

DATED 21 March 2012

MAERSK OIL NORTH SEA UK LIMITED  
PENSION SCHEME

DEED OF AMENDMENT  
ADOPTING CONSOLIDATED  
RULES

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THIS DEED is made on 21 March

2012

**BETWEEN:**

- (1) **MAERSK OIL NORTH SEA UK LIMITED** (Company Registration No.3682299) whose registered office is at Maersk House, Braham Street, London, E1 8EP ("**the Principal Company**"); and
- (2) **KEVIN MANSER, NICOLA MacLEOD, DAVID SINCLAIR, NICOLA McINTOSH** all c/o Maersk Oil North Sea UK Limited, Crawpeel Road, Altens, Aberdeen AB12 3LG and **POUL MOGENSEN, STEFAN DIRK BUCH** both c/o Maersk Olie OG Gas AS, 50 Esplandaden, DK-1263 Copenhagen K55, Denmark ("**the Trustees**")

**INTRODUCTION:**

- (A) By a trust deed dated 24 May 1990 the Maersk Oil North Sea UK Limited Pension Scheme (formerly the Oryx UK Energy Company Pension Scheme and then the Kerr-McGee North Sea (U.K.) Limited Pension Scheme) ("**the Scheme**") was established to provide pensions and other retirement and death benefits for and in respect of employees and former employees of the Principal Company and of any other employers associated with the Principal Company as shall become eligible to participate in the Scheme.
- (B) The Scheme is currently governed by a trust deed and rules scheduled to a deed of amendment and consolidation dated 8 September 2000 as amended to date ("**the Trust Deed and Rules**").
- (C) The current trustees of the Scheme are the Trustees.
- (D) The Principal Company is the "Principal Company" of the Scheme as defined in the Trust Deed and Rules.
- (E) By Clause B.3 of the Trust Deed and Rules the Principal Company may by deed at any time amend, modify, add to or replace all or any of the trusts, powers or provisions of the Trust Deed and Rules subject to the restrictions contained in Clause B.3 (which are not infringed by the amendments set out in this Deed).

- (F) The Scheme actuary has provided the confirmation required by regulation 42 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 and the certificate is attached to this Deed.
- (G) Defined terms shall, unless defined in this Deed, have the meaning given to them in the Rules.

#### OPERATIVE PROVISIONS:

#### NOW THIS DEED WITNESSES THAT -

1. Pursuant to the power set out in (E) above (and all other powers enabling it to do so) the Principal Company alters the trusts, powers and provisions of the Scheme with effect on and from 5 April 2011 ("**the Effective Date**") by replacing the Trust Deed and Rules with the rules set out in Schedule 1 to this Deed ("**the New Rules**").
2. The New Rules shall constitute the governing provisions of the Scheme, except as regards members who left Pensionable Service, retired or died before the Effective Date for and in respect of whom the earlier corresponding provisions of the Scheme concerning the calculation of, eligibility for and conditions for payment of any benefit shall apply, unless the Trustees and Principal Company agree otherwise.
3. The replacement of the Trust Deed and Rules by the New Rules will not operate so as to increase the amount of the benefits payable to or in respect of a person who is at the date of the New Rules a beneficiary under the Scheme unless the Principal Company, with the consent of the Trustees, determines otherwise. Any provisions of this Deed which are inconsistent with this intention are void to the extent of such inconsistency.
4. This Deed shall not operate so as to invalidate or affect any act or the exercise of any power, discretion or right before the Effective Date by any of the Employers or the Trustees.
5. The Trustees and the Principal Employer are of the opinion that the changes made by this Deed are not "regulated modifications" under section 67A of the Pensions Act 1995 and, in particular, the changes made by this Deed are not changes which would or might adversely affect the subsisting rights of members or their survivors. In the

event that there would be any such "regulated modification" in relation to any member, but for this clause, then the change having such effect shall not apply to that member to the extent that it would otherwise constitute a "regulated modification".

6. The Trustees shall have the power (subject to the consent of the Principal Company) to determine (by resolution or otherwise) any doubt, inconsistency, anomaly or any other matter arising in connection with anything contained in this Deed.
7. Each clause and sub-clause of this Deed is separate and if and to the extent that any such clause or sub-clause is not permitted under the law it shall not affect the other clauses and sub-clauses set out in the Deed.
8. This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
9. This Deed is governed by, and shall be interpreted according to, the laws of England and Wales.

**IN WITNESS** of which the parties to this Deed have executed it on the date first mentioned above.

**EXECUTED as a DEED** )  
on behalf of )  
**MAERSK OIL NORTH SEA UK LIMITED** )  
in the presence of: )

Director

Director / ~~Secretary~~

**EXECUTED as a DEED** )  
by **KEVIN MANSER** )  
in the presence of: )

.....  
Signature of Witness

.....  
Full Name of Witness

.....  
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.....  
Address of Witness

**EXECUTED as a DEED** )  
by **NICOLA MacLEOD** )  
in the presence of: )

.....  
Signature of Witness

.....  
Full Name of Witness

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Address of Witness

**EXECUTED as a DEED** )  
by **DAVID SINCLAIR** )  
in the presence of: )

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Signature of Witness

.....  
Full Name of Witness

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Address of Witness

**EXECUTED as a DEED** )  
by **NICOLA McINTOSH** )  
in the presence of: )

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Signature of Witness

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Full Name of Witness

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Address of Witness

**EXECUTED as a DEED** )  
by **POUL MOGENSEN** )  
in the presence of: )

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Signature of Witness

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Full Name of Witness

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Address of Witness

**EXECUTED as a DEED** )  
by **STEFAN DIRK BUCH** )  
in the presence of: )

.....  
Signature of Witness

.....  
Full Name of Witness

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.....  
.....  
Address of Witness

**SCHEDULE 1**

**THE RULES OF THE  
MAERSK OIL NORTH SEA UK LIMITED PENSION SCHEME**



**THE RULES  
OF THE  
MAERSK OIL NORTH SEA UK LIMITED PENSION SCHEME**

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## SECTION 1

## INTERPRETATION, GOVERNING LAW AND DEFINITIONS

1.1 *INTERPRETATION*

1.1.1 In the interpretation of the Rules, unless the context requires otherwise -

- (a) the singular includes the plural and vice versa;
- (b) references to legislation enacted in the United Kingdom, but which does not extend to Northern Ireland, include any corresponding legislation in force in Northern Ireland;
- (c) references to any legislation or any provision of it include references to any subordinate legislation made under it; and
- (d) references to any legislation or any provision of it include references to -
  - (i) any previous legislation or provision relating to the same subject-matter for the time being in force, or
  - (ii) to any modification or re-enactment of it for the time being in force.

References to any subordinate legislation or any provision are to be similarly construed.

1.1.2 The headings to Rules and Sections and summaries of Sections are not to affect their construction or interpretation.

1.2 *GOVERNING LAW*

The Rules are to be construed in accordance with English law. The Scheme and its administration are governed by English law.

1.3 *DEFINITIONS*

In the Rules, unless the context requires otherwise -

**"Absence"** means absence from work whilst still in Service, except on normal holiday leave or Family Leave. **"Absent"** has a corresponding meaning.

**"Actuary"** means the actuary for the time being appointed under Rule 13.1

**"Adoption Leave"** means absence authorised by or pursuant to the terms of Chapter IA of Part VIII of the Employment Rights Act 1996 and any extension of those terms allowed by the Employer.

**"Appendix"** means an appendix (including any alteration to it for the time being in force) to the Rules.

**"Approval"** means, in relation to the Scheme, as an exempt approved scheme for the purposes of Chapter I of Part XIV of the Income & Corporation Taxes Act 1988.

**"Associated Employer"** means any body corporate which is for the time being deemed to be a subsidiary or holding company of the Principal Company or a subsidiary of any such holding company under section 1159 of the Companies Act 2006.

**"AVCs"** means a Member's additional voluntary contributions paid under Rule 3.3. (and **"AVC Provisions"** has the meaning given in Rule 3.3).

**"Basic Salary"** means, in respect of a Member at any time, the annual rate of basic salary (excluding fluctuating emoluments) at that time but so that, with the consent of the Employer, any reduction in salary due to the Member's ill-health may be ignored and the Member's salary shall be increased by 3% per annum or such greater amount as the Employer may determine.

If for any period the Member participates in such salary sacrifice arrangements as the Principal Company designates from time to time, the annual rate of basic salary of such Member for that period shall be such amount as shall (for the time being and from time to time) be notified by the Principal Company to the Trustees as that which it would have been but for the Member's participation in such salary sacrifice arrangements.

**"Beneficiary"** means any person entitled or prospectively entitled to any immediate, deferred, contingent or reversionary benefit under the Scheme.

**"Civil Partner"** means the person who is in a registered civil partnership with the Member under the Civil Partnership Act 2004 or who is treated as being in one under that Act.

**"Closure Date"** means the end of 5 April 2011.

**"Conoco Member"** means a Member who was a member of the Conoco Plan and whose accrued rights under the Conoco Plan were transferred to the Scheme and in respect of whom special benefits apply in accordance with Appendix 1 (Conoco Members).

**"Conoco Plan"** means the Conoco Pension Plan (Staff and Hourly Paid) established by an interim trust deed dated 1 February 1961.

**"Conoco Service"** means, in respect of a Conoco Member, the service which was pensionable under the Conoco Plan.

**"DC Plan"** means The Maersk Pension Scheme.

**"Deferred Pensioner"** means a Member who has left Service (or has opted-out of the Scheme or is treated as having left Service under the Rules) and is entitled to a pension, not yet in payment, under the Scheme.

**"Dependant"** means, in relation to a Member, the spouse, widow, widower, Civil Partner or Dependent Child of the Member and any natural person (including a child whether or not a Dependent Child) who in the opinion of the Principal Company is (or was at the date of the Member's death) wholly or partially financially dependent on the Member or interdependent with the Member.

**"Dependent Child"** means, in relation to a Member, a person who is

- (a) a child or adopted child of the Member but excluding an illegitimate child of the Member unless the Principal Company in its absolute discretion decides otherwise or any other person who, in the opinion of the Principal Company, was at the date of the Member's death living as a child of the Member's family; and
- (b) who in each case is under the age of 18 or is still in full time education or full time vocational training and is under the age of 22;

**"Disclosure Requirements"** means the requirements as to disclosure of information about the Scheme and the form of that information contained in Section 113 of the PSA 1993 and Section 41 of the PA 1995 and the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 and section 251 of the FA 2004.

**"Earnings Cap"** means (unless the Principal Company and the Trustees otherwise determine in an individual case, for a category or categories of Members or generally) –

- (a) for tax years (being a period beginning on 6 April and ending on the following 5 April) up to and including the tax year 2005/2006, will have the meaning given in section 590C(2) of the Taxes Act over that period; and
- (b) for tax years after that, will mean the figure which would have been arrived at if section 590C(2) of the Taxes Act had remained in force on or after 6 April 2006, calculated as set out below.

The figure for the permitted maximum for the tax year 2005/2006 is £105,600. In each subsequent tax year:

- (i) if the Index (or such replacement index as the Principal Company and the Trustees shall jointly specify) for the month of September before the tax year in question is higher than it was for the previous September, the permitted maximum for that tax year shall be an amount arrived at by:
  - (A) increasing the figure for the previous tax year by the same percentage as the percentage increase in the Index; and
  - (B) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple;
- (ii) if the Index for the month of September preceding the tax year in question is not higher than it was for the previous September, the figure for that tax year shall be the same as the figure for the previous tax year.

**"Employee"** means an employee or director in Service who is chargeable to United Kingdom income tax on his Basic Salary from the Employer.

**"Employee Deferred Member"** means a Member, other than a NRD Member, who was a Pensionable Member on the Closure Date and remains in Service.

**"Employers"** means the Principal Company and the other employers which have been admitted to participation in the Scheme pursuant to Rule 14.1 (or similar provisions previously applicable to the Scheme) and, in relation to an individual in an

employment, the Employer shall be that one of the Employers which employs him or her in that employment or which employed him at the relevant time;

"FA 2004" means the Finance Act 2004.

"Family Leave" has the meaning given in Rule 6.4.

"Fund" means the assets from time to time held by the Trustees on the trusts of the Scheme.

"Full-time Contractual Hours" means 31 hours per week or such number of hours greater than 31 as the Principal Company may from time to time decide are full-time contractual hours in respect of any Pensionable Member.

"GMP" means "guaranteed minimum pension" as defined in section 8(2) of the PSA 1993.

"GMP Age" means 65 in the case of a man, and 60 in the case of a woman.

"Government" means the government of the United Kingdom.

"HMRC" means the Board of HM Revenue and Customs.

"Increase Date" means 1 April

"Index" means the Government index of retail prices for all items, or such other published index which is accepted by HMRC for this purpose.

"Insurance Company" means one of the following -

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (or any similar previous enactment) to carry on long term business;
- (b) a friendly society carrying on long term business; or
- (c) an EEA firm as defined in section 275 of FA 2004.

"Kerr-McGee Oil Member" means a Member who was a member of the Kerr-McGee Oil Scheme in respect of whom assets and liabilities were transferred from the Kerr-McGee Oil Scheme to the Scheme at midnight between 5 April and 6 April 1999 in respect of whom special benefits apply for service accrued (or deemed to have accrued) under the Kerr-McGee Oil Scheme.

"Kerr-McGee Oil Scheme" means the Kerr-McGee Oil (UK) plc Pension Scheme governed by a trust deed dated 25 April 1995, as amended by any deeds of amendment dated prior to 6 April 1999.

"Kerr-McGee Oil Service" means, in respect of a Kerr-McGee Oil Member or a former member of the Kerr-McGee Oil Scheme in respect of whom assets and liabilities were transferred to the Scheme, the last or only period of continuous service with an employer who participated in the Kerr-McGee Oil Scheme from the date of joining that scheme up to the date of actual retirement or leaving that scheme (including on the transfer from that scheme to the Scheme) as the case may be plus:



- (a) in the case of a Kerr-McGee Oil Member who joined the Kerr-McGee Oil Scheme at 1 April 1998, any such service before that date which would have been Kerr-McGee Oil Service if the Kerr-McGee Oil Scheme had then been in effect; and
- (b) any further period of service which may have been credited to the Kerr-McGee Oil Member under the Kerr-McGee Oil Scheme.

**"Life Member"** means a person admitted to membership of the Scheme who is entitled to lump sum death benefits only until the earliest of the effective date of any notice given under Rule 2.3, the date on which he or she leaves Service and the Closure Date.

**"Lifetime Allowance"** has the meaning given under section 218 of the Finance Act 2004. For the avoidance of doubt the Lifetime Allowance shall take account of the Lifetime Allowance Enhancement Factor which operates in respect of the Member.

**"Lifetime Allowance Charge"** has the meaning given under section 214 of the FA 2004.

**"Lifetime Allowance Enhancement Factor"** means any of the factors the operation of which is provided for in the provisions listed in section 218(5) of the Finance Act 2004.

**"Maternity Leave"** means absence authorised by or pursuant to the terms of Chapter I of Part VIII of the Employment Rights Act 1996 and any extension of those terms allowed by the Employer.

**"Member"** means a person who has been admitted to membership of the Scheme and remains entitled or prospectively entitled to benefits from the Scheme by virtue of that membership. Unless the context otherwise requires, reference to a Member includes reference to a Deferred Pensioner, Employee Deferred Member, NRD Member or Pensioner. **"Membership"** has a corresponding meaning.

**"NRD Member"** means a Pensionable Member who on the Closure Date was within 6 months of their Normal Retirement Date and has been notified to the Trustees as such by the Company. A NRD Member will remain in Pensionable Service as a Pensionable Member until the earliest of the effective date of any notice given under Rule 2.3 or Rule 4.4, the date of which he or she leaves Service and the date on which he or she reaches Normal Retirement Date.

**"Normal Retirement Date"** means in respect of a Kerr-McGee Oil Member, the last day in the month of the Kerr-McGee Oil Member's 65<sup>th</sup> birthday and in respect of all other Members the last day in the month of the Member's 62<sup>nd</sup> birthday, unless the date of the Member's birthday would provide a greater pension than would otherwise have been the case.

**"Ordinary Family Leave"** means ordinary maternity leave, ordinary adoption leave and paternity leave under sections 71, 75A and 80A and 80B of the Employment Rights Act 1996 (respectively).

**"Ordinary Maternity Leave"** means ordinary maternity leave under section 71 of the Employment Rights Act 1996.

**"PA 1995"** means the Pensions Act 1995.

"PA 2004" means the Pensions Act 2004.

"**Parental Leave**" means absence authorised by or pursuant to the terms of Chapter II of Part VIII of the Employment Rights Act 1996 and any extension of those terms allowed by the Employer.

"**Paternity Leave**" means absence authorised by or pursuant to the terms of Chapter III of Part VIII of the Employment Rights Act 1996 and any extension of those terms allowed by the Employer.

"**Part-time Contractual Hours**" means the normal hours of employment per week under the contract of employment of a Pensionable Member in Part-time Employment.

"**Part-time Employment**" means any period of Service during which the normal hours of employment under the contract of employment of the Member are less than 31 hours per week.

"**Pension Increase Year**" means the twelve months ending on 31 December.

"**Pensionable Member**" means a person admitted to membership of the Scheme under Rule 2.1 or Rule 6.2 (or any corresponding previous provision of the Scheme) including, where the context requires, a Conoco Member or a Kerr-McGee Oil Member until the effective date of any notice given under Rule 2.3 or Rule 4.4 or the date on which he or she leaves Service, whichever is the earlier. Provided that, notwithstanding the foregoing and unless special terms apply under Rule 6.2, all Pensionable Members immediately prior to the Closure Date, other than NRD Members, ceased to be in Pensionable Service on the Closure Date.

"**Pensionable Salary**" means,

in respect of a Member at any time, the highest figure produced from averaging any 365 consecutive days' Basic Salary in the preceding five years; Provided that in cases of Part-Time Employment, Family Leave, other Absence or overseas Service, Rules 6.3, 6.4, 6.5 or 6.6 may modify this definition.

"**Pensionable Service**" means the last or only period of Service as a Pensionable Member with an Employer rounded up, in the case of an Employee Deferred Member, to the nearest complete month.

"**Pensioner**" means a person being paid a pension under the Scheme by virtue of his or her own membership of the Scheme.

"**Personal Pension Scheme**" has the meaning given in section 1 of the PSA 1993.

"**Prescribed Transfer Credits**" has the meaning given in regulation 3 of The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy, etc) Regulations 1997.

"**Preservation Requirements**" has the meaning given in section 69 of the PSA 1993.

"**Principal Company**" means Maersk Oil North Sea UK Limited (Company Registration No.3682299) or the body which is substituted for it in accordance with Rule 14.7.

**"Protected Person"** has the meaning given in Rule 10.1

**"PSA 1993"** means the Pension Schemes Act 1993.

**"Qualifying Overseas Scheme"** means a "recognised overseas pension scheme" as defined in section 150(8) of the Finance Act 2004.

**"Qualifying Service"** means "pensionable service" as defined for the purpose of the Preservation Requirements and any period which, following a transfer-in, is "linked qualifying service" under section 179 of the PSA 1993. Rule 6.8 sets out how Qualifying Service is calculated if there is a break in Pensionable Service.

**"Receiving Scheme"** means another Registered Scheme or a Qualifying Overseas Scheme.

**"Recognised Transfer"** has the meaning given by section 169 of the FA 2004.

**"Registered Scheme"** has the meaning given by section 150(2) of the FA 2004.

**"Rules"** means these Rules (including the Appendices) and includes any alteration to them for the time being in force.

**"Scheme"** means the Maersk Oil North Sea UK Limited Pension Scheme as constituted by the Rules.

**"Scheme Administrator"** has the meaning given by section 270 of FA 2004.

**"Scheme Maximum"** means the limitations on Members' contributions and Scheme benefits set out in Appendices 3 and 4.

**"Scheme Service"** means the sum of (i) Pensionable Service and (ii) Kerr-McGee Oil Service or Conoco Service, where appropriate, and any other period that the Principal Company at any time, with the approval of the Trustees, determines to be Scheme Service

**"Section"** means a section of the Rules.

**"Segregated Assets"** means the part of the Fund which is represented by or derived from:

- (a) contributions made by or in respect of a Pensionable Member to the Scheme under Rule 3.3 (Members' voluntary contributions) (or any similar facility previously applicable to the Scheme); and
- (b) that part of any transfer payment received by the Trustees in respect of any person which was kept separate from the other assets of the arrangement from which it was transferred and which is attributable to voluntary contributions made or deemed to be made by such person to the arrangement from which the transfer payment is received

and which shall, unless the Trustees have determined that that part of the Fund shall not be used to provide benefits on a money purchase basis, be kept separate from the other assets constituting the Fund.

**"Service"** means service in the employment of, or as an executive or non-executive director or other officer of, any of the Employers.

**"Special Deferred Member"** means a Member who left Pensionable Service on and from 1 September 2006 to join the DC Plan;

**"Short Service Benefit"** has the meaning given in section 71(2) of the PSA 1993. A Member is entitled to Short Service Benefit if he or she satisfies the requirements of section 71(1) of that Act.

**"State Pension Age"** means age 65 in the case of a man, and age 60 in the case of a woman.

**"Tax Year"** means a year of assessment for income tax as defined in the Taxes Act.

**"Taxes Act"** means the Income and Corporation Taxes Act 1988.

**"Transfer Credits"** has the meaning given in section 181 of the PSA 1993.

**"Trustees"** means the trustees or trustee for the time being of the Scheme and reference to a "Trustee" includes reference to -

- (a) a person who is one of the Trustees; and
- (b) to an individual who is a director or officer of a body corporate that is the sole Trustee of the Scheme or one of the Trustees.

**"Unauthorised Payment"** has the meaning given by section 160(5) of the FA 2004.

**"Unpaid Family Leave"** has the meaning given in Rule 6.4.2(e).

**"Widow"** and **"Widower"** have the meanings given in Appendix 5 (GMP Rules).

## SECTION 2

## MEMBERSHIP

**Summary**

- *The Scheme is closed to new Members and the future accrual of benefits for most Members (Rule 2.1)*
- *Members may opt-out of the Scheme (Rule 2.3)*
- *Special benefits are payable to and in respect of certain Members (Rules 2.4 and 2.5)*

**2.1 SCHEME CLOSED TO NEW MEMBERS AND FUTURE ACCRUAL**

- 2.1.1 The Scheme has been closed to new Pensionable Members and Life Members from 18 May 2006, with the exception that new employees issued with employment contracts before 18 May 2006 which entitled them to join the Scheme may be admitted with the consent of the Principal Company. New Members may only be admitted in accordance with Rule 6.2 (Membership on special terms).
- 2.1.2 The Scheme has been closed to the future accrual of benefits with effect from the Closure Date for all Members with the exception of NRD Members who will continue as Pensionable Members on the terms provided in the definition of NRD Member. With the exception of NRD Members, a Pensionable Member on the Closure Date will cease to be a Pensionable Member with effect from the end of the Closure Date and will become instead an Employee Deferred Member.
- 2.1.3 Each Employee who is eligible to become a Member under Rule 2.1.1 shall complete and submit to the Trustees an entrance form which the Trustees may prescribe, and provide such evidence of age, good health and marital status as the Trustees may require. If for any reason the Trustees cannot obtain insurance which covers fully their liability for death in Service benefits in respect of a Member then, unless the Principal Company has decided not to obtain insurance in respect of such liabilities, the benefits payable in respect of such Member on death in Service shall, subject to the Disability Discrimination Act 1995, be limited to those which can be provided under the insurance which is available in respect of such Member or such greater amount as the Principal Company may decide.
- 2.1.4 Each Employer shall provide the Trustees with details of Employees who in its opinion are eligible to become Members (if any) and the Trustees shall be entitled to rely on any such details provided to them.

**2.2 LIFE MEMBERS**

- 2.2.1 A Life Member who joins the DC Plan will automatically cease to be a Life Member.
- 2.2.2 All Life Members on the Closure Date ceased to be Life Members with effect from the Closure Date.

**2.3 OPTING OUT OF MEMBERSHIP**

- 2.3.1 A Pensionable Member or NRD Member may cease to be a Pensionable Member and terminate his or her Pensionable Service while remaining in Service by giving to the Principal Company (subject to any statutory requirement) one month's prior notice or as otherwise required by the Principal Company.
- 2.3.2 A Special Deferred Member or a NRD Member may, by giving to the Principal Company one month's prior notice or as otherwise required by the Principal Company, elect to have his or her deferred pension calculated on the basis of Pensionable Salary as at the effective date of the notice rather than at the date of leaving Service as otherwise provided under Rule 4.5.2.
- 2.3.3 An Employee who ceases to be a Pensionable Member while remaining in Service shall only be re-admitted as a Pensionable Member if the Principal Company so decides and any such readmission shall be subject to such conditions as the Principal Company may decide.
- 2.3.4 A Life Member may cease to be a Life Member while remaining in Service by giving to the Principal Company (subject to any statutory requirement) one month's prior notice or as otherwise required by the Principal Company.
- 2.3.5 An Employee who ceases to be a Life Member while remaining in Service shall only be re-admitted as a Life Member if the Principal Company so decides and any such readmission shall be subject to such conditions as the Principal Company may decide.

**2.4 CONOCO MEMBERS' BENEFITS**

A Conoco Member shall on and from 1 June 1995 be entitled to benefits under the Scheme in accordance with the special provisions set out in Appendix 1 (Conoco Members).

**2.5 KERR-MCGEE OIL MEMBERS' BENEFITS**

A Kerr-McGee Oil Member shall on and from 6 April 1999 be entitled to:

- (a) in respect of Pensionable Service on and from 6 April 1999, benefits in accordance with the Rules; and
- (b) in respect of Kerr-McGee Oil Service, benefits in accordance with the special provisions set out in Appendix 2 (Kerr-McGee Oil Members).

## SECTION 3

### CONTRIBUTIONS

#### *Summary*

- *Employers meet the entire cost of the provision of benefits. Members are not required to contribute (Rules 3.1 and 3.2)*
- *Pensionable Members may pay AVCs (Rule 3.3)*

### **3.1 EMPLOYERS' CONTRIBUTIONS**

- 3.1.1 The following provisions are subject to any overriding legislation which may apply to the Scheme from time to time<sup>1</sup>.
- 3.1.2 Each Employer shall, subject to the following provisions of this Rule 3.1 and to any relevant conditions imposed by the Principal Company, pay such contributions to the Scheme as the Principal Company shall determine in relation to that Employer having obtained the advice of the Actuary.
- 3.1.3 An Employer may, by giving written notice to the Trustees, reduce, suspend or vary its liability to make contributions to the Scheme. On receipt of such a notice the Trustees may, if they consider it appropriate after consulting the Actuary, reduce the benefits of all or any of the Members who are or have been employed by that Employer or treat them as ceasing to be in Pensionable Service during the period of the reduction, suspension or variation. All Members who are affected by such action shall be notified by the Trustees.
- 3.1.4 An Employer may, by giving written notice to the Trustees, terminate its liability to make contributions to the Scheme in respect of any or all of its Employees, in which case Rule 14.4 (Ceasing to be an Employer) shall apply except where Rule 15.1 (Termination events) applies.

### **3.2 MEMBERS' COMPULSORY CONTRIBUTIONS**

Members are not required to pay contributions to the Scheme.

### **3.3 MEMBERS' VOLUNTARY CONTRIBUTIONS**

#### **3.3.1 AVCs**

A Pensionable Member may pay, vary or stop paying AVCs to the Scheme, in accordance with provisions approved by the Principal Company and issued to the

<sup>1</sup> As at the date of adoption of these Rules, the Scheme is subject to the statutory funding objective under Part 3 of the Pensions Act 2004. The "statutory funding objective" requires trustees to prepare and from time to time review and if necessary revise a Statement of Funding Principles, Schedule of Contributions and (where the "statutory funding objective" is not met) a Recovery Plan. By section 229 of the Pensions Act 2004, any matter to be included in the Statement of Funding Principles and Schedule of Contributions and any provisions of a Recovery Plan must be agreed with the employer.

Pensionable Members ("the AVC Provisions"). No Member may pay AVCs after the Closure Date.

The Employer of any Pensionable Member paying AVCs under this Rule on and after 1 April 1999 will make regular additional contributions equal to 50% of the Pensionable Member's AVCs made under this Rule, subject to a maximum Employer contribution of 2% of the Pensionable Member's Basic Salary, and in respect of the same period for which the Pensionable Member pays his AVCs.

AVCs will be applied by the Trustees to provide additional benefits to or in respect of the Member in accordance with the AVC Provisions.

### 3.3.2 *Investment of AVCs*

The Member must give the Trustees written notice (which they must comply with as soon as administratively practicable) as to how he or she wishes the AVCs to be invested, within the AVC Provisions.

### 3.3.3 *Benefits from AVCs*

The Member must give the Trustees written notice as to what form of additional benefits, within the AVC Provisions, he or she wishes the proceeds of the AVCs to be applied to provide. The Trustees must comply with that notice, unless and to the extent that to do so might prejudice the Scheme's status as a Registered Scheme. The Trustees will not be responsible for the Member's decision as to the form in which he or she takes such benefits or the time at which he or she takes them. Insofar as the Member does not give notice (or it does not apply in the particular circumstances) the Trustees must apply the proceeds in accordance with the AVC Provisions. The Trustees must secure that the value of the additional benefits is reasonable, having regard to –

- (a) the amount of the AVCs; and
- (b) the value of the other benefits under the Scheme.

Provided that if the Member's arrangements to pay AVCs commenced or are deemed to have commenced on or after 8 April 1987, the restriction in Rule 4.9.2(b) shall apply.

### 3.3.4 *Return of excess AVCs*

If a Member has paid AVCs which exceed the annual limit for relief under section 190 of the FA 2004, any excess AVCs may be returned (less tax) to the Member to the extent that the return constitutes a refund of excess contributions lump sum within the meaning of paragraph 6 of Schedule 29 of the FA 2004.

### 3.3.5 *Deferral of AVCs*

A Member who has AVCs invested on a "money purchase" basis may elect to defer taking benefits in relation to those AVCs beyond the date his or her other benefits under the Scheme come into payment.

The benefits payable in relation to the deferred AVCs will be paid in the form of non-commutable pension (unless otherwise agreed by the Trustees and the Principal Company) and they must not be deferred beyond the Member's 75<sup>th</sup> birthday (or such other date as shall not prejudice the Scheme's status as a Registered Scheme).



**3.4 METHOD OF COLLECTING MEMBERS' VOLUNTARY CONTRIBUTIONS**

- 3.4.1 Each Pensionable Member's AVCs will be deducted from his or her remuneration by the Employer and paid, on the Pensionable Member's behalf, to the Trustees (or as they direct) at such intervals as the Trustees may require. Such payments must be made within the period required under section 49(8) of the PA 1995.
- 3.4.2 The Trustees may, with the Principal Company's consent, agree with the Pensionable Member that his or her AVCs are paid in some other manner.
- 3.4.3 Each Pensionable Member will be personally liable for the payment of his or her AVCs, notwithstanding 3.4.1 and 3.4.2 above.

## SECTION 4

## BENEFITS ON RETIREMENT

**Summary**

*The Scheme provides -*

- *a pension on leaving Service at Normal Retirement Date (Rule 4.1)*
- *pensions on early retirement (Rule 4.2) or late retirement (Rule 4.3)*
- *a flexible retirement option (Rule 4.4)*
- *an option to commute part of the pension for cash (Rule 4.9)*

*Extra pension and other benefits may be provided through AVCs (Rule 3.3), transfers in, special terms etc.*

**4.1 NORMAL RETIREMENT**

- 4.1.1 Subject to Rule 4.1.2, each Pensionable Member shall, at Normal Retirement Date, receive a pension equal to  $1/60 \times$  Pensionable Salary  $\times$  each complete year (and proportionately for each additional complete calendar month) of Scheme Service.
- 4.1.2 In respect of any Member in Pensionable Service on 1 April 1999 and in respect of Pensionable Service prior to 1 April 1999, no Member's benefits shall, in the opinion of the Actuary, be less than those to which he or she would have been entitled before the amendments which were made to the Scheme on 1 April 1999 became effective.

**4.2 EARLY RETIREMENT**

- 4.2.1 If a Pensionable Member leaves Service on or after age 55 but before Normal Retirement Date by reason of retirement with the consent of the Principal Company, the Pensionable Member may elect to receive an immediate pension calculated as in Rule 4.1 (Normal Retirement) but based on Pensionable Salary at the date of retirement and Scheme Service up to the date of retirement. The pension shall then be reduced by such amount as the Principal Company shall direct being no more than the Actuary certifies to be reasonable to take account of the earlier date on which the pension becomes payable; Provided that, in respect of a Kerr-McGee Oil Member, no reduction will apply in respect of benefits which relate to Pensionable Service on and after 6 April 1999 if the Kerr-McGee Oil Member's pension commences on or after the Member attains age 62.
- 4.2.2 Where a pension payable to a Member will be increased when the Member reaches GMP Age because of Rule 4.8.1, the pension payable before that age shall be reduced by such amount as the Actuary prescribes but not so that the actuarial value of the pension is less than the actuarial value of the pension which would have been payable but for Rule 4.8.1 and this Rule 4.2.2.
- 4.2.3 The Trustees shall be reasonably satisfied that on the date when the pension under Rule 4.2.1 becomes payable its value, together with the value of any benefit payable

on the Pensionable Member's death, is not less than the value on that date of any benefits which have accrued to or in respect of the Pensionable Member, including for this purpose any increases in benefits which the Trustees estimate would accrue if the Pensionable Member elected to take a deferred pension under Rule 4.5.

#### **4.3 LATE RETIREMENT**

Subject to the consent of the Principal Company and on such terms as it may decide, a Pensionable Member may continue to remain in Pensionable Service after Normal Retirement Date. In this event such a Pensionable Member shall at the date of leaving Pensionable Service, receive a pension equal to  $1/60 \times$  Pensionable Salary x each complete year (and proportionately for each additional complete calendar month) of Scheme Service.

#### **4.4 FLEXIBLE RETIREMENT**

Notwithstanding any other provisions of the Scheme, each Member who was in Pensionable Service immediately prior to the Closure Date may, on giving to the Principal Company such notice in writing as the Principal Company may require, draw benefits from the minimum pension age permitted by legislation whether or not he or she retires from Service and without the consent of the Principal Company or the Trustees. The Member's benefits will otherwise be calculated on the basis set out in Rule 4.2, Rule 4.3, Rule 4.6 or Rule 4.7 as appropriate.

#### **4.5 DEFERRED PENSION**

This Rule 4.5 applies on the termination of Pensionable Service of a Pensionable Member before Normal Retirement Date otherwise than by and in circumstances where the Member does not elect to receive the benefit payable under Rule 4.2.

4.5.1 If the Member has completed two years or more of Qualifying Service or a transfer payment under Rule 6.1 (Transfer-in) (or any similar facility previously applicable to the Scheme) in respect of the Member's rights under a Personal Pension Scheme has been received the Member shall be granted a deferred annual pension calculated as under Rule 4.1 but (subject to Rule 4.5.2 below) based on Pensionable Salary at, and Scheme Service up to, the date of leaving Pensionable Service and increased in accordance with the provisions of the PSA 1993 relating to revaluation of pensions. The pension shall commence at Normal Retirement Date but subject to Appendix 5 (GMP Rules) where Normal Retirement Date is later than GMP age.

4.5.2 Where a Member is a Special Deferred Member and has completed at least 2 years of Service or where a Member is an Employee Deferred Member then his or her deferred pension shall be calculated on the basis of his Pensionable Salary at the date of leaving Service rather than Pensionable Service, or, if earlier, the effective date of any notice given under Rule 2.3 or Rule 4.4. But this provision shall only operate if it would provide the Member with a greater deferred pension than would otherwise have been the case. The date of leaving Service of a Special Deferred Member or Employee Deferred Member shall not exceed beyond the date on which his Employer leaves the A.P. Møller-Maersk group of companies.

#### **4.6 EARLY PAYMENT OF DEFERRED PENSION**

A Member who is aged 55 or more and who is entitled to a deferred pension under Rule 4.5 may with the consent of the Principal Company elect that the Member's pension shall commence before Normal Retirement Date. The amount of the deferred pension shall be reduced by such amount as the Principal Company shall decide

being no more than the Actuary certifies to be reasonable to take account of the earlier date on which the pension comes into payment but so that the Preservation Requirements shall be complied with. In respect of a Kerr-McGee Oil Member who is a Special Deferred Member no reduction will apply in respect of benefits which relate to Pensionable Service on and after 6 April 1999 if the Kerr McGee Oil Member's deferred pension commences on or after the Kerr-McGee Oil Member attains age 62 and at the time of such commencement or immediately beforehand such Kerr-McGee Oil Member is in the Service of his Employer and providing that Employer is still then part of the A.P. Møller-Maersk group of companies. This provision shall not apply if the Scheme is in winding up.

#### **4.7 LATE PAYMENT OF DEFERRED PENSION**

On receiving a written request in the form prescribed by them from a Member who is entitled to a deferred pension under Rule 4.5 the Trustees shall, if the Principal Company consents, start paying the pension from a date later than Normal Retirement Date but not being later than the Member's 75th birthday. The deferred pension will be increased by such amount as the Trustees, on the Actuary's advice, decide is appropriate having regard to the period of postponement (the intention being that the benefits provided to and in respect of the Member are broadly actuarially equivalent to the benefits which would have been provided if the Member's pension had started at Normal Retirement Date).

#### **4.8 CONTRACTING-OUT REQUIREMENTS AND SCHEME MAXIMUM**

##### **4.8.1 Contracted-out Employment before 6 April 1997 (GMPs)**

The Scheme provides a GMP in respect of contracted-out employment before 6 April 1997. The statutory requirements governing the calculation and payment of GMPs are set out in Appendix 5. A Member's pension under this Section includes his or her GMP and offsets any GMP entitlement under Appendix 5 to the extent permitted by Rule 3.7 of that Appendix.

##### **4.8.2 Contracted-out Employment after 5 April 1997 (Reference scheme test satisfied)**

A Pensionable Member is entitled to a pension ("the Reference Pension") in respect of his or her contracted-out employment after 5 April 1997. The amount of the Reference Pension is the amount which would have been payable to the Pensionable Member by reference to a reference scheme under section 12B of the PSA 1993 if the Pensionable Member had been in membership of that scheme instead of the Scheme. A Pensionable Member's pension under this Section includes his or her Reference Pension.

##### **4.8.3 EPBs included in pension**

If a Member is entitled to equivalent pension benefits (as defined in the National Insurance Act 1965) from the Scheme, this will be included in his or her pension paid under this Section after State Pension Age.

##### **4.8.4 Scheme Maximum**

Each benefit payable under this Section must not exceed the Scheme Maximum and will (if necessary) be reduced to the Scheme Maximum.

#### **4.8.5 Overriding Rule**

In the event of conflict between this Rule and any other Rule of this Section 4, this Rule shall override.

#### **4.9 COMMUTATION**

4.9.1 When the pension of a Member becomes payable, he or she may commute for a lump sum any part of the pension in excess of the GMP by giving written notice to the Trustees.

4.9.2 Subject to 4.9.3, 4.9.4 and 4.9.5 below -

- (a) the initial annual amount of pension will be reduced by such amount as certified as reasonable by the Actuary;
- (b) except in relation to a Member whose AVCs commenced or are deemed to have commenced on or before 7 April 1987, no part of any retirement pension provided by voluntary contributions may be commuted as part of the lump sum;
- (c) the lump sum must not exceed the maximum permitted as a "pension commencement lump sum" under Part 4 of the FA 2004.

4.9.3 If in the opinion of the Trustees (having regard to medical evidence provided by a registered medical practitioner), the Member is in an exceptional state of serious ill-health (such that the Pensionable Member's expectation of life is less than one year or such other period as may be permitted by the HMRC) and so informs the Trustees in writing, the Member may, with the consent of the Principal Company, commute for a lump sum the whole of his or her pension subject to the conditions set out in paragraph 4 of Schedule 29 to the FA 2004. The commutation rate will be on a basis certified as reasonable by the Actuary.

4.9.4 If the terms of paragraph 7 of Schedule 29 to the FA 2004 or the relevant provisions of The Registered Pension Schemes (Authorised Payments) Regulations 2009 apply to the Member's pension, the Trustees may, without his or her consent, commute the whole of it on grounds of triviality. The Trustees will decide the commutation rate on a basis certified as reasonable by the Actuary.

4.9.5 The Trustees may deduct from the commuted lump sum any tax payable by the Trustees in connection with the commutation.

#### **4.10 OPTION TO SURRENDER PENSION FOR DEPENDANT'S PENSION**

4.10.1 A Member may with the consent of the Trustees elect in writing to surrender part of his or her pension in order to provide a pension or pensions in addition to any payable under any other Rule, payable on the Member's death to the Member's spouse and/or any Dependants nominated by the Member.

4.10.2 The option in this Rule 4.10 is subject to the following conditions:

- (a) it may be exercised only when the Member's pension becomes payable;
- (b) the aggregate of the spouse's and Dependants' pensions under this Rule 4.10 shall be equal in value to the part of the Member's pension surrendered, calculated on a basis certified as reasonable by the Actuary;

- (c) the option may not be exercised so that the annual amount of a spouse's or Dependant's pension would be less than the maximum amount which could be commuted for a lump sum under Rule 4.9.4 at the time of surrender;
- (d) the aggregate annual amount of the Dependents' and spouse's reversionary pensions provided under this Rule 4.10 shall not exceed the annual amount of the Member's pension after surrender but before commutation under Rule 4.9;
- (e) if the spouse or nominated Dependant dies before the Member but after the first instalment of the Member's pension has become payable, the Member's pension after surrender shall not be affected;
- (f) the exercise of the option shall be subject to such restrictions as the Trustees consider appropriate to ensure that the Member's pension is not less than his or her GMP; and
- (g) any pension payable to a Dependant or spouse under this Rule 4.10 shall be payable for such period as may be agreed between the Member and the Trustees or failing such agreement the pension shall be payable for life or until such Dependant, if a child, ceases to fulfil the conditions set out at (b) of the definition of Dependent Child in Section 1 of the Rules.

#### **4.11 PENSION PROTECTION LUMP SUM**

- 4.11.1 A Member may elect in writing to the Trustees, before his or her pension starts, to have any lump sum payable on his or her death but after commencement of pension treated as a "pension protection lump sum" as defined in paragraph 14 of Schedule 29 of the FA 2004.
- 4.11.2 The Trustees must be satisfied that the conditions set out in paragraph 14 of Schedule 29 of the FA 2004 are met before any pension protection lump sum is paid.
- 4.11.3 The Trustees shall deduct from the lump sum any tax payable by the Trustees in connection with the lump sum.

#### **4.12 SUPPLEMENTARY PROVISIONS**

In addition to the benefits (if any) payable under this Section 4 above there shall be payable:

- (a) any benefit arising from a transfer payment received by the Trustees pursuant to Rule 6.1 (Transfer-in) (or any similar provision previously applicable to the Scheme); and
- (b) any benefit arising from contributions made by or in respect of a Member to the Scheme under Rule 3.3 (Members' voluntary contributions) (or any similar facility previously applicable to the Scheme),

unless increased Scheme Service has been granted to the Member in respect of the transfer payment or additional contributions, and benefits arising from a surrender of the Member's pension under Rule 4.10 (Option to surrender pension for Dependant's pension).

## SECTION 5

## STANDARD DEATH BENEFITS

*Summary*

*Following a Member's death the Scheme may provide -*

- *a cash sum in certain circumstances*
- *a pension for the Member's spouse and/or Dependants*
- *a pension for Member's Dependent Children*

*Following a Life Member's death the Scheme provides a cash sum.*

**5.1 DEATH IN SERVICE OF A PENSIONABLE MEMBER**

On the death of a Pensionable Member before leaving Pensionable Service, the Trustees shall pay:

- (a) a lump sum equal to three times the Pensionable Member's Basic Salary at the date of death;
- (b) to the Pensionable Member's spouse, a pension equal to one half of the pension which the Pensionable Member would have received if the Pensionable Member had retired on the date immediately preceding the date of his or her death, calculated as in Rule 4.1 or Rule 4.3 and based on the Scheme Service the Pensionable Member would have completed had the Pensionable Member remained in Pensionable Service up to Normal Retirement Date or where the Pensionable Member has continued in Pensionable Service after Normal Retirement Date, in accordance with Rule 4.3 based on the Pensionable Member's Scheme Service if the Pensionable Member had retired on the date immediately preceding the date of his or her death;
- (c) to the Pensionable Member's Dependent Children in such proportions as the Trustees think fit,  $(10n + 10)$  per cent (or  $(20n + 20)$  per cent if there is no spouse) of the pension which the Pensionable Member would have received if the Pensionable Member had retired on the date immediately preceding the date of his or her death, calculated as in Rule 4.1 or Rule 4.3 and based on the Scheme Service the Pensionable Member would have completed had the Pensionable Member remained in Pensionable Service up to Normal Retirement Date or where the Pensionable Member has continued in Pensionable Service after Normal Retirement Date, in accordance with Rule 4.3 based on the Pensionable Member's Scheme Service at the date of death (where  $n$  is the number of Dependent Children of the Pensionable Member to a maximum of four);
- (d) in respect of a Kerr-McGee Oil Member, the amount of the transfer payment received by the Trustees in respect of the Kerr-McGee Oil Member from the Kerr-McGee Oil Scheme which the Trustees were notified was attributable to:

- (i) the ordinary contributions of the Kerr-McGee Oil Member under the Kerr-McGee Oil Scheme with compound interest calculated at the rate of 3% per annum with annual rests, on 6 April in each year (or such other date as the Trustees may from time to time decide), no interest being allowed on intermediate payments; and
- (ii) voluntary contributions made or deemed to be made by the Kerr-McGee Oil Member to the Kerr-McGee Oil Scheme.

## **5.2 DEATH IN SERVICE OF A LIFE MEMBER**

If a Life Member dies in Service the Trustees shall pay a lump sum equal to three times the Life Member's Basic Salary at the date of the Life Member's death.

## **5.3 DEATH IN RETIREMENT OF A MEMBER**

On the death of a Member after his or her pension has become payable (or would have but for it being commuted) the Trustees shall pay:

- (a) if the Member dies within five years of the commencement of his or her pension and the pension is paid monthly, a lump sum which is the product of:
  - (i) the monthly rate of the Member's pension in force at the date of the Member's death; and
  - (ii) sixty less the number of instalments of pension received by the Member before his or her death
 or an equivalent amount if the pension is paid other than monthly; and
- (b) to the Member's spouse provided the spouse's pension has not been commuted for a lump sum under Rule 4.9.3 and Rule 4.9.4, a pension equal to one half of the Member's pension that was or would have been payable to the Member at the date of the Member's death on the basis that the Member had not commuted any pension under Rule 4.9.

## **5.4 DEATH IN DEFERMENT OF A MEMBER**

On the death of a Member who has left Pensionable Service and is entitled to a deferred pension from the Scheme the Trustees shall pay:

- (a) if the Member does not leave a spouse or any Dependent Children, a lump sum equal to the amount (without interest) of any contributions paid or deemed to have been paid to the Scheme by the Member; and
- (b) to the Member's spouse, a pension equal to one-half of the revalued pension the Member would have been entitled to under Rule 4.1 or Rule 4.3 if the Member had retired on the date immediately preceding the date of his or her death;
- (c) in respect of a Kerr-McGee Oil Member the amount of the transfer payment received by the Trustees from the Kerr-McGee Oil Scheme in respect of a Kerr-McGee Oil Member which the Trustees were notified was attributable to:



- (i) the ordinary contributions of the Kerr-McGee Oil Member under the Kerr-McGee Oil Scheme with compound interest calculated at the rate of 3% per annum with annual rests, on 6 April in each year (or such other date as the Trustees may from time to time decide), no interest being allowed on intermediate payments; and
- (ii) voluntary contributions made or deemed to be made by the Kerr-McGee Oil Member to the Kerr-McGee Oil Scheme.

Provided that, for the avoidance of doubt, in calculating any such benefits which are payable in respect of a Special Deferred Member or an Employee Deferred Member, the Trustees shall have due regard to the provisions of Rule 4.5.2.

#### **5.5 REDUCTION OF SPOUSE'S PENSION**

If a Member's spouse is more than ten years younger than the Member the spouse's pension shall be reduced (but not below the spouse's GMP (if any)) by an amount equal to 2.0% for each complete year by which the difference in their ages exceeds 10 years.

#### **5.6 DEPENDANT'S PENSIONS**

Whether or not there is a surviving spouse, the Trustees may in their absolute discretion apply all or part of the pension which is (or would have been if there had been a surviving spouse) payable to a surviving spouse to or for the benefit of the Member's Dependants (other than a surviving spouse) in such shares as the Trustees in their discretion think fit. Where there is a surviving spouse this discretion only applies to:

- (a) that part of the pension in excess of the spouse's GMP (if any) applicable to Scheme Service before 6 April 1997; and
- (b) that part of the pension in excess of the minimum spouse's pension required by the regulations made under section 12B of the PSA 1993

The pension so payable shall (unless the Trustees otherwise determine) cease upon the death of the Dependant concerned except where the Dependant is a Dependent Child in which case it shall cease when the recipient ceases to be a Dependent Child.

#### **5.7 DISTRIBUTION OF LUMP SUM DEATH BENEFITS**

5.7.1 Subject to the remaining provisions of this Rule 5.7, any lump sum death benefits becoming payable under the Rules (including those deriving from AVCs or transfer payments) may at the absolute discretion of the Trustees be applied for the benefit of or paid to any one or more of a class consisting of:

- (a) the Member's spouse or cohabitee;
- (b) the children, parents and grandparents of the Member and the Member's spouse or cohabitee;
- (c) the issue of any such individuals;
- (d) the spouses of any individuals in (a), (b) or (c) and their issue;
- (e) the Member's Dependants;

- (f) any individual or body of persons (whether or not natural persons) nominated by the Member by notice in writing addressed to and received by the Trustees during his or her lifetime (or, in the case of a Kerr-McGee Oil Member, received by the trustees of the Kerr-McGee Oil Scheme during the Kerr-McGee Oil Member's lifetime and before the transfer of the Kerr-McGee Oil Member to the Scheme) to receive the whole or any part of such benefit;
- (g) the Member's legal personal representatives,

in such shares as the Trustees in their absolute discretion decide.

- 5.7.2 The Trustees may also apply the whole or any part of such lump sum benefit by transferring it to trustees to be held by such trustees for any individual and/or body of persons referred to in (a) to (f) of Rule 5.7.1 upon such trusts and powers (including discretionary trusts or powers exercisable by such trustees) as the Trustees shall decide. Any expenses, fees or other outgoings incurred in connection with any payment, application or transfer pursuant to this Rule 5.7.2 may, if the Trustees so decide, be deducted from or paid out of such benefits.
- 5.7.3 If any part of such lump sum benefit is not applied in accordance with Rule 5.7.1 or Rule 5.7.2 within a period of 24 months after the date of the Member's death, it shall be paid to the Member's legal personal representatives.
- 5.7.4 The whole or any part of any lump sum death benefit shall be retained as part of the Fund if the Crown, the Duchy of Lancaster or the Duke of Cornwall would otherwise benefit therefrom.

## **5.8 SUPPLEMENTARY PROVISIONS**

- 5.8.1 Where two or more persons have a claim to be the surviving spouse of any Pensionable Member then any benefit payable under the Scheme to or for the benefit of the surviving spouse shall in the absolute discretion of the Trustees be paid or applied to or for the benefit of such one or more of the claimants and in such proportions as the Trustees think fit, save that the surviving spouse's GMP (if any) shall be payable to the person entitled to receive such pension (if any) pursuant to Appendix 5 (GMP Rules).
- 5.8.2 In addition to the benefits (if any) payable under this Section 5 there shall be payable:
  - (a) any benefit arising from a transfer payment received by the Trustees pursuant to Rule 6.1 (Transfer-in) (or any similar provision previously applicable to the Scheme); and
  - (b) any benefit arising from contributions made by or in respect of a Member to the Scheme under Rule 3.3 (Members' voluntary contributions) (or any similar facility previously applicable to the Scheme),

unless increased Scheme Service has been granted to the Member in respect of the transfer payment or additional contributions, and benefits arising from a surrender of the Member's pension under Rule 4.10 (Option to surrender pension for Dependant's pension).

## 5.9 TRIVIAL COMMUTATION

The Trustees may commute a pension payable under this Section if the terms of paragraph 20 of Schedule 29 of the FA 2004 apply. The Trustees will decide the commutation rate on the advice of the Actuary. The Trustees may deduct from the commuted lump sum any tax payable by the Trustees in connection with the commutation.

## 5.10 CONTRACTING-OUT REQUIREMENTS AND SCHEME MAXIMUM

### 5.10.1 Contracted-out Employment before 6 April 1997 (GMPs)

The Scheme provides, to a Widow, Widower or Civil Partner who is entitled to it, a GMP in respect of a Pensionable Member's contracted-out employment before 6 April 1997. The statutory requirements governing the calculation and payment of GMPs are set out in Appendix 5 (GMP Rules). When a Widow, Widower or Civil Partner is entitled to a GMP it will be paid (in accordance with Appendix 5) -

- (a) as part of the spouse's pension under this Section in respect of the Pensionable Member's Pensionable Service before 6 April 1997; or
- (b) as a separate entitlement if there is no spouse or if the person entitled to it is not the spouse.

### 5.10.2 Contracted-Out Employment after 5 April 1997 ("Reference Pension")

A Widow, Widower or Civil Partner is entitled to a pension ("**the Reference Pension**") in respect of a Pensionable Member's contracted-out employment after 5 April 1997. The amount of the Reference Pension is the amount which would have been payable to the Widow, Widower or Civil Partner by a reference scheme under section 12B of the PSA 1993 if the Pensionable Member had been in membership of that scheme instead of the Scheme and the Widow, Widower or Civil Partner met any payment conditions.

The Reference Pension will be paid -

- (a) as part of the spouse's pension under this Section in respect of the Pensionable Member's Pensionable Service after 5 April 1997; or
- (b) as a separate entitlement if there is no spouse.

### 5.10.3 Scheme Maximum

Each benefit payable under this Section must not exceed the Scheme Maximum and will (if necessary) be reduced to the Scheme Maximum (as set out in Appendices 3 and 4 (Scheme Maximum)).

### 5.10.4 Overriding Rule

In the event of conflict between this Rule and any other Rule of this Section, this Rule shall override.

## SECTION 6

## NON-STANDARD BENEFITS

**Summary**

- *Transfer-in (Rule 6.1)*
- *Membership on special terms (Rule 6.2)*
- *Part-time employment (Rule 6.3)*
- *Family leave (Rule 6.4)*
- *Other absences (Rule 6.5)*
- *Overseas Service (Rule 6.6)*
- *Augmentation and provision of new benefits (Rule 6.7)*
- *Preservation Requirements (Rule 6.8)*
- *Provisions on divorce (Rule 6.9)*
- *Equal treatment rule (Rule 6.10)*

**6.1 TRANSFER-IN**

- 6.1.1 The Trustees may accept a transfer of assets into the Scheme from another Registered Scheme in respect of a person or persons.
- 6.1.2 In consideration of the transfer such benefits will be provided under the Scheme to or in respect of that person or persons as the Trustees decide, having regard to the advice of the Actuary. Provided that
- (a) the Trustees must not accept a transfer it would be inconsistent with the Scheme's status as a Registered Scheme; and
  - (b) the benefits provided must be consistent with the Scheme Maximum, the Preservation Requirements relating to Transfer Credits, the contracting-out requirements of PSA 1993 and the requirements of HMRC (if any).

**6.2 MEMBERSHIP ON SPECIAL TERMS**

- 6.2.1 At the Principal Company's request, the Trustees shall admit or readmit a person to membership, or permit them to remain a Member, on such special terms as the Principal Company decides, subject to payment of any additional contributions which the Actuary certifies are necessary as a consequence of granting these special terms.
- 6.2.2 The Trustees, with the Principal Company's consent, may admit or readmit a person to Membership, or permit them to remain a Member, on such special terms as they agree with the Principal Company.
- 6.2.3 The Trustees shall notify the Member in writing of the terms on which he or she is admitted to Membership of the Scheme.
- 6.2.4 Any special terms agreed under this Rule must be consistent with the Scheme Maximum, the Scheme's status as a Registered Scheme and the Preservation Requirements.

6.2.5 A person who no longer fulfils any requirements for membership may nevertheless remain a Member on such terms and conditions as the Principal Company shall determine. This is subject to the Trustees also approving such a person's continued membership.

**6.3 PART-TIME EMPLOYMENT**

6.3.1 For the purposes of this Rule where the Member's Pensionable Service includes a period of Part-time Employment, the length of the Member's Pensionable Service for the purpose of any calculation of benefits shall, for that period, be based on the length of Pensionable Service calculated as:

Part - time Contractual Hours

x length of Pensionable Service; and

Full - time Contractual Hours

Pensionable Salary shall for that period for the purpose of any calculation of benefits based on Pensionable Service be calculated as:

Full - time Contractual Hours

x Pensionable Salary

Part - time Contractual Hours

**6.4 FAMILY LEAVE**

6.4.1 This Rule applies to Pensionable Members in Pensionable Service during Family Leave and overrides any other provisions of the Rules. The provisions of this Rule have effect subject (where applicable) to Part VIII of the Employment Rights Act 1996.

For the purpose of this Rule 6.4, the definition of "**Pensionable Salary**" in Section 1 is modified in relation to a period of Family Leave so that it means Pensionable Salary (as determined by the Employer) as it would have been but for that Family Leave.

In this Rule "Adoption Leave", "Maternity Leave" and "Paternity Leave" and "Parental Leave" are jointly referred to as "**Family Leave**".

6.4.2 The following provisions apply to a Pensionable Member during Family Leave and override any other provisions of the Rules -

- (a) The Member shall remain a Pensionable Member throughout any period of Family Leave in respect of which the Pensionable Member is entitled to, and receives, remuneration (including statutory maternity, paternity or adoption pay) from the Employer ("**Paid Family Leave**").
- (b) A period of Paid Family Leave will be Pensionable Service.
- (c) If the Pensionable Member does not return to work after taking Family Leave he or she will cease to be a Pensionable Member on the earliest of –
  - (i) the date the Pensionable Member informs the Employer he or she will not be returning to work;
  - (ii) the date the Pensionable Member's right to Ordinary Family Leave ceases;
  - (iii) the date when the Pensionable Member's right to Paid Family Leave ceases,
  - (iv) the date the Pensionable Member started parental leave under Chapter II of Part VIII of the Employment Rights Act 1996 or any extension of those terms allowed by the Employer if none of the period of parental leave is paid.

The Employer's confirmation of this date will be final.

- (d) If the Pensionable Member ceases to be a Pensionable Member and later returns to work pursuant to a statutory right to do so, periods of Pensionable Service before, during and after the Family Leave shall be treated as continuous.
- (e) During a period of Family Leave in respect of which the Pensionable Member is not in receipt of remuneration (including statutory maternity, paternity or adoption pay) from the Employer ("**Unpaid Family Leave**") -
  - (i) the Pensionable Member will continue to be covered for death benefits under Section 5; and
  - (ii) such period of Unpaid Family Leave will not otherwise count as Pensionable Service (unless the Principal Company with the consent of the Trustees otherwise determines).

## 6.5 **OTHER ABSENCES**

6.5.1 The Principal Company may agree with the Trustees any special provisions (consistent with the Scheme's status as a Registered Scheme) to apply to Pensionable Members who are Absent from work while remaining in Pensionable Service. These provisions may apply to one Member only, to a category of Members or to all Members.

6.5.2 The benefits provided in respect of a Life Member shall continue to be provided for the period of absence during which a Pensionable Member may remain a Pensionable Member under Rule 6.5.1.

## **6.6 OVERSEAS SERVICE**

6.6.1 The Trustees may, with the Principal Company's consent, make special provision for Members all or any part of whose Service is to be, is or has been in substance performed outside the United Kingdom. If no special provision is made the provisions of Rule 6.6.3 or Rule 6.6.4 will apply.

6.6.2 (a) The Pensionable Salary of a Pensionable Member (or the Basic Salary of a Life Member), employed outside the United Kingdom and not paid in the currency of the United Kingdom, will (subject to (b) below) be such amount, expressed in the currency of the United Kingdom, as is agreed between the Employer and the Member or, in default of agreement is determined by the Trustees.

(b) The amount referred to in (a) above must not exceed the greater of the Pensionable Salary or Basic Salary (as relevant), in the Trustees' opinion, of a person performing comparable duties in the United Kingdom and the equivalent of the Member's Pensionable Salary or Basic Salary (as relevant) (according to such rate of exchange as the Trustees determine to be appropriate).

6.6.3 Any Pensionable Member whose Service is to be, or has been in substance performed outside the United Kingdom may remain in Pensionable Service provided that:

(a) his or her Service outside the United Kingdom is expressed to be for a "limited period"; and

(b) there is a definite expectation or intention on the part of both the Employer and the Pensionable Member that the Pensionable Member will return to work with the Employer.

6.6.4 If the terms of Rule 6.6.3 are not met, the Pensionable Member will cease to be in Pensionable Service at the date he or she commenced Service outside the United Kingdom, unless the Principal Company determines otherwise.

## **6.7 AUGMENTATION AND PROVISION OF NEW BENEFITS**

6.7.1 The Trustees, with the Principal Company's consent, may -

(a) award a different benefit equivalent to and in lieu of a benefit to which a person is entitled. The different benefit may (without the person's consent) be awarded to someone financially dependent on the person. The award will discharge the Trustees from liability for the payment of the original benefit;

(b) award a benefit to or in respect of any person including any person who is not prima facie entitled to any benefit under the Scheme;

(c) increase or vary the duration or time of payment of any benefit or all or any category of the benefits payable or prospectively payable to any person under the Scheme or provide (by substitution or otherwise) an additional benefit for or in respect of any such person.

- 6.7.2 No award under this Rule will be carried into effect unless the Actuary is satisfied that adequate provision for such award either exists within the Scheme or is to be made by payment in to the Scheme by the Employer of an amount deemed appropriate by the Actuary.
- 6.7.3 No benefit may be provided under Rule 6.7.1 above which would exceed the Scheme Maximum or prejudice the Scheme's status as a Registered Scheme.

#### **6.8 PRESERVATION REQUIREMENTS**

- 6.8.1 For the purpose of calculating 2 years' Qualifying Service if a Pensionable Member leaves and later rejoins Pensionable Service, Qualifying Service will be treated as continuous if the break is -

- (a) not more than one month;
- (b) due to Maternity Leave, Adoption Leave and Parental Leave, where the Pensionable Member exercises her right to return to work under the Employment Rights Act 1996 and returns to Pensionable Service no later than one month after returning to work; or
- (c) due to the Pensionable Member's absence from work in furtherance of a "trade dispute" as defined in section 35(1) of the Jobseekers Act 1995.

The period of the break itself does not count as Qualifying Service. The Trustees may by regulations alter this sub-Rule as they think fit, following any relevant change in the Preservation Requirements.

- 6.8.2 If a Pensionable Member -

- (a) is prospectively entitled at Normal Retirement Date to increased benefits because of "supplementary credits" (as defined in section 75 of the PSA 1993); and
- (b) leaves Service before Normal Retirement Date entitled to Short Service Benefit

his or her Short Service Benefit must include a due proportion of all the supplementary credits to the extent required under section 75.

- 6.8.3 The Trustees may make any determination they think necessary for ensuring that the Scheme complies with the Preservation Requirements. The determination's provisions will override any provision of the Rules to the extent that they are inconsistent.

#### **6.9 DIVORCE**

The provisions of Section 16 and Appendix 4 to these Rules shall apply in relation to divorce.

#### **6.10 EQUALITY RULE**

The Rules will be treated as including any non discrimination or equality rule to the extent (if any) necessary for compliance with the requirements of the Equality Act 2010.



## SECTION 7

## PAYMENT OF BENEFITS

*Summary*

- *Increase of pensions (Rules 7.1 and 7.2)*
- *Payment of benefits (Rule 7.3)*
- *Incapable Beneficiaries (Rule 7.4)*
- *Benefits not assignable (Rule 7.5)*
- *Lien (Rule 7.6)*
- *Tax and HMRC requirements (Rule 7.8)*

**7.1 INCREASES TO PENSIONS IN PAYMENT**

7.1.1 Except as provided in Rule 7.1.3, any pension which has become payable and which is:

- (a) attributable to Scheme Service prior to 6 April 1997 shall be increased on the Increase Date following its commencement and on each subsequent Increase Date by the lesser of 3% per annum and the rate of increase in the Index over the preceding Pension Increase Year;
- (b) attributable to Scheme Service after 6 April 1997 but prior to 6 April 2006 shall be increased on the Increase Date following its commencement and on each subsequent Increase Date by the lesser of 5% per annum and the rate of increase in the Index over the preceding Pension Increase Year;
- (c) attributable to Scheme Service on and after 6 April 2006 shall be increased on each subsequent Increase Date following its commencement and on each subsequent Increase Date by the lesser of 2.5% per annum and the rate of increase in the Index over the preceding Pension Increase Year

but if, on the Increase Date, the pension has been in payment for a period of less than a year, any increase under this Rule 7.1.1 shall be a proportionate amount based on the number of complete calendar months during which the pension has been in payment.

7.1.2 Except as provided in Rule 7.1.3, any pension which has become payable may be increased at such intervals as the Principal Company shall determine and by such amount as the Principal Company with the consent of the Trustees shall decide.

7.1.3 Pension increases under Rules 7.1.1 and 7.1.2 shall not apply to:

- (a) pensions deriving from AVCs made by or in respect of a Member to the Scheme under Rule 3.3 (Members' voluntary contributions) (or any similar facility previously applicable to the Scheme);

- (b) pensions deriving from transfer payments received by the Trustees pursuant to Rule 6.1 (Transfer-in) (or any similar provision previously applicable to the Scheme); or
  - (c) pensions payable in accordance with Rule 4.10 (Option to surrender pension for a Dependant's pension); or
  - (d) that part of any pension which constitutes the GMP (if any) of the recipient,
- unless the Principal Company so directs.

## **7.2 PENSIONS INCREASES IN DEFERMENT**

Where a Member is entitled to a deferred pension under the Scheme, that part of the deferred pension (if any) which exceeds the Member's GMP shall, if the Member ceased to be in Pensionable Service more than one year before Normal Retirement Date, be increased in respect of the period between cessation of Pensionable Service and Normal Retirement Date by the lower of 5% per annum compound and the percentage increase in prices (such increases in pension to be calculated in accordance with the requirements of Chapter II of Part IV of the PSA 1993). This provision shall be read subject to Rule 4.5.

## **7.3 PAYMENT OF BENEFITS**

- 7.3.1 All pensions payable are annual pensions accruing from day to day and, unless the Principal Company otherwise decides, shall be paid by equal monthly instalments in advance on such day in each calendar month as may be selected by the Principal Company. The first payment shall include an additional proportionate amount as arrears for the period from the date on which the pension becomes payable to the due date of the first instalment, except in a case where the pension concerned has become payable upon the death of a Beneficiary to whom a pension was in payment under the Scheme.
- 7.3.2 Except where the period or the method for determining the period for which a pension is payable is stated in the Rules, all pensions are payable for life unless the pension is payable to a Dependent Child when the pension is payable until he or she ceases to be a Dependent Child.
- 7.3.3 The Trustees may make any arrangements they think fit to facilitate the calculation of benefits and may round instalments of pension or other benefits to avoid fractional amounts.
- 7.3.4 The Trustees may make any arrangements they think fit for the payment of benefits. Any payment sent by post will be at the risk of the Beneficiary. The Trustees will not be responsible for, nor be bound to take any steps to recover, any loss which may arise from their method of payment.

## **7.4 INCAPABLE BENEFICIARIES**

- 7.4.1 If the Trustees consider that a Beneficiary is incapable of acting (because of the individual's minority, mental disorder, illness or otherwise) they may -
  - (a) exercise any option or give any notice under the Rules on behalf of the individual;

- (b) apply, for his or her benefit, the pension or other benefit due to the individual or pay it to some other person, body corporate or institution for that person, body corporate or institution to apply for the individual's benefit. The receipt of the other person, body corporate or institution will be a full discharge to the Trustees, who may (but need not) oversee the application of the payment.

The Trustees may, for the purposes of this Rule, accept as conclusive evidence a qualified medical practitioner's certificate regarding an individual's mental or physical capacity.

- 7.4.2 The receipt of a minor over the age of 16 shall be a good discharge to the Trustees for any payment which they may in their discretion make to the minor direct.

## **7.5 BENEFITS NOT ASSIGNABLE**

### 7.5.1 If -

- (a) a Beneficiary attempts to assign or charge his or her entitlement or prospective entitlement under the Scheme, or if an event occurs by which the entitlement or prospective entitlement would (but for this Rule) become payable to some other person, including in either case a transaction or purported transaction made ineffective by section 91 of the PA 1995; or
- (b) a bankruptcy order against the Beneficiary was made on a petition presented on or before 29 May 2000

the Beneficiary's entitlement or prospective entitlement under the Scheme will cease to be payable. The Trustees may pay or apply from time to time (in such proportions as they decide) an amount equivalent to the entitlement or prospective entitlement to or for the benefit of -

- (i) the Beneficiary;
- (ii) his or her children or remoter issue, or such person's other Dependant;
- (iii) any person financially dependent on or interdependent with the Beneficiary.

### 7.5.2 Notwithstanding 7.5.1 above -

- (a) nothing in 7.5.1 will apply to any GMP which remains payable to the Beneficiary under Appendix 5;
- (b) no payment will be made to an assignee or chargee by virtue of the attempted assignment or charge;
- (c) the cessation of payment of the benefit will, in determining entitlement to or the amount of any other pension, be treated as not having occurred;
- (d) if, in the opinion of the Trustees, the Beneficiary's entitlement or prospective entitlement is subject to a lien under Rule 7.6 below at the time the Beneficiary attempts to assign or charge that entitlement or prospective entitlement, nothing in 7.5.1 above will affect the validity of that lien.

- 7.5.3 This Rule shall take effect subject to sections 91 and 94 of the PA 1995 to the extent that they may be in force from time to time.

## 7.6 LIEN

### 7.6.1 If as a result of:

- (a) a criminal, negligent or fraudulent act by, or omission of, the Member; or
- (b) a result of a payment made in error in respect of his or her pension

he or she (or his or her estate) is under a monetary obligation to the Employer or the Scheme, the beneficial interest under the Scheme of the Member, will (insofar as it is not attributable to Transfer Credits other than Prescribed Transfer Credits) stand charged with the payment of that sum.

### 7.6.2 The amount of the sum charged under 7.6.1 above shall be limited to the lesser of -

- (a) the value as determined by the Actuary of the Member's beneficial interest under the Scheme (excluding Transfer Credits other than Prescribed Transfer Credits); and
- (b)
  - (i) in respect of 7.6.1(a) above, the amount notified to the Trustees by the Employer; or
  - (ii) in respect of 7.6.1(b) above, the amount determined by the Trustees.

### 7.6.3 A charge under this Rule -

- (a) shall not have effect -
  - (i) in relation to any GMP; or
  - (ii) if it would infringe or operate otherwise than in accordance with the Preservation Requirements;
- (b) shall not be exercised unless -
  - (i) the Member has been notified in writing of the amount recoverable and its effect on his or her entitlement or prospective entitlement under the Scheme; and
  - (ii) if the Member disputes it, the liability has become enforceable under a court order or the award of an arbitrator provided that the payment of any benefits from the Scheme to or in respect of the Member shall be suspended pending the outcome of any such order or award.

### 7.6.4 In any case where the charge is exercised by the Employer in accordance with this Rule, the benefits payable to or in respect of the Member under the Scheme shall be reduced in such manner as the Trustees on the advice of the Actuary determine is appropriate.

- 7.6.5 (a) The Employer's receipt shall be a good discharge to the Trustees for any payment up to the amount notified to them under 7.6.2 (b)(i) above.
- (b) Any Employer to which a payment is made under this Rule 7.6 will indemnify the Trustees against all actions, claims, demands and expenses arising directly or indirectly in consequences of such payment.

- 7.6.6 A charge or reduction of benefits under this Rule shall not have effect as an event giving rise to the termination of any interest under Rule 7.5 (benefits not assignable) and in relation to that Rule shall be deemed not to have occurred.
- 7.6.7 This Rule shall take effect subject to sections 91 and 94 of the PA 1995 to the extent that they may be in force from time to time.
- 7.6.8 The Member shall be entitled to a certificate showing the amount paid over to the Employer or to the Scheme and the effect on his or her entitlement or prospective entitlement under the Scheme.

#### **7.7 ANCILLARY TO RULES 7.5 AND 7.6**

Rules 7.5 and 7.6 do not prevent the Trustees from giving effect to a direction by a person entitled to benefits under the Scheme (other than a lump sum arising on death) that all or any part of the benefits be paid (as specified in the direction) to any of the Employers (whose receipt or receipts will be a complete discharge for the amount so paid).

#### **7.8 TAX AND HMRC REQUIREMENTS**

- 7.8.1 The Trustees may deduct from any payment under the Scheme a sum not exceeding the amount of any tax which is or may be payable by them or (if the Trustees are not the Scheme Administrator, by the Scheme Administrator) in respect or in consequence of that payment or any other payment in respect of the beneficiary concerned including (but not limited to) any charge arising under Chapter 5 of Part 4 of the FA 2004.
- 7.8.2 If any liability for inheritance tax or any other fiscal imposition arises in respect of any benefit under the Scheme, the Trustees may apply the benefit or any other benefit in respect of the Beneficiary concerned in whole or in part in the payment of such tax (including any interest due) and deduct the amount so paid from the benefit or postpone the payment of the benefit until the liability has been met or provision made for it to their satisfaction. However, no such application, deduction or postponement shall be made in respect of any charge arising under sections 239 (scheme sanction charge) or 242 (de-registration charge) of the FA 2004.
- 7.8.3 If a Member reaches age 75 without his or her pension having come into payment, and the Trustees are unable to verify the amount of Lifetime Allowance remaining available to the Member, the Trustees may reduce the Member's prospective entitlement to benefits under the Scheme, determined as if the whole of his or her benefits were chargeable to a Lifetime Allowance Charge, and will then account to HMRC for the tax due as if the Member had no Lifetime Allowance available.
- 7.8.4 The Trustees (and anyone acting on behalf of the Trustees) shall not be liable for the consequences (including as to tax) of any relevant benefit accrual (as defined in paragraph 13 of Schedule 36 to the FA 2004) that occurs in the Scheme before the Trustees have received a copy of the confirmation from HMRC that the individual has registered for enhanced protection under the FA 2004.
- 7.8.5 The Trustees may with the consent of the Principal Company and the Member pay any part of that Member's benefits that are subject to a Lifetime Allowance Charge to or in respect of the Member in the form of a lump sum that satisfies the conditions set out in paragraph 11 of Schedule 29 to the FA 2004. The amount of the lump sum will



be determined by the Trustees and agreed with the Principal Company (having consulted the Actuary).

- 7.8.6 Subject to the Preservation Requirements, a Member's pension will not start before age 75 unless the Member has provided evidence to the satisfaction of the Trustees of the amount of Lifetime Allowance that is available to him or her (if any).

**7.9 BENEFITS NOT CLAIMED**

- 7.9.1 An instalment of pension or the payment of any other benefit ceases to be payable 6 years after it has fallen due, if the reason for its non-payment is the failure of any person to make any claim and the lack of any knowledge by the Trustees of the existence or continued existence or whereabouts of any person or of any relevant fact.

- 7.9.2 The provisions of 7.9.1 above are without prejudice to the right of the Principal Company to pay any such instalment or benefit, or any part of it, if they think fit to do so. No interest will be added on any such payment, unless the Principal Company decides otherwise.

**7.10 INCORRECT INFORMATION**

- 7.10.1 If any material information supplied to the Trustees is subsequently proved to the satisfaction of the Trustees to be incorrect or insufficient, the Trustees may pay the benefit which would have been payable had it been calculated by reference to the correct information.

- 7.10.2 The Trustees may off-set any overpayment against future payment of benefits.

**7.11 PRODUCTION OF INFORMATION**

Payment of any pension or other benefit under the Scheme is subject to the production to the Trustees or the Principal Company or the Employer of such relevant information and evidence as they may reasonably require and until such evidence or information is produced to their satisfaction, the payment of such benefits may be withheld. The Trustees may send to a person's last known address a request for confirmation of continued existence and, in the absence of a reply within the period specified in the request, may assume that the person is no longer alive.

**7.12 NO CLAIMS EXCEPT IN ACCORDANCE WITH SCHEME**

No person will have any claim right or interest under the Scheme or any claim against the Trustees except under and in accordance with the Rules.

**7.13 MONEYS PAYABLE IN OTHER CURRENCIES**

- 7.13.1 All moneys payable from the Scheme shall be payable in Sterling provided that if any payee to whom moneys are due may request payment to be made outside the United Kingdom and/or in any currency other than Sterling.
- 7.13.2 The Trustees may at their discretion make such arrangements as shall not prejudice the Scheme's status as a Registered Scheme and as shall be permitted by exchange control regulations applicable at the time.
- 7.13.3 Any loss on exchange rates or other cost of making such payments shall be borne by the payee and payment in such requested manner shall be at the risk of the payee.

## SECTION 8

## TRANSFERS OUT AND BUY- OUTS

**Summary**

- *Members' rights to a cash equivalent (Rule 8.1)*
- *Transfers out (Rule 8.2)*
- *Buy-outs (Rule 8.3)*

**8.1 MEMBERS' STATUTORY RIGHT TO TRANSFER**

Certain Members have a statutory right (under Part IV of Chapter IV of PSA 1993) to require the Trustees to use the cash equivalent of their accrued benefits to –

- (a) acquire rights under another pension scheme;
- (b) purchase one or more "buy-out" annuities with one or more Insurance Companies.

The Trustees will, to the extent that they are obliged to do so under Chapter IV, comply with a Member's requirement as to the use of his or her cash equivalent. The following Rules of this Section apply if and to the extent that a person does not have this statutory right, or has it but has not exercised it.

**8.2 TRANSFER OUT**

8.2.1 The Trustees may transfer to a Receiving Scheme an amount equal to all or such part of the Fund as the Trustees shall determine (having regard to the advice of the Actuary), in exchange for the provision of benefits under the Receiving Scheme for a person or persons in place of the benefits to which they were entitled (or contingently or prospectively entitled) under the Scheme.

The amount of any transfer value must not –

- (a) unless the Principal Company otherwise determines, exceed the proportion of the Fund which is equal to the capital value of the benefits and contingent benefits in respect of the persons to whom the transfer relates; or
- (b) be less than the total transfers to which the transferring beneficiaries are entitled under Chapter IV of Part IV of PSA 1993.

8.2.2 In making a transfer under Rule 8.2.1, the Trustees must comply with any relevant requirements of HMRC, the contracting-out requirements of PSA 1993 and the Preservation Requirements. In particular –

- (a) unless the Trustees and Principal Company agree otherwise, the transfer must be a Recognised Transfer;
- (b) the Trustees will provide the trustees or managers of the Receiving Scheme with any certificates (relating to maximum lump sum benefits, the amount of a Pensionable Member's own contributions to the Scheme, the period of



Qualifying Service to which the transfer relates, the amount of any GMP covered by the transfer or any other matter) required by HMRC in connection with the transfer; and

- (c) if a Member is entitled to Short Service Benefit, a transfer to another occupational pension scheme may be made without his or her consent only in the circumstances and subject to the conditions prescribed by regulation 12 of The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991.

8.2.3 The Trustees may enter into an agreement with the trustees or managers of a Receiving Scheme, to transfer under Rule 8.2.1. The agreement may include whatever provisions the Trustees think appropriate. Pending completion of the agreement, the person or persons to whom the agreement relates (and any persons claiming through them) will not be entitled to any benefit under the Scheme, except in accordance with the agreement.

8.2.4 Notwithstanding any provision to the contrary, a Member of the Scheme may elect, subject to the Trustees' consent and the completion of the relevant discharge form, to have an amount representing part of his or her benefit in the Scheme transferred to a Receiving Scheme provided that the transfer is a Recognised Transfer. A transfer permitted by this Rule need not be made at the same time as the transfer of any other benefits for or in respect of the Member under the Scheme.

8.2.5 Once a transfer under this Rule 8.2 has been completed then (except to the extent (if any) that the terms of transfer provide to the contrary) –

- (a) the person or persons in respect of whom it has been made, his or her personal representatives and any person claiming through him or her will have no entitlement under the Scheme in respect of the benefits transferred;
- (b) the receipt by the trustees or managers of the Receiving Scheme will be a complete discharge to the Trustees in respect of that person or persons; and
- (c) the Trustees will not be under any obligation to oversee the application of the amount transferred.

### **8.3 BUY-OUT / ANNUITY PURCHASE**

8.3.1 This Rule 8.3 does not apply if the person concerned has an outstanding application for a cash equivalent (under Chapter IV of PSA 1993).

8.3.2 The Trustees may with the consent of the employer "buy-out" the whole or part of any entitlement or prospective entitlement to Scheme benefits payable to or in respect of any person by purchasing –

- (a) an insurance policy; or
- (b) an annuity contract on the open market;

with an Insurance Company.

8.3.3 Any insurance policy or annuity contract effected under Rule 8.3.2 above, may be

- (a) purchased in the name of the person concerned;

- (b) purchased jointly in his or her name and the Trustees' name; or
- (c) may be assigned to the person concerned (or to the Trustees on his or her behalf);

and (subject to Rule 8.3.4 and 8.3.5 below) will be in such form and subject to such conditions as the Trustees think fit.

#### **8.3.4 *Deferred Pensioners***

Where the Trustees exercise their power under this Rule in respect of a Member who leaves Service before Normal Retirement Date then the Member has the options specified in Rule 8.3.6(d).

#### **8.3.5 *Statutory Requirements***

Any insurance policy or annuity contract effected under Rule 8.3.2 above must comply with any relevant requirements of HMRC, the contracting-out requirements of PSA 1993, the FA 2004 and the Preservation Requirements. In particular –

- (a) it must provide only benefits as described in section 150(1) of the FA 2004 and contain any other provisions (relating to non-assignment, maximum lump sum benefits, or any other matter) required by HMRC;
- (b) it must satisfy the conditions of sections 19 and 81 of PSA 1993 (relating to respectively discharge of GMP and Short Service Benefit liability); and
- (c) the Trustees must be reasonably satisfied that the payment made to the Insurance Company at least equals the value of the benefits that would otherwise have been provided under the Scheme.

#### **8.3.6 *Options***

Any insurance policy or annuity contract effected under this Rule may –

- (a) include the option for the Member concerned to request that the policy or contract be surrendered and that its value be paid to –
  - (i) a Registered Scheme; or
  - (ii) another Insurance Company so as to secure benefits for him or her under another policy;
- (b) include the option for the Member to request, when the benefits under the policy or contract become payable, that such benefits be varied or the amount available under the policy or contract be paid to another Insurance Company to enable benefits to be provided by it;
- (c) provide for any lump sum benefit becoming payable on death to be held on trust; and
- (d) if the Member so requests –
  - (i) differ from the benefits otherwise payable under the Scheme and may, in particular, but without prejudice to the generality of the foregoing,

provide for lesser benefits or no benefit to be payable on the Member's death; and

- (ii) be as selected by the Member or, in default of such selection, as agreed between the Trustees and the Insurance Company.

### **8.3.7 Buy-out without consent**

The Trustees may, in the case of a Deferred Pensioner with at least 2 years' but less than 5 years' Qualifying Service (or as otherwise permitted by the "preservation" requirements), exercise their buy-out power under Rule 8.3.2 above without his or her request or consent. However, they may not purchase the insurance policy or annuity contract within 12 months of the Deferred Pensioner's Pensionable Service ceasing.

### **8.3.8 Trustees' discharge**

Once the purchase has been completed then (unless the terms of purchase provide to the contrary) –

- (a) the person or persons in respect of whom it has been made, his or her personal representatives and any person claiming through him or her will have no entitlement under the Scheme;
- (b) the receipt by the Insurance Company will be a complete discharge to the Trustees in respect of that person or persons; and
- (c) the Trustees will not be under any liability to oversee the performance by the Insurance Company of its obligation under the policy or contract.

## SECTION 9

## TRUSTEES - APPOINTMENT AND CONDUCT

**Summary**

- *Appointment and removal of Trustees (Rule 9.1)*
- *Trustees' meetings and resolutions (Rule 9.2)*
- *Records of Trustees' proceedings (Rule 9.3)*
- *Exercise of discretions by Trustees or Employers (Rule 9.4)*
- *Protection of persons dealing with Trustees (Rule 9.5)*
- *Professional advice (Rule 9.6)*

**9.1 APPOINTMENT AND REMOVAL OF TRUSTEES**

- 9.1.1 This Rule is subject to any statutory requirements in relation to the nomination and selection of trustees by Members of the Scheme. The Principal Company undertakes to exercise its powers to appoint and remove Trustees, and/or directors of any corporate Trustee, to ensure compliance with such statutory provisions.
- 9.1.2 Subject to 9.1.3 below, the Principal Company has power by deed to -
- (a) appoint (in place of or in addition to the Trustees for the time being) a corporate Trustee and/or individual Trustees; or
  - (b) remove any Trustee.
- 9.1.3 A Trustee may retire from the trusts of the Scheme by -
- (a) giving written notice to the Principal Company; and
  - (b) executing such documents and doing such things as may be necessary to transfer any Scheme assets registered in his or her name (whether alone or with the other Trustees).
- 9.1.4 There will be no fewer than 3 Trustees unless a body corporate is the sole Trustee of the Scheme.
- 9.1.5 At any time when there is a sole Trustee of the Scheme, the sole Trustee may appoint in writing a second trustee to be a trustee jointly with the sole Trustee of any real property comprised in the Fund on terms that:
- (a) the sole Trustee and the second trustee shall hold the real property and the proceeds of sale thereof upon bare trust for the sole Trustee as trustee of the Scheme;
  - (b) the second trustee shall cease to be a trustee of the real property and/or of the proceeds of sale thereof when the proceeds of sale have been paid to or at the direction of the sole Trustee or when the Principal Company or sole Trustee gives notice to the second trustee of the termination of the second

trustee's appointment or the second trustee resigns (for which purpose Rule 9.1.3 shall apply to the second trustee), whichever shall first occur; and

- (c) Rules 9.2 (Trustees' meetings and resolutions), 10 (Trustees' and Employers' liability) and 11.2.3 (remuneration) shall apply to the second trustee and the sole Trustee as trustees of the real property as they apply to the Trustee of the Scheme.

9.1.6 The Principal Company shall become a Trustee of the Scheme if a sole Trustee retires without a successor being appointed by the Principal Company or if for any reason the number of Trustees falls below the minimum specified in Rule 9.1.4.

9.1.7 The Trustees may continue to act notwithstanding any casual or temporary vacancy in their number.

## **9.2 TRUSTEES' MEETINGS AND RESOLUTIONS**

9.2.1 The following provisions shall have effect unless a body corporate is, for the time being, the sole Trustee of the Scheme. In the latter case, the articles of association of the corporate Trustee relating to meetings and resolutions will apply.

9.2.2 The Trustees will make such regulations (not being inconsistent with section 32 of the PA 1995 or the Rules) as they from time to time decide for -

- (a) the conduct of their business;
- (b) the calling of meetings;
- (c) the recording of resolutions; and
- (d) all other matters concerned with their work.

9.2.3 The quorum for a meeting of the Trustees shall be three Trustees.

9.2.4 Questions arising at a meeting (including the appointment of any chairman) shall be decided by a majority of votes of those Trustees present and voting thereon or, if there are only three Trustees present, the decision must be unanimous. In the event of an equality of votes the chairman of the meeting (if any) shall have a second or casting vote. If there should be an equality of votes on the election of a chairman at any meeting, the chairman shall be chosen by lot.

9.2.5 A Trustee may participate in a Trustees' meeting by means of the telephone, a video link or any other interactive media and participation by such means shall constitute presence in person at such a meeting. Such a meeting shall be deemed to take place where the largest group of those Trustees participating is assembled or, if there is no such group, where the chairman of the meeting is located.

9.2.6 (a) A resolution in writing signed by all of the Trustees, shall be as valid and effectual as if it had been passed at a meeting of the Trustees and may consist of one or more documents in similar form each signed by one or more of the Trustees.

- (b) For this purpose a written document includes copies sent by telex, electronic media or facsimile transmission or in a similar way and they shall be deemed to be signed if purporting to be authorised by the relevant Trustee.

### 9.3 *RECORDS OF TRUSTEES' PROCEEDINGS*

- 9.3.1 The Trustees will keep minutes of all their proceedings and records of all their resolutions.
- 9.3.2 Any minute, if signed by the person who presided over the meeting at which the proceeding took place or who presides over the next following meeting, will be sufficient evidence of the matters to which it relates.
- 9.3.3 Any such minutes or records must comply with any applicable requirements of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (or any other legislative requirements in force from time to time).

### 9.4 *EXERCISE OF DISCRETIONS BY TRUSTEES OR EMPLOYERS*

- 9.4.1 Every discretion or power conferred by the Rules on the Trustees will be absolute and uncontrolled, except -
- (a) it must not be exercised so as to infringe any undertaking given by the Trustees to the HMRC or be inconsistent with the Scheme's status as a Registered Scheme;
  - (b) it must, if necessary, be exercised in such a manner as, in the Trustees' opinion, is necessary for the retention of the Scheme's status as a Registered Scheme.
- 9.4.2 The Trustees may vary or revoke any regulation or decision made by them under the Rules, unless -
- (a) doing so would infringe 9.4.1(a) or (b) above; or
  - (b) the consent of another party was required to the original regulation or decision and that other party does not consent to its being varied or revoked.
- 9.4.3 (a) Sub-rules 9.4.1 and 9.4.2 above, will apply to the Principal Company or Employer's discretions, powers and regulations, as if all references to the Trustees are replaced by references to the Principal Company or Employer as the case may be.
- (b) Every power, right or discretion conferred on the Principal Company or Employer, will be exercised by that company's board of directors or a sub-committee of directors. A document purporting to be a copy resolution of that board or committee signed by the chairman of the meeting will, unless the power, rights or discretion is exercisable by deed, be sufficient exercise of the power, right or discretion. For the avoidance of doubt, any power given to the Principal Company and each Employer is for its absolute benefit and is not fiduciary and the Principal Company and each Employer may exercise such power (or refrain from doing so) at its absolute discretion.

### 9.5 *PROTECTION OF PERSONS DEALING WITH TRUSTEES*

No person dealing with the Trustees will be concerned -

- (a) to enquire whether any power purported to be exercised by the Trustees is exercisable;

- (b) to enquire as to the necessity or expediency of any term of such dealing or as to its propriety or regularity; or
- (c) to see to the application of any moneys paid to the Trustees.

In the absence of fraud by that person, the dealing will, so far as regards that person's safety and protection, be deemed to be within the Trustees' powers and valid and effectual.

#### **9.6 PROFESSIONAL ADVICE**

Subject to the provisions of the PA 1995 -

- 9.6.1 The Trustees may engage (or terminate the engagement) or act on the advice or opinion of -
  - (a) any lawyer, broker, actuary, accountant, investment manager, medical practitioner or other professional person; or
  - (b) any other person whom the Trustees reasonably believe to be qualified (by ability and practical experience) to advise on a matter.
- 9.6.2 The Trustees shall appoint such person in accordance with the PA 1995, provided that the remuneration for any such person (if any) shall be subject to the approval of the Principal Company.
- 9.6.3 The Trustees will not be responsible for any loss resulting from so acting.
- 9.6.4 The cost of obtaining any such advice or opinion shall be an expense of the Scheme payable in accordance with Rule 11.2.

## SECTION 10

## TRUSTEES' AND EMPLOYERS' LIABILITY

*Summary*

- *Meaning of "Protected Person" (Rule 10.1)*
- *Exoneration (Rule 10.2)*
- *Indemnities (Rule 10.3)*
- *Protection of Trustees (Rule 10.4)*
- *Power to insure (Rule 10.5)*

**10.1 MEANING OF "PROTECTED PERSON" IN SECTION 10**

In this Section, references to the "Protected Person" includes -

- (a) any Trustee;
- (b) any director, officer or other employee of a body corporate which is a Trustee of the Scheme;
- (c) a partner or employee of a Trustee which is a firm;
- (d) a former Trustee (including a person within (a) or (b) above) in respect of his or her period of office as a Trustee; and
- (e) any Employer (or director or officer of any Employer).

**10.2 EXONERATION**

10.2.1 A Protected Person shall not, except to the extent that it is attributable to the personal conscious bad faith of the Protected Person sought to be made liable, be responsible, chargeable or liable in any manner whatsoever for or in respect of any cost, claim, loss or expense suffered by the Fund or for any breach of duty or trust whatsoever and in particular but without prejudice to the generality of the foregoing

- (a) for or in respect of any loss of or any depreciation in or default upon any asset of the Fund;
- (b) for any delay which may occur from whatever cause in the investment of any moneys forming part of the Fund;
- (c) for the safety of any securities or documents of title deposited by the Protected Person for safe keeping;
- (d) for the consequences of any mistake or forgetfulness whether of law or fact of the Protected Person or its legal or other advisers.

10.2.2 The protection given by this Rule is additional to any protection given by legislation, common law or otherwise but is subject to sections 33 and 34 of the PA 1995.



**10.3 INDEMNITIES**

- 10.3.1 A Protected Person (other than a person falling within limb (e) of that definition) shall be indemnified by the Employers against all costs, claims, losses and expenses for which such person is liable arising out of or in connection with the Scheme to the extent that they are not attributable to breach of trust committed through wilful negligence or in personal conscious bad faith by such person.
- 10.3.2 The indemnities under this Rule are given and are enforceable to the extent permitted by law. Each part of each of the indemnities above is separate and, if and to the extent that any part of the indemnities above is not permitted under law, it shall not affect the other parts of the indemnities. If any event would, but for this Rule 10.3.2, cause the indemnities under this Rule to be impermissible or unenforceable under law, these indemnities shall continue in force as if that event had not occurred.

**10.4 PROTECTION OF TRUSTEES**

- 10.4.1 No decision of, or exercise of a power by, the Trustees may be invalidated or questioned on the grounds -
- (a) that the Trustees, or any of them, had a direct or indirect interest in that decision or in the exercise of the power; or
  - (b) without prejudice to the generality of (a), that any of the Trustees is a director, shareholder or employee of, or is otherwise interested or connected with the Principal Company or any Associated Employer of the Principal Company or otherwise owes a duty to a person which conflicts or might conflict with his or her duties as Trustee in making the decision or exercising the power.
- 10.4.2 Any of the Trustees (or the director of a corporate Trustee) who is or has been a Member will be entitled to retain any benefit to which he or she is entitled by virtue of his or her Membership of the Scheme.

**10.5 TRUSTEES' POWER TO INSURE**

- 10.5.1 The Trustees may with the consent of the Principal Company effect any policy of insurance (which may include or comprise cover against professional fees and expenses) or indemnity in relation to acts or omissions (whether or not negligent) of themselves, their servants, agents or other persons (including officers or employees of the Principal Company) in connection with the Scheme.
- 10.5.2 Insofar as the Trustees have insurance under 10.5.1 above and the insurance pays the amounts which would otherwise be payable under the indemnities in Rule 10.3, they shall not have the protection of Rule 10.3 in respect of those amounts. To the extent that the insurance covers professional fees and expenses, the Trustees shall not be entitled to their remuneration (if any) as an expense of the Scheme under Rule 11.2 if the insurance pays such fees and expenses.
- 10.5.3 The cost of any insurance under 10.5.1 above shall be met by the Employers in such shares as the Principal Company shall determine.

## SECTION 11

## ADMINISTRATIVE PROVISIONS

*Summary*

- *This section contains a set of administrative powers to allow the Trustees to operate the Scheme effectively.*

**11.1 ADMINISTRATION AND MANAGEMENT OF SCHEME**

- 11.1.1 The Trustees are responsible for the administration and management of the Scheme. However, the Trustees may appoint another person or persons to carry out the administration of the Scheme including, but not restricted to, the duties imposed on the "scheme administrator" under Part 4 of the FA 2004.
- 11.1.2 The Trustees may, with the Principal Company's consent, make regulations or other provisions relating to the Scheme or the administration of the Fund. The regulations or provisions must not relate to matters already provided for in the Rules or be inconsistent with the Rules.
- 11.1.3 The Trustees will have power generally to execute and do all such acts and things as they consider necessary or expedient for the maintenance and preservation of the Fund and the Scheme and of the rights of the Members and others under the Scheme.

**11.2 EXPENSES OF ADMINISTRATION AND INVESTMENT**

- 11.2.1 Subject to Rule 11.2.2, all costs, charges and expenses in connection with the administration of the Scheme or the management of the Fund shall be paid from the Fund. No cost, charge or expense shall be paid more than once.
- 11.2.2 The Principal Company may from time to time determine that some or all costs, charges and expenses in connection with the administration of the Scheme or management of the Fund shall be met by the Employers in such shares as the Principal Company shall determine. The Employers shall reimburse the Trustees for payment of any cost, charge or expense paid by the Trustees which the Employers were liable to pay under this Rule.
- 11.2.3 Any Trustee shall, by agreement with the Principal Company, be entitled to fees or remuneration for services as a trustee at such rate as shall be agreed between them. Unless such agreement stipulates that such fees or remuneration shall be paid by the Employers in addition to the contributions payable by them to the Scheme, or if the Employers breach any such stipulation, such Trustee shall be entitled to receive such fees or remuneration out of the Fund.
- 11.2.4 Any Trustee, any firm of which such Trustee is a partner and any subsidiary or associated company of such Trustee or in which such Trustee is interested (whether as an officer or shareholder) shall, by agreement with the Principal Company, also be

entitled to retain beneficially any brokerage, commission, fee or remuneration payable directly or indirectly to him, her or it.

### **11.3 DETERMINATION OF QUESTIONS BY TRUSTEES**

11.3.1 Subject to the powers conferred on the Employers, the Trustees may decide all questions and matters of doubt arising under the Scheme. In making its decision the Trustees can act on any advice, evidence or presumption (whether legal or not) as they think appropriate.

11.3.2 Any such decision (whether made upon a question actually raised or implied in the acts or proceedings of the Trustees) will, so far as the law permits, be conclusive.

### **11.4 TRUSTEES' POWERS AS TO EVIDENCE**

11.4.1 The Trustees may require evidence of the truth of any statement and the notification of any information relevant to the Scheme.

11.4.2 The Trustees may accept any information relevant to the Scheme supplied to them by an Employer as conclusive evidence of the matter to which it relates.

11.4.3 In particular (and without limiting 11.4.2 above), any questions arising as to the grounds for the resignation or dismissal of any Member may be determined by the Member's Employer. Any such determination shall, so far as the law permits, be conclusive and binding on all parties.

### **11.5 CLAIMS AND LEGAL PROCEEDINGS**

The Trustees may -

- (a) settle, compromise or submit to arbitration any claim or dispute;
- (b) commence, carry on or defend proceedings,

relating in any way to the Scheme or any person's rights under it.

### **11.6 RESOLUTION OF DISPUTES**

The Trustees shall make and implement arrangements for the resolution of disputes about matters relating to the Scheme, in accordance with the requirements of section 50 of the PA 1995.

### **11.7 GUARANTEES AND INDEMNITIES**

The Trustees may, with the consent of the Principal Company, guarantee the payment of any sum or the performance of any obligation or indemnify any person against liability, loss or expense.

### **11.8 DELEGATION**

11.8.1 The Trustees may delegate all or any of their powers, duties and discretions under the Scheme to any person or persons (whether or not a Trustee or Trustees or a director or officer of a corporate Trustee) on any terms (which may include power to sub-delegate) and at such remuneration (if any) as the Trustees, with the approval of the Principal Company, think fit. The Trustees may vary or revoke the delegation.

11.8.2 Subject to the PA 1995, the Trustees will not be bound to supervise the action of the delegate or its sub-delegate, or be in any way responsible for any loss (however caused) suffered as a result of any delegation or sub-delegation.

11.8.3 The powers of delegation in this Rule are in addition to and separate from those in Rule 12.7 (appointment of nominee, custodian and investment manager).

### **11.9 HMRC MATTERS**

11.9.1 The Trustees may make any determination they think necessary for ensuring that the Scheme complies with the requirements of HMRC for a Registered Scheme. The determination's provisions will override any provisions of the Rules to the extent that they are inconsistent and are not part of the Preservation Requirements.

11.9.2 If the Trustees are required under any provision of the Scheme, including the Rules, to make a payment which would in whole or in part be an Unauthorised Payment that payment shall, to the extent it is an Unauthorised Payment, be payable at the discretion of the Trustees (subject to the consent of any other person required for payment under the provisions of the Scheme prior to 6 April 2006).

11.9.3 Without prejudice to Rule 11.9.2 every discretion or power conferred on the Principal Company and/or the Trustees under the Scheme shall so far as practicable not be exercised so as to give an individual an entitlement to an Unauthorised Payment.

11.9.4 The Principal Company and the Trustees may agree a policy or policies with regard to Unauthorised Payments for the better administration of the Scheme.

11.9.5 If part or all of a payment that would otherwise be made to a Member would be an Unauthorised Payment, the Principal Company and Trustees may agree to pay a different benefit to or in respect of the Member in place of all or part of such payment. The value of such different benefit shall not exceed the value of the payment that would otherwise have been made to or in respect of the Member, unless the Principal Company and Trustees agree otherwise, and the Principal Company pays any contributions to the Scheme which the Trustees decide, having consulted the Actuary, are necessary.

### **11.10 DISCLOSURE**

Members and others are entitled to certain information about the Scheme under the Disclosure Requirements. In addition each Member will be entitled, on application, to receive a copy of the Rules and of any special terms of Membership which apply to him or her subject to payment of any fees imposed by the Trustees.

### **11.11 NOTICES**

Notice of any matter under the Rules must be given to the Trustees at the time and place and in the form and manner and with the supporting evidence (if any) stipulated by the Trustees.

## SECTION 12

## INVESTMENT PROVISIONS

*Summary*

- *Trustees' investment powers (Rules 12.1 and 12.2)*
- *Appointment of investment managers and custodians (Rule 12.7)*
- *Appointment of agents (Rule 12.8)*
- *Insurances (Rule 12.9)*
- *Receipts and discharges (Rule 12.10)*
- *Bank Accounts (Rule 12.11)*
- *Donations (Rule 12.12)*

**12.1 GENERAL POWERS OF INVESTMENT**

Subject to Rule 12.4 below, the Trustees shall have the same full and unrestricted powers of investing in any property (whether or not it is tangible or produces income or involves liability) and disinvesting as if they were an individual absolutely and beneficially entitled to the Fund, except that they may invest in investments that are open to trustees of occupational Registered Schemes but not to individuals.

**12.2.1 SPECIFIC POWERS OF INVESTMENT**

Without prejudice to the Trustees' general power of investment in Rule 12.1 above and subject to Rule 12.4 below, the Trustees may invest all or part of the Fund in all or any of the following -

- (a) deposit or current accounts at such rate of interest (if any) and upon such terms as the Trustees think fit;
- (b) stocks, shares, debentures, bonds, commodities, debenture stock or bearer securities;
- (c) units in unit trusts, exempt funds and mutual funds and any type of collective investment scheme, wherever it is constituted;
- (d) any land or interest in land (any land or interest in land forming part of the Fund will, subject to the relevant national law or any contrary decision by the Trustees, be held subject to a "trust for land" under the Trusts of Land and Appointment of Trustee Act 1996);
- (e) contracts or policies effected with any Insurance Company;
- (f) by making loans to such persons and upon such terms as the Trustees think fit.

### 12.3 POWER TO ENTER INTO TRANSACTIONS

Subject to Rule 12.4 below, the Trustees may engage in any lawful transaction and in particular may -

- (a) enter into, vary or terminate any option, future or contract for differences or any form of contract comprising or relating to an option, future or contract for differences regarding the purchase, sale or carrying out of any transaction relating to any such subject-matter mentioned in Rule 12.1 or any currency, interest rate, notional subject-matter (whether relating to an index or otherwise) or other thing (including any option on a future or contract for differences and any combination of any of the instruments or transactions mentioned in this paragraph);
- (b) enter into, vary or terminate swap transactions (including any appropriate ancillary or supporting documentation);
- (c) collateralise or secure any obligation relating to an option, future, contract for differences or swap transaction (including by the payment or delivery of margin) in such manner and upon such terms as the Trustees thinks fit (including by the giving of any charge or other security over all or any part of the Fund);
- (d) underwrite or sub-underwrite or guarantee the subscription of any investments;
- (e) enter into arrangements of the kind described in Part I of Schedule 10 to the Finance Act 1997 (stock lending) and to do all such other acts and things as they consider necessary or expedient in relation to and for the implementation and enforcement of such arrangements;
- (f) enter into arrangements for the sale and repurchase of securities and to do all such other acts and things as are necessary or expedient in relation to and for the implementation and enforcement of such arrangements;
- (g) deal in foreign currencies either at the official rate of exchange or at any other rate and either for present or forward settlement;
- (h) give any indemnity, guarantee or undertaking which the Trustees consider to be expedient in connection with the application or investment of any part of the Fund;
- (i) enter into any contract or agreement binding the Fund which the Trustees consider to be expedient in connection with the application or investment of any part thereof;
- (j) with the consent of or at the direction of the Principal Company participate in any common investment fund or scheme for the pooling or investment of trust funds whether or not exempt from tax; and
- (k) do all things incidental to any exercise of those powers.

#### **12.4 RESTRICTIONS ON INVESTMENTS AND STATEMENTS OF INVESTMENT PRINCIPLES**

- 12.4.1 The Trustees shall comply with the restrictions on investment in employer-related investments to the extent required by section 40 of the PA 1995 (Restriction on employer-related investments) and regulations made under that section.
- 12.4.2 The Trustees must, in accordance with section 35 of the PA 1995, secure that there is prepared, maintained and from time to time revised a written statement of principles governing decisions about investments for the purposes of the Scheme ("the Statement of Investment Principles").
- 12.4.3 The Trustees or their delegates, must exercise their powers of investment with a view to giving effect to the principles contained in the Statement of Investment Principles so far as is reasonably practicable and in accordance with section 36 of the PA 1995.

#### **12.5 DEALINGS WITH EMPLOYERS, OTHER TRUSTEES AND JOINT INVESTMENTS**

- 12.5.1 The Trustees may enter into any transaction with -
- (a) any of the Employers;
  - (b) the trustees of any other trust, even though the Trustees (or any of them, or any of the directors of a corporate trustee) may be or be included amongst the trustees or directors of a corporate trustee of the other trust; and
  - (c) any other party.
- 12.5.2 In particular, but without prejudice to the generality of 12.5.1, the Trustees may exercise their investment powers jointly with the trustees of any other trust having similar powers, as if the property subject to the trusts of the Scheme and that subject to the trusts of the other trust were one trust fund. When exercising this power the Trustees will make such arrangements as they think fit for apportioning blended trust property, its income, and gains and losses arising on the sale of assets or otherwise and such other arrangements relevant to the joint exercise of such powers as they consider to be just and equitable.

#### **12.6 BORROWING**

- 12.6.1 The Trustees may -
- (a) raise or borrow any sum or sums in any currency and in any manner for investment or for any other purpose of the Scheme or for the exercise of any power conferred on the Trustees under the Scheme;
  - (b) secure the performance of any obligation arising in connection with (a) above in such manner and upon such terms (including any obligation to make a margin payment and the giving of any guarantee or indemnity) as they think fit; and
  - (c) charge the sums so raised or borrowed or any part of them on all or any part of the Fund.

#### **12.7 APPOINTMENT OF NOMINEE, CUSTODIAN AND INVESTMENT MANAGER**

- 12.7.1 The Trustees may appoint any body corporate to act as -

- (a) the custodian of any investments of the Scheme;
- (b) their nominee. Any investments of the Scheme may be made in the name of, or transferred to, the nominee, on terms that it will hold them as nominee for and on behalf of the Trustees;
- (c) their investment manager, to exercise all or any of the investment powers conferred on the Trustees under this Section 12 and such other powers (if any) as the Trustees decide.

12.7.2 The Trustees may enter into any agreement with the body corporate as to the terms and conditions of its appointment and these may include power to sub-delegate. The Trustees may vary or revoke the appointment or agreement.

12.7.3 Subject to 12.7.4 below, the Trustees will not be bound to supervise the actions of any body appointed under this Rule or its sub-delegate, or be responsible for any loss (however caused) suffered as a result of any appointment or sub-delegation.

12.7.4 The terms of the PA 1995 apply and, in particular, the Trustees will not be responsible for the act or default of any investment manager in the exercise of a power delegated to it provided they have taken all such steps as are reasonable to satisfy themselves that the investment manager has the appropriate knowledge and experience for managing the investments of the Scheme and that it is carrying out its work competently and complying with section 36 of the PA 1995.

## **12.8 APPOINTMENT OF AGENTS**

The Trustees shall have power to employ such agents as they may think fit in the transaction of any business of the Scheme including the payment of pensions and other benefits and any valid receipt given to such agents shall be a good and sufficient discharge to the Trustees.

## **12.9 INSURANCES, ANNUITIES ETC.**

12.9.1 The Trustees may effect (and subsequently vary, surrender, sell, exchange or dispose of) any insurance which they believe is suited for the purposes of the Scheme. Every annuity contract effected under this Rule must comply with any relevant requirements of the HMRC.

12.9.2 The Trustees may appropriate any insurance forming part of the Fund to the provision, in whole or in part, of any benefit payable or prospectively payable under the Scheme. If they do so -

- (a) the rights of the person entitled or prospectively entitled to that benefit or the relevant part will be limited to that insurance;
- (b) no person will have any right to resort to that insurance in priority to the person entitled to that benefit; and
- (c) Section 15 (Closing and winding-up) will have effect subject to this provision.

12.9.3 The Trustees may assign the appropriated insurance to the person in 12.9.2 above, following which he or she will have no claim to the benefit or the relevant part under the Scheme. The insurance must -



- (a) correspond or substantially correspond with; and
- (b) be expressed to be non-assignable and non-commutable except in the same circumstances and to the same extent as

the benefits to the provision of which (in whole or in part) it is appropriated.

#### **12.10 RECEIPTS, CUSTODY AND DISCHARGES**

12.10.1 The Trustees may -

- (a) make such arrangements as they think fit for dealing with receipts and discharges under the Scheme; and
- (b) give, vary and revoke instructions as to the custody and disposal of any securities and as to the giving of receipts and discharges for payments in connection with the Scheme.

12.10.2 Where the written authority of the Trustees (contained in a copy of a minute certified by the chairman of, or secretary to, the Trustees to be a true copy) is produced to any person, he or she may, unless he or she has received written notice from the Trustees of its revocation act on the assumption that the authority remains in force.

#### **12.11 BANK ACCOUNTS**

12.11.1 The Trustees will hold any Fund money that it receives in a separate bank account kept by it, unless one of the exemptions from the PA 1995 applies.

12.11.2 The Trustees may make such arrangements as they think fit for the operation of bank accounts and the signing of cheques.

#### **12.12 DONATIONS**

The Trustees may accept donations or bequests or compensation payments from any person or body and apply it in such manner as the Trustees may decide for the purposes of the Scheme and as is consistent with the Scheme's status as a Registered Scheme.

## SECTION 13

## ACTUARIAL INVESTIGATION, AUDIT AND ACCOUNTS

*Summary*

- *Appointment of a Scheme actuary and auditor (Rule 13.1)*
- *Actuarial investigation (Rule 13.2)*
- *Records and audit (Rule 13.3)*

**13.1 APPOINTMENT OF ACTUARY AND AUDITOR**

- 13.1.1 (a) The Principal Company must appoint, on such terms as they think fit, an actuary ("**the Actuary**") for the Scheme. The Principal Company may vary or revoke the appointment.
- (b) The Trustees must appoint, on such terms as they think fit, an auditor ("**the Auditor**") for the Scheme. The Trustees may vary or revoke the appointment.
- (c) The above appointments are subject to and must comply with section 47 of the PA 1995 (professional advisers)<sup>2</sup>.

## 13.1.2 The Actuary must –

- (a) for statutory purposes, be an individual who is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries;
- (b) for non-statutory purposes, may be a firm or organisation which makes available advice from individuals who are Fellows of the Institute of Actuaries or Faculty of Actuaries.

13.1.3 The Auditor must be an individual or a firm qualified for appointment as auditor of a company under Part 42 of the Companies Act 2006.

## 13.1.4 The Trustees will consult and act upon the advice of the Actuary –

- (a) as required under the Rules or by legislation;
- (b) when they consider it necessary or advisable to do so.

**13.2 ACTUARIAL INVESTIGATION**

13.2.1 The following provisions are subject to any overriding legislation which may apply to the Scheme from time to time<sup>3</sup>.

<sup>2</sup> Section 47 of the Pensions Act 1995 requires the Trustees to appoint an actuary to the Scheme who is responsible, among other things, for preparing actuarial valuations and reports required by the statutory funding objective under Part 3 of the Pensions Act 2004.

<sup>3</sup> As at the date of adoption of these Rules, the Scheme is subject to the statutory funding objective under Part 3 of the Pensions Act 2004. Under the "statutory funding objective", the trustees must ordinarily obtain actuarial valuations at intervals of not more than one year or, if they obtain actuarial reports for the intervening years, at intervals of not more than three years.

- 13.2.2 The Trustees, with the consent of the Principal Company, must fix valuation dates not more than 3 years and 6 months apart. After each valuation date, the Trustees must instruct the Actuary to investigate and report on the financial condition of the Scheme at that date as soon as reasonably practicable.
- 13.2.3 The Actuary will report in writing to the Trustees and make such recommendations as he or she thinks fit.
- 13.2.4 The Trustees will make each valuation report available to –
- (a) the Principal Company; and
  - (b) to Members and others in accordance with the Disclosure Requirements.
- 13.2.5 If the value of the assets of the Scheme exceeds the value of its actual and contingent liabilities (both as determined in accordance with prescribed principles as they applied to the Scheme pursuant to Schedule 22 of the Income and Corporation Taxes Act 1988 immediately prior to its repeal or on any other basis approved by HMRC) the Principal Company may direct the Trustees (who shall, subject only to the approval of HMRC, comply with the direction) to transfer to the Principal Company and to such (if any) of the other Employers as the Principal Company shall decide cash or other assets representing all or any part of the excess.

### **13.3 RECORDS AND AUDIT**

- 13.3.1 The Trustees must keep, or cause to be kept –
- (a) a complete record of all matters essential for the working of the Scheme;
  - (b) accounts to show the position of, and dealings with, the Scheme and the amounts contributed to it; and
  - (c) any other records which they are required to keep by The Occupational Pension Schemes (Scheme Administration) Regulations 1996.
- 13.3.2 The Trustees must arrange for a statement of accounts of the Scheme at least once in every consecutive period of 12 months (or other interval as may be required or permitted under The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996).
- 13.3.3 Every such statement of accounts must be audited by the Auditor appointed under Rule 13.1, who must have access to all relevant records, books, papers, vouchers, accounts and documents and will provide a report on the statement to the Trustees in accordance with the Disclosure Requirements.
- 13.3.4 The Trustees will make the report and accounts available to –
- (a) the Principal Company; and
  - (b) to Members and others in accordance with the Disclosure Requirements.

## SECTION 14

## EMPLOYERS

*Summary*

- *This Section explains how a company can become, or cease to be, an Employer and its duties whilst an Employer.*
- *This Section also sets out the circumstances in which the Principal Company may be replaced by a new Principal Company.*

**14.1 BECOMING AN EMPLOYER**

14.1.1 An company will become an Employer if -

- (a) the Principal Company consents in writing; and
- (b) it enters into a covenant with the Trustees by deed to observe and perform the provisions of the Rules as they apply to an Employer under the Scheme.

14.1.2 The admission of an Employer to participation shall be subject to any conditions which the Principal Company thinks fit in order to protect the existing Members and Beneficiaries of the Scheme at the date of admission of the Employer and the Rules shall, in relation to that Employer and its employees, apply with such variations as the Principal Company, with the consent of the Trustees, shall specify.

**14.2 EMPLOYERS' CONTRIBUTIONS**

Each Employer will pay contributions to the Scheme in accordance with Rule 3.1 and any overriding legislation which applies to the Scheme from time to time.

**14.3 EMPLOYERS' DUTIES**

Each Employer must do all things and give to the Trustees all information in its power or possession which are necessary for the working of the Scheme.

**14.4 CEASING TO BE AN EMPLOYER**

14.4.1 An Employer (except the Principal Company) will cease being an Employer if -

- (a) it gives written notice to the Trustees terminating its liability to contribute to the Scheme in respect of all or any of its employees; or
- (b) the Principal Company gives notice that its participation shall cease; or
- (c) it fails to observe and perform all or any of its obligations under the Scheme and the Trustees give notice in writing to the Employer that its participation will cease; or

- (d) it was participating in the Scheme for a temporary period under Rule 14.5 and such temporary period ends; or
- (e) it goes into liquidation or is dissolved or ceases to carry on its business (other than pursuant to a reorganisation and/or circumstances where another company assumes its responsibilities under the Scheme).

14.4.2 The cessation of participation as an Employer will take effect from the earliest of -

- (a) the effective date stated in the notice in 14.4.1(a), (b) or (c) above;
- (b) the end of the temporary period of participation referred to in 14.4.1(d) above; or
- (c) the date of the event referred to in 14.4.1(e) above.

#### **14.5 TEMPORARY PARTICIPATION**

14.5.1 If a person becomes the employer of Members accruing benefits in the Scheme following the sale or transfer of the business of an Employer, the Trustees may, with the consent of the Principal Company, admit that person as an Employer for a temporary period, provided such participation would not prejudice the Scheme's status as a Registered Scheme.

14.5.2 The participation of the Employer shall be on such terms as the Trustees, with the consent of the Principal Company, shall determine.

#### **14.6 MEMBERS' BENEFITS WHEN PARTICIPATION OF EMPLOYER CEASES**

14.6.1 Subject to 14.6.2 below, once participation ceases the Principal Company shall, in accordance with Rule 15.1.2, apply the proportion of the Fund (or such larger part as the Principal Company may direct) which the Principal Company considers in all the circumstances to be equal to the value of the benefits and contingent benefits in respect of the persons affected by the cessation event who do not become employees of another Employer.

14.6.2 In the event that an Employer ceases to participate in the Scheme following its sale or transfer, or at the end of a temporary period of participation under Rule 14.5, the Trustees may, with the consent of the Principal Company, as an alternative to Rule 14.6.1, make a transfer of assets in respect of any Member or Beneficiary who may be affected by the sale or transfer in accordance with Rule 8.2 (transfer out). Provided that the value of the assets to be transferred shall, unless the Principal Company directs the transfer of assets having a greater value, be equal to the value of the benefits and contingent benefits in respect of the persons to whom the transfer relates. The value of the benefits shall be subject to the consent of the Principal Company.

#### **14.7 REPLACEMENT OF PRINCIPAL COMPANY**

14.7.1 (a) The Principal Company may, subject to (b), permit the substitution of a different body (the "**Substitute**") as the Principal Company for the purposes of the Scheme if the existing Principal Company is unwilling or unable to perform its obligations under the Scheme or, in the opinion of the existing Principal Company and the Trustees, it is likely that it will cease to be able to perform those obligations. Subject to (b), the Trustees may also permit the

substitution of the existing Principal Company for a Substitute in such other circumstances as they consider appropriate.

- (b) The substitution of the Principal Company for a Substitute shall not prejudice the Scheme's status as a Registered Scheme.

14.7.2 The Substitute will be appointed by deed ("**the Deed of Substitution**") made between the Substitute and the Trustees and (unless it has entered into liquidation or been dissolved) the outgoing Principal Company in which the Substitute agrees to perform the Principal Company's obligations in substitution for the outgoing Principal Company.

14.7.3 The Deed of Substitution shall also specify the date from which the substitution takes effect and may make provision for the retention or transfer of liabilities and interests incurred or held by the outgoing Principal Company prior to the substitution.

## SECTION 15

## CLOSING AND WINDING-UP

*Summary*

- *This Section deals with the total termination of the Scheme and the effects and priorities on a winding-up of the Scheme.*

**15.1 TERMINATION EVENTS**

## 15.1.1 If:

- (a) the Principal Company gives to the Trustees notice in writing of one month, or of such lesser period as may be agreed by the Principal Company and by the Trustees, that it wishes the Scheme to terminate;
- (b) the Principal Company shall at any time fail to observe and perform any or all of its obligations under the Rules and the Trustees resolve to determine the Scheme;
- (c) the Principal Company goes into liquidation, is dissolved or ceases to carry on business (other than pursuant to a reorganisation and/or in circumstances where another company assumes its responsibilities under the Scheme) and the Trustees resolve to determine the Scheme; or
- (d) the perpetuity period applicable to the Scheme expires,

then the Scheme shall be terminated. The Trustees shall hold the Fund on trust to apply it in accordance with the provisions of Rule 15.1.2 unless the Trustees have entered into an agreement or agreements as referred to in Rule 14.7 (Replacement of Principal Company) and the circumstances described in paragraph (d) above do not apply.

In this Rule 15.1.1, the perpetuity period applicable to dispositions made hereunder for the purpose of the Perpetuities and Accumulations Act 1964 shall be a period ending on the date immediately before the date which is 20 years after the death of the last survivor of the living issue at 1 June 1990 of His late Majesty King George the Fifth, save that if for any reason the trusts of the Scheme are not or cease to be subject to the rule against perpetuities, the limitation on the duration of the Scheme imposed by paragraph (d) above shall no longer apply until such time (if any) at which the Scheme may again become subject to the same rule.

15.1.2 If the Scheme is terminated, the Trustees shall at their discretion determine whether to apply the Fund:

- (a) in accordance with Rule 15.2 (Closed Scheme) unless the Scheme terminated as a result of the occurrence of the event specified in Rule 15.1.1(d), in which case they may not do so; or
- (b) in accordance with Rule 15.3 (Transfer to another arrangement); or

(c) in accordance with Rule 15.4 (Winding-up),

or in such combination of these methods as the Trustees decide.

## **15.2 CLOSED SCHEME**

The Trustees may administer the Scheme as a closed Scheme until such date as the Trustees may fix for the determination of the Scheme (or the date of expiry of the perpetuity period specified in Rule 15.1.1 or until the Fund is exhausted (whichever shall first occur). If the Trustees do continue the Scheme as a closed Scheme all the powers, duties and discretions (including the power of amendment under Section 17) (Power of amendment) previously vested in the Principal Company and the Employers shall, subject to the remaining provisions of this Rule 15.2, become vested in the Trustees. No power, duty or discretion vested in the Trustees by virtue of this Rule 15.2 shall be exercised in such a way as to affect prejudicially (whether directly or indirectly) the interests of the Principal Company or any company which is or has been an Employer without the prior written consent of such person.

## **15.3 TRANSFER TO ANOTHER ARRANGEMENT**

The Trustees may transfer, on the terms set out in Rule 8.2 and on such other terms as they determine, all or part of the Fund to the trustees or administrators of one or more Registered Schemes or may purchase (in accordance with Rule 8.3) an insurance policy or annuity contract in respect of any Member.

## **15.4 WINDING-UP**

If the Trustees decide under Rule 15.1.2 to apply the Fund in accordance with this Rule 15.4 the Trustees shall apply the whole of the Segregated Assets (if any) to provide, in respect of each Member who is paying or has paid voluntary contributions under Rule 3.3 (Members' voluntary contributions) benefits which the Actuary advises are equal in value to that proportion of the Segregated Assets attributable to that Member and the Fund other than the Segregated Assets (or the relevant part thereof as appropriate) shall be applied by the Trustees in accordance with Rule 15.5 (Methods of securing benefits):

### **(a) FIRST**

- (i) in paying or providing for any costs, charges or expenses incurred or to be incurred by the Trustees; and
- (ii) in providing benefits then payable out of the Fund to any persons; and
- (iii) in providing benefits in respect of persons who are entitled to benefits payment of which has been deferred under the provisions of the Rules relating to late retirement but so that the amount of any such benefits to which such persons are entitled shall be the amount to which they would have been entitled under the provisions of the Rules if the benefits had become payable on the date of commencement of winding-up and such benefits shall be payable immediately; and
- (iv) in providing benefits contingently payable out of the Fund on the death of any person currently receiving a pension from the Fund or who has attained Normal Retirement Date on the date of commencement of winding-up,



and if the Fund is insufficient to meet in full all such benefits, all such benefits shall be abated rateably;

(b) SECONDLY (as to any balance remaining)

In providing benefits (vested or contingent and including any equivalent pension benefits as defined in the National Insurance Act 1965) which accrued under the Scheme prior to 6 April 1978 calculated by reference to Members' Basic Salaries during the year preceding that date for persons prospectively or contingently entitled to benefits out of the Fund and not already provided for;

(c) THIRDLY (as to any balance remaining)

- (i) in providing any GMPs and accrued rights to GMPs not already provided under any of the foregoing provisions; and
- (ii) in providing any state scheme premiums which fall to be paid by the Trustees;
- (iii) in providing equivalent pension benefits (as defined in the National Insurance Act 1965) not already provided under any of the foregoing provisions;

and if the balance remaining is insufficient to meet in full all such benefits all such benefits shall be abated rateably;

(d) FOURTHLY (as to any balance remaining)

In providing benefits (vested or contingent) for persons prospectively or contingently entitled to benefits out of the Fund which have not already been provided but so that Members in Pensionable Service at the date of commencement of winding-up of the Scheme shall be entitled to benefits as if their Pensionable Service terminated on the date of commencement of winding-up of the Scheme and if the balance is insufficient to meet in full all such benefits, all such benefits shall be abated rateably so that no person who has left Pensionable Service prior to the date of commencement of the winding-up shall be treated less favourably than Members in Pensionable Service;

(e) FIFTHLY (as to any balance remaining)

In providing such additional benefits (whether immediate or deferred as appropriate) for the benefit of all or any Members (whether or not in Pensionable Service), surviving spouses or dependants of persons who are or have been Members of the Scheme as the Principal Company thinks fit (subject to the Scheme Maximum, unless the Principal Company determines otherwise) and/or paying any balance to the Employers in such shares as the Principal Company thinks fit.

Every such benefit or the provision to be made for the benefit shall be of such amount as the Trustees shall decide having regard to such matters as it shall think fit

including the rights and prospective rights of the person to or in respect of whom the benefit is payable.<sup>4</sup>

#### **15.5 METHODS OF SECURING BENEFITS**

The benefits to be provided under Rule 15.4 above shall be secured in either or both of the following ways:

- (a) by the purchase of non-assignable annuity or assurance contracts or policies from any Insurance Company, such annuity or assurance contracts or policies to include such options as may be agreed with the Insurance Company;
- (b) by paying the benefits (other than pensions where the Scheme is being completely wound up) out of the Fund.

In exercising any discretion under this Rule, the Trustees must comply with any relevant requirements of the HMRC, the contracting-out requirements of the PSA 1993 and the Preservation Requirements.

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<sup>4</sup> Members will be eligible for Pension Protection Fund benefits if the assets of the Scheme are not enough to secure a certain level of benefits.

## SECTION 16

## PENSIONS ON DIVORCE

**Summary**

- *Definitions and applicability of this Section (Rule 16.1)*
- *Earmarking Orders (Rule 16.2)*
- *Implementing a Pension Sharing Order (Rule 16.3)*
- *Ex-Partner Participants (Rule 16.4)*
- *Impact of pension sharing on Members (Rule 16.5)*
- *Death of an Ex-Partner before pension sharing order implemented (Rule 16.6)*
- *Charging (Rule 16.7)*

**16.1 PENSIONS ON DIVORCE**

16.1.1 (a) Rule 16.2 applies if an Earmarking Order is issued in respect of a Member of the Scheme.

(b) Rules 16.3 to 16.7 applies if a Pension Sharing order is issued in respect of a Member of the Scheme.

16.1.2 In this Section 16, the following expressions have the meanings set out below -

**"Earmarking Order"** means an order of a competent court made pursuant to sections 25B, 25C and 25D of the 1973 Act.

**"Ex-Partner"** means a person who has been or will be granted Pension Credit Rights following a Pension Sharing Order.

**"Ex-Partner Participant"** means an Ex-Partner who the Trustees have determined may participate in the Scheme either -

- (1) solely for the provision of a Pension Credit Benefit; or
- (2) for the wholly separate provision of a Pension Credit Benefit, where the Ex-Partner is already a Member or dependant of a Member or former Member

and includes a person who becomes an Ex-Partner Participant by virtue of Rule 16.4.2 below (transferred in Pension Credit Rights).

**"Former Partner"** means a Member's former spouse or Civil Partner to whom benefits are payable pursuant to an Earmarking Order.

**"Pension Credit"** means a credit under section 29(1)(b) of the 1999 Act or under corresponding Northern Ireland legislation.

**"Pension Credit Benefit"** means the benefits (if any) which the Trustees have determined will be payable under the Scheme in respect of a Pension Credit.

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

**"Pension Debit"** means a debit under section 29(1)(a) of the 1999 Act or under corresponding Northern Ireland legislation.

**"Pension Debit Member"** means a Member whose benefits have been permanently reduced by a Pension Debit and who is -

- (1) a Controlling Director (as defined in Appendix 3 (Scheme Maximum)) at the date on which the marriage was dissolved or annulled or at any time within the period of ten years before that date; or
- (2) whose earnings as at the date on which the marriage was dissolved or annulled exceeded one quarter of the Earnings Cap for the year of assessment in which the dissolution or annulment occurred. Earnings for these purposes shall be taken to be the total emoluments -
  - (a) which were paid to the Member in consequence of Service during the year of assessment before the year of assessment in which the marriage was dissolved or annulled; and
  - (b) from which tax was deducted in accordance with The Income Tax (Pay As You Earn) Regulations 2003.

**"Pension Sharing Order"** means any order or provision as is mentioned in section 28(1) of the 1999 Act or under corresponding Northern Ireland legislation.

**"1973 Act"** means the Matrimonial Causes Act 1973.

**"1999 Act"** means the Welfare Reform and Pensions Act 1999.

## 16.2 **EARMARKING ORDERS**

16.2.1 If the Trustees are required by an Earmarking Order to pay to a Member's Former Spouse -

- (a) all or part of -
  - (i) the Member's pension ; or
  - (ii) any cash sum which the Member elects to commute

the Trustees shall make those payments and the amount payable to the Member shall be reduced by those amounts;

- (b) all or part of any cash sum payable on the death of the Member in accordance with Section 5 of the Rules, the Trustees shall exercise their powers under those Rules to give effect to the Earmarking Order and the rights of the other persons shall be adjusted appropriately.

16.2.2 Whilst an Earmarking Order is in place in respect of a Member, the Trustees shall give any notices required by the 1973 Act on the transfer (or certain other applications) of the Member's benefits or any change of circumstances relevant to the Earmarking Order.

16.2.3 An Earmarking Order shall not have the effect of terminating the Member's interest in accordance with Rule 7.5 (Benefits not assignable).

### **16.3 PENSION SHARING - IMPLEMENT A PENSION SHARING ORDER**

16.3.1 If a Pension Sharing Order is made in respect of a Member's or Ex-Partner Participant's benefits, the Trustees shall reduce those benefits by the amount of the Pension Debit in accordance with section 31 of the 1999 Act (or any other enabling power) and provide the Ex-Partner with a Pension Credit.

16.3.2 The Trustees shall discharge their liability in respect of the Pension Credit by -

- (a) transferring the Pension Credit to another pension arrangement; or
- (b) admitting the Ex-Partner to participation in the Scheme as an Ex-Partner Participant, on the terms set out in Rule 16.4 below;

in each case with the Ex-Partner's consent and in accordance with Schedule 5 of the 1999 Act (method of discharging Pension Credits).

16.3.3 Participation in the Scheme pursuant to sub-Rule 16.3.2(b) above may be restricted to such individuals or categories of individuals, or be permitted in such circumstances, as the Trustees may from time to time decide.

16.3.4 If the Ex-Partner fails to give his or her consent under sub-Rule 16.3.2 above, the Trustees may nevertheless make a transfer, or grant participation in the Scheme, under sub-Rule 16.3.2(a) or (b) (as appropriate) in the circumstances permitted by Schedule 5 of the 1999 Act. Subject to section 33 of the PA 1995 (investment powers: duty of care), the Trustees shall not be liable for any resulting loss whatsoever which may be suffered by the Ex-Partner.

16.3.5 Rule 7.5 (Benefits not assignable) is amended to permit -

- (a) the assignment of part or all of the Member's benefits or rights to benefits under the Scheme to his/her Ex-Partner; or
- (b) the assignment of part or all of any Ex-Partner Participant's benefits or rights to benefits under the Scheme to his/her Ex-Partner;

to the extent necessary to comply with a Pension Sharing Order.

### **16.4 PENSION SHARING - EX-PARTNER PARTICIPANTS**

16.4.1 This Rule 16.4 applies to -

- (a) Ex-Partner Participants admitted to the Scheme pursuant to Rule 16.3.2(b) above; and
- (b) Members who acquire the status of Ex-Partner Participants by virtue of Rule 16.5.2 (transferred-in Pension Credit Benefits) but only in respect of such Pension Credit Benefits.

16.4.2 The Pension Credit Benefits to be provided for an Ex-Partner Participant shall be in such form and payable on such terms as (in either case) the Trustees shall

determine. Such benefits shall be subject to Appendix 4 (Scheme Maximum (Pension Sharing on Divorce)).

16.4.3 Any Pension Credit Benefits under the Scheme shall be treated as provided separately from any benefits provided under the Scheme for the same person as a Member or as the dependant of a Member or former Member.

16.4.4 The Rules of the Scheme will be subject to the following modifications in respect of an Ex-Partner Participant -

- (a) Rule 15.4(a) of the winding-up priorities shall include the benefits payable to and in respect of Ex-Partner Participants who are in receipt of their pensions; and
- (b) Rule 15.4(d) of the winding-up priorities shall be deemed to include the benefits payable to and in respect of Ex-Partner Participants who are not in receipt of their pensions

provided that if an Ex-Partner Participant is also a Member or dependant of a Member or former Member, the above modifications shall apply only in respect of his or her Pension Credit Benefits.

16.4.5 (a) The Ex-Partner Participant may request that the Trustees arrange a transfer of his or her Pension Credit Rights to -

- (i) another Registered Scheme if he or she is already a member of that scheme or an ex-spouse participant in that scheme;
- (ii) to any other scheme if the transfer would not prejudice the Scheme's status as a Registered Scheme; or
- (iii) to any other scheme if the HMRC's requirements are satisfied in relation to a transfer to that scheme.

(b) If the Ex-Partner Participant is also a Member of the Scheme -

- (i) the transfer of Pension Credit Rights will only be permitted if the Ex-Partner Participant also requests a transfer of his or her other Scheme benefits under Rule 8.2 (Transfer Out); and
- (ii) a transfer of the Ex-Partner Participant's other Scheme benefits under Rule 8.2 (Transfer Out) will only be permitted if he/she also requests a transfer of his or her Pension Credit Rights.

(c) The Trustees must confirm to the receiving scheme or arrangement, that a transfer value consists wholly or partly of Pension Credit Rights for the benefit of an Ex-Partner Participant.

16.4.6 The rights to a Pension Credit Benefit under the Scheme shall not be absolute, but shall be forfeited upon the bankruptcy of the Ex-Partner Participant (subject to the 1999 Act). Such benefits may then be paid to any individuals or individual as specified by the Trustees, in their absolute discretion.

**16.5 PENSION SHARING - IMPACT ON MEMBERS**

16.5.1 A Pension Debit Member's benefits payable in respect of Pensionable Service shall be subject to the additional HMRC limits set out in Appendix 4 (Scheme Maximum (Pension Sharing on Divorce)).

16.5.2 Where -

- (a) the Trustees accept a transfer payment for a person who is already a Member of the Scheme; and
- (b) are informed by the transferor that the transfer value consists wholly or partly of Pension Credit Rights;

the Trustees must separately identify the transfer payment, or the part of the transfer payment, relating to the Pension Credit Rights from the person's other benefits in the Scheme. Furthermore the Trustees must comply with the requirements of Rule 16.4.2 above in respect of the transferred-in Pension Credit Rights.

The Member will then acquire the status of an Ex-Partner Participant in the Scheme in relation to his or her transferred-in Pension Credit Benefits and such Pension Credit Benefits will not be included for the purposes of calculating the person's maximum allowable benefits under Appendix 3 (Scheme Maximum).

**16.6 PENSION SHARING - DEATH OF AN EX-PARTNER BEFORE PENSION SHARING ORDER IS IMPLEMENTED**

16.6.1 If an Ex-Partner dies after a Pension Sharing Order is made but before the Trustees have discharged their liability in accordance with Rule 16.3, the Trustees may, in their absolute discretion, pay a lump sum death benefit pursuant to Rule 5.8 (Distribution of lump sum death benefits), as though the Ex-Partner were a Member.

16.6.2 The amount of the lump sum shall be determined by the Trustees but shall not exceed an amount equal to 25% of the amount which would have comprised the Ex-Partner's Pension Credit.

16.6.3 If the Trustees so determine, the balance (or if no lump sum death benefit is paid under this Rule 16.6, the whole) of the amount which would have comprised the Ex-Partner's Pension Credit (or part of it) may be used to provide a non-commutable pension to a dependant of the Ex-Partner.

16.6.4 If no lump sum death benefit or dependant's pension is paid under this Rule, an amount equal to the amount which would have comprised the Ex-Partner's Pension Credit will fall back into the Fund and be applied for the general purposes of the Scheme.

16.6.5 If the amount (or aggregate amount) of the lump sum death benefit and/or dependant's pension paid under this Rule 16.6 is less than the amount which would have comprised the Ex-Partner's Pension Credit, the balance will fall back into the Fund to be applied for the general purposes of the Scheme.

**16.7 PENSION SHARING - CHARGING**

The Trustees shall be entitled to charge the Member and/or Ex-Partner for the provision of information in connection with, and the implementation of, a Pension

Sharing Order. Such charges will comply with in accordance with section 41 of the 1999 Act and the regulations made thereunder.



## SECTION 17

## POWER OF AMENDMENT

17 **AMENDMENT OF RULES**

The Principal Company may at any time amend, modify, add to or replace all or any of the trusts, powers or provisions of the Rules and such deed may have retrospective effect. No such amendment, modification, addition or replacement shall:

- (a) prejudice Approval so long as Approval continues to be desired by the Trustees and the Principal Company; or
- (b) affect in any way prejudicially any pensions already being paid in accordance with the Rules or any rights or interests of Members in respect of pension benefits accrued under the Rules at the date of amendment, modification, addition or replacement unless it is necessary in order to secure the continued Approval of the Scheme. For this purpose the pension benefits accrued in respect of a Member in Pensionable Service on any date shall be the benefits payable to or in respect of that Member on the basis that the Member had ceased to be in Pensionable Service on that date.

APPENDIX 1  
CONOCO MEMBERS

The provisions of the Rules of the Scheme shall apply to Conoco Members subject to the modifications set out below.

## SECTION 1

### INTERPRETATION, GOVERNING LAW AND DEFINITIONS

1. Words and expressions shall have the same meanings as set out in Section 1 (interpretation, governing law and definitions) except for the following which shall have the meanings indicated below:

**"Basic State Pension"** means the basic state pension for a single person in force over the twelve months preceding the date the Member leaves Pensionable Service for whatever reason.

**"Conoco Pension Transfer Agreement"** means the agreement dated 31 August 1994 between Conoco (U.K.) Limited (1) and Oryx U.K. Energy Company (2).

**"Conoco Transfer Value"** means the amount transferred to the Scheme from the Conoco Plan in respect of a Conoco Member.

**"State Pension Offset"** means, in respect of a Conoco Member,  $1/45 \times$  the Basic State Pension  $\times$  each complete year (and proportionately for each additional complete day) of the Member's Conoco Service (subject to a maximum of 45 years of Conoco Service).

SECTION 4  
BENEFITS ON RETIREMENT

*Summary*

- *Rule 4.1 (Normal Retirement) is amended*
- *Rule 4.2 (Early Retirement on the grounds of ill-health) is amended*

***NORMAL RETIREMENT***

1. Rule 4.1.1 and Rule 4.1.2 shall read as follows (with existing Rule 4.1.2 renumbered as Rule 4.1.3) -

"4.1.1 Subject to Rule 4.1.2, each Pensionable Member shall, at Normal Retirement Date, receive a pension equal to the aggregate of:

- (a)  $1/60 \times$  Pensionable Salary  $\times$  each complete year (and proportionately for each additional complete calendar month) of Pensionable Service;  
**plus**
- (b) 1.75 per cent  $\times$  Pensionable Salary  $\times$  each complete year (and proportionately for each additional complete day) of Conoco Service;  
**less**
- (c) at State Pension Age, the State Pension Offset.

4.1.2 The pension provided for a Pensionable Member whose last or only period of Conoco Service commenced before 1 January 1984 shall be the greater of:

- (a) the pension provided in accordance with Rule 4.1.1; and
- (b) the pension provided in accordance with Rule 4.1.1 but by reference to Pensionable Salary on the 1 July preceding the date on which the Pensionable Member leaves Pensionable Service and the State Pension Offset calculated using the annual amount of the Basic State Pension on the 1 July preceding the date on which the Pensionable Member leaves Pensionable Service."

***EARLY RETIREMENT***

2. Rule 4.2.1 shall read as follows -

"4.2.1 If a Pensionable Member leaves Service on or after age 55 but before Normal Retirement Date by reason of retirement with the consent of the Principal Company, the Pensionable Member may elect to receive an immediate pension calculated as in Rule 4.1 (Normal Retirement) but based on Pensionable Salary at the date of retirement and Conoco Service and Pensionable Service up to the date of retirement. The pension shall then be reduced by:

- (a) such amount as the Principal Company shall direct being no more than the Actuary certifies to be reasonable to take account of the earlier date on which the pension becomes payable (but this reduction shall

not apply to any pension attributable to Conoco Service if the Pensionable Member's pension commences on or after age 60); and

(b) at State Pension Age, the State Pension Offset.

The pension payable under this Rule 4.2.1 shall comply with Clause 7.2 of the Conoco Pension Transfer Agreement in so far as it relates to early retirement."

### **SUPPLEMENTARY PROVISIONS**

3. Rule 4.12 shall be renumbered Rule 4.12.1 and the following Rule 4.12.2 shall be inserted -

"4.12.2 If a Pensionable Member leaves Pensionable Service due to redundancy (as defined in Section 139 of the Employment Rights Act 1996) or because the undertaking of his Employer is sold or transferred to a company which is not a Group Company but is not immediately entitled to a pension from the Scheme, then the value (as certified by the Actuary) of the benefits payable at the date of leaving Pensionable Service early shall, in respect of Conoco Service be not less than the Conoco Transfer Value attributable to such Pensionable Member adjusted by the investment returns accruing to the Conoco Transfer Value between the date the Conoco Transfer Value was received by the Trustees and the date on which the Pensionable Member left Pensionable Service."

SECTION 5  
STANDARD DEATH BENEFITS

*Summary*

- *Rule 5.1 (Death in Service of a Pensionable Member) is amended*
- *Rule 5.3 (Death in Retirement of a Member) is amended*
- *Rule 5.4 (Death in Deferment of a Member) is amended*
- *Rule 5.9 (Supplementary Provisions) is amended*

**DEATH IN SERVICE OF A PENSIONABLE MEMBER**

1. Rule 5.1 shall read as follows -

"5.1 On the death of a Pensionable Member before leaving Pensionable Service, the Trustees shall pay:

- (a) a lump sum equal to three times the Pensionable Member's Basic Salary at the date of death;
- (b) to the Pensionable Member's spouse, a pension equal to one half of the pension which the Pensionable Member would have received if the Pensionable Member had retired on the date immediately preceding the date of his or her death, calculated as in Rule 4.1 or Rule 4.3 but less the State Pension Offset and based on the Pensionable Service the Pensionable Member would have completed had the Pensionable Member remained in Pensionable Service up to Normal Retirement Date or where the Pensionable Member has continued in Pensionable Service after Normal Retirement Date, in accordance with Rule 4.3 based on the Pensionable Members Scheme Service if the Pensionable Member had retired on the date immediately preceding the date of his or her death; and
- (c) to the Pensionable Member's Dependent Children in such proportions as the Trustees think fit,  $(10n + 10)$  per cent (or  $(20n + 20)$  per cent if there is no spouse) of the pension which the Pensionable Member would have received if the Pensionable Member had retired on the date immediately preceding the date of his or her death, calculated as in Rule 4.1 or 4.3 but less the State Pension Offset and based on the Pensionable Service the Pensionable Member would have completed had the Pensionable Member remained in Pensionable Service up to Normal Retirement Date or where the Pensionable Member has continued in Pensionable Service after Normal Retirement Date, in accordance with Rule 4.3, based on the Pensionable Member's Scheme Service at the date of death (where n is the number of Dependent Children of the Pensionable Member to a maximum of four)."

**DEATH IN RETIREMENT OF A MEMBER**

2. Rule 5.3 shall read as follows -

- "5.3 On the death of a Member after his or her pension has become payable (or would have but for it being commuted) the Trustees shall pay:
- (a) if the Member dies within five years of the commencement of his or her pension and the pension is paid monthly, a lump sum which is the product of:
    - (i) the monthly rate of the Member's pension in force at the date of the Member's death; and
    - (ii) sixty less the number of instalments of pension received by the Member before his or her death;
  - (b) to the Member's spouse provided the spouse's pension has not been commuted for a lump sum under Rule 4.9.3 and Rule 4.9.4, a pension equal to one half of the Member's pension that was or would have been payable to the Member at the date of the Member's death but if the Member died before State Pension Age, less the State Pension Offset and on the basis that the Member had not commuted any pension under Rule 4.9.1;
  - (c)
    - (i) if, at the date of his death, the Member had five or fewer Dependent Children then, to each of the Member's Dependent Children an annual pension equal to 10 per cent of the pension that was or would have been payable to the Member in respect of Conoco Service under Rule 4.1.1 at the date of the Member's death but less, if the Member died before State Pension Age, the State Pension Offset and on the basis that the Member had not commuted any pension under Rule 4.9.1. But if the Member's Dependent Children are, or become, orphans, the Member's first Dependent Child shall receive an annual pension of forty per cent, and the Member's remaining Dependent Children shall each receive a pension of 15% of the pension that was or would have been payable to the Member in respect of Conoco Service under Rule 4.1 at the date of the Member's death but less, if the Member died before State Pension Age, the State Pension Offset and on the basis that the Member had not commuted any pension under Rule 4.9.1;
    - (ii) if, at the date of his death, the Member had more than five Dependent Children, then to the Member's Dependent Children in such proportions as the Trustees thinks fit a pension or pensions equal in total to one-half of the pension (or the pension if there is no spouse) that would have been payable to the Member in respect of Conoco Service under Rule 4.1 at the date of the Member's death but less, if the Pensionable Member died before State Pension Age, the State Pension Offset and on the basis that the Member had not commuted any pension under Rule 4.9.1."

**DEATH IN DEFERMENT OF A MEMBER**

3. Rule 5.4 shall read as follows -

"5.4 On the death of a Member who left Pensionable Service and is entitled to a deferred pension from the Scheme the Trustees shall pay:

- (a) if the Member does not leave a spouse or any Dependent Children, a lump sum equal to the amount (without interest) of any ordinary contributions paid to, or deemed to have been paid to, the Scheme by the Member during Pensionable Service; and
- (b) to the Member's spouse, a pension equal to the sum of:
  - (i) a pension equal to one-half of the revalued pension the Member would have been entitled to in respect of the Member's Pensionable Service under Rule 4.1 or Rule 4.3 if the Member had retired on the date immediately preceding the date of his or her death; and
  - (ii) the pension equal to one-half of the revalued pension the Member would have been entitled to in respect of Conoco Service under Rule 4.1 or Rule 4.3 (but less the State Pension Offset) if the Member had retired on the date immediately preceding the date of his or her death,
- (c)
  - (i) if, at the date of his death, the Member had five or fewer Dependent Children then, to each of the Member's Dependent Children an annual pension equal to 10 per cent. of the revalued pension that would have been payable to the Member in respect of Conoco Service under Rule 4.1 or Rule 4.3 at the date of the Member's death but less, if the Member died before State Pension Age, the State Pension Offset and on the basis that the Member had not commuted any pension under Rule 4.9.1. But if the Member's Dependent Children are, or become, orphans, the Member's first Dependent Child shall receive an annual pension of forty per cent., and the Member's remaining Dependent Children shall each receive a pension of 15%, of the pension that was or would have been payable to the Member in respect of Conoco Service under Rule 4.1 or Rule 4.3 at the date of the Member's death but less, if the Member died before State Pension Age, the State Pension Offset and on the basis that the Member had not commuted any pension under Rule 4.9.1;
  - (ii) if, at the date of his death, the Member had more than five Dependent Children, then to the Member's Dependent Children in such proportions as the Trustees think fit a pension or pensions equal in total to one-half of the revalued pension (or the revalued pension if there is no spouse) that would have been payable to the Member in respect of Conoco Service under Rule 4.1 or Rule 4.3 at the date of the Member's death but less, if the Member died before State Pension Age, the State Pension Offset and on the basis that the Member had not commuted any pension under Rule 4.9.1."



Provided that, for the avoidance of doubt, in calculating any such benefits which are payable in respect of a Special Deferred Member or a Employee Deferred Member, the Trustees shall have due regard to the provisions of Rule 4.5.2."

## SECTION 7

### PAYMENT OF BENEFITS

#### *Summary*

- *Rule 7.1 (Increases to pensions in payment) is amended.*

#### **INCREASES TO PENSIONS IN PAYMENT**

1. Rules 7.1.1, 7.1.2 and 7.1.3 shall read as follows -

"7.1.1 Except as provided in Rule 7.1.3 any pension which has become payable and which is:

- (a) attributable to Conoco Service, shall be increased on the Increase Date following its commencement and on each subsequent Increase Date by the lesser of 3% per annum and the rate of increase in the Index over the preceding Pension Increase Year;
- (b) attributable to Pensionable Service prior to 6 April 1997, shall be increased on the Increase Date following its commencement and on each subsequent Increase Date by the lesser of 3% per annum and the rate of increase in the Index over the preceding Pension Increase Year;
- (c) attributable to Pensionable Service after 6 April 1997 but prior to 6 April 2006 shall be increased on the Increase Date following its commencement and on each subsequent Increase Date by the lesser of 5% per annum and the rate of increase in the Index over the preceding Pension Increase Year;
- (d) attributable to Pensionable Service on and after 6 April 2006 shall be increased on each subsequent Increase Date following its commencement and on each subsequent Increase Date by the lesser of 2.5% per annum and the rate of increase in the Index over the preceding Pension Increase Year.

But if, on the Increase Date, the pension has been in payment for a period of less than a year, any increase under this Rule 7.1.1 shall be a proportionate amount based on the number of complete calendar months during which the pension has been in payment.

7.1.2 Except as provided in Rule 7.1.3, any pension which has become payable may be increased at such intervals as the Principal Company shall determine and by such amount as the Principal Company with the consent of the Trustees shall decide.

7.1.3 Pension increases under Rules 7.1.1 and 7.1.2 shall not apply to:

- (a) pensions deriving from voluntary contributions paid by the Pensionable Member to the Scheme pursuant to Rule 3.3 (Members' voluntary contributions) or any similar facility previously provided by the

Scheme;

- (b) pensions deriving from transfer payments received by the Trustees pursuant to Rule 6.1 (Transfer in) (or any similar provision previously applicable to the Scheme); or
- (c) pensions payable in accordance with Rule 4.10 (option to surrender pension for a Dependant's Pension); or
- (d) that part of any pension which constitutes the GMP (if any) of the recipient,

unless the Principal Company so directs.”



APPENDIX 2

KERR-MCGEE OIL MEMBERS

The provisions of the Rules of the Scheme shall apply to Kerr-McGee Oil Members subject to the following modifications set out below in respect of Kerr-McGee Oil Service and provided further that benefits for and in respect of the Kerr-McGee Service of a Kerr-McGee Oil Member shall be calculated consistently with the method of calculation of pension set out in Rule 4.1.1 below (including by reference to a Kerr-McGee Oil Member's Final Pensionable Salary and Kerr-McGee Oil Service) but without prejudice to any reduction or increase of benefits for early or late payment otherwise provided by the Rules or Appendix 2 below.

## SECTION 1

### INTERPRETATION, GOVERNING LAW AND DEFINITIONS

1. Words and expressions shall have the same meanings as set out in Section 1 except for the following which shall have the meanings indicated below in respect of Kerr-McGee Oil Service:

**"Accounting Date"** means 6<sup>th</sup> April in each year (or such other date as the Trustees with the consent of the Administrator (appointed under section 270 of FA 2004) may from time to time decide)

**"Discretionary Trusts"** means that, in regard to any sum directed to be held on such trusts in respect of a deceased Member or Pensioner:

- (a) the Trustees shall have power, at their discretion, to pay or apply the whole or any part of that sum to or for the benefit of all or any of the Relatives, Dependants, personal representatives or nominated beneficiaries of such deceased Member or Pensioner in such shares and proportions as the Trustees shall in their absolute discretion decide but so that, if the Member or Pensioner shall not leave any Relative or Dependant or nominated beneficiary, the Trustees may elect to retain all or any part of the sum as part of the Fund; and in addition the Trustees shall have the power to declare separate trusts including such provisions for maintenance, education, advancement and accumulation of income during a minority, and including such discretionary trusts and powers, as the Trustees shall from time to time by deed revocable or irrevocable appoint, but without infringing the rule against perpetuities, and the Trustees shall have power to appoint as trustees of such fund any two persons or a trust corporation as the Trustees shall in their absolute discretion decide and to remove any of such trustees and appoint any other trustee in place of any one so removed and provide for the remuneration of any such appointee;
- (b) if or to the extent that the Trustees shall not exercise the powers contained in paragraph (a) within two years of the death of the Member or Pensioner, the Trustees shall hold such sum as a separate fund from the Fund upon trust for the personal representatives of the deceased Member or Pensioner or, if there are none, the statutory next of kin of the deceased Member or Pensioner;
- (c) the Trustees may, but without being in any way bound to do so, have regard to any document signed by the Member or Pensioner concerned expressing his wishes relating to the disposal of any sum to be held upon the Discretionary Trusts, and may issue forms to Members or Pensioners for the purpose and so that for the purposes of this definition any person named in such expression of wish who is not a Relative or Dependant of the Member or Pensioner shall be a "nominated beneficiary".

**"Eligible Child"** means a child who was wholly or mainly dependent on the Member, or already conceived at the time of the Member's death (or at retirement, if death occurs after retirement) and

- (a) is under 18; or

- (b) is under 22 and is receiving full-time education or training for any trade or profession or vocation approved by the Trustees.

**"Final Pensionable Salary"** means, in respect of a Pensionable Member at any time, the highest figure calculated from 12 months' Pensionable Salary in the five years prior to retirement.

**"Kerr-McGee Oil Deferred Member"** means a former member of the Kerr-McGee Oil Scheme who was entitled to a deferred pension under that scheme and in respect of whom assets and liabilities were transferred to the Scheme in accordance with the Kerr-McGee Oil Transfer Agreement.

**"Kerr-McGee Pensioner"** means a former member who was in receipt of a pension.

**"Kerr-McGee Oil Transfer Agreement"** means the agreement dated 2 April 1999 between Kerr-McGee Oil (U.K.) plc (1), John C. Linehan and others (2), Kerr-McGee North Sea (U.K.) Limited (3) and Frances Gordon Heartwell and others (4).

**"Lower Earnings Limit"** means the Lower Earnings Limit expressed as an annual amount as specified for Class 1 contributions to the National Insurance Scheme for the period of twelve months commencing on the 6th April coincident with or immediately preceding the date of calculation.

**"Pensionable Salary"** means the total basic fixed annual salary or wages of a Member (which shall be determined by reference to the Pensionable Member's emoluments as at each accounting date and shall then be deemed for the purposes of the Scheme to remain fixed for the following twelve months) and shall not, unless an Employer in any particular case so decides, include any director's fees, bonuses, commissions, overtime or other fluctuating emoluments provided that the Pensionable Salary of an Employee who is admitted to membership other than on an Accounting Date shall be determined on such date of admission and shall be deemed for the purposes of the Scheme to remain fixed until the next Accounting Date.

If for any period the Member participates in such salary sacrifice arrangements as the Principal Company designates from time to time, the annual rate of the basic fixed annual salary or wages of such Member for that period shall be such amount as shall (for the time being and from time to time) be notified by the Principal Company to the Trustees as that which it would have been but for the Member's participation in such salary sacrifice arrangements.

**"Pensioner"** means a person who is for the time being receiving a pension out of the Fund by virtue of his or her previous membership of the Scheme provided that this must include a period of Kerr-McGee Service.

**"Reckonable Salary"** means that part of a Pensionable Member's Basic Salary which exceeds the Lower Earnings Limit and does not exceed the Upper Earnings Limit, both such limits being expressed as annual amounts as specified for Class 1 contributions to the National Insurance Scheme for the last complete tax year preceding the Pensionable Member's Normal Retirement Date, retirement, death or leaving Service, whichever is earliest.

If for any period the Member participates in such salary sacrifice arrangements as the Principal Company designates from time to time, the annual rate of basic salary of such Member for that period shall be such amount as shall (for the time being and from time to time) be notified by the Principal Company to the Trustees as that which

it would have been but for the Member's participation in such salary sacrifice arrangements.

**"Relatives"** means and includes in relation to any deceased Pensionable Member or Pensioner

- (a) the widow or widower of the Pensionable Member or Pensioner
- (b) the father or mother or grandparents (whether lawful or adoptive) of the Pensionable Member or Pensioner and the widow or widower of such father or mother or grandparents
- (c) any person (except such Pensionable Member or Pensioner) who is the child or remoter issue (whether lawful or adoptive) of such father or mother or grandparents, and the spouse or widow or widower of any such person
- (d) any person who has been the wife or husband of the Pensionable Member or Pensioner

**"Upper Earnings Limit"** means the Upper Earnings Limit expressed as an annual amount as specified for Class 1 contributions to the National Insurance Scheme for the period of twelve months commencing on the 6th April coincident with or immediately preceding the date of calculation. "



## SECTION 4

### BENEFITS ON RETIREMENT

#### *Summary*

- *Rule 4.1 (Normal Retirement) is amended*
- *Rule 4.2 (Early Retirement on the grounds of ill-health) is amended*
- *Rule 4.3 (Late Retirement) is amended*

#### **NORMAL RETIREMENT**

1. Rule 4.1.1 shall read as follows -

"4.1.1 The pension payable to a Kerr-McGee Oil Member who is a Pensionable Member on his retirement at his or her Normal Retirement Date shall be calculated at the rate of:

- (a) 1/60th of his Final Pensionable Salary at the date of retirement for each Year of his Kerr-McGee Oil Service after 6th April 1988; and
- (b) 1/60th of his Final Pensionable Salary at the date of retirement for each Year of his Kerr-McGee Oil Service prior to 6th April 1988

less

m/n times 1/80th of Reckonable Salary for each year of Kerr-McGee Oil Service between 6th April 1978 and 5th April 1988 where "n" equals the total number of years between

- (i) the later of 6th April 1978 and the Member's 25th birthday and
- (ii) the Kerr-McGee Oil Member's Normal Retirement Date,

and "m" equals "n" but limited to 20 such years."

#### **EARLY RETIREMENT ON THE GROUNDS OF ILL-HEALTH**

2. A new Rule 4.2.4 shall be added which shall read as follows -

"4.2.4 Any Kerr-McGee Oil Member not in receipt of benefit from any disability income benefit scheme of the Employer or any other benefit determined as a similar benefit by the Trustees (who shall be the sole judge) who (i) has at least one year's Kerr-McGee Oil Service, (ii) has become in the opinion of the Employer and the Trustees incapable of discharging his duties by reason of permanent ill-health or incapacity, and (iii) retires from Pensionable Service in consequence, shall be entitled to an immediate pension and lump sum calculated in the manner prescribed in Rule 4.1 and Rule 4.9.1 but his pension will be reduced to allow for his age at retirement in such manner as the Trustees, acting on the advice of the Actuary and with the Member's consent, shall decide, not being by more than shall be certified as reasonable by the Actuary tendering advice to the Trustees except that such reduction shall only be applied from age 62 in respect of that part of his pension which

relates to Pensionable Service after 1 April 1999 (such a Member may nevertheless opt to receive a deferred pension under Rule 4.5 as amended by this Appendix 2)."

**LATE RETIREMENT**

3. Rule 4.3 will be renumbered Rule 4.3.1 and a new Rule 4.3.2 shall be added which shall read as follows -

"4.3.2 In the case of a Kerr-McGee Oil Member (whether male or female) who has reached the age of 65 and who remains in Pensionable Service with the consent of the Employer and so agrees with the Principal Company and the Trustees, payment of any pension may be deferred for a period not exceeding 5 years. On such pension coming into payment, the Member shall be entitled to receive the same pension in all respects as he would have received on attaining the age of 65 but increased in relation to benefits attributable to Kerr-McGee Oil Service by such amount as the Trustees acting on the advice of the Actuary shall decide having regard to the period of deferment. For the avoidance of doubt Rule 4.3.1 of the Rules may apply alternatively."

**SECTION 5**  
**STANDARD DEATH BENEFITS**

***Summary***

- *Rule 5.3 (Death in retirement of a Member) is amended*
- *Rule 5.7 (Dependant's Pension) is amended*

**DEATH IN RETIREMENT OF A MEMBER**

1. Rule 5.3 shall be replaced by Rule 5.3.1, Rule 5.3.2 and Rule 5.3.3 which shall read as follows -

"5.3.1 On the death of a Kerr-McGee Oil Member after his or her pension has become payable and who was unmarried at the date of death and who dies within five years after his or her actual retirement there shall be raised out of the Fund and held on the Discretionary Trusts an amount equivalent in value to the balance of the pension which the Pensioner would have received during the remainder of the period of five years but without taking into account any increase in pension under Rule 7.2 as set out in this Appendix 2 which comes into force after the date of death. On the death of any unmarried Member in Pensionable Service after Normal Retirement Date there shall be raised out of the Fund and held upon the Discretionary Trusts an amount equivalent in value to five times the amount of the pension which he would have received if he had retired on the day before the date of his death.

5.3.2 The spouse of a Kerr-McGee Oil Member who dies after his or her pension has become payable to whom he was married on his retirement shall be entitled to receive a pension equal to one-half of the pension which the Pensioner was receiving at the time of his retirement together with any increases to the pension granted under Rule 7.2.2 as set out in this Appendix 2.

5.3.3 For the purposes of this Rule 5.3

- (a) a Member who dies in Pensionable Service after reaching his Normal Retirement Date will be deemed to have retired on the day before the date of his death; and
- (b) if the Member's pension shall have been reduced under any one or more of the provisions of Rule 4.9.1, Rule 4.10.1, Rule 4.10.2 and Rule 4.8.1 the pension shall be calculated as if those reductions had not taken place.

Any pension payable to a spouse under Rule 5.1.1(b) or Rule 5.3.2 shall be payable from the death of the Member or Pensioner and shall be payable to the spouse for life."

**REDUCTION OF SPOUSE'S PENSION**

2. Rule 5.6 shall read as follows -

"5.6 Any pension payable to a spouse or adult Dependant shall be reduced, where the spouse or Dependant is more than ten years younger than the Member or Pensioner, by such amount as the Trustees shall decide, not exceeding 2.0% for each year of disparity in excess of ten."

**DEPENDANT'S AND CHILDREN'S PENSIONS**

3. Rule 5.7 shall be read as follows -

"5.7.1 (a) Where at the Member's or Pensioner's death he was not married, or he was not living with his lawful spouse (and whether or not there was any financial dependency), the Trustees may pay as a pension an amount not exceeding the amount of pension payable under Rule 5.1(b) or Rule 5.3.2 (Spouse's pension on death of a Pensioner), as the case may be, to another Dependant and, to the extent that the Trustees do so, the rights of the lawful spouse shall be forfeited. If the pension is paid to a child it shall continue as long as the child remains an Eligible Child.

(b) In any event however, the pension payable to a lawful spouse (other than one who was living together as man and wife with a person other than the Member at the time of the Member's death) must at least be equal to the minimum specified by section 12(B)4 of the Pension Schemes Act 1993.

5.7.2 Where a Pensionable Member dies in Pensionable Service leaving an Eligible Child or Children, then a pension for the benefit of each Eligible Child in such proportions as the Trustees shall decide will be paid equal to

(a) where a spouse's or Dependant's pension is payable the percentage mentioned below of the pension which the Pensionable Member would have received if he had remained in Pensionable Service (at the same Pensionable Salary he was receiving at his death) until and had retired upon reaching his Normal Retirement Date -

(b) where no spouse's or Dependant's pension is payable, the provisions of paragraph (a) shall apply but the percentage shall be doubled.

Number of Eligible Children	Percentage
1	20
2	30
3	40
4 or more	50

The total amount of all spouse's, Dependant's and children's pensions shall not exceed the pension which the Member would have received if he had remained in Pensionable Service (at the same Basic Salary he was receiving at his death) until he had reached and retired upon, his

Normal Retirement Date. Each pension shall commence on the death of the Member and shall continue as long as the child remains an Eligible Child.

- 5.7.3 A child's pension may be paid to any person who undertakes to apply it for the maintenance or benefit of the Eligible Child, and the Trustees shall not be obliged to see to the application of any pension so paid."

SECTION 7  
PAYMENT OF BENEFITS

*Summary*

- *Rule 7.1 (Increases to Pensions in Payment) is amended*

**INCREASES TO PENSIONS IN PAYMENT**

1. Rules 7.1.1, 7.1.2 and 7.1.3 will be replaced with the following -

“7.1.1 Any pension currently payable out of the Fund and which is:

- (a) attributable to Pensionable Service prior to 6 April 2006 shall be increased by the percentage increase in the Retail Prices Index (published as the preceding December or such other month as the Principal Company and the Trustees decide) during the previous 12 months or, if it less, 5%.
- (b) attributable to Pensionable Service on and from 6 April 2006 shall be increased by the percentage increase in the Retail Prices Index (published as the preceding December or such other month as the Principal Company and the Trustees decide) during the previous 12 months or, if it is less, 2.5%.

This does not apply:-

- to GMPs;
- to any part of a pension derived from the payment by the Member of voluntary contributions;
- to a pension or any part of it which is attributable to Kerr-McGee Oil Service before 6 April 1997.

The increases shall take effect on 6 April each year and shall be calculated as at each 6 April by reference to the number of completed months since the date when the pension became payable, or, if later, from the date of the last calculation.

In addition the Trustees shall make in each year a regular review of pensions in payment, and any pension in payment may from time to time be further increased by such amount and at such times as the Trustees, and having regard to the availability of funds, may decide. Such increases shall not exceed the limit specified in Appendix 3 (Scheme Maximum).”

**PENSION INCREASES IN DEFERMENT**

2. Rule 7.2 should be renumbered as Rule 7.2.1 and a new Rule 7.2.2 should be inserted -

"7.2.2 (a) This Rule 7.2.2 applies to any Member whose Kerr-McGee Oil Service terminated on or after 1st January 1986, but before his Normal Retirement Date and who at the date of termination has accrued rights to benefit under the Scheme.

- (b) For the purposes of this Rule 7.2.2 the revaluation condition means:
- (i) in relation to benefit payable to the Member, there are at least 365 days in the period of which the first day is the day after the date of termination of his Service and the last is his Normal Retirement Date;
  - (ii) in relation to benefit payable to any other person in respect of the Member, there are at least 365 days in the period mentioned in paragraph (i) above and the Member dies after attaining his Normal Retirement Date.

For the purposes of calculating the number of days in the period mentioned in this sub-rule any day which is 29th February shall be disregarded.

- (c) If the revaluation condition is satisfied:
- (i) any pension or other retirement benefit payable under the Scheme to the Member; and
  - (ii) any pension or other benefit payable under the Scheme to any other person in respect of him

shall be revalued by adding to it the appropriate amount.

- (d) For the purposes of this Rule 7.2.2 the appropriate amount is -

$$\frac{A \times B}{C} \times (D-E), \text{ where}$$

- (i) **A** equals the revaluation percentage specified in the last period of one year beginning on 1st January 1986 or on an anniversary of that date and ending before the date on which the Member attains the Normal Retirement Date as the revaluation percentage for the period which is of the same length as the number of complete years in the period of which the first day is the day after the date of termination of his Service and the last is his Normal Retirement Date;
- (ii) **B** equals the length of the Member's qualifying Kerr-McGee Oil Service;
- (iii) **C** equals the length of his Kerr-McGee Oil Service;
- (iv) **D** equals the amount of pension or other benefit which on the date when his Service terminates has accrued to him or any other person in respect of him;
- (v) **E** equals any part of the amount mentioned in paragraph (iv)

above which consists of the Member's or his spouse's GMP.

For this purpose qualifying Kerr-McGee Oil Service means in the case of a Member whose Kerr-McGee Oil Service terminated on or after 1 January 1991 the whole of his Kerr-McGee Oil Service, and in any other case so much of that Service as falls on or after 1st January 1985.

- (e) For the purposes of this Rule 7.2.2, Kerr-McGee Oil Service includes any notional Kerr-McGee Oil Service which is credited to the Member by the Scheme and any notional Kerr-McGee Oil Service which is credited to a Member by the Scheme shall be taken to have ended immediately before the Member's actual Kerr-McGee Oil Service began.
- (f) In making any calculation for the purposes of this Rule 7.2.2 any commutation, forfeiture or surrender (other than an election by the Member under Rule 4.10) of the whole or part of a pension shall be disregarded, and in the case of a Member whose Short Service Benefits have been brought into payment on a date earlier than his Normal Retirement Date, that date shall be substituted for his Normal Retirement Date for the purposes of this Rule 7.2.2.
- (g) Benefits secured as a result of transfer payments to the Scheme (other than added years of Pensionable Service) and benefits secured by the payment of AVCs (other than added years of Pensionable Service or improved death in Service benefits) shall be treated as money purchase benefits and revalued in accordance with paragraph 5 of Schedule 3 of the PSA 1993."



APPENDIX 3  
SCHEME MAXIMUM

**Part A – Scheme specific limits**

In accordance with such other limits as were required by necessary implication immediately prior to 6 April 2006 to ensure the continued approval of the Scheme with HMRC the Scheme Maximum appropriate to a Member's contributions and any benefit is either –

- (a) the greater of -
  - (i) the maximum amount specified in this Appendix in relation to those contributions or that benefit; and
  - (ii) the minimum amount thereof which is consistent with the Preservation Requirements;
- (b) such other amount as the Principal Company decides with the approval of the Trustees either generally or in an individual case.

**PROVIDED THAT** where a transfer payment has been received in respect of a Member the Scheme Maximum will be increased by the amount of the transferred-in benefit, as determined by the Trustees having consulted the Actuary.

For the avoidance of doubt, any reference in this Scheme Maximum to any enactment or subordinate legislation which was repealed immediately before 6 April 2006 shall be treated as being a reference to such enactment or subordinate legislation as it was immediately before 6 April 2006, and, where appropriate, as if HMRC had made any order referred to in such enactment or subordinate legislation. Reference to such legislation shall, where appropriate, include the equivalent legislation in Northern Ireland.

**1. DEFINITIONS**

For the purposes of this appendix:

**"Pre-1987 Member"** means any person (excluding a person who has elected to be a 1989 Member) who became, or pursuant to any Transitional Regulations is treated as having become, a Member of the Scheme before 17 March 1987;

**"1987 Member"** means any person (excluding a person who has elected to be a 1989 Member) who became, or pursuant to any Transitional Regulations is treated as having become, a Member of the Scheme on or after 17 March 1987 but before 1 June 1989;

**"1989 Member"** means

- (a) any person (excluding a Member who is treated as a Pre-1987 Member or a 1987 Member) who became a Member of the Scheme on or after 1 June 1989; and
- (b) any other Member who elects at any time before leaving Pensionable Service in a form satisfactory to HMRC to be subject to the limits applicable to a 1989 Member;

**"Approved Scheme"** means a scheme which has, or is being considered for, approval by HMRC under Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 and any statutory amendment, modification or re-enactment thereof as it was in force immediately before 6 April 2006;

**"Associated Relevant Amount"** means

$$\frac{A \times \text{the Permitted Maximum}}{30}$$

where A is the period of Employment in years (with incomplete years counting proportionately) subject to a maximum of 20 but so that no period shall count more than once;

**"Associated Relevant Employments"** two or more Employments are Associated Relevant Employments if:

- (a) there is a period during which the employee has held both or all of them;
- (b) the period counts under the Scheme in the case of both or all of them as a period in respect of which benefits are payable; and
- (c) the period is one during which both or all of the employers in question are associated,

where employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person, control in relation to a body corporate being construed in accordance with section 416 of the Income and Corporation Taxes Act 1988 where the body corporate is a close company and where it is not, in accordance with section 840 of the 1988 Act;

**"Connected"** - the Scheme is Connected with another Approved Scheme in relation to an employee if:

- (a) there is a period during which he or she has been the employee of two persons who are associated employers;
- (b) the period counts under both schemes as a period in respect of which benefits are payable; and
- (c) the period counts under one scheme by virtue of service with one employer and under the other scheme by virtue of service with the other employer,

where employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person, control in relation to a body corporate being construed in accordance with section 416 of the Income and Corporation Taxes Act 1988 where the body corporate is a close company and where it is not, in accordance with section 840 of the Income and Corporation Taxes Act 1988;

**"Connected Relevant Amount"** means

$$\frac{B \times \text{the Permitted Maximum}}{30}$$

where B is the period of service in years (with incomplete years counting proportionately) subject to a maximum of 20 which counts for the purposes of any of the following:

- (a) the Scheme;

- (b) the other Approved Scheme or Schemes with which the Scheme is Connected in relation to the Member,

at the time when the benefits become payable but so that no period shall count more than once;

**"Employment"** shall mean the period of Pensionable Service together with any period of Service prior to the period of Pensionable Service;

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

- (a) the highest in monetary value for any one of the five years preceding the Relevant Date of the aggregate of:
- (aa) basic Remuneration for the year in question (the "basic salary year"); and
  - (bb) the yearly average over three or more consecutive years ending with the expiry of the corresponding basic salary year, of any fluctuating Remuneration provided that fluctuating Remuneration of a year other than the basic salary year may be increased in proportion to any increase in the Index from the last day of that year up to the last day of the basic salary year; and
- (b) the yearly average of the total Remuneration for any three or more consecutive years ending not earlier than 10 years before the Relevant Date;

Provided that:

- (1) in relation to:
- (aa) 20% Director, in the case of a 1989 Member; or
  - (bb) a 20% Director or any other Member whose Remuneration in any subsequent year to 5 April 1987 used for the purpose of calculating benefits has exceeded £100,000 or such other sum as may be prescribed in an order made by the Treasury, in the case of any other Member,
    - (a) above of this definition shall not apply save in paragraphs 2.2 and 2.3 below and Final Remuneration shall (subject to (2) and (3) below) be the amount ascertained in (b) above of this definition;
- (2) in respect of 1987 Members, for the purpose of the calculation of the maximum lump sum commutation payment in accordance with paragraph 2.4 below Final Remuneration shall not in any event exceed £100,000 or such other sum as may be specified in an order made by the Treasury;
- (3) in the case of 1989 Members, Final Remuneration shall not exceed the Permitted Maximum;
- (4) where a Member receives Remuneration which is substantially reduced due to incapacity for more than 10 years before the Relevant Date, the Member's Final Remuneration shall (if it would yield a higher figure) be calculated by reference to the date immediately preceding that on which the Member's Remuneration was first reduced due to incapacity rather than by reference to the Relevant Date; and
- (5) Remuneration for any year except the last before the Relevant Date shall be increased in proportion to any increase in the Index from the last day of that year up to the Relevant

Date but this proviso (5) shall not apply to the calculation of the maximum lump sum permissible under paragraph 2.4 unless the Member's pension is similarly increased beyond the maximum amount which could have been paid under paragraph 2.1 but for this proviso (5) and then only to the same proportionate extent;

**"FSAVCS"** means a Free-standing Additional Voluntary Contribution Scheme which is an Approved Scheme;

**"Index"** means the Index of Retail Prices published by the Central Statistical Office of the Chancellor of the Exchequer or any other index which is accepted by HMRC for this purpose;

**"Maximum Retirement Pension"** means:

- (a) for any Member who has completed Employment of at least 20 years on Normal Retirement Date, the greater of:-
  - (aa) 2/3rds of Final Remuneration, less Retained Benefits; and
  - (bb) 1/60th of Final Remuneration for each year of Employment (subject to a maximum of 40 years);
- (b) for any Member of the Scheme other than a Pre-1987 Member who has completed Employment of less than 20 years on Normal Retirement Date, the greater of:
  - (aa) 1/30th of Final Remuneration for each year of Employment, subject to a maximum of 2/3rds of Final Remuneration less Retained Benefits;
  - (bb) 1/60th of Final Remuneration for each year of Employment;
- (c) for any Pre-1987 Member who has completed Employment of less than 20 years on Normal Retirement Date, the greater of:
  - (aa) the fraction of the Member's Final Remuneration (calculated from the table below) subject to a maximum of 2/3rds of Final Remuneration less Retained Benefits; and
  - (bb) 1/60<sup>th</sup> of Final Remuneration for each year of Employment;

Table

Years of Employment to Normal Retirement Date	Fraction
1-5	1/60 for each year of Employment
6	8/60
7	16/60
8	24/60
9	32/60
10 or more	40/60

and in determining the appropriate fraction parts of years shall count proportionately;

**"Permitted Maximum"** means the Earnings Cap;

**"Prospective Employment"** means the period of Employment which a Member who leaves Pensionable Service or dies before Normal Retirement Date could have completed had he or she remained in Employment until Normal Retirement Date and includes the actual period of Employment completed prior to the date of leaving Pensionable Service or death;

**"Related Schemes"** means all other Approved Schemes of the Employers or to which the Employers have contributed or to which a Member has contributed in respect of a period during which benefits are provided for or in respect of such Member under the Scheme;

**"Relevant Date"** means the date on which a Member retires or, if earlier, the date on which the Member leaves Pensionable Service, dies or reaches age 75;

**"Remuneration"** means:

(a) the amount of any monetary emoluments received by the Member from the Employers, other than fees and remuneration in respect of which the Member is assessable to tax under Case I or Case II of Schedule D or to which the Member is not beneficially entitled;

and

(b) the amount (if any) in respect of which the Member is assessed to tax under Schedule E directly or indirectly by reason of any benefits in kind which the Member receives or has received from the Employers excluding any amount (i) in respect of which tax is chargeable under Schedule E which arises from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares except where the shares or the interest or right which gives rise to the liability to tax had been acquired by the Member before 17 March 1987 or (ii) in respect of which tax is chargeable by virtue of section 148 of the Income and Corporation Taxes Act 1988,

and so that Remuneration may, depending on its nature, be either basic Remuneration or fluctuating Remuneration and, for the avoidance of doubt, directors' fees may be one or the other according to the basis on which they are voted whereas amounts included in (b) above are usually fluctuating Remuneration;

**"Retained Benefits"** includes:

(a) pensions, whether deferred or already in payment, including any part of a deferred pension which is commutable, from any Approved Scheme and from any scheme accepted by HMRC as corresponding for the purposes of section 596(2)(b) of the Income and Corporation Taxes Act 1988;

(b) all pension benefits from FSAVCS relating to previous occupations;

(c) the annuity equivalent of lump sums received or receivable, including any already received from any Approved Scheme and from any scheme accepted by HMRC as corresponding for the purposes of section 596(2)(b) of the Income and Corporation Taxes Act 1988;

(d) retirement annuities, before any commutation, under contracts and trust schemes approved under Chapter III of Part XIV of the Income and Corporation Taxes Act 1988 related to relevant earnings from the current or any earlier employment, or from previous periods of self-employment (either alone or in partnership) but excluding those in relation to a concurrent occupation;

- (e) annuities and the annuity equivalent of lump sums, from personal pension schemes approved under Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 related to relevant earnings from the current or an earlier employment, or from previous periods of self-employment (either alone or in partnership) but excluding those in relation to a concurrent occupation. (Personal pension schemes approved under section 638(8)(a) of the Income and Corporation Taxes Act 1988 are not related to relevant earnings, and annuities from such schemes are not treated as retained benefits);
- (f) annual payments made to a retired partner and treated as earned income under section 628 of the Income and Corporation Taxes Act 1988; and
- (g) the annuity equivalent of amounts received by way of refunds of contributions from any Approved Scheme and from any scheme accepted by HMRC as corresponding for the purposes of section 596(2)(b) of the Income and Corporation Taxes Act 1988 and any interest thereon if they were received after the age of 45 and exceeded £2,000,

but benefits at (a), (b), (c), (d), (e) and (f) may be ignored if their annuity equivalent does not exceed £104 per annum in all;

"**Transitional Regulations**" means any regulations made under paragraph 1(2) of Schedule 23 to the Income and Corporation Taxes Act 1988 or under paragraph 19(2) in Part II of Schedule 6 to the Finance Act 1989; and

"**20% Director**" means a Member who at any time after 16 March 1987 and within two years of retirement has been a director (as defined in section 612 of the Income and Corporation Taxes Act 1988) who is within paragraph (b) of section 417 (5) of the Income and Corporation Taxes Act 1988 in relation to any of the Employers.

## 2. **LIMITS**

The benefits payable to or in respect of a Member shall not when aggregated with all benefits of a like nature provided under Related Schemes exceed the limits set out in this paragraph 2.

### 2.1 **Member's pension**

The Member's pension (inclusive of the pension equivalent of all benefits not in pension form):

- (a) payable at Normal Retirement Date or on leaving Employment on the grounds of incapacity shall not exceed the Member's Maximum Retirement Pension calculated for a Member who leaves Employment before Normal Retirement Date on account of incapacity on Final Remuneration at the date of retirement and the period of Prospective Employment;
- (b) payable on early retirement (otherwise than on the grounds of incapacity) or on leaving Pensionable Service before Normal Retirement Date with a deferred pension shall not exceed

for Pre-1987 Members and 1987 Members and for those 1989 Members who are leaving Pensionable Service while remaining in Service, the greater of:

- (aa) the Member's Maximum Retirement Pension calculated on Final Remuneration at the date of retirement or of leaving Pensionable Service and on the period of Prospective Employment multiplied by the Member's actual period of Employment (subject to a maximum of 40 years) and divided by the period of Prospective Employment (subject to a maximum of 40 years); and

- (bb) 1/60th of the Member's Final Remuneration for each year of Employment with incomplete years counting proportionately (subject to a maximum of 40 years),

for 1989 Members the greater of:

- (aa) 1/60th of the Member's Final Remuneration for each year of Employment with incomplete years counting proportionately (subject to a maximum of 40 years); and
- (bb) 1/30th of Final Remuneration for each year of Employment with incomplete years counting proportionately subject to a maximum of 2/3rds of Final Remuneration less Retained Benefits;

Where a Member does not receive his or her pension immediately upon leaving Pensionable Service, the amount calculated in accordance with (a) or (b) above shall be increased up to the date when payment begins by 5% per annum compound or, if greater, by reference to the proportionate increase in the Index between the date of leaving Pensionable Service and the date when payment begins.

- (c) payable on late retirement shall not exceed

for Pre-1987 Members and 1987 Members, the greater of:

- (aa) the Maximum Retirement Pension based on Employment and Final Remuneration at the date of retirement plus, if the total period of actual Employment is greater than 40 years, 1/60th of Final Remuneration for each year of Employment after the later of Normal Retirement Date and the completion of 40 years subject to a maximum of 45/60ths of the Member's Final Remuneration; and
- (bb) the Maximum Retirement Pension calculated on the basis that the Member retired at the Member's Normal Retirement Date and increased by the greater of:
  - (i) an actuarial increase to take account of the period the pension is deferred; and
  - (ii) a factor equal to the proportionate increase in the Index since the Normal Retirement Date;

for 1989 Members, the greater of:

- (aa) 1/30th of Final Remuneration at the Relevant Date for each year of Employment subject to a maximum of 2/3rds of the Member's Final Remuneration, less Retained Benefits; and
- (bb) 1/60th of Final Remuneration at the Relevant Date for each year of Employment subject to a maximum of 40 years.

The amount calculated in accordance with (a), (b) or (c) above, as appropriate, less any pension which the Member has commuted or surrendered, shall be increased by 3% per annum compound or, if greater, by reference to the proportionate increase in the Index since the Relevant Date.

## 2.2 Spouses' and Dependants' pensions

- (a) On the death of a Member in Employment before Normal Retirement Date the pension:
  - (aa) for the spouse or one Dependant of the Member, shall not exceed two-thirds of the pension (including the pension equivalent of any lump sum retirement benefit) which

could have been payable to the Member had he or she retired with no entitlement to Retained Benefits on the date of death on the grounds of incapacity; and

- (bb) for the spouse and one or more Dependants (or two or more Dependants) of the Member (each pension being within the limit in (aa) above), shall not in aggregate exceed the full amount of the pension (including the pension equivalent of any lump sum retirement benefit) which could have been payable to the Member had he or she retired with no entitlement to Retained Benefits on the date of death on the grounds of incapacity.
- (b) On the death of a Member whilst in receipt of pension the pension:
- (aa) for the spouse or one Dependant of the Member, shall not exceed two-thirds of the pension which could have been payable to the Member had the Member had no Retained Benefits immediately prior to the Member's death (including the pension equivalent of any lump sum retirement benefit and any increases which could have been made to the pension after retirement);
  - (bb) for the spouse and one or more Dependants (or two or more Dependants) of the Member (each pension being within the limit in (aa) above), shall not in aggregate exceed the full amount of the pension which could have been payable to the Member had the Member had no Retained Benefits (including the pension equivalent of any lump sum retirement benefit and any increases which could have been made to the pension after retirement);
- (c) On the death of a Member in Employment after Normal Retirement Date the limits set out in (a) above apply except in the case of a Pre-1987 Member and a 1987 Member where the limits set out in (b) above may apply instead if higher than those in (a).
- (d) On the death of a Member whilst prospectively entitled to a deferred pension the pension:
- (aa) for the spouse or one Dependant of the Member shall not exceed two-thirds of the maximum pension (including the pension equivalent of any lump sum retirement benefit) which could have been paid to the Member under paragraph 2.1(b) above; and
  - (bb) for the spouse and one or more Dependants (or two or more Dependants) of the Member (each pension being within the limit in (aa) above), shall not in aggregate exceed the full amount of the pension (including the pension equivalent of any lump sum retirement benefit) which could have been paid to the Member under paragraph 2.1 (b) above.

The amount calculated in accordance with (a), (b), (c) or (d) above, as appropriate, shall be increased by 3% per annum compound or, if greater, by reference to the proportionate increase in the Index since the date of the Member's death.

### 2.3 Lump Sum Death Benefit

The lump sum death benefit payable upon the death of a Member in Employment or upon the death before Normal Retirement Date of a Member who left Employment with an entitlement to a deferred pension shall not exceed the greater of:

- (a) £5,000; and
- (b) four times the greatest of:



- (aa) the Final Remuneration of the deceased Member at the Relevant Date calculated as though the definition of Remuneration did not exclude any amount in respect of which tax is chargeable under Schedule E which arises from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares where the shares or the interest or right which gives rise to the liability to tax was acquired by the Member on or after 17 March 1987; and
- (bb) the annual rate of the basic Remuneration of the deceased Member from the Employers (excluding any fees and remuneration in respect of which the Member is assessable to tax under Cases I or II of Schedule D or to which the Member is not beneficially entitled at the Relevant Date) plus the average annual amount of the Member's fluctuating Remuneration (if any) from the Employers for the period of three years immediately prior to the Relevant Date or for the period (if shorter) for which the basis of the Member's Remuneration included fluctuating Remuneration or the Permitted Maximum, if less, for a 1989 Member; and
- (cc) the total Remuneration of the deceased Member (excluding any fees and remuneration in respect of which the Member is assessable to tax under Cases I or II of Schedule D or to which the Member is not beneficially entitled from the Employers) for any period of one year ending not more than three years prior to the Relevant Date increased, if such period ended not less than one year prior to the Relevant Date, in proportion to any increase in the Index from the end of such period up to the Relevant Date or the Permitted Maximum if less for a 1989 Member;

**plus**, a refund of the Member's own contributions to the Scheme (if any) with compound interest;

**less**, where the aggregate of such sums exceeds £1,000,

- (aa) all lump sums payable on the death of the Member under all Approved Schemes of previous employers and under all FSAVCSs relating to previous employments (except refunds of the contributions of the Member plus interest); and
- (bb) all lump sum life assurance benefits payable on the death of the Member under any retirement annuity contracts or trust schemes approved under section 621 of the Income and Corporation Taxes Act 1988; and
- (cc) all lump sums payable on the death of the Member under Personal Pension Schemes approved under section 631 of the Income and Corporation Taxes Act 1988 (except sums representing refunds of premiums or contributions plus interest).

#### 2.4 **Lump Sum Retirement Benefit**

The permitted maximum for this purpose as defined in paragraph 2 of Schedule 29 of the Finance Act 2004 as amended (if applicable) by paragraphs 24 to 34 of Schedule 36 to that Act

#### 2.5 **20% Directors**

- (a) If a Member who is a 20% Director remains in Employment after Normal Retirement Date, the Member's pension shall be calculated as if the earlier of the actual date of retirement and the Member's 70th birthday were the Member's Normal Retirement Date so as not to treat as Employment after Normal Retirement Date any Employment before the Member reaches the age of 70.

- (b) If a Member who is a 20% Director dies in Employment on or after the Member's 75th birthday, any benefits expressed to be payable in accordance with Clause 1.7 (distribution of lump sum death benefits) shall be payable to the Member's spouse or, if there is no spouse, to the Member's legal personal representatives.
- (c) For the purposes of the foregoing provisions of this paragraph 2, benefits provided by premiums paid under contracts effected under section 620 or 621 of the Income and Corporation Taxes Act 1988 by a Member who is a 20% Director, or was at any time before 6 April 1973 a controlling director (as defined in section 624(3) of the Income and Corporation Taxes Act 1988) of any of the Employers, which are qualifying premiums (as defined in the said section 620) by virtue of relevant earnings (as defined in the said section 620) of such Member from the Employers shall be taken into account as if they were benefits provided under a retirement benefits scheme of the Employers in any case in which HMRC so require.

## 2.6 1989 Members

- (a) Where a 1989 Member is a Member of the Scheme by virtue of two or more Associated Relevant Employments the pension (including the pension equivalent of lump sum benefits) payable by the Scheme in respect of Employment in any of the Associated Relevant Employments, when aggregated with any pensions payable by the Scheme in respect of Employment in the other such Employment or Employments shall not exceed the Associated Relevant Amount.
- (b) Where in relation to a 1989 Member the Scheme is Connected with one or more other Approved Schemes the pension (including the pension equivalent of lump sum benefits) payable by the Scheme when aggregated with any amount payable by way of pension under the other Connected scheme or schemes shall not exceed the Connected Relevant Amount.

## 3. Contribution Limits

The Member contributions must not exceed such amount of his or her Remuneration that qualifies for tax relief in respect of that Tax Year under section 190 (Annual limit for tax relief) of the FA 2004 unless the Principal Company and the Trustees determine otherwise.

## 4. Late Retirement

- 4.1 In the case of 1989 Members who remain in Service after Normal Retirement Date no benefits shall (except to the extent required by the Department of Work and Pensions) be paid before the earliest of the Member's 75<sup>th</sup> birthday or the Member's actual retirement or the Member's leaving service.
- 4.2 In the case of 1989 Members, benefits must commence no later than the Member's 75th birthday.

## Part B – Requirements under the Finance Act 2004

### 1. PAYMENT OF BENEFITS

The Scheme provisions shall have effect (notwithstanding anything in them to the contrary) as if they provided:

- a. that the Member's retirement benefit shall be paid no later than the date on which he attains age 75;
- b. that pension and lump sum benefits must be taken simultaneously; and
- c. that the earliest age at which immediate benefits may be taken having left Service on other than Incapacity grounds is age 50 before 6 April 2010 and age 55 on and from 6 April 2010, subject to any rights to take benefit before normal minimum pension age in accordance with Section 21 of Schedule 36 of the FA 2004.

**2. PENSION GUARANTEES**

The Scheme may not provide for a pension to be guaranteed -

- a. for a minimum period by reference to the value of a Member's contributions; or
- b. for a minimum period exceeding 10 years.

APPENDIX 4  
SCHEME MAXIMUM  
(PENSION SHARING ON DIVORCE)

The Scheme Maximum appropriate to any benefit payable in respect of an Ex-Partner Participant following a pension sharing order on divorce is either:-

- (a) the maximum amount specified in this Appendix 4 or
- (b) such other amount as the Principal Company decides with the approval of the Trustees either generally or in an individual case.

1. **INTERPRETATION**

In this Appendix 4:-

- (a) the following expressions are defined in Rule 16.1:-

*"Ex-Partner", "Ex-Partner Participant", "Pension Credit", "Pension Credit Benefit", "Pension Credit Rights", "Pension Debit", "Pension Debit Member", "Pension Sharing Order", "1999 Act"*

- (b) *"Pre-1987 Member", "1987 Member" and "1989 Member"* are defined in Appendix 3 (Scheme Maximum)

- (c) the following expressions have the meanings set out below:-

*"Dependant"* has the meaning given in Part 2 of Schedule 28 to FA 2004.

*"Negative Deferred Pension"* means the amount by which the Member's pension or deferred pension under the Scheme in respect of Service, is reduced at the Relevant Date by section 31 of the 1999 Act (reduction of benefit) following a Pension Sharing Order. For these purposes, Service includes all periods of service with other employers in respect of which a transfer payment has been made to the Scheme.

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

*"Relevant Date"* means:-

- (1) the date of retirement, leaving Pensionable Service, or death; or
- (2) where the Member's pension is in payment on the date the Pension Debit is made, that date.

2. **MAXIMUM ALLOWABLE BENEFITS PAYABLE TO EX-SPOUSE PARTICIPANTS**

*Pension for Ex-Partner Participant*

Any Pension Credit Benefits payable under the Scheme to or in respect of an Ex-Partner Participant shall be subject to the following restrictions.

- (1) Normal benefit age must be between age 60 and 65.
- (2) Subject to (1) above, a pension can be paid to an Ex-Partner Participant:-
  - (a) at any time between attaining age 50 (before 6 April 2010) or age 55 (on and from 6 April 2010) and 75; or
  - (b) earlier on grounds of incapacity, where the Ex-Partner Participant is simultaneously drawing benefits from the Scheme arising from Service on incapacity grounds.

Additionally, a pension not yet in payment can be fully commuted, at any age, on the grounds of exceptional circumstances of serious ill-health.

The Ex-Partner Participant cannot defer commencement of the pension beyond his or her 75<sup>th</sup> birthday. If he or she is aged 75 or over at the date the Pension Sharing Order is implemented, the pension must come into payment immediately.

- (3) There is no limit on the amount of any pension payable to the Ex-Partner Participant. Such a pension may not be commuted, surrendered or assigned except in accordance with this Appendix 4 and/or the Scheme Rules. Such a pension must be payable for life, unless it is fully commuted under paragraph 2(10) below, and may be guaranteed.

#### **Lump sums**

- (4) No lump sum may be paid to the Ex-Partner Participant where:-
  - (a) the Member (who was formerly married to the Ex-Partner Participant) has already received a lump sum retirement benefit from the Scheme before the date of the implementation of the Pension Sharing Order; or
  - (b) all of the Pension Credit Rights under the Scheme have been transferred into the Scheme with a lump sum nil certificate.

Otherwise, a lump sum in commutation of part of the pension can be given, at the time the pension first becomes payable.

- (5) The lump sum in (4) above is limited to a maximum of 2.25 x the initial annual pension. For this purpose, the initial annual pension should be calculated on the following bases:-
  - (a) if the pension payable for the year changes, the initial pension payable should be taken;
  - (b) it should be assumed that the Ex-Partner Participant will survive for a year; and
  - (c) the effect of commutation should be ignored.
- (6) If an Ex-Partner dies after a Pension Sharing Order is made, but before it is acted on by the Trustees:-

- (a) any lump sum death benefit shall not exceed 25% of what would have been the cash equivalent of the fund which would have provided the Pension Credit Rights for the Ex-Partner; and
- (b) the amount of any non-commutable pension payable to a dependant of the Ex-Partner will be limited to a maximum of 2/3rds of the amount of the pension that could have been paid to the Ex-Partner at the date of death if the whole of the cash equivalent described in (a) above had been used to purchase an annuity at an available market rate.

Where more than one dependant's pension is to be paid, the total of all those pensions cannot exceed the amount of the pension that could have been paid to the Ex-Partner.

Such dependants' pensions must be payable for life, except that pensions paid to children must cease on the attainment of age 18 or, if later, on the cessation of full time education.

Such pensions may be fully commuted for a lump sum on the grounds of triviality at the time such a pension becomes payable.

***Death before Ex-Partner Participant's benefits come into payment***

- (7) If an Ex-Partner Participant dies before his or her benefits come into payment, any lump sum can be paid to any person at the discretion of the Trustees and will be limited to 25% of what would have been the cash equivalent of the Pension Credit Rights at the Ex-Partner Participant's date of death.
- (8) If the balance of the cash equivalent in (6) above is used to provide a non-commutable pension to a dependant of the Ex-Partner Participant, the amount of any such pension payable to a dependant will be limited to a maximum of 2/3rds of the amount of the pension that could have been paid to the Ex-Partner Participant at the date of death had the whole of the cash equivalent of the Pension Credit Rights been used to purchase an annuity at an available market rate.

For the purpose of determining the pension which could have been paid to the Ex-Partner Participant, it should be assumed that he or she was aged 50 at the date of death, where he or she died at an earlier age.

Where more than one dependant's pension is to be paid, the total of all the pensions cannot exceed the amount of the pension that could have been paid to the Ex-Partner Participant.

Such dependants' pensions must be payable for life, except that pensions paid to children must cease no later than the attainment of age 18 or, if later, on cession of full-time education. Such pensions may, however, be fully commuted for a lump sum on the grounds of triviality at the time that they become payable.

***Death after Ex-Partner Participant's benefits come into payment***

- (9) Where the Ex-Partner Participant dies after his or her pension has come into payment, any non-commutable pension payable to a dependant of the Ex-Partner Participant will be limited to a maximum of 2/3rds of the initial annual pension which was paid to the Ex-Partner Participant, as increased by any rise in the Index since the commencement of the Ex-Partner Participant's pension.

Where more than one dependant's pension is to be paid, the total of all those pensions cannot exceed the amount of the initial annual pension which was paid to the Ex-Partner Participant, as increased by any rise in the Index since the commencement of the Ex-Partner Participant's pension.

For these purposes, the Ex-Partner Participant's initial annual pension should be calculated on the same basis as in paragraph 2(4) above.

Such dependants' pensions must be payable for life, except that pensions paid to children must cease on the attainment of age 18 or, if later, on cessation of full-time education (but in any case no later than on the attainment of age 23). Such pensions may, however, be fully commuted for a lump sum on the grounds of triviality at the time that they become payable.

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

- (10) On the date the Ex-Partner Participant's pension becomes payable (but not where the pension is paid in the form of income draw down), the Ex-Partner Participant may be permitted to surrender part of this pension for the provision, on the death of the Ex-Partner Participant, of a pension payable to a dependant of the Ex-Partner Participant. The amount of pension surrendered should not exceed the reduced pension which the Ex-Partner Participant retains.

#### ***Trivial Pensions/Serious Ill-Health***

- (11) Full commutation of the Pension Credit Rights on the grounds of triviality or exceptional circumstances of serious ill-health is permitted when the pension first becomes payable.

Where the Ex-Partner Participant is also entitled to benefits under the Scheme arising from Service, for the purposes of determining the aggregate value of the total benefits payable to the Member for triviality purposes, benefits from Pension Credit Rights must be included. Where the Ex-Partner Participant is also entitled to benefits under the Scheme arising from Service, full commutation of the Pension Credit Rights on the grounds of triviality will only be permitted where benefits arising from Service are simultaneously commuted.

### **3. MAXIMUM ALLOWABLE BENEFITS FOR PENSION DEBIT MEMBERS**

- (1) Notwithstanding any other provisions of the Rules, the benefits for a Pension Debit Member are additionally subject to the following limits, subject to compliance with the Preservation Requirements:-

#### ***Pension***

- (A) The pension shall not exceed the Aggregate Retirement Benefit in Appendix 3 (Scheme Maximum) less:

- (a) the Negative Deferred Pension in this Scheme and in any Associated Scheme; and
- (b) in the case of a 1989 Member, the Negative Deferred Pension in any Connected Scheme.

***Lump Sum***

- (B) The lump sum from this and any Associated Scheme shall not exceed:-
  - (a) for Pension Debit Members who are 1989 Members or 1987 Members, an amount determined by 2.25 x the initial annual pension payable;
  - (b) for Pension Debit Members who are Pre-1987 Members, an amount of the greater of:
    - (i) 2.25 x the initial annual pension payable or,
    - (ii) an amount determined in accordance with Appendix 3 (Scheme Maximum) as if there had been no Pension Debit less 2.25 x the Negative Deferred Pension.

For the purposes of this paragraph, the initial annual pension should be calculated on the following bases:-

- (aa) if the pension payable for the year changes, the initial pension payable should be taken;
- (bb) it should be assumed that the Pension Debit Member will survive for a year; and
- (cc) the effect of commutation should be ignored.

***Dependants' pensions***

- (C) On the death of the Pension Debit Member, any pension for a dependant shall not exceed  $\frac{2}{3}$  x an amount determined in accordance with Appendix 3 (Scheme Maximum) as if there had been no Pension Debit less:
  - (a) the Negative Deferred Pension in the Scheme and in any Associated Scheme; and
  - (b) in the case of a 1989 Member, the Negative Deferred Pension in any Connected Scheme.

Where more than one pension is to be paid, the total of all the pensions cannot exceed 100% of an amount determined in accordance with Appendix 3 (Scheme Maximum) as if there had been no Pension Debit, less the Negative Deferred Pensions in (a) and, if applicable, (b) above.

- (2) Where the Trustees accept a transfer payment and are informed by the transferor of the details of a Pension Debit relating to the transfer payment, the Trustees must take account of the Pension Debit, if appropriate, in the calculation of any limit on benefits for that Member.



## APPENDIX 5

### GMP RULES

#### 1. **DEFINITIONS**

In these GMP Rules the following words have the following meanings:

**"the Act"** means the Pension Schemes Act 1993.

**"Contracted-out Employment"** means a Member's Contracted-out employment by reference to the Scheme (as in Section 8(1)(a)(i) and 8(1)(b) of the Act).

**"Fixed Rate Revaluation"** means the method of revaluing a GMP before State Pension Age described in Rule 4.1 (C) below.

**"insurer"** means an insurance company, an EC company or a friendly society complying with any applicable contracting-out requirements of the Act.

**"Limited Revaluation"** means the method of revaluing a GMP before State Pension Age described in Rule 4.1 (B) below.

**"Pre-97 Protected Rights"** means Protected Rights derived from payments or contributions to an occupational or personal pension scheme in respect of employment before 6 April 1997.

**"Protected Rights"** has the same meaning as in section 10 of the Act.

**"Rule"** (followed by a number) means the Rule (with that number) in this Appendix.

**"Secretary of State"** means the Secretary of State for Work and Pensions or the department or other body or person to whom the relevant function has been delegated.

**"Section 148 Revaluation"** means the method of revaluing a GMP before State Pension Age described in Rule 4.1 (A) below.

**"State Pension Age"** means 65 in the case of a man, and 60 in the case of a woman.

**"Widow"** and **"Widower"** means respectively the widow and the widower of a Member and "widower" shall include a Member's surviving Civil Partner. If a Member has married or entered into a civil partnership under a law which allows polygamy and, on the day of the Member's death, has more than one spouse or Civil Partner, the Trustees must decide which, if any, survivor is the Widow or Widower. In reaching that decision, the Trustees must have regard to the practice of the Secretary of State and any relevant provisions of existing Social Security legislation, in particular section 17(5) of the Act and regulation 2 of The Social Security and Family Allowance (Polygamous Marriages) Regulations 1975 (SI 1975/561).

#### 2. **OVERRIDING EFFECT OF THESE RULES**

These Rules shall apply if any Member's employment becomes Contracted-out Employment by reference to the Scheme before 6 April 1997. These Rules will only apply for so long as anyone has a GMP or a prospective right to receive a GMP under the Scheme which subjects the Scheme to the continuing supervision of the Secretary of State.

These Rules override any inconsistent provisions elsewhere in the Scheme except provisions which are necessary in order that HMRC approval for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 is not prejudiced.

3. **ENTITLEMENT TO GMP**

3.1 **Guaranteed Minimum.** This Rule 3 applies to a Member, Widow or Widower where the Member has a guaranteed minimum in relation to the pension provided for the Member under the Scheme in accordance with section 14 of the Act.

3.2 **Member's GMP.** The Member shall be entitled to a pension for life paid at a rate equivalent to a weekly rate of not less than that guaranteed minimum. The pension will be paid from State Pension Age but commencement of the pension may be postponed for any period during which the Member remains in employment after State Pension Age:

- (1) if the employment is employment to which the Scheme relates and the postponement is not for more than 5 years after State Pension Age; or
- (2) if the Member consents to the postponement.

3.3 **Widow's GMP.** Where the Member is a man and dies leaving a Widow, she shall be entitled to receive a pension from the Scheme paid at a rate equivalent to a weekly rate of not less than half that guaranteed minimum.

3.4 **Payment of Widow's GMP.** The pension shall be paid for life to any Widow.

3.5 **Widower's GMP.** Where the Member dies leaving a Widower, he or she shall be entitled to receive a pension from the Scheme paid at a rate equivalent to a weekly rate of not less than half of that part of the guaranteed minimum which is attributable to earnings for the Tax Year 1988/1989 and subsequent Tax Years.

3.6 **Payment of Widower's GMP.** The pension shall be paid for life to any Widower.

3.7 **Offsetting pension against GMP.** Any pension payable to the Member, Widow or Widower under any other provision of the Scheme may be offset against the pension entitlement under this Rule 3 except to the extent that:

- (1) any part of the pension is an EPB; or
- (2) any part of the pension is an increase, calculated in accordance with Schedule 3 of the Act and added to the amount that would be payable but for Chapter II of Part IV of the Act or regulations made under it; or
- (3) offsetting would contravene the anti-franking legislation (see Rule 6 below).

4. **REVALUATION OF GMP**

4.1 **Revaluation before State Pension Age.** Where a Member ceases to be in Contracted-out Employment before State Pension Age, the Member's GMP at State Pension Age or at the Member's earlier death will be calculated by increasing the accrued rights to GMP at cessation of Contracted-out Employment under one of the options (A) or (C) below (option (B) being unavailable after 5 April 1997).

(A) **Section 148 Revaluation.**

The increase will be by the percentage by which earnings factors for the Tax Year in which Contracted-out Employment ceases are increased by the last order under section 148 of the Social Security Administration Act 1992 to come into force before the Tax Year in which the Member reaches State Pension Age (or dies, if earlier).

(B) **Limited Revaluation.**

The increase will be by the lesser of:

- (1) 5 per cent (5%) compound for each Tax Year after that in which Contracted-out Employment ceases up to and including the last complete Tax Year before the Member reaches State Pension Age (or dies, if earlier); and
- (2) the percentage by which earnings factors for the Tax Year in which Contracted-out Employment ceases are increased by the last order under section 148 of the Social Security Administration Act 1992 to come into force before the Tax Year in which the Member reaches State Pension Age (or dies, if earlier).

The Trustees must pay a limited revaluation premium in respect of the Member to the Secretary of State.

**(C) Fixed Rate Revaluation**

The increase will be by such rate as regulations made under section 55(5) of the Act specify as being relevant at the date Contracted-out Employment ceases, for each complete Tax Year after the Tax Year containing that date up to and including the last complete Tax Year before the Member reaches State Pension Age (or dies, if earlier).

The Trustees (with the consent of the Principal Company) shall decide which of the options (A) or (C) applies to the Scheme. It may at any time decide that the other method shall be used, instead of the method currently being used, for all Members ceasing to be in Contracted-out Employment after a specified date. They must notify the Secretary of State whenever the method of revaluation for the Scheme is changed.

**4.2 Transfers in.** Where a transfer payment is received in respect of a Member from another scheme ("the transferring scheme") which includes accrued rights of the Member to a GMP (or includes protected rights in respect of which the receiving scheme will provide a GMP) the earnings factors used in calculating that GMP will normally be revalued using Section 148 Revaluation during the Member's Contracted-out Employment, and 4.1 above will apply if that Contracted-out Employment ceases before State Pension Age. The Trustees may, however, decide, if the provisions of the transferring scheme so allow, to use either Limited Revaluation or Fixed Rate Revaluation from the date on which the Member ceased to be in contracted-out employment by reference to the transferring scheme until the Member attains State Pension Age (or dies, if earlier) but:

- (1) Limited Revaluation may not be used as regards any part of the GMP being transferred which arose from contracted-out employment in relation to a previous scheme and which the transferring scheme is already revaluing by Fixed Rate Revaluation (or vice versa); and
- (2) the Trustees may not make that decision if, on becoming a Member, the Member's contracted-out employment in relation to a previous scheme is treated as continuing for the purposes of the Act.

Where, under this Rule 4.2, Limited Revaluation is to be used, the Trustees shall have power to pay out of the transfer payment in respect of that Member any limited revaluation premium payable as a result of the Member ceasing to be in contracted-out employment by reference to the transferring scheme.

Where the Scheme accepts the proceeds of, or the assignment of, an insurance policy which consists of, or includes, accrued rights to GMP, the Trustees may use either Section 148 Revaluation or the method of revaluation that was in use under the policy (and condition (1) above applies).

**4.3 Transfers out.** Where a Member's accrued rights to GMP are transferred to another contracted-out salary related scheme the Trustees may agree with the administrator of that scheme that the Member's GMP shall, instead of being revalued using the method currently

being adopted under 4.1 above, be revalued using the other method which would be permitted if that scheme contained a rule in the same terms as 4.2 above

5. **INCREASE OF GMP**

5.1 **Increase after State Pension Age.** If the commencement of any Member's GMP is postponed for any period after State Pension Age, that GMP shall be increased to the extent, if any, specified in section 15 of the Act.

5.2 **Increase after State Pension Age or Member's death.** Any GMP to which a Member, Widow or Widower is entitled under Rule 3 above shall, insofar as it is attributable to earnings in the Tax Years from and including 1988/1989, be increased in accordance with the requirements of section 109 of the Act.

6. **ANTI-FRANKING**

Except as provided in sections 87-92 and 110 of the Act, no part of a Member's, Widow's or Widower's pension under the Scheme may be used to frank an increase in the Member's, Widow's or Widower's GMP under Rule 4 or Rule 5 above.

7. **TRANSFERS INTO THE SCHEME**

7.1 **Acceptance of transfers.** The Trustees may accept:

- (1) a transfer payment in respect of the Member's accrued rights to GMPs under a contracted-out salary related scheme or a policy of insurance or an annuity contract of the type described in section 19 of the Act;
- (2) a transfer of the liability for the payment of GMPs to, or in respect of, any person who has become entitled to them;
- (3) a transfer of pre-1997 Protected Rights:
  - (a) in respect of the Member or a former Member from another scheme which is, or was, an appropriate personal pension scheme
  - (b) in respect of the Member or a former Member from another scheme which is, or was, a scheme contracted-out on a money purchase basis.

Transfers may be accepted only as provided in the appropriate regulations.

7.2 **Effect of transfers.** Where a transfer is accepted under 7.1(1) above, the Member's accrued rights to GMPs under the Scheme will be increased accordingly.

Where a transfer is accepted under 7.1(3) above, the Member's, Widow's and Widower's GMPs under the Scheme will be increased by amounts equal to the GMPs to which they would have been treated as entitled by reason of the Member's membership of the transferring scheme if the transfer payment had not been made.

Accrued rights to GMPs arising from a transfer will be revalued in accordance with 4.2 above.

8. **COMMUTATION OF GMP**

A Member's, Widow's or Widower's GMP may be commuted in the circumstances set out in, and in accordance with, regulation 60 of The Occupational Pension Schemes (Contracting-out) Regulations 1996.

9. **FORFEITURE OF GMP**

Any instalment of a GMP may be forfeited if it is not paid within six years of the date on which the instalment became due and the Trustees do not know the whereabouts of the recipient.

10. **CONTRIBUTIONS EQUIVALENT PREMIUMS**

- 10.1 A contributions equivalent premium shall be paid, subject to 10.2 below, in respect of a Member who ceases to be in Contracted-out Employment before whichever is the earlier of the Member's Normal Retirement Age and the end of the Tax Year preceding that in which the Member will reach State Pension Age with less than 2 years' Qualifying Service and less than 2 years' Contracted-out Employment. A contributions equivalent premium shall not be paid where the Member's accrued rights include rights transferred from a personal pension, nor where the Member is a woman who dies in Contracted-out Employment in respect of Widower's GMP.

Payment of the contributions equivalent premium extinguishes the Member's accrued rights to GMPs under the Scheme and (in relation to Service after 5 April 1997) rights to pensions under the Scheme so far as attributable to the amount of the premium. Therefore, where the premium is paid, any refund of contributions to the Member or any transfer payment from the Scheme in respect of a Member shall be reduced by the certified amount (as defined in the Act) in relation to that premium and any pension benefit under the Scheme for the Member or the Member's Widow or Widower shall be reduced so as to allow for the fact that their accrued rights to GMPs and other pension rights have been extinguished.

- 10.2 The premium shall not be payable if:

- (1) its amount is less than £17 (or such greater amount as is specified in regulations made under the Act);
- (2) the Member's accrued rights to GMPs are transferred to another scheme, policy or contract in accordance with Section 7 above;
- (3) the Member has become entitled to an immediate or a deferred pension under the Scheme on ceasing to be in Contracted-out Employment.

11. **SCHEME CEASES TO BE A CONTRACTED-OUT SALARY RELATED SCHEME**

If the Scheme ceases to be a contracted-out salary related scheme, the Trustees must seek the approval of the Secretary of State to any proposed arrangement for securing GMPs or accrued rights to pensions under the Scheme attributable to Contracted-out Employment after 5 April 1997.

