during the course of its winding-up but with power in that event for the *trustee company*, acting on *actuarial advice*, to extend the time limit for payment of a guaranteed cash equivalent for such period as the *trustee company* should decide to be appropriate in the circumstances.
- (b) *Active members* who have attained *normal retirement age* on or before the effective date of commencement of winding-up of the *scheme* shall be treated as if they had *retired* on that date.
- (c) For the purposes of this section, the effective date of commencement of winding-up shall be such date as the *trustee company* shall in its discretion decide but shall not be earlier than the date on which that relevant event occurred which has led to the winding-up of the *scheme* in accordance with rule 22.2 and not later than the first date thereafter on which there are no *members in service*.

22.5 Application of fund on a winding-up

- (a) Save where rule 22.6 applies and subject in any event to rule 7.4(m) and to any exercise by the *trustee company* of its powers under rule 22.3 upon the determination of the *scheme* the assets of the *fund* shall be realised and the *fund* converted into money and (subject to the payment of all costs, charges and expenses which may then be owing and to the discharge by the *trustee company* of all rights of recourse out of the assets of *fund* to meet liabilities to third parties) the entire proceeds of such conversion shall be applied by the *trustee company* in satisfying the following obligations to the persons entitled to benefit:-

- (i) in securing the continuance as if under the *scheme* of any pensions which have then actually commenced, benefits prospectively payable to those who at the time the *scheme* was determined were in *service* after attaining *normal retirement age* and benefits payable on the death of any such *pensioner member* or *member*, provided that future pensions increases shall be compounded at such rate as the *trustee company*, acting on *actuarial advice*, shall decide to be appropriate;
 - (ii) in securing the future payment of equivalent pension benefits payable under Part III of the National Insurance Act 1965 (including any corresponding Northern Ireland legislation and the previous corresponding enactments);
 - (iii) in securing accrued rights to *guaranteed minimum pensions*;
 - (iv) in securing the provision, on *actuarial advice*, of benefits for *deferred pensioners* and others prospectively entitled to benefit, including *preserved benefits* not then in payment.
- (b) The *trustee company* shall apportion the obligations set out in paragraph (a) above between the *main section* and the *supplementary section* according as the *relevant benefits* to be secured would in its opinion have become (but for the winding-up) a charge on one or the other of those sections of the *fund* but in so far as the resources of one of those sections are insufficient to meet the obligations so apportioned to it they shall be met out of such resources of the other as are not required to meet the obligations apportioned to that section in pursuance of the foregoing provisions of this paragraph.
- (c) If after the *trustee company* has secured out of the *supplementary section* such liabilities as are by virtue of paragraph (b) above to be satisfied out of that section, there remain in the hands of the *trustee company* resources apportioned to the *supplementary section* under that paragraph, the *trustee company* shall decide whether (and, if so, how) to augment out of those resources the *relevant benefits* payable to or in respect of *ex-spouse participants*, provided that the selection of such *relevant benefits* and the extent of their augmentation shall be decided on *actuarial advice* and after consultation with the *joint negotiating committee* but shall, subject to the limits set out in rule 9A.9, be such as the *trustee company* shall in its discretion think appropriate.
- (d) If after the satisfaction of the *trustee company's* obligations under paragraphs (a) and (b) above, and after the application of any resources required to implement its decision under paragraph (c) above, there remain in its hands resources apportioned to the *supplementary section* under paragraph (b) above, it shall apply these resources to secure the augmentation of *relevant benefits* to or in respect of *members* or *pensioner members* so far as that will not cause the limits set out in section 17 to be breached. Where the resources are

insufficient to secure the maximum permissible augmentation of all *relevant benefits* to or in respect of *members* or *pensioner members*, the *trustee company* shall have regard to *actuarial advice* in the selection of *relevant benefits* for augmentation and shall consult the *joint negotiating committee* on that selection, but shall so select those *relevant benefits* which it shall in its discretion think appropriate.

- (e) If after the satisfaction of the *trustee company's* obligations under paragraphs (a), (b) and (d) above, and after its application of any resources of the *supplementary section* required to implement its decision under paragraph (c) above, there remain resources of the *fund* in the hands of the *trustee company*, it shall distribute those resources to those bodies which were *institutions* immediately before commencement of the winding-up in such proportions as on *actuarial advice* it shall decide to be appropriate, subject to deduction of such tax as is required to be deducted pursuant to Section 601 of the *Taxes Act*.

22.6 Deficiencies on a winding-up

- (a) Where in the opinion of the *actuary* at any time following the determination of the *scheme* and the effective date of the commencement of its winding-up, the assets of the *scheme* are insufficient to meet in full its liabilities on that winding-up, then the assets of the *scheme* must be applied towards satisfying the *scheme's* liabilities in the manner prescribed by Section 73 of the Pensions Act 1995 modified and supplemented so far as relevant by regulations made under that section.
- (b) Where the circumstances referred to in paragraph (a) above apply, subject to paragraphs (c) and (d) below and to any exercise by the *trustee company* of its powers under rule 22.3, upon the determination of the *scheme* the assets of the *fund* shall be realised and the *fund* converted into money and (subject to the payment of all costs, charges and expenses which may then be owing and to the discharge by the *trustee company* of all rights of recourse out of the assets of the *fund* to meet liabilities to third parties) the entire proceeds of such conversion shall be applied by the *trustee company* in satisfying the following obligations to the persons entitled to benefit in the priority order in which they are set out below. The assets of the *fund* must accordingly first be applied towards satisfying the amounts of the liabilities mentioned in each of the earlier sub-paragraphs hereof before the amounts of the liabilities mentioned in the later sub-paragraphs and where the amounts of the liabilities mentioned in any amounts must be satisfied in the same proportions and any liabilities within a particular sub-paragraph which cannot be met in full shall abate rateably.

- (c) The liabilities referred to in paragraph (b) above are:-
- (i) any liability for pension or other *relevant benefits* which in the opinion of the *trustee company* are derived from the payment by any *member* of *additional voluntary contributions* or from any transfer under rule 7.4(ff);
 - (ii) where the *trustee company* is entitled to benefits under a contract of insurance that was entered into prior to 6 April 1997 with a view to securing the whole or any part of the *scheme's* liability for any pension or other benefit payable in respect of one particular person whose entitlement to payment of a pension or other benefit under the *scheme* has arisen and for any benefit which will be payable in respect of that person on the death of that person and either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract (but excluding liability for increases to pensions), the liability so secured;
 - (iii) where the entitlement of a *person* to payment of pension or other *relevant benefit* has arisen under the *scheme*, liability for that pension or *relevant benefit* and for any pension or other benefit which will be payable in respect of that person on the death of that person (but excluding any increases to pensions otherwise payable);
 - (iv) any liability:-
 - (A) for equivalent pension benefits (within the meaning of Section 57(1) of the National Insurance Act 1965), *guaranteed minimum pensions*, protected rights or section 9(2B) rights (within the meaning of Regulation 1(2) of the Contracting-out (Transfer and Transfer Payments) Regulations 1996) or *safeguarded rights* (but excluding increases to pensions), or
 - (B) in respect of *members* or *former members* with less than two years' *qualifying service* who are not entitled to accrued rights under the *scheme*, for the return of contributions;
 - (v) any liability for increases to pensions referred to in sub-paragraphs (ii) and (iii);
 - (vi) any liability for increases to pensions referred to in sub-paragraphs (iv) above;
 - (vii) so far as not included in any of the preceding sub-paragraphs (i) to (vi) inclusive of this paragraph (c), any liability for the benefits of *deferred pensioners* and others prospectively entitled to benefits including

preserved benefits not then in payment and which have accrued to or in respect of any *members* or *former members* or *ex-spouse participants* (including increases to pensions).

- (d) To the extent that the order of priorities for the application of the *fund* in the above circumstances referred to in paragraph (c) differs from the order of priorities prescribed by Section 73 of the Pensions Act 1995 modified and supplemented so far as relevant by the regulations made under that section, those statutory provisions (as from time to time amended) shall prevail.

22.7 Securing of benefits on a winding-up:

- (a) The *trustee company* shall satisfy those obligations which it is required under rules 22.5 and 22.6 to satisfy by securing the benefits of the *relevant members*, *former members*, *ex-spouse participants*, *pensioners* and *beneficiaries* in such manner as provided by or prescribed under Section 74(3) of the Pensions Act 1995.
- (b) In particular and without prejudice to the generality of the foregoing the *trustee company* shall issue to each person to whom it has a liability which it is required to satisfy in whole or in part a notice specifying the way or ways in which it is proposed to discharge that liability and seeking the consent of that person, unless such consent may lawfully be dispensed with.
- (c) The *trustee company* may secure benefits for any person under paragraph (a) above by the acquisition of rights for that person under a *transfer arrangement* only if that *transfer arrangement* satisfies the requirements which would be imposed on it by Section 95 of the *Pension Schemes Act* (or, as the case may be, Section 101F of that Act) if the transfer it is to accept had been of the guaranteed cash equivalent of that person's accrued rights under the *scheme* or, as the case may be, of the cash equivalent of the *pension credit rights* of that person and made on the requisition of that person in accordance with the said Section 95, (or, as the case may be, Section 101F).
- (d) The *trustee company* may secure benefits for any person under paragraph (a) by transferring to that person the benefits of an insurance policy only if that policy satisfies the requirements mentioned in Section 19(4) of the *Pension Schemes Act* (or, where relevant, Regulation 15 of the Pension Sharing (Pension Credit Benefit) Regulations 2000) but may do so notwithstanding that the conditions set out in rule 9.10 are not otherwise satisfied.
- (e) Having secured a benefit under paragraph (a) of this rule the *trustee company* shall be discharged from any further liability in respect of it.

Section 23 - Transitional Provisions

23.1 Transferring FSSU members

This rule applies to *transferring FSSU members* as follows and so that any reference to 'member' shall be assumed to be to a *transferring FSSU member* unless the context otherwise requires:-

- (a) each member has been credited with pensionable service prior to joining the *scheme* in accordance with the rules in force at the date of joining, the amount of such pensionable service being for the purposes of rule 5.1(b) as last notified to that member by the *trustee company* in writing prior to the *prescribed date* or such greater amount as the *trustee company* may subsequently notify to that member in written correction of an earlier notification;
- (b) there shall be excluded from the trusts of the *scheme* such part of the proceeds of any *FSSU* policy as are attributable to premiums or proportions thereof paid by a member in a private capacity either while the member was not subject to an *FSSU* agreement, or to supplement the benefits to which the member intended to become entitled under the *FSSU* agreement applicable and so that such proceeds as are attributable to such premiums or proportions of premiums shall, upon the policy maturing or being surrendered by the *trustee company*, be held by the *trustee company* upon trust for the member absolutely and not as part of the *fund*;
- (c) paragraph (b) shall not apply where, although the premiums were originally paid by the member in a private capacity, the *institution* agreed prior to that member joining the *scheme* that such member would be credited with additional university service for the purposes of the Supplementation Scheme (within the meaning of clause (1) of Part I of Appendix A to the rules of the *scheme* as they had effect immediately before the *prescribed date*) in respect of such premiums and that service has been treated as *pensionable service*;
- (d) where, in respect of a member:-
 - (i) that person held more than one appointment before becoming a member and section 12 would have applied to a *member* holding those appointments;
 - (ii) before electing to join the *scheme* that person had relinquished one or more such appointments while remaining an *FSSU member* by virtue of an appointment retained; and

- (iii) the policies or other *FSSU* assets accrued in respect of the relinquished appointment or appointments were transferred to the *trustee company* on that person joining the *scheme*;

then the provisions of section 12 shall be deemed to apply in such manner as the *trustee company*, acting on *actuarial advice*, after consulting with the *institution* which was the *employer* on the member's first joining the *scheme*, shall consider to be fair in all the circumstances;

- (e) *pensionable salary* in respect of a member shall up to the expiration of thirteen years from the date of joining the *scheme* be calculated by reference to, if appropriate, the total of the annual fixed *salary* or *salaries* and fixed allowances in respect of all those posts and offices held by the *member* whilst subject to an *FSSU* agreement:
 - (i) which were held with a body which has become an *institution* for the purposes of the *scheme*; and
 - (ii) which were in respect of employment which was treated as *pensionable service*; and
- (f) subject to the limits set out in rule 10.8(c) and to Section 19, the *trustee company* may increase the benefit otherwise payable to a member under the *scheme* as a lump sum to such amount as that person may by notice in writing require and the consideration for such increase shall be a reduction in the pension payable to the member under section 9 or 10 of an amount equivalent in actuarial terms to the additional lump sum payable pursuant to this paragraph.

23.2 Transferring part II members

This rule applies to *transferring part II members* as follows and so that any reference to 'member' shall be assumed to be to a *transferring part II member* unless the context otherwise requires:-

- (a) each member has been credited with pensionable service prior to joining the *scheme* in accordance with the rules in force at the date of joining and such member shall be treated for the purposes of rule 5.1(b) as entitled to a credit of pensionable service of the amount last notified to that *member* by the *trustee company* in writing prior to the *prescribed date* or such greater amount as the *trustee company* may subsequently notify to that member in written correction of an earlier notification;

- (b) *pensionable salary* in respect of a member shall be calculated by taking into account, if appropriate, the salaries received in respect of employment which is treated as *pensionable service* and which was with a body which has become an *institution* for the purposes of the *scheme*;
- (c) subject to the limits set out in rule 10.8(c) and to Section 19, the *trustee company* may increase the benefit otherwise payable to a member under the *scheme* as a lump sum to such amount as that person may by notice in writing require and the consideration for such increase shall be a reduction in the pension payable to the member under section 9 or 10 of an amount equivalent in actuarial terms to the additional lump sum payable pursuant to this paragraph.
- (d) if in order to count any additional *years* as pensionable in a relevant *part II scheme* a member had agreed prior to the date of transferring to this *scheme* to pay additional contributions to that *part II scheme*, whether over a period or in a lump sum at the cessation of employment, the member shall remain liable to pay such additional contributions to the *fund* at the same time as the member would have paid them under the *part II scheme* and, if so agreed, the contributions shall be deducted from any benefits payable to the member; and
- (e) where a member has made voluntary contributions to any *part II scheme* or to any *scheme* which was supplemental to the *part II scheme* and the member has not been credited with any additional *years* of *pensionable service* in respect of such voluntary contributions then, if the transfer payments made in respect of the member on joining the *scheme* included a sum which fairly represented the voluntary contributions referred to above, the member shall, subject to the limits set out in section 17, be granted such other benefits as the *trustee company*, acting on *actuarial advice*, shall determine to be appropriate.

23.3 War service

- (a) This rule shall apply to a *transferring FSSU member* or a *transferring part II member* where that person prior to 31st December 1980 or at a later date where the *trustee company* in an exceptional case so decided, was credited with a period of pensionable service, under the provisions of the *scheme* then in force, in respect of *war service*.
- (b) For the purpose of defraying the cost of the additional benefits arising from the crediting of such pensionable service then either:-
 - (i) the *terminal contribution* shall be deducted from any additional lump sum or transfer payment payable to or in respect of the *former member* concerned arising from the additional *pensionable service* credited to the *member*;

- (ii) if there is no additional lump sum or transfer payment, or it is less than the *terminal contribution*, the additional benefits payable by reason of such additional *pensionable service* shall be reduced by such amount as the *trustee company*, acting on *actuarial advice*, shall decide to be the equivalent in value to the *terminal contribution* or the shortfall of it, as the case may be;

unless the *member* or *former member* concerned shall at any time before the additional benefits come into payment pay the *terminal contribution* or the balance of it to the *fund*.

- (c) The *trustee company* shall have power to apply the provisions of this rule to any person who prior to the commencement of the first period to which *pensionable service* is attributed under the rule belonged to a *retirement benefits scheme* with which the *trustee company* is able to make reciprocal arrangements for the counting as pensionable of any period to which paragraph (a) above relates.
- (d) This paragraph applies to a *member* or *former member* who has a period of *war service* to which paragraph (a) above applies and:-
 - (i) whose credit for such *war service* has been restricted by reason of the fact that the full credit would have resulted in *pensionable service* exceeding forty years or such lower number of years as is in that person's case the maximum permitted under section 17; and
 - (ii) for whom part of such *pensionable service* has accrued as a result of making periodic additional voluntary contributions under this *scheme* prior to 31st December 1980; and
 - (iii) for whom it was not possible at 31st December 1980 to avoid the restriction of such credit by the cancellation or reduction of future payments of *AVCs* under rule 7.3; and
- (e) a person to whom paragraph (d) above applies shall be entitled to request prior to *retirement* on pension that the following retrospective adjustments shall be made:-
 - (i) the credit for such *war service* shall be adjusted to what it would have been if that person had not made any periodic *AVCs* under rule 7.3; and
 - (ii) the credit for *pensionable service* under rule 7.3 shall be reduced to the same extent that the credit for such *service* is increased under subparagraph (i) above; and

- (iii) the contributions paid by that person for the *pensionable service* reduced under sub-paragraph (ii) above shall be refunded and the amount thereof shall be determined by the *trustee company*, acting on *actuarial advice*, but the *trustee company* shall deduct from any such amount prior to its payment the tax for which it is accountable to the Inland Revenue.

Section 24 - Definitions

In these *rules* the words and expressions following shall, unless inconsistent with the subject or context, have the meanings set opposite to them:-

1989 ACT MEMBER

any *member* or *former member* who joined (or re-joined) the *scheme* on or after 1st June 1989 but shall exclude any such *member* or *former member* within any of subparagraphs (a) to (c) below namely:-

- (a) who with the consent of *HMRC* has been treated as a *pre-1989 Act member*;
- (b) who is treated as a *pre-1989 Act member* pursuant to rule 17.8;
- (c) to whom rule 17.7 applies, but only to the extent provided for in that rule.

and any person who as a *pre-1989 Act member* elected to become a *1989 Act member* with effect from that date in accordance with rule 17.6.

ACCOUNTING DATE

31st March in each year (or such other date as the *trustee company* may from time to time decide).

ACTIVE MEMBER

a *member* who is currently an *eligible employee* and who is contributing to the *fund* under section 7 or who no longer pays contributions because exempted or excluded under rule 7.7 or who is a *member* in respect of whom contributions are being made under rule 8.3(a) or 8.4(c).

ACTIVE MEMBERSHIP

the period of *membership* of an *active member* excluding any period during which *membership* is suspended.

ACTUARIAL ADVICE

advice obtained from an *actuary* who:-

- (a) is appointed by the *trustee company* to advise either generally or in any particular case; and

- (b) is in business as a consulting actuary or who is employed by a corporate or non-corporate body providing actuarial services or who is employed by an *insurance company* with which any of the benefits secured under the *scheme* may from time to time be insured; and
- (c) is a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries in Scotland.

ACTUARY

the actuary, being an actuary qualified to give *actuarial advice*, who is appointed to carry out an actuarial investigation pursuant to rule 20.20.

ADVISORY COMMITTEE

the committee established and constituted in accordance with rule 20.4.

AGGREGATE RETIREMENT BENEFIT

the aggregate leaving out of account any benefit derived from rights accrued or credited after 5th April 2006, of:-

- (a) the pension in respect of the *member's* own *pensionable service* under this *scheme* and any *associated scheme* before any *allocation*; and
- (b) the pension equivalent of the *member's lump sum retirement benefit*.

ALLOCATION

the surrender by any person under section 13 of part of that person's pension out of the *fund* (other than *supplementary benefits*) in order that a deferred annuity commencing on that person's death may be provided for a *beneficiary*.

ALTERNATIVE BENEFITS

either:-

- (a) additional pension under Section 44 of the Social Security Contributions and Benefits Act 1992; or
- (b) an appropriate personal pension scheme which meets the requirements of Section 9(5) of the *Pension Schemes Act*;

provided that where during any period in which any *eligible employee* having opted not to be a *member* or having withdrawn from *membership* of this *scheme* is not

in *contracted-out employment* as an *eligible employee* but is not liable during that period to pay any primary Class 1 National Insurance Contributions or is liable to pay them only at the reduced rate (so that that person may not be entitled to benefits under paragraph (a) of this definition), *alternative benefits* shall nevertheless be deemed to accrue during that period.

ALTERNATIVE BENEFITS SERVICE

a period of employment as an *eligible employee* after 5th April 1988 during which *alternative benefits* have accrued or are accruing to that *eligible employee* in respect of that period except:-

- (a) where an *eligible employee* remains a *member* in respect of one or more pensionable posts and is in *contracted-out employment* by reference to the *scheme* such *eligible employee* shall be deemed to be in *alternative benefits service* only in respect of the pensionable post in respect of which *alternative benefits* are accruing;
- (b) where a person is in *eligible employment* and a *member* of *FSSU*, or is an *eligible employee* who belongs in respect of such employment to a *retirement benefits scheme* approved in relation to the *employer* under any of paragraphs (d) to (f) of rule 3.4, or would be in *eligible employment* but for being ineligible for *membership* by virtue of rule 4.1(d) or (e), then *alternative benefits* shall not be treated as accruing to that person in respect of that employment.

APPROVAL

approval of the *scheme* by the Board of Inland Revenue under the *tax code*.

ASSOCIATED EMPLOYER

in relation to two or more employers, means each such employer, if one is under the *control* of the other or others or both or all are under the *control* of a third party.

ASSOCIATED EMPLOYMENT

two or more concurrent employments held by the *member* which are associated, which means that:-

- (a) there is a period during which the *member* has held both or all of them; and

- (b) the period counts under this *scheme* in the case of both or all of them as a period in respect of which benefits are payable; and
- (c) during the period both or all of the employers in question are *associated employers*.

ASSOCIATED SCHEME

whichever is appropriate of:-

- (a) in respect of a *1989 Act member* any *relevant scheme* which is a *connected scheme* or which provides benefits in respect of *service*;
- (b) in respect of a *pre-1989 Act member* any *relevant scheme* which provides benefits in respect of *service*.

AUTHORISED MAXIMUM

means, in relation to any lump sum benefit payable to a *member, former member* or *ex-spouse participant* in connection with that individual becoming entitled to a pension under the *scheme*, the lowest of:-

- (a) the available portion of that individual's lump sum allowance (as defined in paragraph 2 of Schedule 29 to the Finance Act 2004) immediately before he or she becomes entitled to actual receipt of that lump sum benefit;
- (b) the applicable amount as defined in paragraph 3 of schedule 29 to the Finance Act 2004; and
- (c) 25% of the aggregate value of such lump sum and pension under the *scheme* as determined by the *trustee company* on *actuarial advice*.

AVC PROVIDER

any *insurance company*, or other body qualified under Section 34(3) of the Pensions Act 1995 to be a fund manager, with which the *trustee company* has entered into, or proposes to enter into, an agreement or arrangement for the purposes of rule 7.4.

AVCs

additional voluntary contributions paid under rule 7.3 or 7.4.

BENEFICIARY

a person in whose favour a *member, former member or ex-spouse participant* has made or proposes to make an *allocation* and who is either:-

- (a) that person's spouse or *civil partner*; or
- (b) any other individual nominated by that person who would in the opinion of the *trustee company* be (or have been) a *dependant* of that person if that person died (or had died) immediately following the *allocation*, but excluding anyone who would be (or have been) an *eligible child* in that case by virtue only of paragraphs (a) and (b)(i) of the definition of that expression in this section;

Provided that where an *allocation* has been made by a *member, former member or ex-spouse participant* in favour of a person, and that person was the spouse or *civil partner* of that *member, former member or ex-spouse participant* when the latter first became entitled to actual receipt of a pension under the *scheme*, the person in whose favour that *allocation* was made shall thereafter be treated, for the purposes of this definition, as a *dependant* immediately before the death of that *member, former member or ex-spouse participant* even if the marriage or registered *civil partnership* between those two people has been dissolved or annulled.

**BENEFIT
CRYSTALLISATION EVENT**

has the meaning given in section 216 of the Finance Act 2004

CALCULATION DATE

means in relation to the *salary* of a *member* in respect of employment by an *employer* as a *variable time employee*, the *relevant date* or, in relation to such *salary* for any period before the *scheme year* into which the *relevant date* falls, the *accounting date* in that period.

CHARGEABLE AMOUNT

has the meaning given to it in Section 215(3) of the Finance Act 2004.

CIVIL PARTNER

shall have the same meaning as in the Civil Partnership Act 2004, and "*civil partnership*" has a corresponding meaning.

COMPARABLE SCHEME

means, in relation to a *member*, a *retirement benefits scheme* which was, at a date relevant to the determination of that *member's* rights under this *scheme*, either:

- (a) approved by the Commissioners of Inland Revenue for the purposes of the *tax code* or treated by them as approved for any of those purposes; or
- (aa) an occupational pension scheme within the meaning of Section 1 of the *Pension Schemes Act* which is a registered pension scheme for the purposes of Part 4 of the Finance Act 2004; or
- (b) a relevant statutory scheme within the meaning of the *tax code*; or
- (c) a scheme to which the *employer* contributed in respect of that *member* while that person was normally required to work for the *employer* wholly or mainly outside the United Kingdom;

and an individual's membership of a comparable scheme shall be treated as having continued only for so long as that member was an active member of it within the meaning of Section 124 of the Pensions Act 1995.

COMPOUND INTEREST

interest at a specified rate calculated with *yearly* rests (or such other shorter rests as the *trustee company* may in its absolute discretion decide) on the amount of principal and interest (if any) already accrued at the commencement of the year (or such other shorter period) no interest being allowed on any addition to principal or accruing interest since the commencement of the period.

CONNECTED SCHEME

any *relevant scheme* which is connected with this *scheme* in relation to the *member*, which means that:-

- (a) there is a period during which the *member* has been an *eligible employee* of two or more *associated employers*; and
- (b) that period counts under this *scheme* and the *relevant scheme* or schemes as a period in respect of which benefits are payable; and

- (c) the period counts under one of those schemes for service with one *employer* and under the other or others for service with the other *employer* or *employers*.

CONTINUED RIGHTS REGULATIONS

The Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990 (SI 1990 No 2101).

CONTRACTED-OUT SCHEME

in relation to a *member* or potential *member*, a scheme (including this *scheme*) by reference to which an *employer* is for the time being holding, or named on a schedule to, a contracting-out certificate pursuant to Part III of the *Pension Schemes Act* which covers, has covered or will cover the *member's* employment, and 'contracted-out' and 'contracted-out service' and 'contracted-out employment' have corresponding meanings.

CONTROL

in relation to a body corporate or unincorporated association has the same meaning as it has in Section 416 of the *Taxes Act* for the purposes of Part XI of that Act (except that for the purposes of defining *associated employers control* of a body corporate shall have the same meaning as in Section 840 of the *Taxes Act* if that body is not a close company for the purposes of that Act); in relation to a partnership has the same meaning as in Section 840 of the *Taxes Act*; and for the purposes of section 3 of these *rules* and of the definition of *institution* in this section, includes any such other arrangements as regards the ownership, direction or governance of any body by one or more *institutions* within sub-paragraph (i) or (ii) of paragraph (b) of that definition as the *trustee company* may decide in consultation with those *institutions* prior to the admission of that body to participation in the *scheme* or may decide in order that that body may remain an *institution* without prejudicing *approval*.

CONVERSION RATE

the amount of additional *pensionable service* or additional benefits to be credited to or in respect of a *member* or *former member* for each £1,000 of the *member's fund* of that person that is to be transferred to the *main section* of the *fund* in pursuance of an election under rule 7.4(ff).

CO-OPTED DIRECTOR

an individual co-opted to membership of the *management committee* in accordance with the articles of association of the *trustee company*.

DEFERRED PENSIONER

a *member* or a *former member* who remains or was immediately prior to death entitled to benefits under section 9 (or to *preserved benefits* under rule 12.1) which have not yet come into payment.

DEPENDANT

in relation to any *member, former member* or *ex-spouse*, a person (whether or not a *relative*) who in the opinion of the *trustee company* is, whether wholly or in part, at the time of the death of that *member, former member* or *ex-spouse* either:-

- (i) financially dependent on that person or
- (ii) dependent on that person because of any physical or mental disability.

DISCRETIONARY TRUSTS

in relation to any sum directed to be held thereon in respect of a deceased *member, former member* or *ex-spouse* the trusts, powers and provisions exercisable by the *trustee company* set out below:-

- (a) the *trustee company* shall have power, at its discretion, to pay or apply the whole or any part of that sum to or for the benefit of all or any of the *relatives, dependants*, personal representatives or nominated beneficiaries of that deceased individual in such shares and proportions as the *trustee company* shall in its absolute discretion decide;
- (b) if that deceased individual shall not leave any *relative* or *dependant*, the *trustee company* shall have the further power to elect to retain all or any part of the sum as part of the *fund*;
- (c) without prejudice to the generality of the foregoing power, the *trustee company* shall have power to declare in respect of any sum or part thereof such separate trusts, terms and limitations (including provisions for maintenance, education, advancement and accumulation of income during a minority) and including such discretions, trusts

and powers as the *trustee company* shall from time to time by deed revocable or irrevocable appoint, but without infringing the rule against perpetuities; and the *trustee company* shall have power to appoint as trustees of such *fund* any two or more persons or a trust corporation as the *trustee company* shall in its absolute discretion decide and to remove any of such trustees and appoint any other trustee in place of any one so removed and provide for the remuneration of any such trustee;

- (d) if or to the extent that the *trustee company* shall not exercise the powers contained in paragraph (a), (b) or (c) above within two *years* of the death of that deceased individual, the *trustee company* shall hold such sum as a separate *fund* from the fund constituted hereunder upon trust for the personal representatives of that person or, if there are none, the statutory next of kin of that person; and
- (e) the *trustee company* may, but without being in any way bound to do so, have regard to any document signed by the individual concerned expressing the wishes of that person relating to the disposal of any sum to be held upon the *discretionary trusts*, and may issue forms for the purpose, and so that for the purposes of this definition any individual or corporation named in such expression of wish who is not a *relative* or *dependant* of the signatory shall be a 'nominated beneficiary' for the purposes of paragraph (a) above.

EARNINGS CAP

the limitation to the *permitted maximum* by the *tax code* of remuneration which may be taken into account for the purposes of a *retirement benefits scheme* but subject to rule 17.14(b).

ELIGIBLE CHILD

means in relation to any *member*, *former member*, *ex-spouse* or *pensioner member*; an individual who:-

- (a) is a lawful or legally adopted child alive at the death of that person or then unborn, or is (or would have been if born before that person died) a *dependant* who is a *stepchild* or natural child, or is a *dependant* accepted by that person as a member of the family; and

- (b) fulfils one of the following requirements:-
- (i) is under the age of eighteen or is receiving full-time education or undergoing full-time training approved by the *trustee company*;
 - (ii) on the death of that *member, former member* or *pensioner member* or on ceasing to qualify under sub-paragraph (i) above, is physically or mentally incapable of being self-supporting; or
 - (iii) having previously qualified under sub-paragraph (ii) above and having ceased to do so by becoming able to carry on remunerative employment so as to be self-supporting is again (within two years or such reasonable time thereafter as the *trustee company* having regard to the circumstances of the case shall decide to be appropriate) incapable of being self-supporting by reason of the same physical or mental incapacity as that which previously qualified that individual to be an eligible child.

An eligible child to whom sub-paragraph (b)(ii) above applies shall remain an eligible child until the physical or mental incapacity ceases provided that once such child has ceased to be an eligible child that child shall not become an eligible child again unless sub-paragraph (b)(iii) above applies.

ELIGIBLE EMPLOYEE an individual who is an eligible employee within rule 4.2.

ELIGIBLE EMPLOYMENT the employment with an *institution* of an *eligible employee*.

EMPLOYER an *institution* which is participating in the *scheme*, having complied with the provisions of rule 3.1 and means, in relation to:-

- (a) an *eligible employee* the employer or prospective employer;

- (b) a *member* the employer (or employers if such person has more than one concurrent employment); and
- (c) a *former member* the last *institution* (or *institutions* if that *former member* had more than one concurrent employer) to have employed that person as a *member* or, where *membership* ceased before the *prescribed date*, as a *member* as defined in the *rules* in force when *membership* terminated;

and for the purposes of rule 10.4(b) and (c), where a *member* is employed under a contract of employment with an *institution* and was previously employed by any person for any period in an undertaking which has been transferred to that *institution* in circumstances such that that *member* is entitled under the law governing that contract, and apart from any express term thereof, to have employment by that person for that period treated for any purpose as continuous with employment by that *institution*, that person shall be treated as that *member's* employer and as the same employer as that *institution*.

EMPLOYMENT ACT

the Employment Rights Act 1996.

ENHANCED INCAPACITY PENSION

means a pension payable in the circumstances provided for in and calculated in accordance with rule 10.4(k) to (m), (q) and (r).

ENHANCED PROTECTION

has the meaning given to it in paragraphs 12 to 17 of Schedule 36 to the Finance Act 2004.

EX-SPOUSE

an individual being either a former spouse or former *civil partner* of a *member* or *former member* to whom *pension credit rights* have been or are to be credited following a *pension sharing order*.

EX-SPOUSE PARTICIPANT

an *ex-spouse* who participates in the *scheme*.

FINAL AVERAGE NET PAY

in relation to an appointment which is terminated the higher of:-

- (a) the *member's net pay* from that appointment in any period of twelve months during the three years before its termination; and

- (b) the highest yearly average of the total *net pay* from that appointment for any three consecutive years ending not earlier than ten years prior to the termination of that appointment;

and so that for the purposes of this definition *net pay* for any year except the last before the date that appointment terminates shall be increased in proportion to any increase over the *RPI* published at the last day of that year by the *RPI* published at the date that appointment terminates.

FINAL REMUNERATION

A. in relation to a *pre-1989 Act member* (except in so far as otherwise provided by rule 17.7 and 17.8) and in relation to a *1989 Act member* in so far as provided by rule 17.9 and 17.10 the greater of:-

- (a) the highest *total emoluments* for any period of twelve complete and consecutive months (ending on the last day of the month) falling wholly within the five years preceding the *relevant date*; and
- (b) the yearly average of the *total remuneration* for any three or more consecutive years ending at the end of any month not earlier than ten years before the *relevant date*.

provided that:-

- (i) in relation to any *member* whose remuneration in any *year* subsequent to 5th April 1987, and prior to 6th April 2006, used for the purpose of calculating benefits has exceeded £100,000 or such other sum as has for that period been prescribed in an order made by the Treasury under Section 590(3) of the *Taxes Act*, final remuneration shall (subject to proviso (iii) below) be the amount ascertained in accordance with paragraph (b) above and paragraph (a) above shall not apply;
- (ii) where final remuneration is computed by reference to any period other than that of the last twelve months ending on the *relevant date*, the *member's total emoluments* (for the

purposes of sub-paragraph (a) above) or *total remuneration* (for the purposes of sub-paragraph (b) above) may be increased for any period of twelve complete and consecutive months in proportion to any increase in the *RPI* from the last day of that period up to the *relevant date*.

B. in relation to a *1989 Act member* (except in so far as otherwise provided by rule 17.9 and 17.10) and in relation to a *pre-1989 Act member* in so far as provided by rules 17.7 and 17.8 the greater of:-

- (a) the highest *total emoluments* for any period of twelve complete and consecutive months (ending on the last day of the month) falling wholly within the five years preceding the *relevant date*; and
- (b) the yearly average of the *total remuneration* for any three or more consecutive years ending at the end of any month not earlier than ten years before the *relevant date*.

Provided that:-

- (i) where final remuneration is computed by reference to any period other than that of the last twelve months ending on the *relevant date*, the *member's total emoluments* (for the purposes of sub-paragraph (a) above) or *total remuneration* (for the purposes of sub-paragraph (b) above) may be increased for any period of twelve complete and consecutive months in proportion to any increase in the *RPI* from the last day of that period up to the *relevant date*; and
- (ii) final remuneration shall not exceed the *permitted maximum* as at the *relevant date*.

C. for the purposes of paragraphs A and B above 'month' means one of the twelve named calendar months.

FORMER MEMBER

an individual who has either been a *member* or who, before the *prescribed date*, has been a member under the rules then in force but who, in either case, is at present not a *member* having ceased to be an *eligible employee* (whether on *retirement* or otherwise) or having withdrawn from *membership*.

FSAVC SCHEME

A *retirement benefits scheme*:-

- (a) to which a *member* has made additional voluntary contributions;
- (b) to which at no time did the *employer* contribute; and
- (c) which was approved under Section 591 of the *Taxes Act* while the *member* contributed to it before 6th April 2006.

FSSU

the Federated Superannuation System for Universities established in 1913 under the Second and Third Reports of the Board of Education Advisory Committee on University Grants (including any subsequent modification of it).

FSSU MEMBER

a person who was in the employment of an *institution* prior to the 1st April 1975 and who was treated as being subject to an *FSSU* agreement and who remained subject to the *FSSU* agreement up to the date of joining the *scheme*.

FULL-TIME SERVICE

in relation to any person, any employment as an *active member* which is not or is not deemed to be *part-time service*.

FUND

the pension fund constituted under rule 2.1 divided into two sections, namely the *main section* and the *supplementary section*.

FUNDING COUNCIL

means:-

- (a) in relation to any *institution* (which shall include for the purposes of this paragraph a *retiring institution*) and to those of whom it is the *employer* and in respect of the powers and rights vested in or granted to the Funding Council under rules 3.3(c),

4.5(d)(iv), 6.3(a)(i), 7.9, 8.2(c), 17.1(b) and 20.12(c) and (d), whichever of:-

- (i) the Higher Education Funding Council for England (established by Section 62(1) of the Further and Higher Education Act 1992);
- (ii) the Higher Education Funding Council for Wales (also established by Section 62(1) of the Further and Higher Education Act 1992); and
- (iii) the Scottish Further and Higher Education Funding Council (established by Section 1 of the Further and Higher Education (Scotland) Act 2005);

may make grants to such *institution* under Section 65(3)(a) of the Further and Higher Education Act 1992 or Section 12(1) of the Further and Higher Education (Scotland) Act 2005, or if none or more than one of the Councils referred to in (i) to (iii) above may make such grants to that *institution* the Higher Education Funding Council for England; and

- (b) in relation to the powers vested in the Funding Council under rules 21.5 and 22.3, all of the Councils referred to in sub-paragraphs (a)(i) to (iii) above;

provided that to the extent that any two or more of the Councils referred to in sub-paragraphs (a)(i) to (iii) above shall determine to exercise the powers vested in the Funding Council under the rules referred to in those sub-paragraphs jointly then any reference in those rules to the Funding Council shall notwithstanding the provisions of paragraph (a) above be construed in accordance with paragraph (b) above.

GUARANTEED MINIMUM PENSION

a guaranteed minimum pension to which a *member*, a *former member* or the spouse or *civil partner* of a *member* or *former member* is entitled by virtue of the *scheme* being, or having been, *contracted-out*.

GREATER APPOINTMENT

in respect of an individual with two or more appointments, means the appointment carrying the higher *salary*, and where both or the two or more higher *salaries* are equal the *member* shall elect which appointment to treat as the greater and which as the lesser.

GROSS

where used to qualify any expression describing any category of a *member's* emoluments, shall mean the full amount of the emoluments within that category which that *member* would have been entitled to receive but for deductions on account of absence from work, or other deductions permitted under Section 13 of the *Employment Act* (including without limitation the deduction of the income tax and national insurance contributions required by virtue of Sections 684 of the Income Tax (Earnings and Pension) Act 2003 and paragraph 6 of Schedule 1 to the Social Security Contributions and Benefits Act 1992), or such other deduction as would have been so permitted if Part II of the *Employment Act* had applied in relation to the *member's eligible employment*.

**HEALTH SERVICE
TRANSFER AGREEMENT**

in relation to a *member*, means any of the following agreements which is applicable to an *institution* by which that *member* has been employed at any time after its effective date:

- (a) the agreement dated 1st March 1995 between the Secretary of State for Health and the *trustee company* relating to the transfer of employees to *institutions* from nurse training establishments and Colleges of Health;
- (b) the agreement dated 1996 between the Secretary of State for Scotland and the *trustee company* relating to the transfer of employees to *institutions* from Colleges of Nursing and Midwifery Education;
- (c) the agreement dated 1st September 1997 between the Department of Health and Social Services for Northern Ireland and the *trustee company* relating to the transfer of employees to *institutions* from Colleges of Nursing and Midwifery Education.

HMRC

means Her Majesty's Revenue and Customs as defined in section 4 of the Commissioners for Revenue and Customs Act 2005.

INCAPACITY

means either *partial incapacity* or *total incapacity*.

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when used in relation to benefits which have not yet come into payment or are about to come into payment the amount to which such benefits have been or fall to be increased under the provisions of section 15 by reference to the Pensions (Increase) Act 1971 as amended.

INSTITUTION

A body whether incorporated or not which:

- (a) is resident in the United Kingdom; and
- (b) has been approved by the *trustee company* for participation in the *scheme* and which is:
 - (i) a university, or university college, or a higher education institution as defined in Section 65(5) of the Further and Higher Education Act 1992, or an institution designated under Section 44 of the Further and Higher Education (Scotland) Act 1992; or
 - (ii) any other body which is established for the purpose of higher education or research and not for profit; or
 - (iii) any body which is under the *control* of one or more *employers* falling within subparagraph (i) or (ii) of this paragraph and which is established to (and does) carry on any activities which in the opinion of the *trustee company* are conducted for the benefit of each of those *employers* and which in the opinion of the *trustee company* are directly ancillary to, or are necessary or advisable for or conducive to the fulfilment of, or otherwise materially support, the primary objects of each of those *employers*, whether or not the activities of the body constitute a trade or other commercial or investment activity; and
- (c) has executed or agreed to execute the deed of covenant required by rule 3.1 and fulfil such other requirements of that rule as may be applicable, in

order that its *eligible employees* may become *members*.

INSURANCE COMPANY

any person who is an insurer as defined in Section 180A of the *Pension Schemes Act*.

INVESTMENT

any policy, contract, deposit arrangement or other investment permitted under rule 20.8 concluded by the *trustee company* with an *AVC provider* to provide benefits for or in respect of *members* in respect of their *AVCs* paid or payable under rule 7.4 and which the *trustee company* is satisfied complies with Section 36(3) of the Pensions Act 1995.

INVESTMENT COMMITTEE

the sub-committee of the *management committee* of the *trustee company* referred to in rule 20.5.

JOINT NEGOTIATING COMMITTEE

the committee established and constituted in accordance with rule 20.3.

LAND

any estate, interest, easement, profit, right, privilege or benefit in, over, under, derived from or connected with land of any tenure or description including an undivided share in land and any mining or mineral rights, whether in any such case developed or not and whether income producing or not, including, without prejudice to the generality of the foregoing, lands, buildings, structures and fixtures erected thereon or situated therein and any part or parts thereof (whether held or enjoyed with surface land or not), excavations and works of all kinds, roads, sewers and other conveniences including the stock, shares and securities of any body corporate (wherever incorporated) established solely for the purpose of acquiring and holding any such estate, interest or other right.

LESSER APPOINTMENT

in respect of an individual with two or more appointments any of such appointments which is not the *greater appointment*.

LIFETIME ALLOWANCE CHARGE

has the meaning given in sections 214 and 215 of the Finance Act 2004.

LOCAL GOVERNMENT SCHEME

a pension scheme maintained by a local authority in the United Kingdom at 1st April 1975 of which certain *eligible employees* then in the employment of an

institution had elected to remain *members* instead of joining *FSSU*.

LONG SERVICE BENEFITS

the benefits which in accordance with the rules in force at the *relevant date* would fall to be paid to or in respect of the *member*, the *member's* surviving spouse or *civil partner*, *dependants* and personal representatives if the *member* remained in *service* until and *retired* on attaining *normal retirement age*.

LUMP SUM AVC

an *AVC* paid under rule 7.3(a)(ii).

LUMP SUM RETIREMENT BENEFIT

the total value of all benefits payable on *retirement* in any form other than non-commutable pension to or in respect of any person *retiring* and in respect of that person's *pensionable service* under this *scheme* and of all benefits actually or prospectively so payable under an *associated scheme* to that person at that date.

MAIN SECTION

the *main section* of the *fund* referred to in rule 2.2.

MANAGEMENT COMMITTEE

the board of directors for the time being of the *trustee company*.

MATERNITY PATERNITY OR ADOPTION LEAVE

in relation to a *member*, a period for which that *member* is entitled to be absent from *eligible employment* because of pregnancy or childbirth or adoption which shall include, if it would not otherwise be the case, any period during which such a *member* receives statutory maternity, paternity or adoption pay from his or her *employer* and any other period which that *member* is entitled to count as additional maternity or adoption leave under Section 73 or Section 75B of the *Employment Act* or a corresponding contractual right and shall in addition include any period immediately following such period during which the *member* is exercising his or her statutory right to parental leave under Chapter II of Part VIII of the *Employment Act* or a corresponding contractual right.

MAXIMUM CONTRIBUTION

means

- (a) in relation to any contribution of a *member* made in any *year* commencing 6th April but before 6th April 2006 such contribution as when aggregated with all other contributions of that *member* in that *year* to this and any other *retirement benefits scheme* of the *employer* to which the *member* contributes and to any *FSAVC scheme* in respect of employment by the *employer*, is equal to 15% of the *member's total remuneration* for that *year* or such other amount as the Inland Revenue may from time to time approve.
- (b) in relation to any contribution of a *member* made under rule 7.3 in any *reference period*, such contribution as, when aggregated with all other contributions of that *member* under that rule in that *reference period*, is equal to 15% of the *member's salary* for that *reference period*.

MEDICAL OPINION

means an opinion on the available evidence and on the balance of probabilities which is received by the *trustee company* from one or more of the registered medical practitioners (or other medical advisers determined by the *trustee company* to be suitably qualified) who are appointed from time to time by the *trustee company*.

MEMBER

an *eligible employee* who is for the time being a member of the *scheme* as stated in rule 4.7 and '*membership*' has a corresponding meaning.

MEMBER'S FUND

in relation to a *member* or *former member* means the amount payable under the *investment on retirement*, death, on *normal retirement age* or at any earlier age on which any benefit commences to be payable under section 9, 10 or 12 but shall not include any amount already paid by way of benefit, or in purchase of an annuity, or in securing credits in respect of the *member* or *former member* under a *transfer arrangement* or in pursuance of an election under rule 7.4(ff), nor shall it include any lump sum life assurance benefits for which the member has elected pursuant to rule 7.4(f) or any contributions of the *member* applied to secure such benefits.

MHO	means a <i>member</i> who is within the definition of MHO given in a <i>Health Service transfer agreement</i> by virtue of a supplemental deed of accession executed between the <i>trustee company</i> and an <i>institution</i> under rules 3.3(a)(ii) and 3.6 and in pursuance of that agreement, provided that a <i>member</i> who has actually fallen within this definition, apart from this proviso, shall be deemed to have done so at all times when he or she had mental health officer status for the purposes of the <i>National Health Service Pension Scheme</i> .
MONEY PURCHASE AVC FUND	Has the meaning derived from rule 2.4.
NATIONAL HEALTH SERVICE PENSION SCHEME	any of the pension schemes originally established under the National Health Service Act 1946 or the National Health Service (Scotland) Act 1947 or the Health Services Act (Northern Ireland) 1948.
NEGATIVE DEFERRED PENSION	in relation to the <i>scheme</i> , the amount by which the <i>pension debit member's</i> benefits under the <i>scheme</i> , which are attributable to that <i>member's pensionable service</i> (including any credited in respect of transfer payments accepted by the <i>trustee company</i>), are reduced at the <i>member's relevant date</i> under Section 31 of the <i>Welfare Reform Act</i> by virtue of a <i>pension sharing order</i> , and in relation to an <i>associated scheme</i> or a <i>connected scheme</i> the amount by which the benefits of the <i>pension debit member</i> under that scheme are correspondingly reduced by virtue of that order.
NET PAY	The <i>salary</i> for a terminated appointment after deducting any actual or prospective increase in <i>salary</i> for the remaining appointment directly attributable to the <i>member's</i> relinquishment of the terminated appointment.
NON-ENHANCED INCAPACITY PENSION	means a pension payable in the circumstances provided for in and calculated in accordance with rule 10.4(d).
NORMAL BENEFIT AGE	the age of 63 years and 6 months.
NORMAL RETIREMENT AGE	the <i>member's</i> 65th birthday.

**ORDINARY ADOPTION
LEAVE PERIOD**

in relation to a *member* and to a period of *maternity, paternity or adoption leave*, a period within or coinciding with, that leave which is an ordinary adoption leave period for the purposes of Chapter 1A of Part VIII of the *Employment Act*, or would be so if that Act extended to the place where that *member* is or was employed.

**ORDINARY MATERNITY
LEAVE PERIOD**

means in relation to a *member* and to a period of *maternity, paternity or adoption leave*, a period within, or coinciding with, that leave which is an ordinary maternity leave period for her for the purposes of Chapter I of Part VIII of the *Employment Act*, or would be so if that Act extended to the place where she is or was employed.

PAID ADOPTION ABSENCE

means a period of paid adoption leave within the meaning of paragraph 5B of Schedule 5 to the Social Security Act 1989 and includes, in respect of any *member* to whom rule 5.10 applies in relation to any *eligible employment* with an *institution* and where the date of adoption is after 31 March 2007, any day (subject to a maximum of ten days) within a period of that *member's maternity, paternity or adoption leave*, for which that *member* is not actually absent from that *eligible employment*, but either has entitlement to statutory adoption pay from that *institution* or is within a part of that period which is an *ordinary adoption leave period*.

PAID MATERNITY ABSENCE

has the meaning given to that expression in paragraph 5 of Schedule 5 to the Social Security Act 1989 and includes, in respect of any *member* to whom rule 5.10 applies in relation to any *eligible employment* with an *institution*, and where the expected week of childbirth begins after 31 March 2007, any day (subject to a maximum of ten days) within a period of that *member's maternity, paternity or adoption leave*, for which that *member* is not actually absent from that *eligible employment*, but either has entitlement to statutory maternity pay from that *institution* or is within a part of that period which is an *ordinary maternity leave period*.

PAID PATERNITY ABSENCE

means a period of paid paternity leave within the meaning of paragraph 5A of Schedule 5 to the Social Security Act 1989.

PART II MEMBER

an *eligible employee* who on the 1st April 1975 was in the employment of an *institution* and who immediately before that date was a member of a *part II scheme* and

remained a member of such *part II scheme* up to the date of joining this *scheme*.

PART II SCHEME

the *Teachers' Pension Scheme*, the *National Health Service Pension Scheme* or a *Local Government Scheme*.

PART-TIME SERVICE

the employment, or a period of employment, of any person as an *active member*, in respect of which a *part-time service fraction* has been notified by the *employer* to the *trustee company* or determined in accordance with paragraph (b), (c) or (d) of the definition in this section of the expression "*part-time service fraction*".

PART-TIME SERVICE FRACTION

means, in relation to any office, post or employment which is *eligible employment* in an *institution*,

- (a) subject to paragraphs (b) to (e) below that fraction, less than 1, of a full-time commitment which that *institution* deems to be that devoted to the office, post or employment by a person and which it has notified to the *trustee company* and in relation to which it has certified to the *trustee company* in writing that its application will conform with the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and any such certification shall in relation to a full-time commitment derived other than from or by reference to an actual office, post or employment or category thereof held at that *institution* incorporate a guarantee by the *institution* to the *trustee company* as to compliance with those requirements referred to in rules 4.2(b) and (c) as if they applied to any *eligible employment* which is the subject of such certification.
- (b) in default of such notification and certification, or in relation to any office, post or employment in respect of which rule 6.1(d) or rule 6.4(b) applies to the *member* concerned that fraction, less than 1, which has as its numerator the fixed annual *salary* for that office, post or employment, including the amount of any fixed allowances referable thereto, and as its denominator the fixed annual *salary* of the equivalent full-time office, post or employment, including any fixed allowances referable thereto; or

- (c) in relation to an office, post or employment held by a *member* who is a *variable time employee*, to any period for which it is held by that *member*, and in default of such nomination under paragraph (a) above, that fraction, if less than 1, which has as its numerator the *salary* of that *member* for that period determined in accordance with rule 6.1(i), and as its denominator the aggregate of the fixed annual salary for an equivalent regular full-time office, post or employment (whether such office, post or employment is actual or notional) designated by the *employer* and of any fixed allowances referable thereto provided (i) that in any case to which section 12 does not apply, the *employer* may in respect of a period of *variable time employment* designate more than one such full-time equivalent salary (and any fixed allowances) as are referred to above in this paragraph having regard to the nature and scope of the duties undertaken by the *variable time employee* in the period in question and in that event the applicable part-time service fraction shall be the sum of the resulting fractions for such period but also (ii) that an *employer* shall not be treated as having designated an equivalent regular full-time office, post or employment for the purposes of this paragraph unless that *employer* shall have specified in writing to the *trustee company* and to the *variable time employee* concerned an amount which is the aggregate of fixed annual salary for that office, post or employment and fixed allowances referable thereto, or a scale (or point on a specified scale) by reference to which that aggregate may in the opinion of the *trustee company* be at any time verified, and shall have certified to them that the determination of a part-time service fraction in accordance with this paragraph by reference to that amount or, as the case may be, to that scale or scale point, is appropriate and entails no breach of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000; or
- (d) in default of any such notification or designation by the *employer* under paragraph (a) or (c) above, and subject to paragraph (e) below, the part-time service fraction for a member for a period of service as a *variable time employee* (or where the

trustee company so determines at the request of any *employer* in relation to such other category of *service* in *eligible employment* as the *trustee company* may allow) shall have as its numerator the *salary* of that *member* for that period determined in accordance with paragraph (i) of rule 6.1 and as if for this purpose that paragraph applied to that *member* and such amount by way of denominator as may be designated by the *trustee company* in a manner consistent with the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 provided that:

- (i) the *trustee company* shall designate that amount by reference to relevant nationally applicable salary scales selected by the *trustee company* from time to time with the prior consent of and in a manner previously approved by the *joint negotiating committee* which for this purpose may give such consent and approval so that it shall apply to all employment of *variable time employees* or to any sub set of such employment specified by the *trustee company* and so approved by the *Joint Negotiating Committee*; and
- (ii) that the amount so designated by the *trustee company* by way of denominator in accordance with the foregoing provisions of this paragraph (d) shall be for any *scheme year* the same for all offices, posts and employments to which it is applied and shall in any case be greater than three quarters of the average amount of *salaries* of all *active members* as certified by the *trustee company* on the advice of the *actuary* for the *scheme year* next but one before any *scheme year* for which it is approved, *indexed* to the beginning of the latter *scheme year*, but not greater than nine tenths of that average amount, or shall fall within such other range as the *trustee company* may from time to time determine with the prior consent of the *joint negotiating committee*; or

- (e) in relation to such categories of *eligible employment* as at the request of an *employer* the *trustee company* may in its discretion agree in default of any notification or designation by the *employer* under paragraph (a) or (c) above, and where the *trustee company* agrees that paragraph (d) above may be disapplied in the absence of an ascertainable *salary* for such an equivalent full-time office, post or employment as is referred to in paragraphs (a) to (c) above or in such other circumstances as the *trustee company* may determine, such fraction, not greater than 1, as would have been determined under paragraph (b) above if a notional figure could have (and had) been used by the *employer* instead of the *salary* of the equivalent office, post or employment requisite under that paragraph, or alternatively under paragraph (c) above if rule 6.1(i) had applied to the *member* and a notional figure could have (and had) properly been used by the *employer* instead of the denominator required to be derived from an equivalent regular full-time office, post or employment designated under that paragraph, provided that the *trustee company* shall not agree to the disapplication of paragraph (d) in any case nor to the application of this paragraph (e) unless in either such case it has secured from the *employer* with regard to the effect of its use of specific notional figures for the purposes of this paragraph the same guarantees for its employees and those of its *associated employers* as are under paragraphs (b) and (c) of rule 4.2 deemed to be incorporated in the specification to which those paragraphs refer with regard to the inclusion of persons therein.

PARTIAL INCAPACITY

means ill health of, or injury to, a *member* or *former member* which does not amount to *total incapacity* and which causes the *member* or *former member* to be able for the long term to discharge the duties of neither:

- (a) an office, post or employment which is currently held by the *member* as an *eligible employee* or which was held by a *member* or *former member* immediately before last ceasing to be an *eligible employee*; nor

- (b) any other office, post or employment which has a scope and a nature similar to that described in paragraph (a) above of this definition, whether or not that office, post or employment is available.

PATERNITY LEAVE PERIOD means in relation to a *member* and to a period of *maternity, paternity or adoption leave*, a period within, or coinciding with, that leave which is paternity leave for the purposes of Chapter 3 of Part VIII of the *Employment Act*, or would be so if that Act extended to the place where that *member* is or was employed.

PENSION CREDIT a credit under Section 29(1)(b) of the *Welfare Reform Act*.

PENSION CREDIT BENEFIT the benefits (or any of them) payable under the *scheme* to or in respect of an *ex-spouse* by virtue of rights under the *scheme* attributable (directly or indirectly) to a *pension credit*.

PENSION CREDIT RIGHTS rights to future benefits under the *scheme* which are attributable (directly or indirectly) to a *pension credit*.

PENSION DEBIT a debit under Section 29(1)(b) of the *Welfare Reform Act*.

PENSION DEBIT MEMBER a *member* or *former member* whose benefits have been permanently reduced by a *pension debit* and who falls within the following categories:

- (a) a *member* or *former member* who was a controlling director of a company at the date on which his or her marriage or registered *civil partnership* was dissolved or annulled which was then that person's *employer* if that person was also a director of the company to whom paragraph (b) of Section 417(5) of the *Taxes Act* applies either at the date on which the marriage or registered *civil partnership* was dissolved or annulled, or at any time within the period of 10 years before that date; or
- (b) a *member* or *former member* whose earnings at the date at which his or her marriage or registered *civil partnership* was dissolved or annulled exceeded 25 per cent of the *permitted maximum* for the year of assessment (which in this definition has the same

meaning as in the *Taxes Act*) in which the dissolution or annulment occurred, earnings for these purposes being taken to be the total of the emoluments

(i) which were paid to the *member* or *former member* in consequence of *pensionable service* to which the *scheme* relates during the year of assessment before the year of assessment in which the marriage or registered *civil partnership* was dissolved or annulled; and

(ii) from which tax was deducted in accordance with the Income Tax (Employments) Regulations 1993.

PENSIONABLE SALARY the amount to be used for the calculation of the benefits payable to or in respect of a *member* in accordance with the provisions of section 6.

PENSIONABLE SERVICE the period or periods referred to in rule 5.1.

PENSION SHARING ORDER any such order or provision as is mentioned in Section 28(1) of the *Welfare Reform Act*.

PENSIONER a person who is drawing a pension from the *fund* including, but without limitation, a *pensioner member*, a surviving spouse or *civil partner*, *dependant* and *eligible child* or any person who would be drawing such a pension but for the operation of one or more of the following rules: 14.3, 16.1, 16.2, 20.4, 20.16 and 20.17.

PENSIONER MEMBER a *pensioner* who is for the time being receiving a pension out of the *fund* by reason of having been a *member* of the *scheme* (whether before or after the *prescribed date*) or, for the purposes of section 11, was such a person immediately before death or would in the opinion of the *trustee company* have been so but for the receipt of a payment under rule 10.8A or rule 16.3(a).

PENSION SCHEMES ACT the Pension Schemes Act 1993.

PERMITTED MAXIMUM

in relation to any year commencing 6th April or to any *relevant date* falling within that year, such amount as shall have been specified for that year in or under Section 590C of the *Taxes Act*.

PERPETUITY PERIOD

the period of eighty years from 2nd December 1974 plus such further period (if any) as may be lawful, including any period during which the trusts of the *scheme* may be exempt for whatever reason from the application of the rule against perpetuities, and such period or periods shall for the purposes of Section 1 of the Perpetuities and Accumulations Act 1964 be the perpetuity period for the purposes of the *scheme*.

POST-1989 INSTITUTION

an *institution* which first began to participate in the *scheme* on or after 14th March 1989 except in relation to any *member* for whom it is a *pre-1989 institution*.

PRE-1989 ACT MEMBER

any *member* or *former member* who, apart from any occasion on which he or she rejoined the *scheme* on or after 6th April 2006, last joined, or with the consent of *HMRC* has been treated as having last joined, the *scheme* before 1st June 1989, or in relation to whom rule 17.8 has effect so far as appears in that rule but shall exclude one who:-

- (a) has elected before the *relevant date* in accordance with rule 17.6 to be treated as a *1989 Act member*;
- (b) by virtue of rule 17.7 is to be treated as a *1989 Act member*, to the extent provided for in that rule.

PRE-1989 INSTITUTION

an *institution* which was participating in the *scheme* prior to 14th March 1989 and in relation to any *member* to whom rule 17.7 would have applied by virtue of a change of employment, but for the *institutions* concerned having been *associated employers*, this expression shall include the *institution* of which that *member* then became an *eligible employee* for so long as that *active membership* continues by virtue of that *eligible employment*.

PRESCRIBED DATE

7th February 1994.

PRESERVED BENEFITS

the benefits which will be expressly payable under the *rules* at *normal retirement age* to a *former member* with *qualifying service*, the benefits payable in respect of such

a person who has died, whenever that death occurred, and all such other benefits as must be payable to or in respect of a *former member* in order that the *scheme* shall conform to the preservation requirements of Chapter I of Part IV of the *Pension Schemes Act*.

PROTECTED PENSION AGE has the meaning given to it in paragraph 22(8) of Schedule 36 to the Finance Act 2004.

QUALIFYING SERVICE such a period of *service* or other qualification as entitles a *member* or *former member* to *preserved benefits* as of right for the purpose of ensuring that this *scheme* complies with the requirements of Chapter I of Part IV of the *Pension Schemes Act*, or as, having entitled that person to those benefits for that purpose, ceased to do so only because that individual attained the age which was that individual's normal pension age within the meaning of that Act.

REDUNDANCY in relation to a *member* or *former member* and to the cessation of that person's *eligible employment* whether voluntarily or involuntarily, redundancy exists, if such cessation is attributable wholly or mainly to:-

- (a) the fact that the *employer* has ceased or intends to cease to carry on the activity for the purposes of which the *member* concerned was appointed or employed by the *employer* or has ceased, or intends to cease, to carry on that activity in the place in which the *member* concerned worked; or
- (b) the fact that the requirements of that activity for employees of the *employer* to carry out work of a particular kind or for employees of the *employer* to carry out work of a particular kind in that place, have ceased or diminished or are expected to cease or diminish;

provided that if within one month of cessation of employment by reason of such redundancy a *member* is offered a comparable post entitling that person to continued *membership* of this *scheme* or if that *member* has been offered comparable employment by any successor to the business or functions of the *employer* in such circumstances as would disentitle that *member* to a redundancy payment under the *Employment Act* such *member's* employment shall be deemed not to have

ceased by reason of redundancy for the purposes of these *rules*.

REDUNDANT

has a meaning corresponding to *redundancy*.

REFERENCE PERIOD

means:

- (a) for the tax year 2006/07, the period from 6th April 2006 to 31st March 2007; and
- (b) for any subsequent tax year, the period of twelve months ending with 31st March in that year.

REGULATION 8 DIRECTION

a direction by the Board of Inland Revenue pursuant to regulation 8 of the *Continued Rights Regulations*.

RELATIVE

where a *member*, *former member* or *ex-spouse* has died any living individual who is:-

- (a) the surviving spouse or *civil partner* of the deceased;
- (b) a parent (whether lawful, natural or adoptive) of the deceased and the surviving spouse or *civil partner* of such parent;
- (c) the child or remoter issue (whether lawful, natural or adoptive) of such parent or the spouse or *civil partner* or surviving spouse or *civil partner* of any such person; or
- (d) a former spouse or *civil partner* of the deceased.

RELEVANT BENEFITS

means benefits whose provision qualifies a scheme or arrangement to be a pension scheme within the meaning of Section 150 of the Finance Act 2004.

RELEVANT DATE

- (a) subject to paragraph (b) below, whichever first occurs of the date on which a *member* ceases to be an *eligible employee*, ceases to be in *service*, dies and, so far as benefits are expressly required to be calculated at *normal retirement age*, attains that age; and

- (b) in relation to rule 10.3(b)(ii) and (c)(ii), the date of actual *retirement*;

provided that, in the case of each of paragraphs (a) and (b) above, the date is no later than the day immediately preceding the *member's* 75th birthday.

RELEVANT SCHEME

a *retirement benefits scheme* (other than this *scheme*) which was approved under Chapter I of Part XIV of the *Taxes Act*.

RETIREMENT

the cessation (whether by resignation, dismissal or effluxion of time) of employment which gives entitlement to *membership* without the *member* taking any other post or employment which would give entitlement to *membership*:

- (a) in the case of *member* whose employment so ceases before 6th April 2010, on or after attaining the age of 50;
- (b) subject to paragraph (c), in the case of *member* whose employment so ceases after 5th April 2010, on or after attaining the age of 55;
- (c) in the case of a *member* who as at 6th April 2010 has a *protected pension age* of between 50 and 55, on or after attaining that *protected pension age*,

or, in any case, before the age specified in paragraphs (a) to (c) above if rule 10.4 applies .

RETIRE AND RETIRED

have corresponding meanings to '*retirement*'.

RETIREMENT BENEFITS SCHEME

in relation to any time before 6th April 2006, has the meaning given in Section 611 of the *Taxes Act*, and in relation to any time on or after that date, means an occupational pension scheme as then defined by Section 150 of the Finance Act 2004

RETIRING INSTITUTION

has the meaning derived from rule 22.1

RPI

the General Index of Retail Prices (all items) referred to in Section 833(2) of the *Taxes Act*.

RULES	these rules, including any appendices hereto, as from time to time amended.
SAFEGUARDED RIGHTS	has the same meaning as in Section 68A of the <i>Pension Schemes Act</i> .
SALARY	the total of the <i>gross</i> fixed salary or salaries and fixed allowances in respect of all posts and offices which are held by an <i>eligible employee</i> as a <i>member</i> but so that <i>salary</i> may be adjusted for the purposes of the <i>scheme</i> in accordance with the provisions of rule 6.1.
SALARY SACRIFICE ARRANGEMENT	<p>an arrangement whereby a <i>member's</i> contract of employment with an <i>institution</i> is varied so as to reduce the cash remuneration to which the <i>member</i> would otherwise be entitled in respect of <i>service</i> after the date of that variation and either:</p> <ul style="list-style-type: none"> (i) the <i>institution</i> provides the <i>member</i> with non-cash benefits in respect of the <i>member's eligible employment</i> with that <i>institution</i> which are specified on a list of applicable non-cash benefits which is published from time to time by the <i>trustee company</i>; or (ii) the <i>institution</i> has executed a supplementary deed of accession to the <i>scheme</i> with the <i>trustee company</i> relating to the arrangement and in a form acceptable to the <i>trustee company</i> and the <i>institution</i> pays additional contributions in respect of the <i>member</i> under rule 8.4(c);
SCHEME	the <i>scheme</i> known as 'Universities Superannuation Scheme', established by a declaration of trust dated 2nd December 1974 and now governed by these <i>rules</i> .
SCHEME SPECIFIC CAP	the amount which would have fallen to be specified under Section 590C of the <i>Taxes Act</i> for a year commencing on or after 6th April 2006 had that enactment not been repealed with effect from that date.
SCHEME YEAR	means the year beginning immediately after one <i>accounting date</i> and ending with the next following <i>accounting date</i> .

SECTOR FUND

any investments or categories of investments to which AVCs payable under rule 7.4 under an *investment* may be applied by the *AVC provider* in accordance with the terms of an agreement or arrangement concluded under rule 7.4(a).

SERVICE

in relation to the *scheme* and a *member* of it, and subject to rule 17.14, employment (or a period of employment) as an *eligible employee* which would (or would but for section 17) entitle that *member* (if such *member* survived) to benefits under the *rules* on or after *retirement* provided that, subject to the *rules* specifically making provision for suspension of *membership* and breaks in *service*, it must be continuous, but it shall be deemed to be continuous although performed partly with one of the *institutions* and partly with another or others of the *institutions*.

SPECIAL CLASS MEMBER

means a *member* who is within one of the special classes, as that expression is defined in a *Health Service transfer agreement* by virtue of a supplemental deed of accession executed between the *trustee company* and an *institution* under rules 3.3(a)(ii) and 3.6 and in pursuance of that agreement.

STATE PENSION AGE

the age of 65 in the case of a male and 60 in the case of a female.

STEPCHILD

in relation to any *member*, *former member* or *ex-spouse*, an individual who is not that person's lawful, natural or legally adopted child, but who immediately before that person married, or formed a *civil partnership* with, another person was the lawful, natural or legally adopted child of that other person, provided that if that *member*, *former member* or *ex-spouse* married, or formed a *civil partnership* with, the same person on more than one occasion, only the last occasion shall be taken into account for the purposes of this definition.

SUPPLEMENTARY BENEFITS

(a) the benefits in payment under *USDPS* immediately prior to 1st April 1988 which became payable out of the *fund* on and after that date;

- (b) the benefits payable under sections 10 and 11 which are paid in respect of *supplementary service* or expressed to be a charge on the *supplementary section*; and
- (c) any addition by virtue of rule 15.4 to the benefits referred to in paragraphs (a) and (b) above.

SUPPLEMENTARY SECTION

the meaning referred to in the definition of *fund* and in rule 2.3.

SUPPLEMENTARY SERVICE

subject to rule 10.4(r), that period (if any) by which the *pensionable service* of the *member* at the *relevant date* (including any period credited on *retirement* or death under or by reference to rule 10.4 or would have been so credited apart from paragraph (e) of that rule) falls short of that *pensionable service* which, on the assumption in rule 7.7(d), would have accrued to the *member* by *normal retirement age*, provided

- (i) that, where the *member* was at the *relevant date* in *part-time service*, that period shall be treated as of a number of *years* equal to the product of multiplying its duration in *years* apart from this proviso by any fraction which is used in relation to that *member* as a multiplier for the purposes of rule 5.2(b);
- (ii) that there shall be subtracted from the number of *years* arrived at apart from this proviso and proviso (iii) below any number of *years* by which the *pensionable service* to be purchased by *AVCs* under rule 7.3 falls to be reduced in pursuance of paragraph (c) of that rule; and
- (iii) that after the multiplication (if any) required by proviso (i) and the subtraction (if any) required by proviso (ii) the period shall not when aggregated with *pensionable service* exceed forty *years*.

TAX CODE

Chapter I of Part XIV of the *Taxes Act* and where appropriate, any regulations made thereunder and any conditions which *HMRC* from time to time laid down for *approval* of schemes thereunder and any further statutory enactments affecting a *retirement benefits scheme* approved under Chapter I introduced by any Finance Act passed subsequently to the *Taxes Act* but prior to the Finance Act 2004.

TAXES ACT

the Income and Corporation Taxes Act 1988.

TEACHERS' PENSION SCHEME

any one of the schemes currently in force and governed by regulations made under Section 9 of the Superannuation Act 1972 or under corresponding Northern Ireland legislation.

TERMINAL CONTRIBUTION

a lump sum calculated at the rate of £8.33 for each month of additional *pensionable service* credited to or in respect of a *member* or *former member* for *war service*, with compound interest thereon calculated at the rate of 3.5% per annum with annual rests on 1st April in each year calculated from the 1st April 1975 to the date of payment or deduction.

TOTAL EMOLUMENTS

in relation to any *member* the aggregate of:-

- (a) actual amounts payable for the twelve complete and consecutive months ending on or immediately prior to the date for which total emoluments are to be calculated (in this definition called 'the calculation date') which correspond to the *member's gross* fixed salary or salaries or fixed allowances for that period calculated as if paragraphs (d) to (h) had been omitted from rule 6.1; and
- (b) that *member's* average annual remuneration from the *employer* or otherwise in respect of *service* by way of commissions, fluctuating emoluments or other benefits which are assessable to income tax as employment income, or would be so assessable if they were receivable in respect of duties performed in the United Kingdom, or by way of profit-related pay exempt from income tax under Section 171 of the *Taxes Act* or benefits in kind which are exempt income within the meaning of Section 8 of the Income Tax (Earnings and

Pensions) Act 2003 but permitted by *HMRC* to be included in total emoluments for the purposes of the *scheme* (but excluding in either case any amount falling within paragraph (a) above) for the thirty six complete and consecutive months ending on or immediately prior to the calculation date, provided that remuneration within the scope of this paragraph for a *year* prior to that ending with the calculation date may be increased in proportion to any increase in the *RPI* from the last day of that *year* up to the calculation date;

but so that:

- (i) where a *member's salary* was at any time in the period referred to in paragraph (a) above taken to include a fixed allowance for benefits in kind, the amount of that allowance actually payable shall, subject to paragraph (ii) below, be taken as equal to the amount treated by reference to those benefits in kind as emoluments of the relevant employment for the purposes of Part 3 of the Income Tax (Earnings and Pensions) Act 2003 or to such other amount as it has in that *member's* case been taken to be in accordance with rule 6.1(a);
- (ii) total emoluments shall not include any amount which arises from the acquisition or disposal of shares, an interest in shares, a right to acquire shares or anything in respect of which tax is charged by virtue of Chapter 3 of Part 6 of the Income Tax (Earnings and Pension) Act 2003.

TOTAL INCAPACITY

means ill health of, or injury to, a *member* or *former member* which causes the *member* or *former member* to be able for the long term to discharge the duties of neither:-

- (a) the office, post or employment which is currently held by the *member* as an *eligible employee* or which was held by the *member* or *former member* immediately before last ceasing to be an *eligible employee*; nor

- (b) any other office, post or employment for which an employer would be likely to pay the *member* or *former member* more than a small fraction of the amount which would but for the cessation of *eligible employment* have been the aggregate of the *salaries*, or in respect of *part-time service* the full-time equivalent of the *salaries*, of the *member* or *former member* in respect of the *member* or *former member's eligible employments* immediately before benefits under rule 10.4 or rule 9.5(a) first become payable to the *member* or *former member*.

TOTAL REMUNERATION

means in respect of any *member* and in relation to any period:-

- (a) the aggregate of that *member's* employment income (within the meaning of the Income Tax (Earnings and Pensions) Act 2003) from the *eligible employment* for which the total remuneration falls to be determined, and of any other remuneration which would be such income under that Act if it were receivable in respect of duties performed within the United Kingdom, or which comprises benefits in kind that are exempt income within the meaning of Section 8 of that Act but fall into a class whose inclusion in *salary* the *trustee company* will contemplate for the purposes of rule 6.1(a), or which is profit-related pay exempt from income tax under section 171 of the *Taxes Act*; and
- (b) in addition, in respect of a *1989 Act member* and of a period prior to 6th April 2006, any amount, not within paragraph (a), derived from *associated employment*, or from employment by reference to service in which contributions were then made in respect of that *member* under a *relevant scheme* which was at that time a *connected scheme*, and which would in either case have been within paragraph (a) had it been derived from the *eligible employment* for which total remuneration falls to be determined;

but so that total remuneration shall exclude any amounts which arise from the acquisition or disposal of shares, an interest in shares, a right to acquire shares and anything in respect of which tax is charged by virtue of Chapter 3 of

Part 6 of the Income Tax (Earnings and Pensions) Act 2003.

TRANSFER ARRANGEMENT a *transfer scheme*, an appropriate personal pension or any other fund, scheme or arrangement which is for the purposes of Part 4 of the Finance Act 2004 a registered pension scheme or a recognised overseas pension scheme the trustees or administrators of which are to receive or make a transfer payment under any of sections 5, 9, 9A and 22 or any other fund, scheme or arrangement from the trustees or administrator of which the *trustee company* duly accepted a transfer payment before 6th April 2006 under either section 5 or section 9A.

TRANSFER CLUB the arrangements operated by certain occupational pension schemes relating to public sector employment and by other *retirement benefit schemes* which have agreed to participate, under which a common basis for transfer payments is applied by the participating schemes.

TRANSFER SCHEME an occupational pension scheme (other than an *FSAVC scheme*) approved under the *tax code* or a relevant statutory scheme as defined in the *tax code*, and the trustees or administrator of which made before 6th April 2006 a transfer payment pursuant to any of sections 5, 9, 9A and 22 and for the purpose of rule 17.9, where the context requires or admits, shall include any other scheme satisfying the conditions referred to in that rule in respect of a transfer payment, out of which the *trustee company* (directly or indirectly) makes a grant of transfer credits to the *member* under section 5, irrespective of whether any transfer payment has been made (or could be made) between that scheme and this *scheme*.

TRANSFERRING FSSU MEMBER an *FSSU member* who elected to become a *member* on or before 5th April 1980 under the provisions for transfer then in force.

TRANSFERRING PART II MEMBER a *part II member* who elected to become a *member* of the *scheme* on or before 5th April 1980 under the provisions for transfer then in force.

TRIVIAL AMOUNT	the sum of £260 per annum or such higher amount which may be prescribed from time to time under the provisions of Section 21(1) of the <i>Pension Schemes Act</i> and Section 91(5)(c) of the Pensions Act 1995.
TRUSTEE COMPANY	Universities Superannuation Scheme Limited or any successor trustees or trustee for the time being of the <i>scheme</i> appointed pursuant to rule 20.1(b).
UCU	the University and College Union or any other recognised trade union which assumes the functions, rights and obligations of the UCU.
UCU DIRECTOR	an individual appointed by <i>UCU</i> or the Association of University Teachers to be a member of the <i>management committee</i> under the articles of association of the <i>trustee company</i> .
USDPS	the scheme, as from time to time amended, originally known as 'Universities Supplementary Dependants Pension Scheme' but subsequently known as 'Universities Supplementary Dependants (and Ill-Health Retirement) Pension Scheme' established and constituted by Declaration of Trust dated 2nd December 1974 made by the <i>trustee company</i> which scheme was amalgamated with this <i>scheme</i> on 1st April 1988.
UUK	Universities of the United Kingdom, a company incorporated under the Companies Act 1985 and limited by guarantee and being registered as a charity (registered number 1001127).
UUK DIRECTOR	an individual appointed by <i>UUK</i> to be a member of the <i>management committee</i> in accordance with the articles of association of the <i>trustee company</i> .
VARIABLE TIME EMPLOYEE	means, in relation to any <i>institution</i> , an individual who is employed in <i>eligible employment</i> by that <i>institution</i> and is not remunerated in respect of it (either wholly or in part) either by a fixed annual salary or in such a way that it would be reasonably practicable for a <i>part-time service fraction</i> to be determined in respect of such employment in accordance with paragraph (b) of the definition of that expression in this section, and includes such an <i>eligible employee</i> even if that person holds in addition a separate office, post or employment with that <i>institution</i> in respect of which that person is not so remunerated, provided that

the *trustee company*, having consulted the *employer*, shall in any case where in the opinion of the *trustee company* doubt arises as to whether an *eligible employee* satisfies this definition, have power to decide whether an *eligible employee* does or does not do so; and *variable time employment* shall be construed correspondingly.

WAR SERVICE

service in the armed forces of the Crown, the Merchant Navy, the Mercantile Marine or Women's services between 3rd September 1939 and 30th June 1950.

WELFARE REFORM ACT

the Welfare Reform and Pensions Act 1999.

YEAR

any complete period of 365 days (or 366 in a leap year) and, in relation to *pensionable service* and *supplementary service*, any fraction of a year calculated in days with each day and part of a day in which a *member* is in *service* counting as a complete day and each complete day representing for all purposes (even in a leap year) 1/365th of a year.