

**The Loft Shop Limited Directors Pension Scheme  
DEFINITIVE TRUST DEED**

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**DEFINITIVE TRUST DEED**

**RELATING TO THE**

**THE LOFT SHOP LIMITED DIRECTORS PENSION SCHEME**

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DATED:

14 DECEMBER 1999

**PARTIES:**

1 **THE LOFT SHOP LTD** (Company Number 767762) of Eldon Way, Littlehampton, Sussex BN17 7HE. 

2 **GEOFFREY GEORGE JAMES MARLING** of ~~The Old Post Office Cottage,~~ <sup>Faulkner's End, Broadbridge Heath, West Sussex</sup> Broadbridge Heath, West Sussex RH12 3LA and **LEE MARTIN PERRIAM** of 12-3 ~~Seamers Hill,~~ <sup>Seamers Hill,</sup> Willowhall Avenue, Aldwick, West Sussex PO21 4AY and **PETER RICHARD STEDMAN** of "Argeles", Salthill Road, Chichester, West Sussex PO19 3PY. 

3 **NPI TRUSTEE SERVICES LIMITED** (Company Number 1895689) whose registered office is at National Provident House, 55 Calverley Road, Tunbridge Wells, Kent TN1 2UE.

**INTRODUCTION:**

- 1 The Scheme is currently governed by the Existing Provisions.
- 2 The Member Trustees and NPI Trustee Services Limited are the present Trustees of the Scheme. The Principal Employer is the Schemes sponsoring employer.
- 3 This document constitutes the Definitive Trust Deed and Rules for the Scheme.

**OPERATIVE PROVISIONS:**

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 The various attached Schedules all form part of this Deed.
- 1.2 Unless the context requires otherwise, words and expressions used in this Deed have the meaning assigned to them in Schedule 2.
- 1.3 Unless the context requires otherwise any reference to a clause, rule or schedule is to the relevant provision of this Deed.
- 1.4 The headings to this Deed have been inserted for ease of reference only. They are not to affect its construction or interpretation.
- 1.5 Words in the singular include the plural and vice versa.
- 1.6 Words in the masculine gender include the feminine and vice versa unless the context otherwise requires.
- 1.7 Any reference to a statute, statutory instrument or other legislative provision includes any amendment or re-enactment of it for the time being in force and any regulations made under it. Any reference to a particular section or part of a statute or statutory instrument will be read to include reference to any other relevant section or part of the statute or statutory instrument.

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DEFINITIONS

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## **2 ESTABLISHMENT**

- 2.1 The establishment of the Scheme from the Commencement Date is confirmed.
- 2.2 The provision of this Deed takes effect from the Commencement Date.
- 2.3 Nothing in this Deed invalidates any prior act, omission or exercise of any power, discretion or right pursuant to the Scheme's Existing Provisions.
- 2.4 The Scheme will be wound up in accordance with the Scheme Documents no later than eighty years after the Commencement Date unless it can be lawfully continued.
- 2.5 To the extent the execution of this Deed would constitute the exercise of a power to modify the Scheme which would require
  - 2.5.1 the consent requirements
  - 2.5.2 the certification requirements

to be met pursuant to Section 67 of the Pensions Act the Trustees who are Members by their execution of this Deed indicate their consent to such modification as Members in accordance with Section 67 of the Pensions Act. For the purposes of this clause 2.5 the terms "consent requirements" "certification requirements" and "Member" have the meaning given to them for the purposes of Section 67 of the Pensions Act.

## **3 APPOINTMENT AND REMOVAL OF ADVISERS**

- 3.1 The Member Trustees will (if so required by Section 47 of the Pensions Act) appoint the following: -
  - 3.1.1 an Auditor
  - 3.1.2 one or more Custodians
  - 3.1.3 their legal advisers.
- 3.2 Any person or firm appointed under Clause 3.1 will be appointed to carry out any functions prescribed for them by the Pensions Act. In addition the Member Trustees may instruct them to carry out such further work in connection with the Scheme as they think appropriate.
- 3.3 In addition to any appointments they are required to make under Clause 3.1 the Member Trustees may appoint such persons or firms to assist them (including actuaries, auditors, administrators, solicitors, brokers, medical practitioners and investment managers) as they think appropriate.
- 3.4 Provided they comply with any relevant requirements of Section 47 of the Pensions Act any appointment made pursuant to this Clause will be on such terms (including remuneration) as the Member Trustees see fit.
- 3.5 The power to remove, replace and/or vary the terms of the appointment made under this Clause will lie with the Member Trustees.

## **4 APPOINTMENT AND REMOVAL OF TRUSTEES**

- 4.1 There are to be no fewer than two Trustees unless the provisions of the Trustee Act 1925 necessitates the appointment of an additional Trustee for the purpose of holding assets or if

the Pensioner Trustee is willing to operate alone the provisions of the Scheme that apply to Member Trustees.

- 4.2 A corporate body may act as a Trustee whether or not it is a Trust Corporation or has been preceded in office by more than one Trustee.
- 4.3 Where a corporate body acts as a Trustee its powers, duties, authorities and discretions are to be exercisable either by its board of directors or by any one or more of its duly authorised officers.
- 4.4 Subject to Schedule 3 of this Deed the Principal Employer, with the consent of the Pensioner Trustee, may appoint or remove any Trustee. Such an appointment or removal will be done by deed executed by the Principal Employer and in the case of an appointment the Trustees including the new trustee and in the case of a removal the remaining Trustees.
- 4.5 Section 39(1) of the Trustee Act 1925 will not apply in relation to the Pensioner Trustee.
- 4.6 The Pensioner Trustee may by deed appoint a new trustee to act as Pensioner Trustee in its place. Any costs so incurred shall be payable in accordance with Clause 13.
- 4.7 Where the Pensioner Trustee wishes to cease to act as such, but is unable to procure his removal or replacement in accordance with Clause 4.4 or 4.6; or
- 4.7.1 the Pensioner Trustee shall be entitled to recover out of the assets of the Scheme all fees, costs and expenses incurred in connection with the Scheme (including for the avoidance of doubt any incurred in accordance with this Clause 4) without the consent of the Member Trustees or of any other person;
- 4.7.2 the Pensioner Trustee shall be entitled to operate alone any bank, building society or similar account on behalf of the Trustees and the Member Trustees hereby irrevocably authorise and appoint the Pensioner Trustee for this purpose;
- 4.7.3 the Pensioner Trustee shall be entitled to apply to the court for an order for his removal.
- 4.8 A Member Trustee may retire at any time by giving written notice to the Principal Employer and the other Trustees. The Member Trustee will then immediately cease to hold office and will be discharged even if this would result in the number of remaining Trustees being less than the minimum stated in Clause 4.1.
- 4.9 A departing Trustee will execute such documents and take such further action as may reasonably be required by the Principal Employer and the other Trustees to implement his retirement or removal. Should he fail to do so the remaining Trustees may execute such documents and act on his behalf as his attorney. Each of the Trustees irrevocably authorises and appoints their co-trustees as such for this purpose.

## **5 TRUSTEES' MEETINGS**

- 5.1 If at any time there is only one Member Trustee that Member Trustee shall have power to operate the powers, duties and discretions of the Member Trustees under the Scheme in such manner as he sees fit even if the relevant Clause or Rule of this Deed and the Rules then in force would require the operation of that power, duty or discretion by two or more Member Trustees.
- 5.2 Reasonable notice is to be given to the Trustees of any forthcoming meeting. In this respect due regard is to be given to the urgency or otherwise of any business to be discussed.
- 5.3 Whenever practicable: -

- 5.3.1 the notice should specify, unless the Trustees agree otherwise, or not required by the Pensions Act, the date, the time and place of the meeting and the matters to be discussed
- 5.3.2 the meetings should be held at a time and venue reasonably convenient to all the Trustees
- 5.3.3 unless the Trustees agree otherwise, or not required by the Pensions Act, the notice should be sent to the last known address of each Trustee no later than 10 days before the meeting.
- 5.4 As soon as reasonably possible after a meeting minutes of the matters discussed and decisions made are to be circulated to all the Trustees. The records are to comply with any relevant requirements of Section 49 of the Pensions Act as to their form and content.
- 5.5 The Member Trustees may appoint a Secretary who is to have primary responsibility for co-ordinating the matters referred to in Clauses 5.2, 5.3 and 5.4. This is not however to prevent any Trustee from convening a meeting in accordance with the above procedures should he consider this appropriate.
- 5.6 The Member Trustees may also appoint from among their number a Chairman (who for the avoidance of doubt may also be the Secretary). If they are equally divided on the appointment of a Chairman, he will be chosen by lot. If for any reason the Chairman is unable to attend a validly convened meeting then the Member Trustees may appoint another of their number to act in his place at that meeting only.
- 5.7 Subject to Clause 5.6 the Chairman and the Secretary will each hold office until the earlier of the date upon which: -
  - 5.7.1 he resigns such office
  - 5.7.2 he resigns, is removed or otherwise ceases to act as a Member Trustee
  - 5.7.3 the Trustees resolve otherwise.
- 5.8 The quorum for a meeting of the Member Trustees is to be all the Member Trustees.
- 5.9 All decisions at Trustees' meetings must be unanimous between the Member Trustees. Any decision connected with the termination or winding-up of the Scheme must be unanimous between the Member Trustees and the Pensioner Trustee.
- 5.10 Any resolution signed by each of the Member Trustees will be binding and effective as if it had been passed at a Member Trustees' meeting. The resolution may be passed by the signature of copies whether or not on the same date.
- 5.11 A Member Trustee (or an officer or employee of a corporate trustee) may retain for his own account any benefits relating to his membership of the Scheme. He may, if he wishes participate in the discussion and vote on any resolution which may affect any such benefits or in which he otherwise has a personal interest.

## **6 TRUSTEES' DUTIES**

- 6.1 In addition to any duties which may exist at law the Trustees will: -
  - 6.1.1 manage the Scheme and (subject to Clause 6.2) act as its Administrator for the purposes of the 1988 Act
  - 6.1.2 pay out of the Fund the Relevant Benefits

- 6.1.3 keep proper records and accounts for the Scheme and if so required by the Pensions Act or if the Member Trustees so decide submit these (together with a supporting balance sheet) to the Auditor following the end of each Scheme Year
- 6.1.4 prepare and sign a report on the Scheme accounts which together with any Auditor's report is to be open for inspection by the Beneficiaries and any officer of the Principal Employer
- 6.1.5 provide any advisers with such information as the Member Trustees are required to provide under the Pensions Act and take all reasonable steps to enable the Auditor to comply with any duties he may have under the Pensions Act.
- 6.2 The Trustees may appoint an individual or corporate body to act as Administrator in which event the provisions of Clause 3 will apply.
- 6.3 The Pensioner Trustee has been appointed to satisfy the requirements of the Board and to obtain and maintain Approval and to perform any statutory or legislative duties and obligations or exercise any powers set out for the Pensioner Trustee in this Deed or in any legislation, or as required by the Board.
- 6.4 The duties and obligations of the Pensioner Trustee are limited to those set out in the Scheme Documents as applying solely to the Pensioner Trustee and any other duties and obligations applying to any trustee in law. The Member Trustees and the Employers acknowledge that the Pensioner Trustee may be required to make reports relating to the Scheme to the Board. No duty (whether owed to the Member Trustees, the Beneficiaries, the Employers or otherwise) to which the Pensioner Trustee is subject shall be regarded as contravened merely because of any information or opinion contained in such a report.

## **7 TRUSTEES' POWERS**

- 7.1 Subject to Section 34 of the Pensions Act (to the extent it applies) and any other specific provisions of the Scheme Documents the Member Trustees may by unanimous decision in writing delegate (and/or authorise the sub-delegation of) any of their duties, powers and discretions as they see fit, and on such terms and conditions as they see fit. They may at any time revoke any delegation (and/or sub-delegation).
- 7.2 Such delegation (and/or sub-delegation) may be made to: -
  - 7.2.1 a committee consisting of any one or more of the Member Trustees
  - 7.2.2 such other person or corporate body (including any one or more of the Employers) as the Member Trustees determine
  - 7.2.3 an investment manager in relation to the Member Trustees powers of investment.
- 7.3 The Member Trustees may appoint any one or more agents to transact any business of the Scheme in which event the provisions of Clause 3 will apply.
- 7.4 Agents may include any employees or officers of the Member Trustees and/or of the Employers.
- 7.5 Subject to Clause 16 and any other requirements of the Board the Trustees may enter into any transaction involving the Fund with any Employer or the trustees of any trust. Such transaction will be valid irrespective of whether the directors of any such Employer or trustees of any such trust are one or more of the Member Trustees, provided that Approval is not prejudiced by this transaction.
- 7.6 Anyone dealing in good faith with the Trustees will be under no duty to enquire into the application of any money or asset paid or transferred by him to the Trustees.



- 7.7 The Trustees will have power to insure any or all of the assets of the Fund against such risks and for such amounts as they determine appropriate. Subject to Section 31 of the Pensions Act they may also effect insurance against any personal liability relating to their office or any liability of the Scheme for such amounts as they determine appropriate.
- 7.8 The Trustees will hold any proceeds of insurance on trust with power to apply part or all, to repair, replace or maintain the asset in question (subject to the provisions of Section 31 of the Pensions Act) or to indemnify themselves or the Scheme against any claims. They may exercise this power as if they were the absolute owner of the Fund unrestricted by law whether statutory or otherwise.
- 7.9 Subject to Section 31 of the Pensions Act, the cost of effecting insurance is to be paid in accordance with Clause 13.
- 7.10 The Member Trustees may open any one or more accounts with a bank, building society, finance company or other financial institution. They may make such arrangements as they see fit from time to time regarding the operation of any such account. These arrangements must provide that at all times, the Pensioner Trustee will be a signatory to any such account.

## **8 PROTECTION OF TRUSTEES**

### **8.1 No Trustees will incur liability for: -**

- 8.1.1 the exercise or failure to exercise any power or discretion
- 8.1.2 the performance of his duties as a trustee of the Scheme
- 8.1.3 the acts and omissions either of co-Trustees, agents, delegates or other advisers to the Scheme.

### **8.2 The Employers (on a joint and several basis) will indemnify each and all of the Trustees against any costs, claims, demands, expenses, proceedings and liabilities arising from any matter referred to in Clause 8.1.**

### **8.3 Should the Employers fail to indemnify them the Trustees will (unless it is prohibited under Section 31 of the Pensions Act) be entitled to be indemnified from the Fund.**

### **8.4 The Trustees will be entitled to rely upon any advice or recommendations given by the advisers to the Scheme and will incur no personal liability in doing so.**

### **8.5 The Trustees will not be accountable for any payment they may make under this Deed: -**

- 8.5.1 to a minor direct, or to his parent or guardian or other person with whom he is living, or
- 8.5.2 to any person who the Trustees believe to be a Spouse, even if it subsequently transpires the person is not a Spouse, or
- 8.5.3 to any institution or individual who the Trustees believe to be responsible for the care of a Beneficiary.

### **8.6 The Trustees will not be obliged to bring, pursue or defend any legal proceedings in relation to the Scheme except if they so decide, or if required to do so by the Board.**

- 8.7 The provisions of this Clause apply in addition to any further protection afforded to the Trustees by statute, common law or otherwise but are subject to the limitations set out in Clause 9.

## **9 LIMITATION AND EXTENSION OF PROTECTION**

9.1 The provisions of Clause 8: -

- 9.1.1 will not protect a Trustee in relation to any breach of trust arising out of fraud or deliberate disregard of the interests of the Beneficiaries knowingly and intentionally committed by him
- 9.1.2 are subject to Section 33 of the Pension Act which may restrict or prevent the exclusion of personal liability on the part of the Trustee.

9.2 If the inclusion of any words in Clause 8 and in this Clause 9 would at law render ineffective the protection of any Trustee then the Clause is to be read with such words omitted.

9.3 The provisions of this Clause 8 and Clause 9 will apply also to:-

- 9.3.1 all officers and employees of a corporate Trustee
- 9.3.2 trustees of the Scheme who no longer hold office.

## **10 TRUSTEES' REMUNERATION**

- 10.1 Any Trustee engaged in a profession or business will be entitled to be paid all proper expenses, charges and commissions for work carried out in connection with the Scheme by him or any firm/company to which he belongs or by which he is employed.
- 10.2 Any Trustee not engaged in a profession or business may be paid such expenses and remuneration as may be agreed by the Principal Employer.
- 10.3 The provisions of this Clause apply similarly to any officer or employee of a corporate Trustee.
- 10.4 Without prejudice to the generality of Clause 10.1, if the Pensioner Trustee, or any professional adviser with which it is connected, is consulted by the Member Trustees with regard to investment advice, the party providing such advice may charge a reasonable fee for such advice and may retain any reasonable commissions received as a result of any investment made by the Member Trustees.
- 10.5 All sums due pursuant to this Clause are to be paid in accordance with the provisions of Clause 13.

## **11 PARTICIPATING EMPLOYERS**

- 11.1 The Principal Employer with the consent of the Member Trustees, may allow a company, firm or person associated with it to become an Employer.
- 11.2 However, before consenting to an Employer participating in the Scheme the Member Trustees must first obtain the written advice of the Pensioner Trustee as to whether the proposed participation would prejudice approval. No company, firm or person is to be allowed to become or continue as an Employer if its participation would prejudice Approval. In such circumstances the Employer will automatically cease to participate.

11.3 Any new Employer is to enter into a deed of adherence with the Principal Employer and the Trustees. This will contain a covenant on the Employer's part to observe and perform the relevant provisions of the Scheme Documents (and is to be in such form as the Trustees may reasonably prescribe). Participation will take effect from the date of the deed of adherence unless stated otherwise.

11.4 The Employers are to supply to the Trustees and the Member Trustees' advisers such information as they are required to provide pursuant to the Pensions Act. In addition the Employers are to supply to the Trustees such further information as the Trustees may reasonably require for the administration of the Scheme.

11.5 In addition the Member Trustees will have the right on request: -

11.5.1 to have reasonable access to any records relevant to such administration which are in the custody or control of the Employers

11.5.2 to take copies of those records free of charge.

## **12 SUBSTITUTION OF PRINCIPAL EMPLOYER**

12.1 The provisions of this Clause will apply in the following circumstances: -

12.1.1 if an order or resolution is passed for the winding-up of the Principal Employer, for the purposes of reconstruction; or

12.1.2 if the Principal Employer amalgamates with another corporation; or

12.1.3 if the Principal Employer has ceased to contribute to the Scheme.

12.2 In such circumstances, and provided that the Principal Employer does not go into liquidation without a successor, the Trustees may in their discretion permit the continuation of the Scheme.

12.3 Such continuation may be made in connection with the reconstructed or amalgamated Principal Employer or any other company, firm or person carrying on business in succession to the Principal Employer. Such company, firm or person will then take over the role of the Principal Employer under the Scheme.

12.4 The new Principal Employer is to enter into a deed of novation with the Trustees. This will contain a covenant on its part to observe and perform the relevant provisions of the Scheme Documents and is to be in such form as the Trustees may reasonably prescribe.

## **13 COSTS AND EXPENSES**

13.1 The costs and expenses of establishing the Scheme are to be paid by the Principal Employer.

13.2 The costs and expenses of managing and administering the Scheme are to be paid by the Fund unless the Principal Employer determines they are to be met by the Employers.

13.3 In such circumstances each Employer is to pay such proportion of those costs and expenses as the Principal Employer and the Member Trustees may agree. In default of such agreement they are all to be borne by the Principal Employer.

13.4 To the extent any of the Employers and/or the Principal Employer defaults in paying the costs and expenses the Trustees may recoup the same from the Fund, on such basis as the Trustees decide.

- 13.5 For the avoidance of doubt the costs and expenses will include any incurred by the Trustees pursuant to Clauses 3, 4, 6, 7, 10, 14 and 15 or otherwise in performance of their duties or the exercise of their powers and discretions.

## **14 CONTROL OF THE FUND**

- 14.1 The Fund will be vested in the Trustees as joint tenants and held by them upon irrevocable trusts in accordance with the terms of the Scheme Documents.
- 14.2 All monies and assets received by the Trustees for the purposes of the Scheme will be paid or transferred into the Fund. They may be retained in the Fund or sold if and when the Trustees decide appropriate.
- 14.3 All benefits due under the provisions of the Scheme will be paid in accordance with Rule 7. The Trustees will have power to sell or realise any Fund assets for this purpose.
- 14.4 The Member Trustees (in consultation with the Advising Actuary) may nominally allocate assets from the Fund for such purposes as they decide, that will not prejudice Approval.

## **15 INVESTMENT OF THE FUND**

- 15.1 The Member Trustees will give prior notification to the Pensioner Trustee as soon as reasonably practicable of any proposed acquisition or disposal of any Investment.
- 15.2 The Pensioner Trustee is to give the Member Trustees advice as to whether the proposed investment could prejudice Approval as soon as reasonably practicable after receiving the request to do so. In providing this advice, the Pensioner Trustee is entitled to rely on the accuracy of the information provided by the Member Trustees. At the same time, the Pensioner Trustee is to advise the Member Trustees of any investments currently held by the fund, retention of which could prejudice Approval.
- 15.3 Before any investment is made each of the Members, Deferred Pensioners, Postponed Pensioners and Pensioners will agree in writing to the making of that investment unless the Member Trustees have delegated all or any of their powers of investment pursuant to Clause 7.
- 15.4 No investment of the resources of the Scheme may be made in any Employer-Related Investment unless each Member, Deferred Pensioner, Postponed Pensioner and Pensioner agrees in writing to the making of that investment.
- 15.5 If the Member Trustees have followed the above provisions of Clauses 15.1, 15.2 and 15.3 they may exercise their powers of investment in any way they choose. In such event, the Pensioner Trustee will have no liability to any party for any loss arising out of non-Approval or withdrawal of Approval whether caused directly or indirectly by any investment not endorsed by the Pensioner Trustee.
- 15.6 Subject to Clause 16 the Member Trustees may make investments in any of the Employers. For this purpose, investment includes any dealings in shares, securities, assets or land or the entering into of any loan, guarantee, indemnity or agreement.
- 15.7 Investments may be made within or outside the United Kingdom whether or not: -
- 15.7.1 involving liability
  - 15.7.2 producing income

15.7.3 authorised by law for the investment of trust monies

to the intent that the Member Trustees will have the same full and unrestricted powers of investment as if they were absolutely and beneficially entitled to the Fund.

15.8 Without prejudice to Clauses 15.1 to 15.7 but subject to Clause 16 the Member Trustees may invest the Fund in or upon the security of any: -

15.8.1 annuity contract or assurance policy (whether with profits or not) issued by a United Kingdom office or branch of an Insurance Company

15.8.2 scheme of deposit administration

15.8.3 unit trust, managed fund or mutual fund

15.8.4 deposit with a local authority, bank, building society, finance company or other financial institution

15.8.5 stocks, shares, debentures and debenture stocks (whether by purchase, subscription, underwriting, sub-underwriting or otherwise)

15.8.6 gilt's, government securities and other interest bearing investments whether at a fixed or variable rate

15.8.7 traded options (as defined in Section 144(8)(b) of the Taxation of Chargeable Gains Act 1992)

15.8.8 transactions and financial futures on the London International Financial Futures Exchange

15.8.9 gold bullion or any other commodity

15.8.10 interest in land or property (either in their own right or jointly with any other party)

15.8.11 contract, guarantee, option or other agreement in connection with any of the above.

15.9 As regards any real property held as an investment of the Scheme the Member Trustees may enter into any lease, licence, option, development or other contract in relation to it.

15.10 The Member Trustees may with the Pensioner Trustees consent join with the trustees of any other exempt approved scheme in any of the investment activities described in this Clause. In such circumstances the Member Trustees may hold or be entitled to such share of the mixed investments as they agree with the trustees of the other scheme.

15.11 The Member Trustees will if so required by Section 35 of the Pensions Act prepare and maintain a statement of principles governing the investment of the Fund. The statement will comply with Section 35 of the Pensions Act.

## **16 RESTRICTIONS ON INVESTMENT**

**This Clause 16 is subject to the provision of Schedule 3**

The provisions of Schedule 3 will in the event of any inconsistency with the provisions of this Clause 16 be overriding.

16.1 The Member Trustees' power of investment shall be restricted to preclude investment either directly or indirectly in: -

- 16.1.1 personal chattels other than choses in action; or
- 16.1.2 Residential Property other than that which is, or is to be, occupied: -
  - 16.1.2.1 by an employee who is not connected with his or her Employer and who is required as a condition of employment to occupy that property, or
  - 16.1.2.2 by a person other than a Member or a person connected with a Member where that person also occupies connected business premises which are also held by the Member Trustees as an investment of the Scheme; or
- 16.1.3 stock or shares in a Private Company which: -
  - 16.1.3.1 carry more than thirty per cent of the voting power in that company, or
  - 16.1.3.2 entitle the holder to more than thirty per cent of any dividends declared by that company.

For the purposes of sub-clause 16.1.2 above the Member Trustees are not regarded as holding a Residential Property where they hold as an investment units in a unit trust scheme:

- (A) which is an authorised unit trust scheme within the meaning of Section 468(6) of the 1988 Act, or
- (B) an exempt unit trust within the meaning of Section 96 of the Capital Gains Tax Act 1979, and
- (C) that unit trust scheme holds Residential Property as an investment.

Notwithstanding any provisions to the contrary in the Scheme Documents, the word "Member" for the purposes of this paragraph means a person who is in Pensionable Service for the purposes of the Scheme or a person who qualifies for benefits under the Scheme by reason of his Pensionable Service.

16.2 The Member Trustees in that capacity may not directly or indirectly lend money: -

- 16.2.1 to a Member or to a person who is connected with a Member other than an Employer or any company associated with an Employer; or
- 16.2.2 to an Employer or a company associated with an Employer unless the loan is: -
  - 16.2.2.1 utilised for the purpose of the borrower's business, and
  - 16.2.2.2 for a fixed term, and
  - 16.2.2.3 at a commercial rate of interest, and
  - 16.2.2.4 evidenced by an agreement in writing which contains all the conditions on which it is made and, in particular, the provisions specified in Clause 16.2.3 below;
- 16.2.3 the provisions specified in this Clause are that lending will be repaid immediately if the borrower: -
  - 16.2.3.1 breaches the conditions of the agreement; or

- 16.2.3.2 ceases to carry on business; or
- 16.2.3.3 becomes insolvent within the meaning of Regulation 6 of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991; or

if the money is required to enable the Member Trustees to pay benefits which have already become due under the Scheme.

16.3 The amount of the aggregate of: -

- 16.3.1 the amount outstanding of any lending to an Employer and/or a company associated with an Employer made in accordance with Clauses 16.2.2 and 16.2.3 above, and
- 16.3.2 the market value of stock and shares in an Employer and/or a company associated with an Employer held by the Member Trustees in that capacity

must not at the time of any lending under Clause 16.2 or the purchase of any shares in the Employer or a company associated with an Employer exceed fifty per cent of the market value of the total assets of the Scheme. If the lending or purchase takes place within two years of the establishment of the Scheme the amount must not exceed twenty-five per cent of the market value of the total assets of the Scheme excluding the value of any transfer values received or policies assigned to it.

16.4 The Member Trustees must not directly or indirectly purchase, sell or lease any investment or asset from or to a Member or a person (other than an Employer or a company associated with an Employer) connected with a Member. A purchase will not be construed as being an indirect purchase from a Member of the Scheme or a connected person if at the time of purchase three or more years have elapsed since the investment or asset was owned by the Member or connected person. A sale will not be construed as an indirect sale to a Member or a connected person if the purchase by the Member or connected person takes place three years or more after the sale by the Member Trustees.

16.5 Where a prescribed transaction has been undertaken in relation to Clause 16.4 before 15 July 1991 the effect of Clause 16.4 will not be to limit or nullify the Member Trustees' powers to sell to a Member or connected person the specific asset or investment comprising such transaction.

16.6 The Member Trustees must not directly or indirectly purchase, sell or lease any investment or asset from or to an Employer or a company associated with an Employer except in accordance with independent professional advice obtained in writing.

16.7 For the purpose of this Clause 16 any question of whether a person is connected with another will be determined as follows: -

- 16.7.1 a person is connected with an individual if that person is: -
  - 16.7.1.1 the individual's spouse; or
  - 16.7.1.2 a Relative of the individual; or
  - 16.7.1.3 a Relative of the individual's spouse; or
  - 16.7.1.4 the spouse of a Relative of the individual.

16.7.2 a Member is connected with an Employer if: -

16.7.2.1 the Employer is a partnership and the Member is contr  
a partner, or

16.7.2.2 the Employer is a company and the Member or any pe  
connected with him or her is, or has been during the la  
years a Controlling Director of the company;

16.7.3 a company is connected with another company if: -

16.7.3.1 the same person has Control of both, or

16.7.3.2 a person has Control of one and persons connected wit  
person have Control of the other, or

16.7.3.3 a person has Control of one and that person and perso  
connected with that person have Control of the other;

16.7.4 a company is connected with another person if that person has Control c  
that person and a person or persons connected with him or her together  
control of it;

16.7.5 any two or more persons acting together to secure or exercise Control of  
company will be treated in relation to that company as connected one wit  
another and with any person acting on the directions of any of them to se  
exercise Control of the company.

16.8 For the purposes of this Clause 16: -

16.8.1 a company is associated with an Employer if (directly or indirectly) the Em  
controls that company or that company controls the Employer or if both an  
controlled by a third person;

16.8.2 "Member" includes any Member, Deferred Pensioner, Postponed Pensione  
Pensioner.

16.9 Provision of Information to the Board

16.9.1 Within ninety days of any transaction by the Member Trustees as is specific  
Clause 16.9.2 the Administrator will furnish the Board with such information  
documents as it requires.

16.9.2 The transactions specified are: -

16.9.2.1 the acquisition or disposal of land (including buildings and c  
structures);

16.9.2.2 the lending of money to an Employer or a company associa  
with an Employer;

16.9.2.3 the acquisition or disposal of shares in an Employer or a  
company associated with an Employer;

16.9.2.4 the acquisition or disposal of shares in a Private Company;

16.9.2.5 the borrowing of money; or

16.9.2.6 the purchase, sale or lease from or to an Employer or a comp  
associated with an Employer of any investment or asset



## **17 TRUSTEES' BORROWING POWERS**

This Clause 17 is subject to the provisions of Schedule 3. The provisions of Schedule 3 will in the event of any inconsistency with the provisions of this Clause 17 be overriding.

- 17.1 The Trustees may borrow money on the security of all or any part of the Fund or borrow or raise money on any terms they think fit. This Clause and Clause 17.2 are subject to Clause 17.3.
- 17.2 The Trustees may exercise the power to borrow in Clause 17.1 in order to buy or acquire any property or assets or any interest in them for the Scheme. The property or assets may be charged as security for the borrowing as if the Trustees were absolutely beneficially entitled to them. Provided that at all times the liability of the Pensioner Trustee shall be limited to the assets of the Scheme but without prejudice to the joint and several liability of the other parties.
- 17.3 At any time the aggregate borrowing of the Member Trustees must not exceed: -
- 17.3.1 three times the Ordinary Annual Contribution, plus
  - 17.3.2 three times the annual amount of contributions paid or payable as a condition of membership by the Members in the year of assessment ending immediately before the borrowing took place, plus
  - 17.3.3 forty-five per cent of the market value of investments held for the purposes of the Scheme.

In determining the aggregate borrowing of the Scheme, the Trustees shall have regard to the provisions of Rule 10.2.4.

## **18 ACTUARIAL VALUATIONS**

- 18.1 The Member Trustees are to ensure that the Actuary conducts a valuation of the Scheme's assets and liabilities and provide a report to the Principal Employer, Member Trustees and the Pensioner Trustee as soon as reasonably practicable after the commencement of the Scheme and, after that, at intervals of not more than three years.
- 18.2 The Trustees and the Employers will make available to the Actuary all accounts, documents and information which he may reasonably require for this purpose.

## **19 AMENDMENT**

- 19.1 The Trustees may alter or replace the trusts, powers and provisions of the Scheme, after obtaining the consent of the Principal Employer and complying with any statutory requirement to give Members or Former Members notice of the alteration. The consent of the Principal Employer will not be required if the Trustees are making the alterations as a result of an Employer's failure to pay one or more contributions. Any alteration to the trusts, powers and provisions of the Scheme will be made by deed or written resolution and may be retrospective. However, an alteration may not be made if: -
- 19.1.1 it will/would prejudice that part of a Members or Former Members benefits which are in respect of Pensionable Service prior to the date of alteration.

## 20

### AMALGAMATION AND RECONSTRUCTION

#### 20.1

This Clause applies where an Employer (other than the Principal Employer): -

20.1.1 is involved in an amalgamation, reconstruction or liquidation or

20.1.2 sells or transfers its property, assets and undertaking or a significant part of them.

#### 20.2

In such circumstances the Employer (with the Member Trustees' consent) may be replaced by the company, firm or person carrying on all or part of its business in succession.

#### 20.3

Provided the procedural requirements contained in Clause 11 of the Deed are met in respect of the new Employer the Pensionable Service of Members employed by the old Employer will be treated as continuous, provided the Board consents to it being so treated.

## 21

### PARTIAL WIND-UP

#### 21.1

This Clause applies where an Employer (other than the Principal Employer): -

21.1.1 ceases to carry on business

21.1.2 goes into voluntary or compulsory liquidation

21.1.3 has an administrator or administrative receiver appointed over any of its property assets or undertaking

21.1.4 sells or transfers its property, assets and undertaking or a significant part of them

21.1.5 ceases to be associated with the Principal Employer, if its continued participation in the Scheme would prejudice Exempt Approval.

21.1.6 gives notice (other than contemporaneously with the Principal Employer) pursuant to Rule 64 severing its obligations to pay future contributions

21.1.7 fails to pay any sum due to the Trustees within one month after receiving from them a formal written demand

and (in the case of the events listed in Clauses 21.1.1 to 21.1.5 inclusive) no appointment has been made pursuant to Clause 20.

#### 21.2

In such circumstances the Trustees, on the advice of the Actuary, must apply, at such time as they determine, the Member's Account to secure benefits relating to the Members employed by the Employer at the date the relevant event occurs unless the Members become employees of another Employer.

#### 21.3

The relevant Members' Accounts may (at the Trustees' discretion and subject to the agreement of the Board) be dealt with in one or more of the following ways, namely: -

21.3.1 preserving the benefits in the Scheme

21.3.2 setting apart such part of the Fund as the Trustees may decide and applying it in a partial wind-up in accordance with Clauses 23 and 24

21.3.3 provided they comply fully with either Rules 19 or 20, effecting a transfer out in accordance with such Rules

## **SCHEDULE 1**

### **The Rules**

- 21.4 In the event an Employer (other than the Principal Employer) goes into liquidation (whether compulsory or voluntary) and no company takes over that Employer's business in succession, the Trustees must wind up the relevant part of the Fund in accordance with Clauses 21.3.2 and 23.

## **22 FULL WIND-UP**

- 22.1 Subject to Clause 25.1 the Trustees may resolve to wind-up the Scheme if any of the events listed in Clause 21.1 has occurred in relation to the Principal Employer (save for Clause 21.1.5) and Clause 21.1 (in the case of the events listed in Clauses 21.1.1 to 21.1.4 inclusive) no substitute has been appointed pursuant to Clause 12.
- 22.2 In the event the Principal Employer goes into liquidation (whether voluntary or compulsory) and no company takes over the Principal Employer's business in succession, the Trustees must wind up the Fund in accordance with Clause 23.
- 22.3 Any such resolution is to be recorded in writing. The wind-up will take effect from the date specified in the resolution which may be: -
- 22.3.1 prior to the passing of the resolution but after the occurrence of the relevant event specified in Clause 22.1
- 22.3.2 at any time in the future.
- 22.4 In the absence of any such resolution the Scheme will continue as a closed arrangement, as if the Trustees had elected to continue the Scheme as a closed arrangement pursuant to Clause 25, subject to the consent of the Board, if required.

## **23 DISSOLUTION**

- 23.1 If the Scheme is wound-up in part or full the Trustees will obtain an actuarial valuation as at the date of wind-up and will realise the appropriate part of the Fund at such time and upon such terms as they think fit. No further benefits will accrue in respect of the relevant Beneficiaries once the wind-up has commenced.
- 23.2 Subject to prior payment of all costs, charges and expenses which cannot be recovered from the Employers and subject to the consent of the Pensioner Trustee and following the advice of the Actuary, the net proceeds of realisation are to be used to secure benefits in the following descending order of priority, namely: -
- 23.2.1 benefits already in payment or in respect of which entitlement has arisen
- 23.2.2 benefits in respect of Postponed Pensioners
- 23.2.3 benefits accrued by or in respect of Members and Deferred Pensioners to the extent they are not included above.
- 23.3 If any balance remains after the priorities referred to in Clause 23.2 have been met, the Trustees may use the same to augment the benefit of any of the Beneficiaries up to the Maximum Benefit.
- 23.4 If any balance still remains after the priorities referred to in Clause 23.2 have been met and the power contained in Clause 23.3 has been exercised it is to be returned subject to the prior agreement of the Board, and after payment of any tax liability under the 1988 Act, to the Principal Employer or (if it no longer exists) to the Employers. In the latter case the balance is to be divided between the Employers as the Trustees determine.

- 23.5 If the Fund is insufficient to secure in full the benefits set out in one of the categories listed in Clause 23.2 then they will abate on such basis as the Member Trustees on the advice of the Actuary shall determine.
- 23.6 For the avoidance of doubt benefits: -
- 23.6.1 are to be categorised under Clause 23.2 by reference to their status on the date the wind-up commences (which for the avoidance of doubt is in the case of partial wind-up a condition set out in Clause 21.1 is satisfied or, in the case of full wind-up, the date specified in the Trustees' resolution)
  - 23.6.2 include any which may subsequently become payable on the death of the relevant Beneficiary
  - 23.6.3 are to be calculated and paid in accordance with the appropriate Rules of the Scheme.
- 23.7 Until all the assets of the Fund have been fully disposed of the trusts of the Scheme will remain in force. In particular the provisions of Rule 15.9 will apply.

## **24 SECURING BENEFITS**

- 24.1 Except as provided for below benefits are to be secured by the purchase of an appropriate non-commutable, non-assignable annuity in respect of each Beneficiary. For the avoidance of doubt the Trustees may purchase such annuity in, or transfer it into, the name of the Beneficiary.
- 24.2 In exceptional circumstances of serious ill health or where the benefits (including those payable on death) are Trivial a lump sum may be paid instead to the Member or former Member. In the case of a Controlling Director, payment of a lump sum on grounds of serious ill-health must be preceded by 14 days' notice by the Trustees to the Board.
- 24.3 At the request of a Beneficiary the Trustees may effect a transfer out under Rule 19 upon such terms as they consider appropriate.
- 24.4 The Trustees may arrange for any Beneficiary to participate in a Receiving Scheme in accordance with Rule 20. For the avoidance of doubt the transfer may include all or any part of an unallocated surplus within the Scheme.
- 24.5 Following the advice of the Actuary, benefits may be secured by the purchase of such policy or other contract or investment as may be permitted by law.
- 24.6 The Trustees may at their discretion secure benefits for the various categories referred to in Clause 23.2 by different means. They may also secure benefits by different means for individuals who are in the same category.

## **25 SPECIAL POWERS**

- 25.1 If any of the circumstances referred to in Clause 21.1 (save for Clause 21.1.2 where no successor in business replaces the relevant Employer) occurs the Trustees subject to the prior agreement of the Board may elect to continue the Scheme as a closed arrangement, provided that a pensioner trustee continues to act in relation to the Scheme.
- 25.2 If an election is made under Clause 25.1 no further benefits will be deemed to accrue after the date of the relevant event. Any benefits accrued prior to that date will be calculated in such manner as the Trustees decide. The trusts of the Scheme will remain in force. In particular the provision of Clause 19 will apply.

- 25.3 The election will continue in force until the Trustees determine otherwise. The Scheme is then to be wound-up in accordance with Clauses 22 and 23.

## **26 INSOLVENCY OF PRINCIPAL EMPLOYER**

If any of the events set out in Clauses 21.1.2 (except for a members' voluntary liquidation) or 21.1.3 occur in relation to the Principal Employer then all powers of the Principal Employer in relation to the Scheme will vest solely in the Member Trustees unless and until a new Principal Employer is appointed under Clause 12 at which time the powers will be re-instated to the Principal Employer (but without prejudice to their exercise whilst vested in the Member Trustees).

## **27 NOTICES**

- 27.1 Any notice required under the Scheme Documents may be served by delivering or sending it, in the case of: -

- 27.1.1 any of the Employers, the Principal Employer or a corporate Trustee to its registered office
- 27.1.2 an individual Trustee to his normal place of work or last known private address
- 27.1.3 a Member or Beneficiary to his normal place of work or last known private address.

- 27.2 Notices may be sent by first-class post or delivered personally. The former will be deemed served two days after the date of posting and the latter upon delivery.

## **28 DETERMINATION OF QUESTIONS**

- 28.1 Except as provided for expressly in the Scheme Documents the Member Trustees will have full power to determine conclusively any questions or matters of doubt concerning the Scheme or the construction of the Scheme Documents. For the avoidance of doubt any question concerning termination or winding-up of the Scheme will be determined by the Pensioner Trustee and the Member Trustees.

- 28.2 Such determination will be binding on all interested parties.

## **29 GOVERNING LAW**

- 29.1 The Scheme Documents will be governed in all respects by and construed in accordance with the laws of England and Wales.

- 29.2 The parties agree to submit to the jurisdiction of the courts of England and Wales.

IN WITNESS of which this document was executed as a Deed on the date set out above

**SIGNED** as a deed by **THE LOFT SHOP LTD** acting by two of its officers

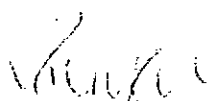
**Director  
Signature**

: 

**Name**

: G. G. J. STIRLING

**Director/Secretary  
Signature**

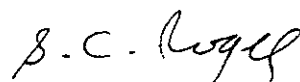
: 

**Name**

: L. M. TOWNSEND

The **COMMON SEAL** of **NPI TRUSTEE SERVICES LIMITED** was affixed to this deed  
in the presence of two of its Authorised Officials:

**Signature**

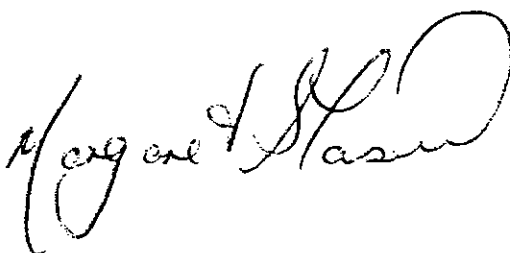
: 

**Name**

: **S C Rogers**

5751

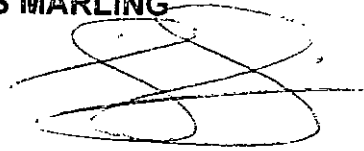
**Signature**

: 

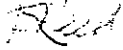
**Name**

: **M. S. TOWNSEND**

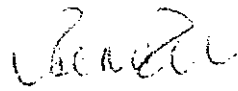
SIGNED as a deed by GEOFFREY GEORGE JAMES MARLING  
in the presence of:




**Witness**

Signature :   
Name : SUSAN A. REED  
Occupation : PERSONAL ASST  
Address : 32 FOXGLOVE AVENUE  
MARSHAM  
W. SUSSEX BN12 5FZ

SIGNED as a deed by LEE MARTIN PERRIAM  
in the presence of:

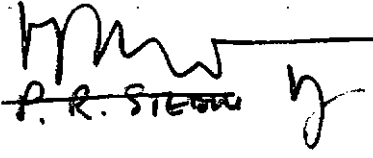



**Witness**

Signature :   
Name : SUSAN A. REED  
Occupation : PERSONAL ASST  
Address : 32 FOXGLOVE AVENUE  
MARSHAM  
W. SUSSEX BN12 5FZ

SIGNED as a deed by PETER RICHARD STEDMAN  
in the presence of:

**Witness**

Signature :   
Name : P. R. STEDMAN  
Occupation :  
Address :   
SUSAN A. REED  
32 FOXGLOVE AVENUE  
MARSHAM  
W. SUSSEX BN12 5FZ



## **1 ELIGIBILITY**

- 1.1 The Membership of any person who was an Eligible Employee on the Commencement Date and joined the Scheme following the invitation of an Employer is confirmed.
- 1.2 An Eligible Employee may be admitted to Membership if he is invited to become a Member by his Employer and the other Member Trustees.
- 1.3 If an invitation is made pursuant to Rule 1.2 the Eligible Employee will be notified by an Announcement Letter. This Announcement Letter will state:-
  - 1.3.1 a summary of the benefits to be provided and
  - 1.3.2 the initial contributions required from him (if any).
- 1.4 The Eligible Employee will be granted Membership if he notifies his Employer that he has received the Announcement Letter and he agrees:-
  - 1.4.1 that his entitlement to benefits under the Scheme will be governed solely by the Scheme Documents, as amended from time to time, and
  - 1.4.2 that he will make contributions to the Scheme at the rate required by his Employer from time to time.
- 1.5 The Principal Employer may notify the Trustees that Membership will be closed to new entrants. Such notice given will take effect immediately or at such future date as may be specified in it.
- 1.6 A statement in writing signed by or on behalf of the Principal Employer to the effect that any person is or is not an Eligible Employee will be conclusive.
- 1.7 No person is to be admitted to, remain in or be excluded from Membership if this would prejudice Approval.

## **2 ADMISSION TO MEMBERSHIP**

- 2.1 Anyone eligible for Membership who wishes to join the Scheme must if so requested by the Member Trustees supply to them:-
  - 2.1.1 a copy of his birth certificate or other satisfactory evidence of age
  - 2.1.2 any such evidence of health required (including submission to an examination)
  - 2.1.3 a completed Member application form and/or any other information requested.
- 2.2 Having complied with Rule 2.1 to the satisfaction of the Member Trustees the relevant individual will become a Member with effect from such date as the Principal Employer and the Member Trustees determine.
- 2.3 If for any reason the information supplied pursuant to Rule 2.1 transpires to be incorrect or incomplete the Trustees may adjust the terms of his Membership in such manner as they consider appropriate. Such changes may be made retrospectively.
- 2.4 The Maximum Benefits and maximum Member Contributions which will apply to a Member or former Member to ensure Exempt Approval will not be prejudiced are set out in Schedule 3. The provisions of Schedule 3 which apply will depend on when the Member or former Member joined the Scheme unless

2.4.1 the Board has agreed pursuant to its discretionary practice that the Member or former Member is treated as if he joined the Scheme at another date or

2.4.2 the Member or former Member meets the Prescribed Requirements.

### **3 CESSATION OF MEMBERSHIP**

An individual's Membership will cease if he:-

3.1.1 is no longer an Eligible Employee, or

3.1.2 exercises any statutory right to terminate his Membership, or

3.1.3 exercises a right under the remainder of this Rule.

3.2 Membership of the Scheme is voluntary. Accordingly, a Member may give two months' written notice to the Trustees to withdraw and his Membership will cease on expiry of that notice.

3.3 The relevant Employer will give written notice to the Trustees if any Member ceases to be an Eligible Employee.

3.4 Anyone who ceases to be a Member will only be re-admitted with the consent of the relevant Employer and the Trustees. If consent is given re-admission will be on such terms as the Trustees decide after taking the advice of the Actuary.

3.5 If a Member is temporarily absent from work the Principal Employer may direct the Trustees to treat that Member as though he will be remaining in Membership, subject to Approval not being prejudiced.

3.6 If the Member does not return to work after 10 consecutive years his Membership will terminate in accordance with Rule 12 unless the Trustees and the Employer agree otherwise, subject to Approval not being prejudiced.

3.7 Rules 3.5 and 3.6 do not apply in the case of maternity leave. A Member who is absent for this reason will be provided with such benefits in respect of her absence as the law may require.

### **4 MEMBERS' NORMAL CONTRIBUTIONS**

4.1 A Member will pay contributions to the Scheme of the amount (if any) determined by his Employer and notified to the Member in the Announcement Letter (or any variation of it). The rate of contribution may not be altered within twelve months of the first payment at that rate, unless the Board agrees.

4.2 Contributions will begin on the first pay date after admission to Membership and will cease when Membership comes to an end.

4.3 The Employer will deduct the Member's Contributions (together with any AVCs made pursuant to Rule 5) from his pay and remit them as soon as reasonably possible to the Trustees in such manner and at such intervals as the Trustees may require (provided Section 49 of the Pensions Act is complied with insofar as it applies).

4.4 The payment of contributions by a Member may be terminated, suspended or reduced at any time by the Trustees if the Actuary confirms they are excessive, having regard to the Maximum Benefit applicable to him.

## **5 MEMBER AVCs**

- 5.1 Subject as noted below a Member may pay AVCs either on a regular or an ad hoc basis until his Membership ceases or (in the case of regular amounts) he elects to stop paying them.
- 5.2 No Member may pay AVCs if this would cause the contribution limit referred to in Schedule 3 to be exceeded.
- 5.3 If it appears a Member is paying AVCs greater than those appropriate to the Maximum Benefit they are to be reduced by such amount as the Trustees on the advice of the Actuary may direct.
- 5.4 Before commencing, ceasing or varying payment of AVCs the Member will give the Trustees such prior written notice (not exceeding 12 months) as they may from time to time require. This obligation will not apply where AVCs stop because Membership has ceased or in the circumstances referred to in Rules 5.2 and 5.3.
- 5.5 Subject as noted below a Member's AVC Account is to be used by the Trustees to increase the benefits payable in respect of his Membership. These increased benefits will be in the form of pensions or lump sum death benefits as the Member Trustees decide. Any increased benefits must be of such kind and amount as are acceptable to the Board and which will not prejudice Approval.
- 5.6 For the avoidance of doubt the Trustees will not be obliged to increase:-
- 5.6.1 all or any specific benefit payable in respect of the Member
  - 5.6.2 all benefits by the same proportion,
- 5.7 Any AVC Account established on or after 8th April 1987 is to be used only to provide benefits on an annuity basis. No lump sum payment is to be made from such an AVC Account.
- 5.8 Any monies remaining in the Member's AVC Account after benefits have been provided are to be paid to him after deduction of tax at the appropriate rate. In this respect the Trustees will ensure the Scheme is administered in accordance with Part III of Schedule 6 to the Finance Act 1989 and the AVC Regulations.
- 5.9 The Member Trustees will hold the AVC Accounts (including AVCs collected but not yet paid in) separate from the other assets of the Fund upon trust to provide benefits for the relevant individuals. Accordingly, on a total or partial wind-up the AVC Accounts are not to be used for the general purposes of the Scheme.

## **6 EMPLOYERS' CONTRIBUTIONS**

- 6.1 Each of the Employers will pay such contributions as the Principal Employer may from time to time agree with the Trustees, after consultation with the Actuary.
- 6.2 Any contributions due from the Employers are to be paid to the Trustees or as they may otherwise direct. Payment is to be made at such intervals as the Trustees with the consent of the Principal Employer may from time to time determine.
- 6.3 An Employer may at any time pay further contributions to the Trustees provided this does not prejudice Approval. Such contributions may be made either for the general purposes of the Scheme or for one or more of the specific purposes referred to in these Rules.
- 6.4 Each Employer has the power to sever its obligation to make future contributions by giving three months written notice to the Trustees. In such circumstances the provisions of Clauses 21 and 22 (as appropriate) will apply.

6.5 Each Employer has the power to suspend or reduce its obligation to make further contributions by giving three months' written notice to the Trustees. The Trustees will however have the power to wind-up the Scheme in accordance with Clause 22.1 if such notice is given.

6.6 If so required by Section 87 of the Pensions Act, the Trustees will ensure that a schedule of contributions to the Scheme is put in place. The schedule of contributions will be prepared, maintained and reviewed as necessary to comply with Section 87 of the Pensions Act.

## **7 NORMAL RETIREMENT**

7.1 Subject to Rules 8,9 and 10, a Member will be paid at his Normal Pension Date a non-assignable non-commutable Pension for the remainder of his life. The Pension will be the amount that the Trustees (after taking the advice of the Actuary) can provide from the Member's Account (after taking into consideration any Nominee's Pension provided arising under Rule 16 and any lump sum benefit arising under Rule 15), subject to Approval not being prejudiced.

7.2 Any annuity contract purchased utilising a Member's Account to provide a Pension in accordance with this or any other provision of the Scheme Documents will be purchased in the name of the Trustees.

7.3 The Pension provided under Rule 7.1 may be supplemented in accordance with the Rules by the application of AVCs, transfer payments and any other increases and augmentations.

7.4 The Trustees will secure a Pension which provides for increases in payment of at least those required by Section 51 of the Pensions Act and may with the prior agreement of the Member secure a Pension which provides for:-

- 7.4.1 further increases in payment
- 7.4.2 a guarantee as to the minimum period of payment
- 7.4.3 such other provisions as may be permitted by the Board.

## **8 LATE RETIREMENT**

8.1 A Member's retirement may be deferred past Normal Pension Date with the written consent of the Principal Employer but in any event not later than age 75 for a Class A Member.

8.2 Subject to Rule 8.1 and to the provisions of Schedule 3 if such consent is given the Member will be entitled (at his option) to either:-

- 8.2.1 a Pension paid from Normal Pension Date equal to that he would have received under Rule 7 if he had retired at such time, or
- 8.2.2 a Pension paid from his actual date of retirement or any date on or between Normal Pension Date and the date of his retirement in accordance with the value at that date of his Member's Account.

8.3 Any Pension payable to a Controlling Director is to be calculated in a manner and commence no later than a date acceptable to the Board.

## **9 EARLY RETIREMENT**

9.1 A Member who retires early on grounds of Incapacity (at any age) or on any other grounds (but after attaining age 50) will be paid a Pension calculated in accordance with Rule 7 but assuming that his Normal Pension Date is his actual date of retirement.

- 9.2 Payment of a Pension on early retirement (on whatever grounds) prior to Normal Pension Date requires the written consent of the Principal Employer and the Trustees.
- 9.3 In the case of early retirement on grounds of Incapacity the Member must first produce evidence of his condition (including attendance at a medical examination) satisfactory to the Trustees.
- 9.4 Where a Controlling Director is to retire early on the grounds of Incapacity, the Trustees must give 28 days' notice to the Board in advance of such retirement.

## **10 SECURING OF PENSIONS BY ANNUITIES**

- 10.1 In this Rule "annuity" means an annuity in the name of the Trustees purchased from an Insurance Company and "pension date" means the date when a Member's Pension first becomes payable and "member" means a Member, Deferred Pensioner, Pensioner or Postponed Pensioner as the context requires.
- 10.2 In the case of (i) a member who retires for whatever reason on or after 4 February 1994 or (ii) a Pensioner who retired on or after 4 February 1989 but whose Pension has not been secured within five years of that retirement the Trustees shall purchase an annuity for such member in accordance with Rule 7. Where a prospective widow's/widower's reversionary pension is payable, the Trustees shall purchase a contingent annuity at the same time as the member's own pension is so secured. If, however, the widow's/widower's pension is payable to whichever person is the member's spouse when the member dies, its purchase may be deferred until the death of the member. The Trustees shall, however, have the power to defer the purchase of an annuity for such member or for any Dependant or Nominee (subject always to the above conditions for purchasing a widow's/widower's Pension) of such member who dies before or after retirement until in the case of the member's pension no later than the date on which such member attains age 75, or in the case of a Dependant's or Nominee's pension until the earlier of the attaining by the Dependant or Nominee of age 75 or the date on which the deceased member would have attained age 75, so long as the following conditions are and remain satisfied:-
- 10.2.1 Where all members of the Scheme and any Dependant or Nominee are in receipt of Pensions (contingent widow's/widower's of members whose pensions must be secured at the same time as the member's in accordance with this Rule 10.2 being regarded as in receipt of pension), the Trustees shall not, directly or indirectly, make any new loans to, or share purchases in, an Employer or a company associated with an Employer or make any new investments in any stock or shares of any Private Company following the later of the first payment of Pension to the last member of the Scheme to retire and the first payment of pension to the last Dependant or Nominee. The Trustees shall ensure the repayment of any existing loan made to an Employer or to any company associated with an Employer and shall realise the value of any stock or shares held in any Private Company within five years of the commencement of Pension in respect of the last member, Dependant or Nominee, or on attainment by that member, Dependant or Nominee of age 70 if earlier. Where the member, Dependant or Nominee has already attained age 70 when payment of pension commences, the repayment of any existing loan or realisation of any stock or shares held in any Private Company shall take place immediately.
- 10.2.2 Where the Scheme has both members who have not retired and Pensioners, Dependents and Nominees with benefits in payment whose annuity purchase has been deferred, (prospective widow's/widower's of members whose pensions must be secured at the same time as the member's in accordance with this Rule 10.2 being regarded as in receipt of pension) the Actuary shall exclude each such Pensioner's Account and Dependant's and Nominee's actuarial interests in the Fund when determining the proportion and the amount which may be lent to,

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

10.2.3 Where, during the period of deferral, investments held for the purposes of the Scheme include real or heritable property, the Trustees shall ensure that there are sufficient other readily realisable assets so as to be in a position to purchase a member's, Dependant's or Nominee's annuity at any time after the member Dependant or Nominee has attained age 70.

10.2.4 The amount of any new borrowing by the Trustees during any period of deferral shall be restricted so that the Pensioner's Account and Dependant's and Nominee's actuarial interests in the Fund are excluded from the calculation in Clause 17.3.3 of this Deed. The Trustees shall ensure the reduction of any borrowing in existence when a member retires or when a Dependant's or Nominee's benefits come into payment so as to comply with the levels set out in Clause 17.3.3 of this Deed within 5 years of those events or on attainment by the retired member or Dependant or Nominee of age 70 if earlier. Where the member or Dependant or Nominee has already attained age 70 when payment of pension commences, any reduction in borrowing to comply with the levels set out in Clause 17.3.3 of this Deed shall take place immediately.

10.2.5 During the period of deferral, and whilst the Pension is paid by the Trustees, the Actuary shall certify the amount of Pension which can be maintained by the Trustees taking account of:-

10.2.5.1 in the case of a member's Pension, any contingent Dependants' and/or Nominees' Pensions payable;

10.2.5.2 the income and assets of the Scheme, and in particular those liquid assets representing the Pensioner's Account or Dependant's or Nominee's actuarial interests in the Fund.

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

10.2.6 A copy of the initial actuarial certificate shall be provided to the Pension Schemes Office with the next actuarial valuation report of the Scheme or earlier on request by the Pension Schemes Office.

10.2.7 A formal review of the amount of Pension payable shall thereafter form part of the Scheme's triennial actuarial reviews; and the renewal certificate shall be supplied to the Pension Schemes Office with the actuarial valuation report.

- 10.2.8 The Trustees shall review the suitability of annuity purchase at least on an annual basis and in connection with significant changes in available annuity rates.

## **11 PAYMENT OF BENEFITS**

- 11.1 All pensions and annuities will be payable at such intervals and in such manner as the Trustees decide.
- 11.2 Benefits will be paid by such method as the Trustees may from time to time determine including payment:-
- 11.2.1 at the registered office of the Principal Employer, subject to the requirements of the Pensions Act
  - 11.2.2 by cheque, money order or other negotiable instrument sent to the last known address of the Beneficiary
  - 11.2.3 by transfer or credit to a bank, building society or other account nominated by the Beneficiary
  - 11.2.4 by an insurance company or agent appointed by the Trustees.
- 11.3 All benefits will be sent at the risk of the Beneficiary and the Trustees will not be liable should they go astray. The Trustees will not be obliged to obtain a formal receipt or acknowledgement of payment.
- 11.4 If in the opinion of the Trustees a Beneficiary has become incapable of managing his own affairs they may pay any benefits due to anyone they consider is a proper person to receive the same on his behalf.
- 11.5 In such circumstances the Trustees will not be obliged to ensure how or for whose benefit the payment is applied. The payment itself will be a sufficient discharge to the Trustees for the relevant benefits.

## **12 WITHDRAWAL**

- 12.1 Subject to Rules 19 and 20 anyone ceasing to be a Member who does not receive an immediate benefit will instead have his Member's Account maintained in the Scheme.
- 12.2 The Member's Account will be used to provide benefits in accordance with Rules 7, 15 and 16 (subject to Rule 12.3) from Normal Pension Date.
- 12.3 If a Deferred Pensioner retires either on grounds of Incapacity or after attaining age 50 but before Normal Pension Date he may (with the consent of both the Principal Employer and the Trustees) elect to receive an immediate Pension. The Pension will be calculated in accordance with Rule 7 but will assume that his Normal Pension Date is his actual date of retirement.
- 12.4 The benefits of a Deferred Pensioner who has less than five years' Pensionable Service may be secured (at the Trustees' discretion) by a transaction to which section 81 of the 1993 Act applies. Once such benefits have been secured the rights relating to them under the Scheme will be extinguished. Accordingly the Deferred Pensioner and all others claiming under him will have no further interest in the Scheme in respect of such benefits.
- 12.5 If a Deferred Pensioner retires after Normal Pension Date he may with the consent of the Trustees defer payment of his Pension in accordance with Rule 8.

## **13 AUGMENTATION**

- 13.1 The Principal Employer (or any other Employer with the Principal Employer's consent) may after obtaining the advice of the Actuary request the Trustees to enhance the benefits which may become payable to or in respect of a Beneficiary in such manner as it may prescribe including the following:-
- 13.1.1 increasing benefits
  - 13.1.2 accelerating the payment of benefits
  - 13.1.3 granting additional benefits
- 13.2 The Principal Employer may request the Trustees to provide any new or increased benefits to or in respect of any person in, or formerly in the service of, any Employer.
- 13.3 The Trustees are to implement the request provided the relevant Employer pays such further contributions (if any) as the Actuary may recommend and provided that Maximum Benefits are not exceeded.

## **14 REVALUATION**

Where a Member became a Deferred Pensioner at least one year before Normal Pension Date his Member's Account will be revalued in accordance with paragraph 5 of Schedule 3 to the 1993 Act.

## **15 LUMP SUM BENEFITS**

- 15.1 Subject to Schedule 3, a Member or Deferred Pensioner may elect to commute all or part of his Pension to a cash lump sum. This will be of an amount determined by the Trustees on the advice of the Actuary to be as equivalent to the Pension surrendered.
- 15.2 Such election is to be made by giving written notice to the Trustees before payment of the Pension commences.
- 15.3 The lump sum will be due at the same time as the first payment of the Pension. Subject to Schedule 3, if a Member postpones drawing his Pension at Normal Pension Date pursuant to Rule 8 the election may still be made to take effect at any time on or between Normal Pension Date and the date of his actual retirement. The Trustees may also pay a lump sum pursuant to Rule 15.4.1 on the occasion of an increase in the limit below which benefits become Trivial.
- 15.4 At the Trustees' discretion a lump sum may also be paid
- 15.4.1 in lieu of all benefits payable (including those payable on his death) which are Trivial
  - 15.4.2 in lieu of his Pension in exceptional circumstances of serious ill-health, subject to confirmation from the Board that such commutation will not prejudice Approval. In the case of a Controlling Director, the Trustees must give 14 days' advance notice to the Board of any proposed payment in accordance with this Clause.
- 15.5 If the Trustees exercise their discretion pursuant to Rule 15.4 they will deduct from the lump sum any tax upon it for which they may be liable.



## **16 CONVERSION**

- 16.1 With the Trustees' consent a Member, Deferred Pensioner or Postponed Pensioner may elect that part of his Member's Account be utilised to provide one or more Nominee's Pension(s). The Pension(s) will be of such amount(s) as can be provided by the Trustees from that part of the Member's Account surrendered and are to be in accordance with any conditions laid down by the Board and imposed by the Trustees after taking the advice of the Actuary. Rule 10 is to apply to the securing of any Nominee's Pension.
- 16.2 Such election is to be made by giving written notice to the Trustees before the date of retirement.
- 16.3 No election may be made to the extent it would reduce the Pension below the aggregate value of the Nominee's Pension.
- 16.4 The relevant part of an election will be void if before the Member, Deferred Pensioner or Postponed Pensioner retires:-
- 16.4.1 the Nominee dies, or
  - 16.4.2 (where the Nominee is the Spouse) the marriage is dissolved or a decree of judicial separation is granted (unless written confirmation that the election is to remain valid is given by the Member, Deferred Pensioner or Postponed Pensioner), or
  - 16.4.3 he withdraws his election, with the consent of the Trustees.
- 16.5 If at the retirement of a Member, Deferred Pensioner or Postponed Pensioner a valid election subsists, he will be paid reduced benefits in accordance with Rule 16.1. On the death of the electing Pensioner the Nominee (if surviving) will be paid the Nominee's Pension.
- 16.6 In the event that a Nominee's Pension is provided to a Child under this Rule or any other provision of the Scheme Documents the Trustees may at their discretion:-
- 16.6.1 pay any monies to the Child's guardian or other person with whom the Child resides and under whose care and control the Child appears to be. In this event, the Trustees are not required to supervise the application of the monies and will not be responsible for any misapplication
  - 16.6.2 apply the pension, in whole or in part, towards the Child's education or otherwise for his benefit in any way they think fit
  - 16.6.3 after taking the advice of the Actuary, continue payment of the pension to or in respect of a Child who has attained majority but who is physically or mentally disabled to the extent that he is unable to support himself financially.

## **17 EVIDENCE OF DEATH**

- 17.1 The Trustees will obtain a copy of the death certificate.
- 17.2 When a sum is to be paid to a deceased's personal representatives the Trustees may first obtain a copy of the grant of representation. However, they will not be obliged to do so.
- 17.3 If no grant has been taken out the Trustees may at their discretion pay the relevant sums to the deceased's personal representatives, Spouse, next-of-kin or such other body, person or organisation as they may consider appropriate. Payment to the relevant body, person or organisation will be a valid discharge to the Trustees.

## 18 DEATH BENEFITS

- 18.1 On the death of a Member, Deferred Pensioner or Postponed Pensioner the Member's Account will be utilised to provide the following benefits:-
- 18.1.1 A lump-sum equal to the Member's Contributions (if any), the Member's AVC Account and any Member's Transferred Contributions including interest at a rate determined by the Actuary to be reasonable.
  - 18.1.2 Subject to Schedule 3 a lump sum equal to the amount remaining in the Member's Account after the deduction of the sum specified in Rule 18.1.1.
  - 18.1.3 If any portion of the Member's Account remains after the deduction of the sums specified in Rules 18.1.1 and 18.1.2 an annuity for life for any one or more of the Nominees, as decided by the Trustees. Such annuity is to be provided by the Member Trustees, subject to Rule 10 and Rule 16.6.
- 18.2 On the death of a Pensioner a lump sum may be payable in accordance with the terms for a guaranteed minimum period of payment of the Pension secured for him at his actual retirement, if applicable.
- 18.3 Any lump sums due are to be distributed on such terms and in such proportions as the Trustees decide to or for the benefit of the deceased's Dependants. If the Trustees are unable to identify and locate any Dependants of the deceased they may at their discretion pay the lump sum in such proportions they decide to such other trust, person, body or organisation as they may consider appropriate.
- 18.4 No benefits payable under this Rule may exceed the limits set out in Schedule 3. If, after the provision of the benefits specified above, there remains an unexpended balance of the Member's Account, that balance will be held by the Trustees for the general purposes of the Scheme, subject to Rule 18.6 below.
- 18.5 If the balance (or any part of it) referred to in Rule 18.4 is attributable to AVCs it will be refunded to the Member's personal representatives subject to deduction of tax pursuant to Section 599A of the 1988 Act and the AVC Regulations.
- 18.6 All sums due under Rule 18 are to be held by the Trustees separately from the other assets of the Fund and applied in accordance with this Rule. Such sums are to be paid out within two years of the date of death of the relevant individual except where his estate passes as bona vacantia. If all or part of the lump sum remains unpaid at the end of two years from the date of death of the relevant individual it will be paid to his estate. If the estate of the deceased individual passes bona vacantia no payment will be made pursuant to the remainder of this Rule, the monies being retained for the purposes of the Scheme.
- 18.7 The two year time period specified in Rule 18.7 may be extended by the Trustees to such longer time period as the Board will allow.
- 18.8 The Trustees may take account of any expression of wish form completed by the deceased member regarding the disposal of the lump sum but they will not be obliged to do so.
- 18.9 Where a Controlling Director remains in Pensionable Service over age 75 any benefit paid under the provisions of this Rule will be paid to his Spouse or (if he leaves no Spouse) to his personal representatives.
- 18.10 The Trustees may establish a trust, on such terms as they may think appropriate, for the benefit of one or more of the persons to whom benefits may be paid under Rule 18.3 and may pay to it any sum arising under this Rule. Any costs and expenses incurred in

establishing the trust or making payment to it may be deducted from the payment if the Trustees so decide.

## **19 INDIVIDUAL TRANSFERS OUT**

- 19.1 A Member or Deferred Pensioner may request in writing a transfer value payment in lieu of his entitlements under the Scheme be made if he:-
- 19.1.1 sets up a Personal Pension Scheme or
  - 19.1.2 becomes a member of another retirement benefits scheme or arrangement approved (where necessary) by the Board to take a transfer.
- 19.2 If such a request is made (subject to the approval of the Pension Schemes Office of the Inland Revenue) the Trustees will (subject to Rule 19.3) pay to the Receiving Scheme the Cash Equivalent for the Member or Deferred Pensioner. The transfer is to be made in accordance with any requirements of the 1993 Act which apply to it.
- 19.3 Whilst a Member or Deferred Pensioner remains a director or employee of any Employer the Trustees may decide that no transfer will be made (other than in respect of benefits relating to Pensionable Service after 5th April 1988).
- 19.4 Provided this does not prejudice Approval a Member or Deferred Pensioner may request the Trustees to purchase for him an annuity policy or contract with an Insurance Company. The purchase price of the policy or contract is to be equal to the Cash Equivalent referred to in Rule 19.2.
- 19.5 Once a transfer has been effected or an annuity policy or contract has been purchased all rights under the Scheme relating to or derived from the Member or Deferred Pensioner will be extinguished. Accordingly, the Member or Deferred Pensioner and all others claiming under him will have no further interest in the Scheme.

## **20 BULK TRANSFERS OUT**

- 20.1 At the request or with the consent of the Principal Employer the Trustees may arrange for any or all of the Beneficiaries (whether immediate, deferred or contingent) to participate in a Receiving Scheme.
- 20.2 Subject to Rule 20.5 such arrangements may be made without obtaining the consent of any of the persons concerned but only after obtaining the consent of the Board.
- 20.3 Participation may be effected by transferring to the Receiving Scheme all or any part of the Scheme assets and monies upon terms agreed between the Trustees and the trustees or administrator of the Receiving Scheme.
- 20.4 For the avoidance of doubt the transfer may include all or any part of an unallocated surplus within the Scheme.
- 20.5 No such transfer is to be made if it would:-
- 20.5.1 offend against the law of perpetuities
  - 20.5.2 prejudice Approval
  - 20.5.3 breach the provisions of the Preservation Regulations
  - 20.5.4 contravene the provisions of Section 20 of the 1993 Act.

- 20.6 Once a transfer has been made all rights under the Scheme relating to or derived from the relevant Beneficiaries will be extinguished. Accordingly, they and all others claiming under them will have no further interest in the Scheme.

## **21 TRANSFERS IN**

- 21.1 If a Member previously participated in another retirement benefits scheme or Personal Pension Scheme the Trustees (with the prior consent of the Principal Employer and the Board) may receive a transfer payment in respect of such participation.
- 21.2 Upon receipt of the transfer payment the Member's Account will be credited with such notional assets as the Trustees may determine (after prior consultation with the Principal Employer and the Actuary) provided this does not prejudice Approval.
- 21.3 Where a transfer payment is accepted the Member's Transferred Contributions will be deemed to be those which would be payable on withdrawal from the Transferring Scheme. For this purpose any deduction which would have been made in respect of tax is to be ignored.
- 21.4 If the Transferring Scheme has no provision for withdrawal payments the Member's Transferred Contributions will be those which it actually credited to the Member.
- 21.5 If the Member was prohibited from receiving a refund of his Member's Transferred Contributions at the time he left the Transferring Scheme the Trustees must apply a similar prohibition if those Member's Transferred Contributions are subsequently transferred out of the Scheme.
- 21.6 The Trustees will obtain a certificate from the trustees of the Transferring Scheme showing the amount of the transfer which may be used to provide lump sum benefits. This must be taken into account by the Trustees in providing benefits under the Scheme.

## **22 ALTERNATIVE TO SHORT SERVICE BENEFIT**

Where an alternative to short service benefit (as defined in Section 71 of the 1993 Act) is payable under the Scheme the Trustees must be reasonably satisfied it is of at least equal value.

## **23 DISCLOSURE OF INFORMATION**

- 23.1 The Trustees may ask any Beneficiary to supply such evidence of age, identity, status or other information as they may from time to time require.
- 23.2 If such information is not supplied or is incorrect the Trustees may, acting on the advice of the Actuary, make such adjustments to the benefit payable to the Beneficiary as they think fit. These adjustments may be made on a retrospective basis and the Trustees may reclaim an benefit which has been overpaid previously.

## **24 BAR ON ASSIGNMENT**

- 24.1 Except to the extent allowed by Section 95 of the Pensions Act no benefit payable under the Scheme is capable of being charged or assigned nor can a lien or set-off be exercised in respect of such benefit.
- 24.2 No attempt by a Beneficiary to affect a transaction in respect of a benefit which is not permitted under Rule 24.1 will be binding upon the Trustees. Should such an attempt be made the relevant part of the benefit will cease to be payable to that Beneficiary.

24.3 In such circumstances the Trustees may at their discretion instead apply the relevant part of the benefit for the support and maintenance of any one or more of the Beneficiary and his dependants.

24.4 Any part of the benefit not applied for support or maintenance is to be used for the general purposes of the Scheme.

## **25 TAX LIABILITY AND OVER-PAYMENTS**

25.1 Where liability to any tax or duty arises in respect of any benefit or refund the Trustees may deduct the same before payment.

25.2 If the liability is uncertain or its extent unknown the Trustees may postpone payment until they are satisfied that the liability does not exist or has been adequately provided for.

25.3 If for any reason a payment is made in full where a deduction should have been applied or if the liability arises after payment then the Trustees may (but will not be obliged to) recover the same from the recipient.

25.4 If for any reason there is any overpayment of benefit it will be at the Trustees' discretion as to whether any steps are taken to recover the same, subject to any requirements of the Pension schemes office.

## **26 DETERMINATION OF EMPLOYMENT**

26.1 No provision of the Scheme will in any way restrict the right of any of the Employers to end the employment of a Member.

26.2 No damages will be recoverable by such a former Member from the Scheme or the Trustees as a consequence of his employment coming to an end.

## **27 FAILURE TO CLAIM BENEFITS**

27.1 No Beneficiary will be entitled to any benefit more than six years after it has fallen due if the reason for non-payment was:-

27.1.1 his failure to claim it

27.1.2 the Trustees' lack of knowledge of his existence or whereabouts or of any fact giving him the right to it.

27.2 Subject to Rule 27.3 any such sums are to be forfeited and used for the general purposes of the Scheme.

27.3 Notwithstanding the above the Trustees may (with the consent of the Principal Employer) elect to pay to or in respect of the Beneficiary part or all of the relevant benefit.

## **28 FORFEITURE**

28.1 This Rule applies where a Beneficiary:-

28.1.1 owes a monetary debt to an Employer arising out of a fraudulent, negligent or criminal act or omission

28.1.2 is a Trustee who owes a monetary debt to the Scheme arising out of a breach of trust by him or

- 28.1.3 has caused a monetary loss to the Scheme as a result of a criminal, negligent or fraudulent act or omission
- 28.1.4 is bankrupt.
- 28.2 Where the debt is due to an Employer:-
  - 28.2.1 the relevant Employer may deliver to the Trustees a certificate stating the loss suffered as a consequence of the fraudulent, negligent or criminal act or omission
  - 28.2.2 upon receipt of the certificate the Trustees are to consult with the Actuary and determine an appropriate reduction in the Member/Beneficiary's benefits to reflect the certified loss
  - 28.2.3 the Trustees are then to deliver a copy of the certificate to the Member/Beneficiary and notify him of the proposed reduction. They may in their discretion modify the reduction in light of any representations made by the Member/Beneficiary but their ultimate decision will be binding upon him.
- 28.3 Where the debt is due to a Employer without prejudice to any other remedy it may have, the Employer will be entitled to reimbursement of the loss from the Scheme (less any tax which may be chargeable).
- 28.4 Where the debt or loss is due to the Scheme:-
  - 28.4.1 the Trustees may consult with the Actuary and may determine an appropriate reduction in benefits to reflect the debt or loss
  - 28.4.2 the Trustees will then deliver a certificate to the Beneficiary notifying him of the debt or loss and the appropriate reduction in benefits to reflect the debt or loss. They may at their discretion modify the reduction in light of any representations made by the Beneficiary but their ultimate decision will be binding upon him.
- 28.5 Notwithstanding the above the Trustees may not make any reduction or reimbursement:-
  - 28.5.1 unless the claim set out in the certificate delivered to the Beneficiary is either not disputed or the obligation has become enforceable by an order of a competent court
  - 28.5.2 in respect of any benefits transferred into the Scheme under Rule 21 (except to the extent permitted by Sections 91, 92 or 93 of the Pensions Act)
  - 28.5.3 which is more than the amount of the monetary debt or less or (if less) the value of the Beneficiary's entitlement or Member's Account under the Scheme.
  - 28.5.4 if it contravenes the preservation requirements of the Act.
- 28.6 In Rules 28.7 and 28.8 below:
  - 28.6.1 "pension" includes any benefit under the Scheme and any part of a pension and any payment by way of pension; and
  - 28.6.2 "dependant" and "member" have the same meanings as they have in section 92 (3) of the Pensions Act.
- 28.7 The rights to a pension under the Scheme shall not be absolute but shall be forfeited upon bankruptcy of the person entitled to the pension or whose right to it has accrued.

28.8 On and from the bankruptcy of such person any pension which was, or would but for the forfeiture have become, payable may, if the Trustees so determine, be paid to all or any of the following:

28.8.1 The member to or in respect of whom the pension was, or would have become, payable;

28.8.2 The spouse, widow or widower of the member;

28.8.3 Any dependant of the member; and

28.8.4 Any other person to whom, under the rules of the Scheme, the pension was or could have been paid.

28.9 Any part of the benefit not paid pursuant to Rule 28.8 is to be used for the general purposes of the Scheme.

## **SCHEDULE 2**

### **Definitions**



**"the Actuary"**

A fellow of the Institute of Actuaries or the Faculty of Actuaries, or a firm of such actuaries appointed pursuant to Clause 3.

**"Administrator"**

The Member Trustees or such other individual or corporate body as the Member Trustees may appoint to act as administrator for the purposes of the 1988 Act.

**"Announcement Letter"**

A letter from the Employer to the Member setting out his entitlement to benefits under the Scheme.

**"Approval"**

Approval of the Scheme by the Board as an exempt approved scheme under Chapter I of Part XIV of the 1988 Act.

**"Approved Investments"**

Such investments which the Member Trustees may make in respect of the Scheme, which would not prejudice Approval.

**"the Auditor"**

A person or firm permitted to act as the auditor by the Pensions Act and appointed pursuant to Clause 3.

**"AVCs"**

Additional voluntary contributions paid by a Member under Rule 5 together with any transfer value paid to the Member Trustees in respect of him which is certified by the Transferring Scheme to represent AVC's.

**"AVC Account"**

The total value of the Member's AVCs together with any investment yield or bonuses earned on them but after the deduction of investment expenses.

**"the AVC Regulations"**

Regulation 5 of The Retirement Benefits Schemes (Restriction of Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 and where the Scheme is a "leading scheme" in relation to a Member, Regulation 6 of those Regulations so far as they concern main schemes. If these Regulations are amended or replaced by any other Regulations then this Rule will have effect as if it had been amended or replaced accordingly.

**"Beneficiary"**

A person entitled or prospectively entitled to a benefit under the Scheme.

**"Board"**

The Board of Inland Revenue.

**"Cash Equivalent"**

The cash equivalent (as defined in the 1993 Act) of the benefits payable to and in respect of a Member or Deferred Pensioner under the Scheme scaled down if necessary to comply with the requirements of the Occupational Pension Schemes (Transfer Values) Regulations 1996.

**"Chairman"**

The Trustee appointed from time to time to act as chairman pursuant to Clause 5.6.

**"Child"**

A child of a Member, Deferred Pensioner or Postponed Pensioner under age eighteen or (at the discretion of the Member Trustees) over that age and currently in receipt of full-time education or vocational training. This expression includes:-

- a step-child
- a legally adopted child
- a child to whom a Member, Deferred Pensioner or Postponed Pensioner stood in loco parentis immediately prior to his death
- a child en ventre sa mere
- an illegitimate child.

### **"Children"**

Will have a corresponding meaning to "Child".

### **"Class A Member"**

This expression has the meaning set out in Schedule 3.

### **"Commencement Date"**

5 September 1997 the date upon which the Scheme was established.

### **"Control"**

Control as defined in Section 840 of the 1988 Act.

### **"Controlling Director"**

A Member who, at any time on or after 17 March 1987 and in the last ten years before the date of retirement, death or leaving Pensionable Service has, in relation to an Employer, been both within the definition of a director in section 612(1) and within paragraph (b) of section 417(5) of the 1988 Act.

### **"Custodian"**

A person or firm who has the custody of cash, securities and any other document of title to Scheme assets.

### **"Death Benefits"**

A lump sum which will become payable to the Member Trustees from an Insurance Company in respect of a Member, Deferred Pensioner, Postponed Pensioner or Pensioner on his death.

### **"Deferred Pensioner"**

A former Member who is entitled to a deferred Pension under the Scheme but who has not yet become a Pensioner or otherwise retired and taken all his Member's Account as a lump sum.

### **"Dependant"**

In respect of a Member, Deferred Pensioner or Postponed Pensioner his:-

- spouse, children and other offspring not within the definition of Children
- any person with an interest in his estate

together with:-

- any other person who (in the opinion of the Member Trustees) was financially dependent the Member, Deferred Pensioner or Postponed Pensioner at the date of his death or retirement as appropriate
- any person, body or organisation named or any expression of wish made by the deceased regarding the disposal of the benefit payable

- any trust of which a Dependant (as defined above) is a beneficiary notwithstanding that there may be other beneficiaries under such trust.

### **"Eligible Employee"**

Any permanent employee of any Employer who has been notified he is eligible by his Employer.

### **"Employers"**

The Principal Employer together with any companies, firm or persons which participate from time to time in accordance with Clause 11.

### **"Employer-Related Investment"**

- shares or other securities issued by an Employer or by any person who is connected with, or an associate of, an Employer
- land which is occupied or used by, or subject to a lease in favour of, an Employer or by any person who is connected with, or an associate of, an Employer
- property (other than land) which is used for the purposes of any business carried on by an Employer or by any person who is connected with, or an associate of, an Employer
- loans to an Employer or to any person who is connected with, or an associate of, an Employer
- any other investment prescribed as an Employer-Related Investment by Section 40 of the Pensions Act.

In this definition, "securities" means any asset, right or interest falling within paragraphs 1, 2, 4 or 5 of Schedule 1 to the Financial Services Act 1986. The meanings of "connected" and "associated" are as defined by Section 40 of the Pensions Act.

### **"Existing Provisions"**

A Trust Deed and Rules dated 5 September 1997 and made between The Loft Shop Ltd, Geoffrey George James Marling, Lee Martin Perriam, Peter Richard Stedman and NPI Trustee Services Limited.

### **"firm"**

A firm, company (including a trust corporation) or other organisation as the context may require.

### **"Fund"**

The monies, assets, property and investments which from time to time constitute the fund of the Scheme. This expression includes where appropriate any part of the Fund.

### **"Incapacity"**

Physical or mental deterioration which, in the opinion of the Member Trustees is either sufficiently serious to prevent the Member from following normal employment or seriously impairs his earning capacity.

### **"including"**

Including without limitation (the expression "include" having a similar meaning).

### **"Insurance Company"**

An insurance company as described in Section 659B of the 1988 Act.

### **"Maximum Benefit"**

The appropriate maximum prescribed by Schedule 3.

**"Member"**

A person who has been admitted to the Scheme but who has not become a Deferred Pensioner, Postponed Pensioner or Pensioner or otherwise ceased to participate in it.

**"Member's Account"**

That part of the Fund which, in respect of each Member, Deferred Pensioner or Postponed Pensioner, is determined by the Member Trustees (after taking the advice of the Actuary) as relating to that individual including any Death Benefits. Nothing in this definition is to confer on any Member, Deferred Pensioner or Postponed Pensioner any right to specific assets of the Fund which may be allotted to him on a notional basis for the purpose of determining his Member's Account only.

**"Member's Contributions"**

Compulsory contributions (if any) made by a Member to the Scheme.

**"Member's Transferred Contributions"**

A transfer value paid to the Member Trustees in respect of a Member which is certified by the transferring scheme to represent the Member's contributions in that scheme.

**"Member Trustees"**

Geoffrey George James Marling, Lee Martin Perriam, Peter Richard Stedman and any other member trustee appointed from time to time.

**"Membership"**

Participation in the Scheme as a Member.

**"Nominee"**

A person who in the opinion of the Member Trustees is financially dependent on or is financially interdependent with the relevant Member, Deferred Pensioner or Postponed Pensioner, or a Child.

**"Nominee's Pension"**

The pension payable after the death of a Pensioner to a Nominee selected by the Pensioner and approved by the Member Trustees.

**"Normal Pension Date"**

Such date between the Member's or former Member's 60th and 75th birthdays as is specified in his Announcement Letter.

**"Ordinary Annual Contribution"**

The average annual amount of the contributions paid to the Scheme by the Employers in the three accounting periods preceding the date on which the Ordinary Annual Contribution is to be ascertained. Where the Scheme has been established less than three years, the Ordinary Annual Contribution will be the total amount of contributions paid by the Employers divided by the number of complete years for which the Scheme has been established. If the Scheme has been established for less than one year, a part year will be counted as one year.

**"Pension"**

A pension payable in respect of Membership of the Scheme.

**"Pensionable Service"**

Service as a Member with any Employer before attaining Normal Pension Date together with any period added by the Member Trustees by reason of any transfer value made to the Scheme in respect of the Member.

**"Pensioneer Trustee"**

NPI Trustee Services Limited, a Trustee of the Scheme who is approved by the Board to act as such and is not connected with a Scheme Member, another Trustee or an Employer.

**"Pensioner"**

A former Member who receives a Pension under the Scheme.

**"Pensioner's Account"**

That part of the Fund which the Member Trustees determine relates to a Pensioner, following advice of the Actuary.

**"Pensions Act"**

Any reference to the Pensions Act will be to the Pensions Act 1995 and any statutory instrument made under it.

**"Personal Pension Scheme"**

A scheme approved by the Board under Section 631 of the 1988 Act.

**"Postponed Pensioner"**

A Member who has passed Normal Pension Date but is not yet in receipt of Pension.

**"Prescribed Requirements"**

These are where either: -

- a person who joined the Scheme, or who the Board has agreed to treat as if he joined the Scheme, before 1st June 1989 has elected to be treated as if he joined the Scheme after 1st June 1989; any such election may be made to the Member Trustees and must be given in writing in such form, and within such timescales prescribed by the Board, if any, or otherwise as prescribed by the Member Trustees, or
- a person is treated as being reinstated to the Scheme in the circumstances set out in the Occupational Pension Schemes (Transitional Provisions) (Amendment) Regulations 1996 having previously received bad investment advice.

**"Preservation Regulations"**

The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 as amended by the Occupational Pension Schemes (Preservation of Benefit) Amendment Regulations 1993.

**"Principal Employer"**

The Loft Shop Ltd or any company firm or person substituted for it pursuant to Clause 12.

**"Private Company"**

A company which is not officially listed on a recognised stock exchange within the meaning of Section 841 of the 1988 Act.

**"Receiving Scheme"**

A retirement benefits scheme or a Personal Pension Scheme to which a transfer is to be made pursuant to Rule 19.

**"Relative"**

A brother, sister, or other ascendant or descendant.

**"Relevant Benefits"**

Has the meaning given the term in Section 612 of the 1988 Act.

**"Residential Property"**

Property normally used, or adapted for use as one or more dwellings.

**"Rules"**

The rules of the Scheme set out in Schedule 1 as amended from time to time.

**"Scheme"**

The Loft Shop Limited Directors Pension Scheme.

**"Scheme Documents"**

The documents which from time to time regulate the Scheme.

**"Scheme Year"**

A period of twelve months ending on the 31 day of December in any year, or such other date as the Member Trustees agree.

**"Secretary"**

The person for the time being appointed to act as the secretary pursuant to Clause 5.5.

**"Spouse"**

The wife or husband of a relevant individual. In the case of polygamous marriages the spouse will be such wife or husband as the Member Trustees may decide. Where the context requires wife or husband will mean widow or widower.

**"Transferring Scheme"**

A retirement benefits scheme or a Personal Pension Scheme from which a transfer is received pursuant to Rule 21.

**"Trivial "**

Member's or former Member's service with a participating Employer do not exceed the A Beneficiary's benefits are Trivial if the aggregate of them arising in respect of a value of a pension of £260 a year or such higher amount which may be prescribed from time to time by regulations made under Section 77 of the 1993 Act and is consistent with Approval.

**"Trust Corporation"**

A trust corporation as defined in the Trustee Act 1925.

**"Trustees"**

The Member Trustees and the Pensioner Trustee from time to time. The expression "Trustee" will be construed accordingly.

**"1988 Act"**

The Income and Corporation Taxes Act 1988 and any statutory amendment, modification or re-enactment thereof.

**"the 1993 Act"**

The Pension Schemes Act 1993.

## **SCHEDULE 3**

### **Inland Revenue Definitions and Requirements**

In these rules the following expressions will have the meanings ascribed to them:-

- (1) **"Aggregate Retirement Benefit"** will mean the aggregate of
  - (i) the Member's pension under this Scheme and any Associated Scheme, and
  - (ii) the pension equivalent of the Member's Lump Sum Retirement Benefit.
- (2) **"Associated Employer"**. An employer is associated with another employer if one is controlled by the other, or both are controlled by a third party. Control has the meaning in section 840 of the 1988 Act, or in the case of a close company, section 416 of the 1988 Act.
- (3) **"Associated Scheme"** will mean any Relevant Scheme providing benefits in respect of Service.
- (4) **"Class A Member"** will mean any Member who is not a Class B or Class C Member.
- (5) **"Class B Member"** will mean any Member:-
  - (a) who, on or after 17 March 1987 and before 1 June 1989, joined the Scheme being a scheme which commenced before 14 March 1989, or
  - (b) who the Board have agreed in writing to be a Class B Member by virtue of previous membership of a Relevant Schemeand, in either case, has not opted to become a Class A Member.
- (6) **"Class C Member"** will mean any Member who joined the Scheme before 17 March 1987 or who joined subsequently and who the Board have agreed in writing to be a Class C Member by virtue of previous membership of a Relevant Scheme and, in either case, has not opted to become a Class A Member.
- (7) **"Connected Scheme"** will mean any Relevant Scheme which is connected with the Scheme in relation to the Member i.e. if
  - (a) there is a period during which the Member has been the employee of 2 Associated Employers;
  - (b) that period counts under both schemes as a period in respect of which benefits are payable; and
  - (c) the period counts under one scheme for service with one employer and under the other for service with the other employer.
- (8) **"Final Remuneration"** will mean the greater of:
  - (a) the highest remuneration upon which tax liability has been determined for any one of the 5 years preceding the Relevant Date being the aggregate of:-
    - (i) the basic pay for the year in question, and
    - (ii) the yearly average over 3 or more consecutive years ending with the expiry of the corresponding basic pay year, of any Fluctuating Emoluments provided that Fluctuating Emoluments of a year other than the basic pay year may be increased in proportion to the Index from the last day of that year up to the last day of the basic pay year. Remuneration that is received after the Relevant Date and upon which tax liability has been determined will be treated as a Fluctuating Emolument



(providing it was earned or qualified for prior to the Relevant Date). In these circumstances it may be included provided the yearly average of 3 or more consecutive years begins no later than the commencement of the basic pay year; or

- (b) the yearly average of the total emoluments from the Employer which are assessable to income tax under Case I or II of Schedule E and upon which tax liability has been determined for any 3 or more consecutive years ending not earlier than 10 years before the Relevant Date. Where such emoluments are received after the Relevant Date but are earned or qualified for prior to that date, they may be included provided that in these circumstances the yearly average of 3 or more consecutive years begins no later than the commencement of the year ending with the Relevant Date.

Provided that:-

- (i) remuneration and total emoluments do not include any amounts which arise from the acquisition or disposal of shares or any interest in shares or from a right to acquire shares (except where the shares or rights etc which give rise to such an amount liable to tax under Schedule E had been acquired before 17 March 1987) or anything in respect of which tax is chargeable by virtue of section 148;
- (ii) in relation to a Controlling Director, final remuneration will be the amount ascertained in accordance with (b) and (a) above will not apply;
- (iii) in relation to any other employee whose remuneration in any year subsequent to 5 April 1987 used for the purpose of calculating benefits has exceeded £100,000 (or such other figure as may be prescribed by the Treasury), final remuneration will not exceed the amount ascertained in accordance with (b) above and (a) above will not apply, unless the individual chooses to adopt £100,000 (or such other figure as may be prescribed by the Treasury);
- (iv) where final remuneration is computed by reference to any year other than the last complete year ending on the Relevant Date the member's remuneration or total emoluments of any year may be increased in proportion to any increase in the Index from the last day of that year up to the Relevant Date. For a Class C Member this proviso will not apply to the calculation of the maximum Lump Sum Retirement Benefit unless the member's aggregate total benefits are similarly increased beyond the maximum amount which could be paid but for this proviso and/or the first sentence of (a)(ii) above and then only to the same proportionate extent;
- (v) for Class A Members final remuneration will not exceed the Permitted Maximum;
- (vi) for the purpose of calculating the maximum Lump Sum Retirement Benefit of a Class B Member final remuneration will not in any event exceed £100,000 (or such other figure as may be prescribed by the Treasury);
- (vii) an employee who remains, or is treated as remaining, in service but by reason of Incapacity is in receipt of a much reduced remuneration i.e. under a sick pay or permanent health insurance scheme, for more than 10 years up to the Relevant Date, may calculate final remuneration under (a) or (b) above with the final remuneration calculated at the cessation of normal pay and increased in accordance with the Index;
- (viii) the total amount of any profit related pay (whether relieved from income tax or not) may be classed as pensionable remuneration and treated as a Fluctuating Emolument;
- (ix) an early retirement pension in payment from the Employer may not be included in final remuneration.

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

Where at the relevant date Final Remuneration cannot be precisely established because tax liability on all the constituent elements of Remuneration for the year or years in question has not been determined, Final Remuneration may be calculated on the appropriate basis above using those elements of Remuneration which have been finally determined for tax purposes. Immediate "on account" pension and lump sum benefits may be provided based on Final Remuneration so calculated. When tax liability on Remuneration is finally determined, and Final Remuneration re-calculated providing scope for further benefits (both pension and lump sum) these may be paid but they must not cause total benefits to exceed Inland Revenue limits calculated as at the date benefits were first taken.

Where the above applies in the case of a Class A Member and whose Lump Sum Retirement Benefit is calculated as a greater amount that will not prejudice Approval pursuant to Paragraph (2) of Part I of these Rules a subsequent additional lump sum will not be possible if Final Remuneration is not finally determined for tax purposes until after the end of the first year in which the Pension has been in payment.

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

- (9) **"Fluctuating Emoluments"** are any part of an employee's earnings which are not paid on a fixed basis and are additional to the basic wage or salary. They include overtime, commission, bonuses or benefits in kind as long as they are assessable to tax under Case I or II Schedule E and profit related pay (see proviso (viii) to definition of Final Remuneration). Directors' fees may rank as fluctuating emoluments according to the basis on which they are voted.
- (10) **"Index"** will mean the Government's Index of Retail Prices.
- (11) **"Lump Sum Retirement Benefit"** will mean the total value of all retirement benefits payable in any form other than non-commutable pension under this and any Associated Scheme.
- (12) **"Pensionable Service"** will have the meaning ascribed to it by paragraph 3 Schedule 16 Social Security Act 1973.
- (13) **"Permitted Maximum"** is to be construed as defined in section 590C(2) of the 1988 Act.
- (14) **"Relevant Date"** will mean the date of retirement, leaving Pensionable Service or death as the case may be.
- (15) **"Relevant Scheme"** will mean any other scheme approved or seeking approval under Chapter I Part XIV of the 1988 Act and in respect of a Class A member who is a Controlling Director also any retirement annuity contract or trust scheme approved under Chapter III Part XIV of any personal pension scheme as approved under Chapter IV Part XIV of the 1988 Act insofar as it provides benefits secured by contributions in respect of Service.
- (16) **"Remuneration"** in relation to any year will mean the aggregate of the total emoluments for the year in question from the Employer and which are assessable to Income Tax under Schedule E but excluding any amounts which arise from the acquisition or disposal of shares or any interest in shares or a right to acquire shares or anything in respect of which tax is chargeable by virtue of

section 148 of the 1988 Act. Provided that for a Class A Member there will be disregarded any emoluments in excess of the Permitted Maximum.

(17) **"Retained Death Benefits"** will mean any lump sum benefits payable on the Member's death from:

- (a) retirement benefits schemes approved or seeking approval under Chapter 1 Part XIV of the 1988 Act or relevant statutory schemes as defined in section 611A thereof;
- (b) funds to which section 608 of the 1988 Act applies;
- (c) retirement benefits schemes which have been accepted by the Inland Revenue as "corresponding" in respect of a claim made on behalf of the Member for the purposes of section 596(2)(b) of the 1988 Act;
- (d) retirement annuity contracts approved under Chapter III Part XIV of the 1988 Act, or
- (e) term life provisions under personal pension schemes approved under Chapter IV Part XIV of the 1988 Act,
- (f) transfer payments from overseas schemes held in a type of arrangement defined in (a) (d) or (e) above

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

If the Member is not a Controlling Director and his or her earnings in the 12 months after entry to the Scheme (in this context including any other Relevant Scheme providing benefits in respect of service with the current Employer) do not exceed one quarter of the Permitted Maximum, benefits from these sources, other than those transferred into the Scheme, shall not be classed as Retained Death Benefits.

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

## PART 1

### INLAND REVENUE LIMITS RULE

#### CLASS A MEMBERS

Notwithstanding anything to the contrary in the Scheme provisions, the benefits payable to a Class A Member or his Dependents or other beneficiaries in respect of him will not when aggregated with all benefits of a like nature provided under all Associated Schemes exceed the limits set out below:

(1) The Member's Aggregate Retirement Benefit will not exceed:-

- (a) on retirement at any time between attaining age 50 and attaining age 75, except before Normal Pension Date on grounds of Incapacity, a pension of 1/60th of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
- (b) on retirement at any time before Normal Pension Date on grounds of Incapacity a pension of the amount which could have been provided at Normal Pension Date in accordance with paragraph (1)(a) above, Final Remuneration being computed as at the actual date of retirement;

- (c) on leaving Pensionable Service before attaining age 75, a pension of 1/60th of Final Remuneration for each year of that Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed may be increased by 5% for each complete year or if greater in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the pension begins to be payable. Any further increase necessary to comply with Social Security legislation is also allowable.
  - (d) Benefits for a Class A Member are further restricted to ensure that this total retirement benefit from this scheme and from any Associated Scheme or Connected Scheme does not exceed a pension of 1/30th of the Permitted Maximum for each year of service, subject to a maximum of 20/30ths. For the purpose of this limit, service is the aggregate of Service and any period of service which gives rise to benefits under a Connected Scheme provided that no period is to be counted more than once.
  - (e) For the purpose of calculating the Aggregate Retirement Benefit or the total retirement benefit in (a) to (d) above, the pension equivalent of any Lump Sum Retirement Benefit is one twelfth of its total cash value.
- (2) The Member's Lump Sum Retirement Benefit will not exceed:-
- (a) on retirement at any time between attaining age 50 and attaining age 75, except before Normal Pension Date on grounds of Incapacity, 3/80ths of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
  - (b) on retirement at any time before Normal Pension Date on grounds of Incapacity the amount which could have been provided at Normal Pension Date in accordance with paragraph (2)(a) above; Final Remuneration being computed as at the actual date of retirement;
  - (c) on leaving Pensionable Service before attaining age 75, a lump sum of 3/80ths of Final Remuneration for each year of that Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed may be increased in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the benefit is first paid.

#### **CLASS B OR C MEMBERS**

Notwithstanding anything to the contrary in the Scheme provisions, the benefits payable to a Class B or C Member or to his Dependants or other beneficiaries in respect of him will not when aggregated with all benefits of a like nature provided under all Associated Schemes exceed the limits set out below:

- (1) The Member's Aggregate Retirement Benefit will not exceed:-
- (a) on retirement at or before Normal Pension Date, a pension of 1/60th of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Approval;
  - (b) on retirement at any time before Normal Pension Date on grounds of Incapacity a pension of the amount calculated in accordance with paragraph (1)(a) above as if the Member had remained in Service until the Normal Pension Date, Final Remuneration being computed as at the actual date of retirement;
  - (c) on retirement after Normal Pension Date, a pension of the greatest of:-
    - (i) the amount calculated in accordance with paragraph (1)(a) above on the basis that the actual date of retirement was the Member's Normal Pension Date;

- (ii) the amount which could have been provided at Normal Pension Date in accordance with paragraph (1)(a) above increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period, and
- (iii) where the Member's total Service has exceeded 40 years, the aggregate of 1/60th of Final Remuneration for each year of Service before Normal Pension Date (not exceeding 40 such years) and of a further 1/60th of Final Remuneration for each year of Service after Normal Pension Date, with an overall maximum of 45 reckonable years.

Final Remuneration being computed in respect of (i) and (iii) above as the actual date of retirement, but subject always to paragraph 4 below;

- (d) on leaving Pensionable Service before Normal Pension Date, a pension of 1/60th of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed may be increased by 5% for each complete year or if greater, in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the pension begins to be payable. Any further increase necessary to comply with Social Security legislation is also allowable.

(2) The Member's Lump Sum Retirement Benefit will not exceed:-

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

Final Remuneration being computed in respect of (i) or (iii) above as at the actual date of retirement, but subject always to paragraph (4) below;

- (d) on leaving Pensionable Service before Normal Pension Date, a lump sum of 3/80ths of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Approval. The amount computed as aforesaid may be increased in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the benefit is first paid.

(3) If a Member elects under the Rules to take any part of his benefits under this Scheme in advance of actual retirement, the limits set out in paragraphs (1) and (2) above will apply as if he had

retired at the date of the election as aforesaid, no account being taken of subsequent Service, save that the maximum amount of any uncommuted pension not commencing immediately may be increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period.

- (4) The preceding provisions of this Rule will be modified in their application to a Member who is a Controlling Director as follows:-
- (a) the amount of the maximum Aggregate Retirement Benefit in paragraph (1) and of the maximum Lump Sum Retirement Benefit in paragraph (2) will be reduced, where necessary for Approval, to take account of any corresponding benefits under retirement annuity contracts or trust schemes approved under Chapter III Part XIV of the 1988 Act or under personal pension schemes approved under Chapter IV Part XIV of the 1988 Act;
  - (b) where retirement takes place after Normal Pension Date but not later than the Member's 70th birthday, paragraph (1)(c)(ii) and (1)(c)(iii) and paragraph (2)(c)(ii) and (2)(c)(iii) will not apply, and if retirement is later than the attainment of that age, the said paragraphs will apply as if the Member's 70th birthday had been specified in the Rules as his Normal Pension Date, so as not to treat as Service after Normal Pension Date any Service before the Member reaches the age of 70;
  - (c) where paragraph (3) applies to him, the rate of the actuarial increase referred to therein in relation to any period of deferment prior to his attaining the age of 70, will not exceed the percentage increase in the Index during that period.

## **PART 2**

### **OTHER CONDITIONS RELATING TO CLASS A MEMBERS**

#### **A MEMBER'S CONTRIBUTIONS**

A Member is required to contribute to the Scheme (if at all) in accordance with the Rules. A Member may make voluntary contributions to secure additional benefits for himself and/or his Dependants. Any retirement benefits so secured must be in the form of non-commutable pension except to the extent to which the provision of the Scheme allow commutation of trivial pensions or on the grounds of serious ill health.

The contributions paid to the Scheme by a Member in a year of assessment will not exceed either:

- (i) when aggregated with the Member's contributions to any other exempt approved schemes, 15 per cent of the Member's Remuneration, or
- (ii) when aggregated with the Member's contributions to any schemes which are Associated or Connected Schemes, 15 per cent of the Permitted Maximum.

#### **B CONTINUED LIFE COVER**

Any provision in the rules to provide a lump sum benefit on the death of a Member occurring after retirement on pension (other than a payment under a guarantee of pension provision) will be restricted in respect of a Member who joined the Scheme on or after 1 October 1991 to exclude any provision other than on death occurring before the Normal Pension Date and after retirement on grounds of Incapacity. The amount of the benefit will not exceed the amount payable had the Member died immediately before retirement increased in proportion to any increase in the Index between the date of the Member's retirement and the date of death.

## **C PAYMENT OF RETIREMENT BENEFITS**

- 1 The payment of a Member's retirement benefits will not commence earlier than the Member attaining age 50, except on retirement on grounds of incapacity, nor later than attaining age 75.
- 2 No part of the Member's retirement benefits is to be paid in advance of actual retirement except as necessary to comply with paragraph C1 above or to the extent necessary to comply with the requirements of the Pension Schemes Act 1993.

## **PART 3**

### **OTHER CONDITIONS RELATING TO CLASS B OR C MEMBERS**

#### **A MEMBER'S CONTRIBUTIONS**

A Member is required to contribute to the Scheme (if at all) in accordance with the Rules. A Member may make voluntary contributions not exceeding, when aggregated with his contributions to any Associated Scheme, in a year of assessment 15% of his Remuneration for that year, to secure additional benefits. Where such voluntary contributions commence on or after 8 April 1987 any retirement benefits so secured must be in the form of non-commutable pension for himself and/or his Dependants, except to the extent to which the provisions of the Scheme allow commutation of trivial pensions or on the grounds of serious ill health.

#### **B TRANSFERS**

- 1 Any retirement benefits arising by virtue of the receipt by the Scheme of a transfer value (other than from another scheme providing benefits in respect of Service) will not be capable of commutation unless and then only to the extent that a certificate has been obtained from the administrator of the transferring scheme showing the maximum lump sum payable from the transfer value. The amount so certified may be increased in proportion to any increase in the Index since the date the transfer payment was received.
- 2 When, on or after a transfer having been made to another occupational pension scheme, the administrator of that scheme requests such a certificate as is referred to in paragraph B1 above, the Administrator will calculate as at the date of the transfer the maximum lump sum payable on retirement from the transfer value and certify that amount to the receiving scheme.

## **PART 4**

### **OTHER CONDITIONS RELATING TO ALL MEMBERS**

#### **1 LUMP SUM DEATH BENEFIT**

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

- (a) £5,000, and
- (b) 4 times the greater of:
  - (i) the annual rate (subject, for a Class A Member, to the Permitted Maximum) of the Member's basic salary or wages at the date of death or leaving Pensionable Service together with the yearly average of Fluctuating Emoluments received in the 3 years (or the whole period of Service if less) up to the date of death or leaving Pensionable Service, and

- (ii) the Member's total emoluments (subject, for a Class A Member, to the Permitted Maximum) of any selected period of 12 months ending not earlier than 36 months before the date of death.
- (iii) Final Remuneration disregarding provisos (i) (ii) and (iii) of that definition less Retained Death Benefits.

## **2 DEPENDANTS' PENSIONS**

Any pension for a Dependant, when aggregated with the pensions, other than those provided by surrender or allocation of the Member's own pension, payable to that Dependant under all Associated Schemes, will not exceed an amount equal to two thirds of the maximum Aggregate Retirement Benefit payable to the Member immediately before death under Part 1 above. Where the death of the Member occurs whilst in Service before the Normal Pension Date the maximum is that appropriate had the Member retired on grounds of Incapacity on the date of death entitled to no retained benefits from previous employment's.

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

## **3 INCREASES OF PENSIONS IN PAYMENT**

The maximum amount of a pension ascertained in accordance with Part 1 or Part 4 of this Rule less any pension which has been commuted for a lump sum or the pension equivalent of any benefits in lump sum form and any pension surrendered to provide a Dependant's pension may be increased by 3% for each complete year or if greater, in proportion to any increase in the Index since the pension commenced.

## **4 SURPLUS AVCs**

Where the application of the limits in this Rule requires the quantum of the Aggregate Retirement Benefit to be restricted and the Member has paid additional voluntary contributions to supplement scheme benefits, that restriction will first be effected on those supplementary benefits so as to permit the repayment of the surplus additional voluntary contributions subject to section 599A of the 1988 Act.

The administrator of the scheme will comply with the requirements of Regulation 5 of The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 [SI 1993 No 3016] and where the scheme is the "leading scheme" in relation to a member, with the requirements of Regulation 6 of those Regulations so far as they concern main schemes. If these Regulations are amended or replaced by any other Regulations then this Rule will have effect as if it had been amended or replaced accordingly.

## **5 TRANSFERS**

- (a) The benefits arising on retirement from a transfer value will not be capable of commutation nor will they be paid in lump sum form if the transfer is accompanied by a certificate from the administrator of the transferring scheme to the effect that the transfer value is not to be used to provide benefits in lump sum form.
- (b) When making a transfer to an approved personal pension scheme the Administrator will provide a certificate of the maximum lump sum payable on retirement from the transfer value if the transferring member:
  - (a) was aged 45 or more at the time that the transfer payment was made, or



- (b) has at any time within the 10 years preceding the date on which the right to the cash equivalent being transferred arose, been, in respect of any employment to which the transfer payment or any part of it relates, either
  - (i) a Controlling Director, or
  - (ii) in receipt of annual remuneration in excess of £60,000 or, if greater, the allowable maximum (i.e. the equivalent for personal pension schemes of the Permitted Maximum) for the year of assessment in which the date of transfer falls, or
- (c) is entitled to benefits included in the transfer payment which arise from an occupational pension scheme under which the normal retirement age is 45 or less.

## PART 5

### SMALL SELF-ADMINISTERED SCHEMES

Notwithstanding anything to the contrary in the Scheme provisions the following rules [1 to 9] shall have full effect except that they may not be construed as conferring powers on the Trustees which they do not otherwise have by virtue of the Trust Deed and Rules.

1. In these rules (Part 5 of Schedule 3) the following expressions shall have the meanings ascribed to them:
  - (a) **"Business"** includes
    - (i) a trade or profession, or
    - (ii) any activity other than investment carried on by a body of persons, whether corporate or unincorporate, or
    - (iii) any activity carried on by a holding company for a trading group.
  - (b) **"Close Company"** has the meaning given by sections 414 and 415 of the 1988 Act.
  - (c) **"Company"** means any body corporate or unincorporated association, but does not include a partnership.
  - (d) **"Control"** in relation to a body corporate (other than a Close Company) or partnership shall be construed in accordance with section 840 of the 1988 Act and in relation to an unincorporated association that section shall be applied as it applies to a body corporate.  
  
In relation to a Close Company "Control" shall be construed in accordance with section 416 of the 1988 Act.
  - (e) **"Ordinary Annual Contributions"** means for the purpose of Rule 2 the smaller of:
    - (i) the amount found-
      - (A) where the scheme has been established for three years or more at the time of any borrowing, by dividing the amount of contributions paid by employers in the period of three years which ended at the end of the previous accounting period of the scheme by three, or

- (B) where the scheme has been established for less than a three years at the time of any borrowing, by dividing the amount of the contributions paid by employers in the period since the scheme was established ending at the time of that borrowing by the number of years falling within that period (a part of a year being counted as one year), and
  - (ii) the amount of the annual contribution which, within the period of 3 years immediately preceding the date of the borrowing, an Actuary has advised in writing would be necessary to secure the benefits payable under the Scheme.
- (f) **"Pensioneer Trustee"** means a Trustee of the Scheme who:
  - (i) is approved by the Board of Inland Revenue to act as
  - (ii) is not connected with a Scheme Member, another Trustee or an Employer.
- (g) **"Private Company"** means a company which is not officially listed on a recognised stock exchange within the meaning of section 841 of the 1988 Act.
- (h) **"Relative"** means a brother, sister, ancestor or lineal descendant.
- (i) **"Residential Property"** means property normally used, or adapted for use as one or more dwellings.
- (j) **"Scheme Member"** means a Member of the Scheme to whom benefit is currently accruing by virtue of service as an Employee.

2. For the purpose of these rules any question of whether a person is connected with another shall be determined as follows:

- (a) a person is connected with an individual if that person is the individual's spouse or is a Relative or the spouse of a Relative of the individual or of the individual's spouse;
- (b) a Scheme Member is connected with an Employer if:
  - (i) the Employer is a partnership and the Scheme Member is connected with a partner, or
  - (ii) the Employer is a Company and the Scheme Member or any person connected with him or her is, or has been during the last 10 years, a Controlling Director of the Company;
- (c) a Company is connected with another Company if:
  - (i) the same person has Control of both, or
  - (ii) a person has Control of one and persons connected with that person have Control of the other, or
  - (iii) a person has Control of one and that person and persons connected with that person have Control over the other;

- (d) a Company is connected with another person if that person has Control of it or if that person and a person or persons connected with him or her together have Control of it;
  - (e) any two or more persons acting together to secure or exercise Control of a Company shall be treated in relation to that Company as connected one with another and with any person acting on the directions of any of them to secure or exercise Control of the Company.
3. For the purpose of these rules a Company is associated with an Employer if (directly or indirectly) the Employer Controls that company or that company Controls the Employer or if both are Controlled by a third person.
4. For the purpose of these rules, a Member of the Scheme includes:
- (a) a Scheme Member,
  - (b) a person in receipt of a pension from the Scheme, or
  - (c) a person who has been a Scheme Member.

## 2 PROVISIONS AS TO BORROWING

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

- (a) three times the Ordinary Annual Contribution, and
- (b) three times the annual amount of contributions paid or payable as a condition of membership by Scheme Members in the year of assessment ending immediately before the borrowing takes place, and
- (c) the amount found by the formula -

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

where -

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

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

## 3 PROVISIONS AS TO INVESTMENT

The Trustees' powers of investment shall be restricted to preclude investment either directly or indirectly in:

- (a) personal chattels other than choses in action
- (b) Residential Property other than that which is, or is to be, occupied:

- (i) by an employee who is not connected with his or her Employer and who is required as a condition of employment to occupy that property, or
- (ii) by a person other than a Scheme Member or a person connected with a Scheme Member where that person also occupies connected business premises which are also held by the Trustees as an investment of the Scheme; or
- (c) Stock or shares in a Private Company which:
  - (i) carry more than thirty per cent of the voting power in the Company, or
  - (ii) entitle the holder to more than thirty per cent of any dividends declared by the Company in respect of shares of the class held.

For the purposes of this rule the Trustees are not regarded as

- (A) holding a Residential Property where they hold as an investment units in a unit trust scheme:
  - (i) which is an authorised unit trust scheme within the meaning of section 468(6) of the 1988 Act, or
  - (ii) an exempt unit trust within the meaning of section 96 of the Capital Gains Tax Act 1979, and
  - (iii) that unit trust scheme holds Residential Property as an investment.
- (B) indirectly holding as an investment Residential Property other than specified in paragraph (b) where -
  - (i) they hold as an investment subject to the trusts of the Scheme a right which confers entitlement to receive payment of any rent charge, ground annual, feu duty or other annual payment reserved in respect of, or charged on or issuing out of, that property, and
  - (ii) the property is not occupied by a scheme member or a person connected with him

4 The Trustees in that capacity shall not directly or indirectly lend money:

- (a) to a Member of the Scheme or to a person who is connected with a Member of the Scheme other than an Employer or any Company associated with an Employer; or
- (b) to an Employer or a Company associated with an Employer unless the loan is:
  - (i) utilised for the purpose of the borrower's Business, and
  - (ii) for a fixed term, and
  - (iii) at a commercial rate of interest, and
  - (iv) evidenced by an agreement in writing which contains all the conditions on which it is made and, in particular, the provisions specified in paragraph (c) below;
- (c) the provisions specified in this paragraph are that the lending shall be repaid immediately if:

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

5 At the time any money is lent, or any shares in the Employer or any company associated with an Employer are acquired, the aggregate of:

- (a) the amount outstanding of any lending to an Employer and/or a Company associated with an Employer made in accordance with Rule (4) (b) and (c) above, and
- (b) the market value of stock and shares in an Employer and/or a Company associated with an Employer held by the Trustees in that capacity

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

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

where -

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

F is the aggregate of any sums borrowed to purchase those assets which are outstanding at that time, and any other liabilities incurred by the trustees which are outstanding at that time, other than liabilities to pay benefits under the Scheme - and shall not, where that time is during the period of two years from the date in which the Scheme was established, exceed the amount found of the formula -

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

where -

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

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

## **6 PROVISIONS AS TO TRANSACTIONS WITH MEMBERS OF THE SCHEME**

The Trustees in that capacity shall not directly or indirectly purchase, sell or lease any investment or asset from or to a Member of the Scheme or a person (other than an Employer or a company associated with an Employer) connected with a Member. A purchase will not be construed as being an indirect purchase from a Member of the Scheme or a connected person if at the time of purchase 3 or more years have elapsed since the investment or asset was owned by the Member or connected person. A sale will not be construed as an indirect sale to a Member of the Scheme or a connected person if the purchase by the Member or connected person takes place 3 years or more after the sale by the Trustees.

## **7 PROVISIONS AS TO TRANSACTIONS WITH EMPLOYERS AND ASSOCIATED COMPANIES**

The Trustees in that capacity shall not directly or indirectly purchase, sell or lease any investment or asset from or to an Employer or a Company associated with an Employer except in accordance with independent professional advice obtained in writing.

## **8 PROVISIONS AS TO PENSIONER TRUSTEES**

One of the Trustees shall be a Pensioner Trustee and the appointment of that trustee and his obligation and entitlement to act as Pensioner Trustee, shall be incapable of termination at any time except:

- (a) by the death of the trustee,
- (b) by an order of the court,
- (c) by virtue of section 3, 4 or 29 of the Pensions Act 1995 or Article 3, 4 or 29 of the Pensions (Northern Ireland) Order 1995 (prohibition, suspension or disqualification).
- (d) by withdrawal by the Board of Inland Revenue of their approval of the trustee to act as a Pensioner Trustee, or
- (e) where termination occurs by virtue of the trustee having committed a fraudulent breach of trust in relation to the Scheme
- (f) where another trustee is appointed to act as Pensioner Trustee in place of the trustee, and the appointment of the other trustee takes effect at the same time as the termination.

The appointment of a successor to the former Pensioner Trustee shall except where (f) above applies, be made no more than 30 days after the termination.

## **9 PROVISION OF INFORMATION TO INLAND REVENUE**

- (1) Within 90 days of any transaction by the Trustees such as is specified in paragraph (2) below the Administrator will furnish the Board of Inland Revenue with such information and documents as the Board requires.
- (2) The transactions specified are:
  - (a) the acquisition or disposal of land (including buildings or other structures);

- (b) the lending of money to an Employer or a Company associated with an Employer;
- (c) the acquisition or disposal of shares in an Employer or a Company associated with an Employer;
- (d) the acquisition or disposal of shares in a Private Company;
- (e) the borrowing of money; or
- (f) the purchase, sale or lease from or to an Employer or a Company associated with an Employer of any investment or asset.