

Pensions Client Directorate

**Pensions - Consultation on
draft scheme order and rules**

28 April 2009

**personal accounts
delivery authority**

helping millions save
for their retirement

CONTENTS

Part one:	Foreword and consultation arrangements	3
Part two:	Policy and legislative background	8
Part three:	Overview of proposals	11
Part four:	Commentary on draft scheme order	29
Part five:	Commentary on draft scheme rules	35
Part six:	Summary of consultation questions	39
Annex A:	The draft scheme order	41
Annex B:	The draft Transfer Values (Disapplication) Regulations	54
Annex C:	The draft scheme rules	56
Annex D:	Glossary of terms	76
Annex E:	List of organisations consulted	80

Part one: Foreword and consultation arrangements

Who this document is aimed at

1. This document is aimed at all those with an interest in the legal framework for the pension scheme established under section 67 of the Pensions Act 2008 (“the 2008 Act”). The scheme will enable those employers who wish to use it to fulfil the new duties in relation to the provision of workplace pensions introduced by that Act. In particular, we invite responses from the pensions industry, employers and organisations representing employers’ interests as well as potential members of the scheme and organisations representing their interests.

Subject of consultation

2. This document sets out the Secretary of State’s proposals on the draft secondary legislation (“the order”) that will establish the scheme, the non-statutory scheme rules (“the rules”), and the Transfer Values (Disapplication) Regulations (“the Disapplication Regulations”). This document seeks views in advance of introducing this package of measures into Parliament. The proposals set out here have been developed by the Department for Work and Pensions (DWP) and the Personal Accounts Delivery Authority (PADA).

Purpose of consultation

3. This document seeks views on this draft Pension Scheme Order 2009 which will be made under Chapter 5 of the 2008 Act, the draft Scheme Rules; and on the draft Transfer Values (Disapplication) Regulations 2009 which will be made under the Pension Schemes Act 1993, as amended by section 134 of the 2008 Act.
4. This document is the second in a series of three DWP consultation documents seeking views on the proposed regulations to be made in exercise of powers contained in the 2008 Act. In addition, this is the third in a series of four PADA consultations on aspects of the scheme. Other PADA consultations are:
 - charges structures which PADA responded to in July 2008
<http://www.padeliveryauthority.org.uk/charging-structure.asp>
 - securing a retirement income. PADA is currently considering the responses submitted
<http://www.padeliveryauthority.org.uk/securing-retirement.asp>.
 - a further PADA consultation on investment is due to be published in May 2009. The purpose of this consultation is to draw on good practice in the pensions and investment industry and seek views on the most appropriate investment strategy for the scheme. This will feed into the recommendations PADA makes to the trustee corporation regarding developing their investment approach and strategy.

- a DWP consultation is currently being held on the draft Pensions (Automatic Enrolment) Regulations 2009, <http://www.dwp.gov.uk/consultations/2009/pensions-auto-enrol-regs2009.pdf> which set out the practical arrangements underpinning automatic enrolment of jobholders for all qualifying schemes, including information flows, and the arrangements should a jobholder decide to opt out.
 - A further DWP consultation is planned in Autumn 2009 on the remaining elements of the employer duty (including re-enrolment and opt ins, staging, phasing, qualifying schemes criteria and certification) and employment safeguards and elements of the compliance regime, including information to be passed to the Pensions Regulator, sanctions and penalties.
5. This pension scheme will offer one way for employers to discharge the new duties conferred to them under Chapter 1 of the 2008 Act. Employers choosing to participate in this scheme will be subject to the employer duties broadly in the same way as other employers. This consultation therefore does not specifically address the broader employer duties.

Scope of consultation

6. This consultation applies to England, Wales, Scotland and Northern Ireland. Northern Ireland has its own body of pension law and references to Great Britain legislation are to be taken, where necessary, as including references to the corresponding Northern Ireland legislation.

Duration of consultation

7. The consultation period begins on 28 April 2009 and runs until 20 July 2009.
8. This document is available on the Department's website at:

<http://www.dwp.gov.uk/consultations/2009/>

and is also available on PADA's website at:

<http://www.padeliveryauthority.org.uk/consultations.asp>

How can you respond to this consultation?

9. Please send your responses, preferably by email, to:

orderandrules.consultation@dwp.gsi.gov.uk

or by post:

Sean Scarle
Order and Rules Consultation
Enabling Retirement Savings Programme
Department for Work and Pensions
Adelphi (4th floor)
1-11 John Adam Street
London
WC2N 6HT

Please ensure your response reaches us by **20 July 2009**.

10. When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.
11. The responses to the consultation will be published, jointly by DWP and PADA, within three months of the consultation closing, in a report that will summarise the responses and the action that we will take as a result of them.

Queries about the content of this document

12. Any queries about the subject matter of this consultation should be made to Sean Scarle at the above address, or telephone 0207 712 2753.
13. We have sent this consultation document to a large number of people and organisations who have already been involved in this work, or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved.

Freedom of information

14. The information you send us may need to be passed to colleagues within the Department for Work and Pensions and published in a summary of responses received, and referred to in the published consultation report.
15. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purpose of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

16. If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Name: Charles Cushing
Address: Department for Work and Pensions, Adjudication and Constitutional Issues, Information Policy Division, Freedom of Information Unit, 1-11 John Adam Street, London WC2N 6HT
Phone: 0207 962 8581
Email: charles.cushing@dwp.gsi.gov.uk

Please note that Charles and his team are unable to answer any questions you may have about the consultation exercise itself.

More information about the Freedom of Information Act can be found on the website of the Ministry of Justice - <http://www.justice.gov.uk/whatwedo/freedomofinformation.htm>.

The consultation criteria

17. The consultation is being conducted in line with the Code of Practice on Consultation - <http://www.berr.gov.uk/files/file47158.pdf> – and its seven consultation criteria which are as follows:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises.** Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact.** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises.** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation.** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises.** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult.** Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback on this consultation

18. We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Name: Roger Pugh
Address: Department for Work and Pensions' Consultation
Coordinator, Room 2A, Britannia House, 2, Ferensway,
Hull HU2 8NF
Phone: 01482 609571
Fax: 01482 609658
Email: roger.pugh@dwp.gsi.gov.uk

19. In particular, please tell us if you feel that the consultation does not satisfy these criteria. Please also make any suggestions as to how the process of consultation could be improved further.

20. If you have any requirements that we need to meet to enable you to comment, please let us know.

Regulatory impact assessment

21. An impact assessment was prepared for the Pensions Act 2008 which set out the impact of establishing a scheme under section 67 of that Act. An impact assessment has not been produced because the scheme order and the Transfer Values (Disapplication) Regulations do not impose additional burdens on the private or voluntary sectors. The requirement on business is to automatically enrol, and pay minimum contributions for eligible jobholders into a qualifying workplace pension scheme. This scheme is being set up to enable many employers to fulfil this duty. An equality impact assessment was also prepared for the 2008 Act, and this has not been updated.

Part two: Policy and legislative background

1. The Department for Work and Pensions (DWP) estimates that around 7 million people are not saving enough to deliver the pension income they are likely to want, or expect, in retirement. The Government has set out a programme of State and workplace pension reforms which aim to increase individuals' income in retirement. The first part of this reform package was implemented in the Pensions Act 2007. The measures contained in the 2007 Act focused on the changes to the State pension. Further measures to help provide security in retirement for tomorrow's pensioners are contained in the Pensions Act 2008 and consist of:
 - New duties on all employers to automatically enrol their eligible jobholders into a pension scheme and to pay a minimum contribution towards the pension;
 - A robust compliance regime to support the new duties;
 - A new, low cost simple pension scheme to ensure all employers have access to a suitable pension scheme.
2. The 2008 Act requires this pension scheme to be established through secondary legislation. In common with many other occupational pension schemes, the scheme is being treated as if established under a trust. The terms of the scheme will be set out in the scheme order, and in the non-legislative scheme rules.
3. The Personal Accounts Delivery Authority (PADA) is a non-Departmental Public Body (NDPB) and was set up under the 2007 Act. Its functions include advising and assisting the Secretary of State on the establishment and operation of the scheme. Its powers were extended under the 2008 Act and PADA is now responsible for designing and procuring the administration elements of the scheme.
4. The design of the scheme will need to take account of the diverse nature of its participating employers and potential membership, many of whom may not have been involved in pension saving before. PADA is undertaking both qualitative and quantitative research, looking at individuals' and employers' needs and preferences when it comes to interacting with the scheme.

Box one

Guiding principles of the Personal Accounts Delivery Authority

The Pensions Act 2008 includes a set of principles that the Personal Accounts Delivery Authority (PADA) must have regard to when carrying out its functions. These principles provide an operational framework and are fundamental to the scheme's design. In summary, they are that:

- Participation in qualifying schemes should be encouraged and facilitated.

- The burdens imposed on employers should be minimised.
- Any adverse effects on qualifying schemes, and members and future members of those schemes, should be minimised.
- The cost of membership of a scheme should be minimised.
- The preferences of members and future members should, so far as practicable, be taken into account in making any provision about investment choice in such a scheme.
- Diversity among members and future members should be respected.

PADA needs to make balanced judgements between the principles where they give rise to competing priorities.

The approach outlined in this document strikes a balance between these principles. The legal framework will be underpinned by processes that will be designed to be straightforward, and will be supported by clear, easy to understand communications. These proposals take account of customer research and are informed by pension industry good practice.

5. PADA will cease to be operational once the scheme has been effectively handed over to the trustee corporation. The scheme will then be managed on an on-going basis by the trustee corporation. DWP and PADA will need to ensure that the scheme is designed in such a way that it can be run in the best interests of its beneficiaries and within the terms of the order and rules.
6. This document does not provide information on the detailed processes that the scheme will use, but describes the key statutory and non-statutory instruments that will set the scope and parameters within which the scheme will operate.
7. We estimate that the scheme will have between 2 and 8 million members and hundreds of thousands of participating employers, who will not be associated in any way other than their use of the scheme for their workers. It is estimated that this may result in around £100–300 billion of funds under management in the scheme by 2050 in 2007/08 earnings terms. The intention is that the scheme will operate as much as possible like any other trust based, multi-employer, occupational pension scheme. For example, in common with all other occupational pension schemes, it will be regulated by the Pensions Regulator (tPR). The scheme will provide benefits to or in respect of persons on retirement, death, the onset of ill-health or serious ill-health.
8. However, as a result of its unique scale and design there will be certain differences. The main differences are:
 - The scheme will be established in legislation and will be sponsored by the Secretary of State for Work and Pensions, rather than set up and sponsored by one employer or a number of employers.

- The scheme will have a public service obligation to accept any employer that wishes to use the scheme to fulfil their employer duties.
- Once an employer is participating in the scheme, the scheme will accept any worker enrolled by that employer.
- There will be no differentiation between contributing and non-contributing members. All members of the scheme will be able to remain active members and can choose to continue to contribute to the scheme until they access their savings at retirement.
- Members who have left the employment of a participating employer will be able to continue to make contributions irrespective of whether they are in employment or not.
- Self employed people will be able to join the scheme directly and make contributions.
- There will be an annual contribution limit of £3,600 (in 2005 earnings terms), adjusted in accordance with changes in average earnings.
- There will be a ban on the transfer of accrued benefits into and out of the scheme, apart from in a limited number of circumstances.
- A members' panel and employers' panel will be established to allow the trustee to engage effectively with the diverse, large membership and employer population.
- Employers using the scheme to discharge their duties under the 2008 Act will not be able to postpone automatic enrolment under Section 4 of the 2008 Act.
- It is intended that the scheme will become self-financing from member charges.

The specific rationale for these differences is given in the body of this consultation document.

9. The scheme has been designed to operate broadly within the existing framework of pension regulation and other related law. It will, however, be necessary to make some minor modifications to current law. These minor modifications will not be legislated for through the order and rules themselves, but, where necessary for ease of understanding, have been explained within this document.

Part three: Overview of proposals

Constitution of the scheme, role of the trustee corporation and the Secretary of State

Note: in the text in this part:

- references to Article numbers refer to specific sections of the draft scheme order at **Annex A**
 - references to Regulation numbers refer to specific sections of the draft Transfer Values (Disapplication) Regulations at **Annex B**
 - references to Rule numbers refer to specific sections of the draft scheme rules at **Annex C**
1. A new trustee corporation will be established to be the trustee of the scheme, and be responsible for its governance and administration (Article 4). The functions of the trustee are set out in the 2008 Act at section 76 and further details about the constitution of the trustee are given in Schedule 1 of the Act. As these are already set out in legislation, it is not necessary to repeat these provisions in the scheme order and rules. Those provisions include matters such as how appointments are made; tenure of office; treatment of conflicts of interest; remuneration; proceedings of the trustee corporation; delegation of functions; and the keeping of accounts. This will be included in other scheme documentation.
 2. The trustee corporation will be a body corporate, comprised of nine to fifteen members. The trustee corporation's role will be to act as trustee of the scheme. It will need to make decisions on matters that affect the scheme and its members independently of government and participating employers. The trustee corporation will employ people to help it carry out its duties.
 3. The Government has established the trustee corporation and the scheme to achieve the public policy objective of providing a scheme suitable for the target market of moderate to low income earners, whilst minimising any adverse effects on existing pension provision. The order and rules, therefore, give the trustee corporation specific duties beyond those normally associated with an occupational pension scheme, including the duty to accept all employers who wish to use the scheme to discharge their new duties under the 2008 Act. Similarly, the order and rules remove powers common to other schemes – for example, by restricting the ability to accept transfers into the scheme - and sets out an annual contribution limit of £3,600 (at 2005 earnings levels). These measures will help ensure the scheme remains targeted towards moderate to low income earners who are not currently enrolled in an occupational pension scheme.
 4. In addition, the Government, in setting the scheme up through legislation, is undertaking a role similar to a sponsoring employer setting

up a scheme under trust arrangements. Under many trust based occupational pension schemes, if the trustee wishes to propose certain changes to the scheme these must be agreed by the sponsoring employer. Similarly, it is possible that circumstances might arise in which the trustee corporation proposes changes to the scheme and would need to seek Government or Parliamentary agreement. For example, any changes to the establishing scheme order itself will be subject to Parliamentary approval.

5. The trustee corporation will be set up as a non-Departmental Public Body (NDPB), sponsored by the Department for Work and Pensions. This will ensure that accountability remains between the trustee and Parliament. As the trustee corporation will be a public body, we are considering what provision, if any, needs to be made in the scheme order to provide the Secretary of State with sufficient controls to assure Parliament that the trustee corporation's activities as a public body are consistent with Parliament's intentions that the scheme is a self-financing, low cost occupational pension scheme targeted at moderate to low income earners, while ensuring the trustee corporation's activities do not adversely affect public finances. These controls could range from measures to ensure that activity by the trustee corporation impacting on public finances, including in relation to its financial transactions and the way it raises revenues, is properly accounted for and managed, to steps or reporting mechanisms that provide Parliament with the assurances it needs. Any controls must be balanced to ensure that they do not undermine the independence of the trustee corporation in running the scheme in the interests of its beneficiaries and will not include any controls over the normal exercise of trustee powers in relation to investment. We will make clear in our response to this consultation what provision, if any, will be made in the scheme order to take this into account.
6. In common with other NDPBs, the detail about this relationship and the respective roles and responsibilities between the Government and the trustee corporation will be set out in a framework document.

Engaging with members and employers

7. The trustee will need to take into account the views of members and participating employers in the day to day running of the scheme and to assess whether it is meeting their needs. To enable this, section 69 of the Pensions Act 2008 requires the trustee to consult with scheme members and participating employers through a members' panel and an employers' panel (Articles 5-9 and Rule 5).
8. The function of the members' panel will be to represent members' perspectives to the trustee, providing a member viewpoint to the trustee and act as a sounding board for ideas and suggestions proposed by the trustee. Also, in such a large scheme, the panel will provide reassurance to the membership that the trustee is acting in their interests and encourage a feeling of ownership amongst the members.

9. Most occupational pension schemes are required to have member nominated trustees to ensure that members' views are reflected and to provide a counterbalance to employer nominated trustees. The Government and PADA are concerned that the diverse range and number of members and the lack of a single sponsoring employer means that traditional member nominated trustees would prove a costly and ineffective mechanism for representing members' views. It is proposed instead that, in addition to its broader function of representing members' views and perspectives to the trustee, once it has been set up the members' panel will participate in the recruitment and selection process for all members of the trustee corporation (Article 5). This will ensure that members' interests are directly reflected and that those representing the membership are involved in the recruitment process. In addition, the members' panel will be required to report, on behalf of scheme members, on the extent to which the trustee corporation has taken members' perspectives into account in its decision making process.
10. The trustee must also engage with participating employers to ensure that the scheme remains a good proposition for them and their employees. The function of the employers' panel will be to ensure that the views of the wide range and diverse nature of the participating employers using the scheme are heard, in particular views about the efficient administration of the scheme.
11. Both panels are likely to adapt the way they work to suit the scheme as it develops over time. Therefore, the order and rules set out the minimum requirements in relation to the panels. Each panel must aim to have between nine and fifteen members. Panel members can be scheme members, participating employers or others representing their interests. This will allow representative organisations to put forward members of the panels to help ensure that the panels are effective at representing a broad range of interests, particularly in the early years of the scheme's operation. The trustee is also able to make payments to panel members for remuneration and allowances, and will be able to supply a secretariat and other reasonable use of corporation resources to ensure that the panels can carry out their work effectively.
12. The scheme order requires the trustee to make and maintain arrangements for consulting members and participating employers about the operation, development and amendment of the scheme (Article 7). We also intend that once set up the employers' panel and the members' panel will have a consultative role in the preparation or revision of the content of the statement of investment principles. (Article 7).
13. We are keen to ensure that the trustee has appropriate flexibility to develop inclusive and imaginative ways of engaging with participating employers and members. PADA will develop further proposals on this for the trustee to consider, but it will be for the trustee corporation to decide on an ongoing basis what will be the best and most cost effective way to engage members and employers. For example, the scheme might

engage with members through online discussion forums, e-newsletters, e-mail alerts and other interactive approaches.

Specific questions:

Question 1, Article 7: Are the following aspects of the members' panel the right model for ensuring that members' interests and perspectives influence the day to day running of the scheme?

- **The role of the members' panel;**
- **The members' panel involvement in the recruitment and selection process for all members of the trustee corporation;**
- **The members' panel remit to produce a report on whether the trustee considers members' interests in its decision making process.**

Question 2, Article 7: Are there ways in which the panel can be constituted or its functions defined that would maximise its effectiveness?

Question 3, Article 7: Is it appropriate to allow representative bodies on the members' and employers' panels?

Data sharing

14. The Government may require information about the scheme to complete legal obligations or other undertakings for example, the Government is required to review certain aspects of the scheme under section 74 of the 2008 Act. The order provides that the trustee must share anonymised information with the Secretary of State where it is needed to comply with a legal obligation or undertaking.
15. In addition, the trustee must also disclose anonymised data requested by the Secretary of State where it is required to assess the performance, administration or management of the scheme, or for the purposes of private pensions policy or retirement planning. However, if the trustee considers that to comply with such a request would involve disproportionate cost time, or effort – and provides reasons – it need only disclose that data if the Secretary of State and trustee are able to reach an agreement to disclose the data (Article 11).
16. The information which the Government might require includes: the characteristics of members (for example, gender, age, employment status, earnings, investment choices) or relate to the operation of the scheme (for example, numbers of joiners into and leavers out of the scheme or values of members' accounts). The trustee corporation may recover from Government any additional costs incurred in providing this.
17. The Government may also be interested in individuals' experiences of the reforms and want to contact members of the scheme for research purposes – for instance to carry out a survey or qualitative research about the scheme. Therefore, the order also provides for the trustee to

provide relevant personal data (essentially basic contact details) to the Government but only where a member has consented to such disclosure (Article 12).

18. These provisions also apply in respect of a person providing services to or on behalf of the Secretary of State and the Department for Social Development in Northern Ireland (Article 13).

Indemnity

19. In common with many occupational trust based pension schemes, potential members of the trustee corporation will want to be assured that adequate exoneration and indemnity arrangements are in place to protect them. The order contains provisions that exonerate and indemnify the trustee and those to whom it delegates responsibility from liability for losses arising from their actions in running the scheme (Article 14). There are some exemptions to this indemnity, for example where actions are wilful or dishonest, where the Pensions Regulator has imposed civil penalties and where investment duties have not been complied with. There is also some standard indemnity cover for NDPBs but this does not extend to the fiduciary duties of trustees.¹

20. We anticipate that the trustee corporation may wish to purchase additional commercial cover. For this reason the order also contains a provision allowing the trustee to pay for this out of scheme funds.

21. We recognise that the provision of adequate indemnity and insurance is essential to attract the high calibre applicants we are seeking as members of the trustee corporation. We believe the indemnity and insurance provisions in the scheme order meet this requirement without incurring excessive cost either for members or the taxpayer.

Specific question:

Question 4, Article 14: Are the provisions in the scheme order providing indemnity and insurance appropriate to this scheme?

Employer participation and member participation

Public service obligation

22. Whilst the scheme will be broadly like any other trust based occupational pension scheme, it will differ in that it will have a public service obligation to accept all employers who wish to use the scheme to fulfil their duties under the 2008 Act (Article 17). The 2008 Act will require all employers of UK jobholders to automatically enrol their eligible jobholders into a workplace pension scheme of a requisite quality. To enable employers

¹ Managing Public Money, 2007, http://www.hm-treasury.gov.uk/d/mpm_whole.pdf

to fulfil this duty, this pension scheme is being established to ensure there is a simple, low-cost arrangement available for any employer who chooses to use it.

23. The public service obligation consists of the following elements:
- The scheme must accept any employer who wishes to use the scheme to fulfil their employer duty.
 - The scheme must accept as members any eligible jobholder of those employers and those jobholders who are not eligible for automatic enrolment but opt in to workplace saving.
 - The public service obligation also applies to employers of workers without qualifying earnings under section 9 of 2008 Act. The employer's duty in respect of such workers is to provide access to a tax registered pension scheme, but the employer is not obliged to pay an employer contribution.
 - The expected revenue from any individual should not determine the level of charge they face as a member of the scheme – essentially there should be a standard charge applied to all members receiving the same service.

Information and employer decision-making

24. The size and nature of the scheme's target audience means that it is likely that the trustee will have to undertake activity to raise awareness of the scheme's existence and the nature of the proposition it offers to employers and to prospective scheme members to ensure employers are aware of the scheme and have sufficient information to judge its suitability for their employees. The trustee will, therefore, need to ensure that information about the scheme is made widely available (Article 15).
25. Making information available to employers, intermediaries and the pensions marketplace will inevitably incur expenditure which, like all the scheme's costs, will need to be covered by members' charges. This is not a normal function of the trustee of a trust based occupational pension scheme and the trustee will need to be sure that the expenditure incurred on such promotional activity is in accordance with the best interests of its beneficiaries, and within any constraints imposed by the scheme order and rules.

Specific question:

Question 5, Article 15: Does the wording of article 15 adequately cover the activity that the trustee will need to undertake to raise awareness of the scheme to employers and prospective members?

Obligations on employers using the scheme

26. After choosing to use this pension scheme as the automatic enrolment scheme for some, or all, of their workforce, but before being able to commence participation in the scheme, employers will be required (Rules 6 and 7) to:

- signal their agreement to abide by the terms of the order and rules;
- adhere to the other reasonable operational requirements of the scheme, by signing (electronically) a participation agreement; and
- agree a payment schedule (electronically) with the trustee setting out the contributions they agree to pay over to the scheme.

27. In order to ensure that members do not bear disproportionate costs incurred by employers who persistently fail to follow the agreed terms and conditions, the trustee corporation will need to be able to take action in order to protect members' best interests. PADA will develop the detail of the content of the terms and conditions in conjunction with its Employer and Member Representative Committees.

Specific question

Question 6, Article 17: What remedies would it be useful for the trustee corporation to have available in order to deal with employers who persistently fail to meet the agreed terms and conditions of the scheme?

The introduction of the scheme

28. DWP intend to consult on possible approaches to implementing the new employers' duties in the Autumn of 2009. When the new employers' duties under the 2008 Act are introduced, it is anticipated that the scheme will be required to accept large numbers of employers who choose the scheme to discharge their new duties. It is expected that the introduction of these duties will be staged in order to mitigate the initial peak of activity, not only for the scheme, but also for other occupational pension schemes. Notwithstanding any staging of the employers' duties, it is still expected that the scheme will be required to process large numbers of employers and their jobholders over a relatively short period of time. The trustee corporation may accept employers into the scheme prior to the start of their employer duty if it is practicable for them to do so (Article 17(3)).

29. In order to ensure that the scheme is able to manage this initial peak of activity in an efficient and controlled way, PADA wish to launch the scheme prior to the introduction of the employers' duties. This will allow the trustee corporation and the scheme administrator to test the majority of the scheme's administration processes, and to identify and resolve any operational problems which arise.

30. It is intended that the provisions of the scheme on launch should, as far as possible, mirror the scheme provisions that will apply once the employers' duties are in force. There are, however, some areas where the absence of the employers' duties will mean that scheme provisions cannot be replicated; primarily these are around automatic enrolment and opt-out. In all other regards, on launch, the scheme will need to comply with the legislative regime in force in the same way as any other occupational pension scheme.

Employer contributions

31. Where a participating employer has chosen the scheme to meet the employers' duties in relation to a jobholder, they must ensure that minimum contributions are remitted to the scheme in relation to that jobholder. Minimum contributions are defined under Section 20 of the 2008 Act as contributions equivalent to 8 per cent of the jobholder's qualifying earnings of which at least 3 percent must be made by the participating employer. Employers will be required to agree to these minimum contribution requirements when they participate in the scheme (Rule 7).

32. Minimum contributions to the scheme will be phased in as set out under section 29 of the 2008 Act. Participating employers can choose to contribute more than the minimum contributions for their employees, subject to the scheme's annual contribution limit.

33. Where a participating employer has an employee who is a member of the scheme, and that employee is not entitled to minimum contributions, the employer can choose to pay contributions to the scheme for that member on a voluntary basis.

Membership

34. Scheme membership will be created through a number of routes. The scheme order and the scheme rules accommodate these different joining options and events (Article 18 and Rule 8).

Members contributions

35. As the scheme will be a qualifying scheme for the purposes of the 2008 Act, the scheme rules reflect the contribution requirements set out in the Act. Members are required to contribute sufficient amounts to meet the minimum contribution requirements, after allowing for the employer contributions payable (Rule 9).

36. The scheme rules also accommodate situations where the minimum contribution requirements do not apply (for example, in relation to workers without qualifying earnings who join by notice) and allow additional member contributions in excess of the minimum (but within the annual contribution limit).

37. Where members are eligible for income tax relief on their contributions, this will be granted through the relief at source method. The rules relating to income tax relief for members are covered under Administrative Provisions (Rule 4).

Always a member

38. In existing occupational trust based schemes, the general approach is that once a member leaves the employment of the employer sponsoring the pension scheme, they can no longer make contributions to that particular pension scheme. In this scheme, each member will have one account for the whole of their membership period (Article 19 and Rule 10), into which all their contributions will be allocated by the trustee, even if the member is employed by more than one participating employer or has concurrent employments.

39. Once an account is opened, it stays open for contributions (subject to the annual contribution limit) until the member decides to access their savings for retirement: for example, if an individual moves employment and the new employer is using a different scheme to fulfil their duties, the member could also contribute separately to their account in this scheme. This will avoid individuals building up multiple accounts over their working life and will allow members to monitor and manage their account on a consolidated basis. If a member is not in employment for a period, they can continue to contribute to their pension fund and build up savings for retirement (Rule 12).

Specific Question:

Question 7, Articles 18 and 19: Are there any issues arising out of the proposal to operate one membership category and not to differentiate between “active” and “deferred” members?

Self-employed members

40. Generally, occupational pension schemes do not admit self-employed workers. To assist any self-employed people who do not have a pension to make provision for their retirement, the scheme will admit the self-employed as members, through a self-certification process. Self-employed workers will be able to contribute an amount of their choosing, subject to the annual contribution limit which will apply to all members.

Workers without qualifying earnings

41. Workers without qualifying earnings (as set out in section 9 of the 2008 Act) can require their employer to enrol them into a tax registered pension scheme, although not necessarily a qualifying scheme under section 16(1)(b) of the 2008 Act. These workers will not be covered by the minimum contribution requirements that will apply to automatically enrolled members and opt-in members with qualifying earnings.

42. Where an employer has nominated this scheme for workers without qualifying earnings, there is no requirement for the employer to

contribute for such members and the employer need only pass on the contributions which the member wishes to contribute. However, this may result in very small contributions being made with disproportionate administrative costs to the scheme, which in turn must be borne by scheme members.

Specific question

Question 8: In order to avoid disproportionate administrative costs should the scheme set a minimum level of contributions in relation to workers without qualifying earnings?

Recipients of pension credits on divorce, nullity and dissolution

43. The scheme will also accept as members the former spouses or civil partners of scheme members who are awarded a pension credit in respect of benefits under the scheme. Further information on how the scheme will accommodate pensions sharing is covered in paragraphs 65 and 66.

Third Party Contributions

44. The scheme will allow third parties to pay contributions on behalf of scheme members. Although this facility is not commonly offered under occupational pension schemes, this would allow other parties, such as relatives, to help members increase their savings for retirement. Third party contributions paid into the scheme will be treated as member contributions, as outlined in the Finance Act 2004, and will count towards the scheme's annual contribution limit.

Opting-out and ceasing contributions

45. Jobholders who are enrolled by their employer, and jobholders who opt-in, have a statutory right under section 8 of the 2008 Act to opt-out (within a defined opt-out period, as set out in the draft Pensions (Automatic Enrolment) Regulations 2009) in respect of each enrolment (Rule 11). If they opt out, then they will be treated as not having been in the scheme in respect of that enrolment and any contributions received by the scheme within the opt-out period will be refunded. The self-employed and workers without qualifying earnings who join by notice do not have a right to opt-out.

46. Contributions will only be refunded from the scheme following the opt-out of a member during the opt-out period. If a member does not exercise their right to opt-out then all contributions will be retained within the scheme until the member decides to access their savings for retirement (or earlier death). No short service refund lump sums will be available from the scheme.

The scheme fund

The annual contribution limit

47. The 2008 Act provides for there to be a limit on the amount of contributions that can be paid to the scheme in respect of a member in any tax year. The order confirms that this limit will be £3,600 (in 2005 terms), and includes a mechanism for up-rating the limit, in line with average earnings, from 2005 to the launch of the scheme and beyond (Articles 20-24 and Rule 14).
48. The order defines which contributions to the scheme will be measured against the contributions limit. In addition, in certain circumstances, some payments received by the scheme will be excluded from counting towards the contributions limit, namely:
- cash transfers arising from pre-vested pension rights;
 - receipts of pensions credits arising from a pension share on divorce²;
 - payments made to the scheme in error, that are subsequently refunded;
 - contributions paid to the scheme, which are refunded following the member opting-out of scheme membership; and
 - contributions paid to the scheme late by an employer and which were due to be paid in a previous tax year.
49. The scheme will reject contributions that members attempt to make directly to the scheme which would exceed the contribution limit in a tax year. The 2008 Act, however, requires employers to pay a minimum level of contributions to a qualifying pension scheme for jobholders who are enrolled into the scheme. The scheme will, therefore, continue to accept statutory minimum contributions paid by employers even where they exceed the annual contribution limit. Where the annual contribution limit has been exceeded, the scheme will hold any excess contributions in cash, with a view to taking remedial actions following the end of the tax year.
50. A reconciliation exercise will be carried out following the end of the tax year and remedial actions will be taken where contributions have been paid to the scheme in respect of a member which exceed the contributions limit (except in the circumstances outlined below, where a

² References to pension sharing on divorce also apply to dissolution of a civil partnership.

member has more than one employer). The order provides the trustee with the power to make refund payments following a hierarchy. This hierarchy is intended to enable members to benefit fully from employer contributions, by returning member contributions paid during the year, before employer contributions are refunded. Any refunds will not contain interest or investment growth. Scheme members will also be offered a facility to offset refunds of excess member contributions against contributions they make in the following tax year.

51. The contribution limit will not apply in the year that a member leaves the scheme through retirement, death or transferring out. This will allow the trustee to apply any excess contributions, being held in cash to a member's account and for the excess amount to be included in the member's benefits or transfer value. As the trustee will not be able to determine with certainty that a member will leave the scheme until after the event, the trustee will continue to reject contributions paid directly by members, even where a member has expressed an intention to leave the scheme.
52. In cases where a member has more than one participating employer, the minimum contributions required under the 2008 Act from the combined employments may be in excess of the contribution limit. To allow participating employers to meet their duties under the Act, in these circumstances the scheme will be able to accept and retain all minimum statutory contributions.

Membership charges: deductions from member's accounts

53. Responsibility for making deductions from member's accounts (i.e. setting and taking membership charges) will generally fall to the trustee corporation, who will aim to set the level of charges so that the scheme will become self-financing in the long run.
54. Article 25 of the order places an obligation on the trustee corporation to ensure deductions contribute to the cost of setting up and administering the scheme. The costs of setting up the scheme will include any costs incurred by PADA in connection with its role in implementing the scheme. The Article also requires the trustee corporation to apply the same level of deductions consistently to all members irrespective of individual members' personal characteristics. This means, in practice, all members will be charged for the same services regardless of factors such as earnings level or age. The trustee corporation will also be able to make specific deductions for additional services as determined by the trustee corporation.
55. The Secretary of State will set the initial charge structure (method) that will apply in the scheme and the period in which it will apply. The trustee corporation will be responsible for setting the charge structure subsequently. The trustee corporation will also be responsible for setting the charge level that will apply in the scheme. The charge structure and level will not be set out in the order and rules, as this is not usual in other

schemes, but the trustee will be expected to ensure membership charges are visible to members through other scheme documents or communication with members. Views are welcome on whether a specific provision is needed in Article 25 to set out how the trustee corporation should achieve this. The trustee corporation will also be required to consult the members' panel on any changes to the charge structure or the charge level, and to inform members when these change.

56. The scheme's charge structure, level and the length of the period in which the Secretary of State's initial charge structure will apply, will depend on the costs of the scheme which will not be determined until the commercial procurement processes for the services supporting the scheme are complete.

Specific Question:

Question 9, Article 25: Should there be a specific provision to require the trustee corporation to make the method and level of deductions transparent, and if so how can this be achieved?

Investment

57. Investment decisions in the scheme will be the responsibility of the trustee in accordance with existing trust and pension law. This will ensure investment decisions are made in the best interests of members. PADA will do much of the preparatory work on the investment approach and prepare a draft investment strategy and a Statement of Investment Principles (SIP) for consideration by the trustee. The SIP will provide details of the scheme's policy on the kinds of investments to be held, the balance between different kinds of investments, the risk and expected return on investments and the extent, if any, to which social, environmental or ethical considerations are taken into account.
58. Financial decisions can be difficult for people, so it is important that the scheme is kept simple both to encourage high participation and to keep charges low. The order provides flexibility for the trustee to develop an appropriate investment approach to meet the needs of the target membership. For those members who do not wish to make a fund choice, there will be a default fund.
59. Section 76 of the 2008 Act sets out the functions of the trustee corporation. In particular, it allows the trustee corporation to invest money. When investing money on behalf of the members of the scheme, the trustee corporation will have complete autonomy, but will always be required to act in the best interests of beneficiaries. To put beyond any doubt the ability of the trustee to invest, the scheme order also provides the trustee with a broad power to invest (Articles 26 and 28 and Rule 15). This power is broad enough to provide the trustee with powers to do anything it needs to in connection with investment in line with existing pension and trust law.

60. Under section 17(2)(b) of the 2008 Act, a qualifying scheme must not require members to express a choice in any matter relating to their membership. Therefore members cannot be required to choose an investment fund. Consequently, qualifying schemes will have to provide a default investment option. For the scheme, this will be achieved via the provision of investment funds on a default basis by the trustee (Article 27). Contributions for all members enrolled in the scheme, who do not make an active investment choice, will be placed in this fund.

61. Legislation³ provides that, where there is more than one employer in relation to a scheme and at least two of those employers are not associates of one another, employer-related investments must not exceed 20 per cent of the market value of the scheme. As the scheme is expected to have hundreds of thousands of participating employers, there is a risk that the 20 per cent employer related investment limit may be breached. The above limit will be disapplied for the scheme but this will not remove the obligation on the trustee corporation to ensure that employer-related investments are made prudently and are suitably diversified to ensure that members' best interests are maintained.

No transfers into the scheme

62. There will be a general ban on the transfer of pension funds into the scheme. The order makes clear that the scheme will not accept transfers into the scheme. However, individuals will be allowed to transfer pre-vested rights into the scheme (Article 29 and Rule 22). In the situation where an individual ceases to be a member of another pension scheme before their rights in that scheme have vested, they will be allowed to transfer the accrued funds into the scheme but only where they are existing members of the scheme. These funds are known as 'cash transfer sums' and will not count towards the annual contribution limit⁴. This option will only be open to existing scheme members.

No transfers out of the scheme

63. The Pension Schemes Act 1993 gives members of pension schemes the general right to transfer out of their scheme into another scheme. However, in relation to this scheme, there will be a general ban on such transfers out, achieved through regulations (the Transfer Values Disapplication Regulations) made under the 1993 Act as amended by

³ Regulation 16, The Occupational Pension Schemes (Investment) Regulations SI 2005/3378)

⁴ Many occupational pension schemes require a member to be in pensionable service for a period of time before their rights vest. Here we refer to this period as the 'pre-vesting period'. Legally this period cannot be longer than 24 months, although schemes can decide to have shorter periods, or no pre-vesting period at all. During this period, contributions are collected from members and invested. However, if a person leaves a scheme before their right vest, they are entitled to receive a refund of their contributions. Once a person's rights have vested, these funds cannot be accessed until retirement.

the 2008 Act (Regulation 2 and Rule 23). These regulations are separate but complementary to the scheme order. There are exceptions to this general ban of transfers out in the following limited circumstances:

- Transfers out will only be allowed from the normal minimum pension age (age 55 from 2010) for the purpose of accessing pension saving.
- Pension credit benefit transfers will only be allowed from the normal minimum pension age (age 55 from 2010).

64. Such transfers can only be made to tax registered pension schemes, or to a qualifying recognised overseas pension scheme that is recognised by HM Revenue and Customs (HMRC). These relaxations of the general ban will allow members to transfer out their funds and consolidate their pension saving thereby enabling members to achieve the best possible outcome for retirement. Where a member satisfies the trustee that they are suffering from incapacity the transfer value provisions will also apply.

Pension sharing on divorce

65. Pension sharing on divorce was introduced from December 2000 under the Welfare Reform and Pensions Act 1999 as a 'clean break' alternative to 'earmarking'. The Civil Partnership Act 2004 extended this further to civil partners upon dissolution of a partnership. The legislation enables the value of a member's accrued rights in a pension arrangement to be shared on divorce and on the dissolution of a civil partnership. The provisions apply to occupational pensions, and hence to the scheme.

- The trustee will discharge their liability for a pension credit which is derived from a scheme account into a scheme account, unless the former spouse wants the trustee to discharge his liability into another pension arrangement (Article 30(1)(a)).
- The trustee will accept a pension credit from another pension arrangement and confer appropriate rights on the former spouse, but only where the former spouse is a member of this scheme (Article 30(1)(b)).

66. The scheme will not distinguish pension credit members from other members. Pension credit members will have broadly similar rights under the existing legislation as a member in any other pension scheme. A pension credit benefit will not count towards the annual contribution limit. Details of the process for implementing a pension sharing order are included in the rules (Rule 24).

Benefits

67. The rules the scheme will follow for the purchase of annuities, the payment of a pension commencement lump sum and trivial commutation are covered in existing legislation for tax registered pension schemes.

68. The scheme order gives the trustee the power to purchase a lifetime annuity for a member, and / or to pay a lump sum benefit. If a scheme member dies before taking their pension benefits, and before age 75, the trustee will make a lump sum death payment representing the value of the accrued uncrystallised funds. On the death of a member, the trustee will pay a lump sum death benefit to a nominated person, using the information held on a nomination form completed by the scheme member. Where the member has not nominated a death beneficiary, the benefits will be paid directly to the deceased member's estate, unless death occurred after the age of 75 (Article 31 and Rule 18).
69. For most occupational schemes, current practice is for the trustee to exercise their discretion on the payment of death benefits either directly to the member's nominated death beneficiary/spouse/dependant or allowing trustees to pay benefits to other appropriate recipients. Given the likely numbers of members in the scheme who will die before accessing their savings, we believe it will be more efficient and cost effective both for members and the scheme to pay the death benefits directly to the member's nominated beneficiary where possible. This means that death benefits under this scheme will not be paid using trustee discretion, and consequently there will be a potential liability for Inheritance Tax. However, unlike many other occupational pension schemes, the only lump sum death benefit payable under the scheme will be the current value of the member's account. This option does place an obligation on members to complete and keep up to date their death beneficiary form throughout their working lives, which the scheme will remind them to do at regular intervals. This option will minimise the cost involved with the trustee exercising its discretion each time a death benefit has to be paid.

The age at which a member can access their savings

70. Many occupational pension schemes have a normal retirement age that reflects the type of employment of their members. It is highly unlikely that a single normal retirement age would be appropriate for all potential participating employers. A member in the scheme will, therefore, be able to access their savings at any time of their choosing between the normal minimum pension age (55 from 2010) and the latest date a member can take trivial commutation or receive a pension commencement lump sum (currently before age 75).
71. The scheme will inform members of their benefit options at a point when a member is likely to retire. To encourage members to actively participate in their pension saving, the scheme will enable members to self-nominate the age at which they think they are most likely to take benefits and this will be used as the age at which the scheme sends information to a member about their options. When a member does not make a nomination, then information will be sent at the default age of 65, rising with increases in State Pension Age from April 2020 (Rule 16).

Ill health and serious ill health

72. The scheme rules set out the conditions for early retirement (Rule 16). In the case of ill-health, a scheme member can access their savings before the age of 55 where the scheme administrator has received evidence from a registered medical practitioner that the member is (and will continue to be) incapable of carrying on any occupation because of physical or mental impairment, and the member has in fact ceased to carry on their occupation.
73. In the case of serious ill health, the scheme rules will allow the trustee to pay the member benefits in a lump sum. The definitions of ill health and serious ill health are consistent with the HMRC definitions.

Unclaimed assets / untraceable members

74. The scheme rules stipulate that any sums due to a member become forfeited by a failure to make a claim for accrued rights by age 105 (Rule 17). The scheme rules set out that prior to forfeiture the trustee should make reasonable attempts to trace the member. Forfeited sums should be used by the trustee for the benefit of the scheme members.

Miscellaneous trustee powers and administrative / general provisions

75. Unlike most other occupational pension schemes, the scheme will administer tax relief on members' contributions using a relief at source arrangement. The administrative provisions sections allows for tax relief to be claimed on members' contributions.
76. The only other provisions in the order and rules (which have not been discussed elsewhere in Part three of this document) are the usual general provisions that would normally be expected to be part of a trust based occupational pension scheme's deed and rules. These include trustee powers of appointment (Rule 3), provision of information and notices (Rules 4.7 and 20), incapacity of beneficiaries (Rule 21), taxation provisions and administrative provisions (Rule 4.5), and power to make charges (Rule 4.4).
77. A key trustee power is the trustee power to alter the rules in accordance with section 68(3) of 2008 Act (Article 16). Section 68(4) of the Act provides for the order to constrain the trustee's rule making powers but, in order to give the trustee maximum flexibility to operate the scheme on an ongoing basis, DWP and PADA have not made any provision in the order to this effect.

Specific question

Question 10: Should the trustee have the power to change the scheme rules without the agreement of the Secretary of State? If not, what are the circumstances where you feel the trustee should not be able to make changes?

Scheme closure and winding-up

78. The governing documentation for most trust based occupational pension schemes will generally contain provisions relating to the closure of the scheme to future benefit accrual as well as provisions relating to the winding-up of the scheme. As the scheme is being created under a statutory provision in section 67 of the 2008 Act, there are no provisions in the order or rules relating to the closure or winding-up of the scheme. Any future provisions relating to scheme closure and winding-up would require the introduction of new primary legislation.

Conclusion

79. We believe these proposals strike the correct balance between setting a framework for the trustee corporation to run the scheme and the wider public policy objectives of establishing a scheme to enable all employers to fulfil their employer duty and allow moderate to low income earners to save for their retirement. The proposals also take account of the best practice of pension schemes whilst recognising the unique nature and scale of this scheme.

Comments are invited on any aspect of these proposals

Part four: Commentary on draft scheme order

References in the draft scheme order to Great Britain legislation are to be taken, where necessary, as including the corresponding Northern Ireland legislation.

Article 1 and 2: Citation, commencement and interpretation

These are general provisions setting out the citation and commencement date and define key terms in relation to Pensions and Finance legislation. It will give the title of the order and specify the date on which it comes into force.

The order does not, at this stage, include a name for the scheme, because PADA are doing further work on the most appropriate name for the scheme, and for the trustee corporation which will run the scheme. The scheme name is being developed as part of its brand and will be based on research and testing with the scheme's target market. The scheme order does not contain a date because the exact date on which the legislation comes into force will depend on the Parliamentary process.

Article 3: Establishment of the scheme

This article makes clear that the scheme is an occupational pension scheme with the purpose of allowing members to accumulate funds in order to provide for retirement.

Article 4: Trustees

This article makes clear that the trustee corporation is appointed as the first trustee of the scheme. The detail about the constitution of the trustee corporation is in Schedule 1, Pensions Act 2008.

Article 5: Appointment of members of the trustee corporation

This article provides that the members' panel participates in the recruitment processes of members to the trustee corporation.

Article 6: Consultation of members and employers

This article provides that the trustee must make arrangements for consulting members and employers. Paragraph 2 sets out that these arrangements must include the establishment of members' and employers' panels.

Article 7: Composition and functions of the panels

This article sets out that the trustee must make provision in relation to panels. It provides that non-members of the scheme can sit on the members' panel; and similarly not all members of the employers' panel need be participating employers. This article provides the members' panel must report on the extent

to which the trustee takes account of the views of members of the scheme. It requires the members' panel to be consulted on the preparation or revision of the content of the Statement of Investment Principles.

Article 8: Establishment of the panels

This article sets out that the trustees must establish panels as soon as practicable and at most within one year after the scheme first accepts contributions to the scheme fund from members of the scheme.

Article 9: Payments to panel members

This article provides that the trustee may pay panel members, and must publish those payments.

Article 10: Application of the Trustee Act 2000

This article provides that the Trustee Act 2000 applies as if the scheme order and scheme rules were a trust instrument.

Article 11: Disclosure of requested data to the Secretary of State

This article requires the trustee to share anonymised information with the Secretary of State where it is needed to comply with either:

- a legal obligation arising from the duty to establish the scheme under section 67 of the Pensions Act 2008 or to satisfy a requirement to notify or inform another person; or
- a request from a person appointed by the Secretary of State to carry out the review under section 74 of the Pensions Act 2008.

The trustee must also disclose anonymised data requested by the Secretary of State where it is required to assess the performance, administration or management of the scheme or for the purposes of private pensions policy or retirement planning. However, if the trustee considers that to comply with such a request would involve disproportionate cost, time or effort – and provides reasons – it need only disclose that data if the Secretary of State and trustee are able to reach an agreement to disclose the data.

Article 12: Disclosure of relevant personal data to the Secretary of State

This article provides that the trustee may provide relevant personal data (i.e. amounting to basic contact details only) to the Secretary of State, but only where it has obtained the individual consent of the members or employers concerned.

Article 13: Disclosure: References to the Secretary of State

This article clarifies the references to whom the disclosure of anonymised data applies.

Article 14: Protection

This article makes clear that trustee and employees are not liable for damages. Paragraph 3 allows the trustee to purchase insurance to indemnify itself.

Article 15: Providing information about the scheme

This article sets out that the trustee may undertake activity to inform interested parties in relation to the scheme.

Article 16: Power to make rules

The trustee has the power to make rules.

Article 17: Duty to admit employers

Paragraph 1(a) specifies that all employers who wish to participate in the scheme in order to fulfil their enrolment duties under Chapter 1 Pensions Act 2008 must be allowed to participate. Paragraph 1(b) specifies that all employers who wish to participate to satisfy their responsibilities to workers under section 9 of the Pensions Act 2008 must be allowed to participate. Paragraph 2 provides that the trustee may accept employers for membership of the scheme before the employer duty applies to those employers. Acceptance of an employer is subject to them accepting the trustee's terms and conditions.

Article 18: Duty to admit members

Paragraph 1 prescribes who the trustee must accept for membership and clarifies who is a member of the scheme.

Article 19: Members accounts

This article provides that the trustee must allocate a member a pension account. Paragraph 2 prescribes which contributions must be accepted. Paragraph 5 allows the trustee to make refunds.

Article 20: Annual contribution limit

This article defines the limit on the amount of contributions that can be paid to the scheme in any tax year by, on behalf of, or in respect of an individual member. The corresponding provision in the rules sets out the mechanism by which the figure will be calculated. The actual level year on year will be published in a document considered appropriate by the trustee and it will be initially set at:

- £3,600 based on the average earnings index⁵ (AEI) for December 2005;
- up-rated in line with the AEI to the commencement date of the scheme and thereafter at the start of each tax year; and
- rounded up to the nearest £100.

It allows the trustee, in accordance with Article: *refund of excess contributions*, to refund excess contributions to the member or the employer or both, where a breach of the annual contribution limit has taken place.

Article 21: Annual contribution limit: Meaning of contributions

Not all payments to the scheme will count towards the annual contribution limit. Therefore, this article prescribes both the payments that will count as “contributions” for the purposes of the annual contribution limit and those payments that will not.

Payments that will count are:

- minimum contributions paid under the employers’ duties – the default level of earnings which will be set at 8 per cent of an employee’s qualifying earnings within a tax year (with a minimum 3 per cent employer contribution); and
- additional contributions paid by employers and members over and above the default level prescribed under the employer duty.

Payments that will not count are:

- transfers in of pre-vested pension rights and certain receipts of pensions credits on divorce (see section on pension sharing);
- retrospective payments of contributions which were due to be paid in previous tax years;
- payments made in error which are subsequently refunded;
- refunds of contributions following a member opting out of the enrolment process; and
- minimum contributions received in excess of the contribution limit where the limit is breached due to multiple-employment (see Article 24).

Article 22: Annual contribution limit: Refund of excess contributions

This article enables the trustee to make refunds of excess contributions where a breach of the annual contribution limit has taken place. Where refunds are necessary, the trustee will broadly follow a hierarchy which is intended to enable members to benefit fully from employer contributions, by returning

⁵ Average earnings index as published by the Office for National Statistics or any substitute index published by that office.

member contributions paid during the year before employer contributions are refunded.

This article also allows the scheme to operate a minimum threshold, below which excess contributions received will not be refunded. This is to ensure that the scheme does not incur disproportionate costs in refunding contributions in cases of minor breaches. The monetary value of the threshold will be determined by the trustee once the costs it will incur in making refunds can be determined. Scheme members who receive refunds of excess contributions will not be tax-disadvantaged.

Article 23: Timing of contributions

This article defines the timing of all payments that would count towards the annual contribution limit. It confirms that all such contributions would be treated as made (or paid) on the day when they were received by the scheme.

Article 24: Multiple employment

To ensure that members in multiple employments benefit fully from mandatory employer contributions, this article allows the trustee to accept all of the minimum mandatory contributions remitted by each and every employer even if this causes a breach of the annual contribution limit. However, remedial actions (as set out separately in the order and rules) will apply in relation to additional contributions over and above the default level and which exceed the annual contribution limit.

Article 25: Deductions from members' accounts

This article sets out who has responsibility for setting the charge structure (method) and level for members in the scheme and any conditions attached to the way deductions from member's accounts are made.

Article 26: Power to invest the scheme's assets

This article provides that the trustee has power to invest monies.

Article 27: Investment funds and default investment funds

This article ensures that the trustee must establish investment funds and that if a member does not express a choice the fund or funds into which those contributions will be made will be known as the default investment fund.

Article 28: Investments: Liability of the trustee

This article provides that the trustee is not liable for any loss to a member in certain circumstances.

Article 29: Acceptance by trustee of cash transfer sums

This article sets out which transfers into the scheme the trustee may accept.

Article 30: Pension sharing

This article specifies how the trustee will confer appropriate rights on the person entitled to a pension credit arising from a pension share on divorce or dissolution of a civil partnership.

Article 31: Benefits

This article makes clear that the trustee may use a members' account to provide members with benefits through the purchase of an annuity or payment of a lump sum. In the event of the death of a member pay a lump sum to a person nominated by the member, or to the relatives of the deceased or to a charity.

Part five: Commentary on draft scheme rules

References in the draft scheme rules to Great Britain legislation are to be taken, where necessary, as including the corresponding Northern Ireland legislation.

Rules 1 and 2: Definitions and Interpretation

These rules define the key terms used throughout the rules and clarify how the rules are to be interpreted in conjunction with legislation.

Rule 3: Trustee Powers

These rules define the power to appoint or replace a secretary, appoint a scheme administrator and operate scheme bank accounts (rule 3.4).

Rule 4: Administrative Provisions

This rule provides that an individual member of the trustee corporation may be a scheme member; that the trustee corporation may compromise claims; and deduct taxes or charges from members' pension accounts where appropriate. It also covers the operation of tax relief at source and the provision of any notices required to be given under the rules.

Rule 5: Members' and Employers' Panels

This rule provides for the selection and appointment of members to the members' and employers' panels as well as outlining the panels' terms of reference.

Rule 6: Employer Participation

Rule 6 provides that all employers who wish to participate in the scheme in order to fulfil their enrolment duties must be allowed to participate. It also outlines that employers who wish to participate before sections 2 to 9 of the 2008 Act apply to them may be allowed to participate. Rule 6 also specifies that the trustee may set terms and conditions for employers to agree to and abide by, if they wish to participate within the scheme, and that these conditions may be in such form as the trustee determines.

Rule 7: Employer Contributions

Rule 7 details what contributions must and may be made to the scheme and that they are to be applied to the credit of the relevant member's account.

Rule 8: Eligibility and Membership

This rule sets out how individuals become members of the scheme, details the contribution levels payable and explains how members with more than one joining event are accommodated (for example, concurrent employments).

Rule 9: Member Contributions

This rule requires members to contribute such amounts as may be necessary to meet the quality scheme requirement, but only in cases where the employer is using the scheme to fulfil their employers' duties in respect of that jobholder, and after taking into account the employer's contributions payable. It also covers the self-employed and any other members who are not subject to the minimum contribution requirement under the 2008 Act. In addition, rule 9 also outlines that members may pay additional contributions (but only up to the annual contribution limit).

Rule 10: Pension Accounts

This rule covers the creation and maintenance of a pension account for each scheme member. It also explains that a member does not have legal ownership of the assets held in their account, which are used solely for the purposes of calculating the member's entitlement under the scheme.

Rule 11: Ceasing Payment of Contributions

This rule confirms when payments to the scheme can be stopped by members. It explains that members who have been automatically enrolled or re-enrolled, or who have opted-in, have the right to opt-out. Rule 11 also allows members to cease and start contributions at any time.

Rule 12: Membership and Vesting

This rule confirms that membership continues from joining until benefits are taken (or forfeited) and outlines that contributing and non-contributing members are not treated differently. Rule 12 also grants immediate vesting to scheme members.

Rule 13: Contributions General Provisions

This rule gives the trustee power to define the acceptable methods for making contributions to the scheme.

Rule 14: Annual Contribution Limit

This rule defines how the annual contribution limit will be calculated and how excess contributions will be dealt with.

Rule 15: Investment

The rule gives the trustee the ability to specify how members make their investment choices; restrict the number of investment funds in which a scheme member may invest; and impose limits on the number of times a scheme member may change their investment funds in a given period. This rule also confers power on the trustee to change the investment funds offered and, in the absence of member instructions on investment, to invest scheme assets in a default fund. The trustee may also determine charges for investment funds which are not covered by Article 25. The trustee may also impose charges for certain transactions in relation to investment funds. The way in which the trustee may wish to exercise these powers will be consulted on in PADA's consultation on investment.

Rule 16: Payment of Benefits

This rule covers how, when, and in what format benefits may be paid in respect of a scheme member. If a member does not select an annuity, this rule also allows the trustee to purchase an annuity on the member's behalf in some circumstances.

Rule 17: Unclaimed Benefits

Rule 17 provides for benefits which are unclaimed by the time the member reaches age 75 and outlines what happens if the member is subsequently traced or the member's death is notified to the trustee.

Rule 18: Death Benefits

This rule makes it clear in the event of the death of a member before age 75 the scheme will pay a lump sum to a person nominated by the member, or if unable to do this, to the estate of the deceased. It also allows for the payment on death of lump sums of a small amount to a member's estate without a Grant of Representation being in place. In addition, it also allows the scheme, if unable to pay the lump sum death benefit within two years (for example because the member dies intestate and with no entitled kin), to forfeit the benefits.

Finally, it may be possible that a member who has unclaimed benefits dies after having had their account put into suspense at age 75, and before they reach age 105. In this scenario a dependant's annuity will normally be secured or a lump sum payment made to a charity.

Rule 19: Requirements of Registration

This rule states that all payments made by the scheme must be authorised, so as to benefit from the tax advantages for registered pension schemes, and that the trustee may modify any payment accordingly.

Rule 20: Provision of Information

This rule allows the trustee to request relevant information from scheme members in order to establish their benefit, and to withhold benefit until such information is provided.

Rule 21: Incapacity of Beneficiary

This rule allows the trustee to pay benefit to a person other than the scheme member or any beneficiary, at their discretion provided that it is for the benefit of the member or beneficiary, for example in the case of a minor.

Rules 22 and 23: Transfers In and Transfers Out

These rules define the limited circumstances under which the trustee may accept transfers in from (rule 22), or pay transfers out to another occupational pension scheme (rule 23).

Rule 24: Pension Sharing on Divorce

This rule details how pension credits and pension sharing orders will be handled by the scheme. The default position is that the ex-spouse will be offered membership of the scheme unless that person nominates an external scheme to accept the pension credit benefit. Rules 24.2 to 24.4 provide that an ex-spouse who becomes a scheme member is treated as any other member and can make further contributions to the scheme. However, the pension credit benefit will continue to be identified separately as an administrative matter to allow for the differences in treatment of such benefits under tax legislation. Rule 24.5 permits the trustee to levy charges to cover the costs of implementing a pension sharing order, as permitted by legislation.

Part six: Summary of consultation questions

Question 1, Article 7: Composition and functions of the panels

Are the following aspects of the members' panel the right model for ensuring that members' interests and perspectives influence the day to day running of the scheme?

- The role of the members' panel
- The members' panel involvement in the recruitment and selection process for all members of the trustee corporation
- The members' panel remit to produce a report on whether the trustee considers members' interests in constituting itself.

Question 2, Article 7: Composition and functions of the panels

Are there ways in which the panel can be constituted or its functions defined that would maximise its effectiveness?

Question 3, Article 7: Composition and functions of the panels

Is it appropriate to allow representative bodies on the members' and employers' panels?

Question 4, Article 14: Protection

Are the provisions in the scheme order providing indemnity and insurance appropriate to this scheme?

Question 5, Article 15: Providing information about the scheme

Does the wording of article 14 adequately cover the activity that the trustee will need to undertake to raise awareness of the scheme to employers and prospective members?

Question 6, Article 17: Duty to accept employers

What remedies would it be useful for the trustee corporation to have available in order to deal with employers who persistently fail to meet the agreed terms and conditions of the scheme?

Question 7, Articles 18 and 19: Duty to admit members / Members accounts

Are there any issues arising out of the proposal to operate one membership category and not to differentiate between "active" and "deferred" members?

Question 8:

In order to avoid disproportionate administrative costs should the scheme set a minimum level of contributions in relation to workers without qualifying earnings?

Question 9, Article 25: Membership charges

Should there be a specific provision to require the trustee corporation to make the method and level of deductions transparent, and if so how can this be achieved?

Question 10:

Should the trustee have the power to change the scheme rules without the agreement of the Secretary of State? If not, what are the circumstances where you feel the trustee should not be able to make changes?

Annex A: The draft scheme order

Draft Order laid before Parliament under section 143(4) of the Pensions Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. []

PENSIONS

The [] Pension Scheme Order 2009

Made - - - - []

Coming into force - - []

The Secretary of State makes the following Order in exercise of the powers conferred by sections 67(1) and (8), 68 (1), (2), (3) and (5), 69(1) to (3) and (5), 70(1) and (2), 144(2) to (4) and 145(1)(a) of the Pensions Act 2008 ⁽⁶⁾.

In accordance with section 143(4) of that Act, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

PART 1

General

Citation and commencement

1. This Order may be cited as the [] Pension Scheme Order 2009 and shall come into force on [].

Interpretation

2.—(1) In this Order—

“data” and “personal data” have the same meanings as in section 1 of the Data Protection Act 1998 ⁽⁷⁾;

“employers’ panel” means the panel referred to in section 69(2)(b) of the Act;

“jobholders” mean workers to whom section 1(1) of the 2008 Act applies;

“members’ panel” means the panel referred to in section 69(2)(a) of the Act;

⁽⁶⁾ 2008 c. 30.

⁽⁷⁾ 1998 c.29.

“participating employer” means an employer who has been admitted to participation in the Scheme, under article [*duty to admit employers*];

“pension account” means an account maintained by the Trustee for each member comprising the member’s contributions, employer contributions, any sums transferred into the Scheme in respect of the member, investment return and any other amounts paid to the Trustee to be credited to the member’s pension account less any expenses and outgoings which the Trustee properly deducts from the member’s pension account;

“pension credit” means a credit under section 29 of the 1999 Act;

“pension debit” means a debit under section 29 of the 1999 Act;

“pension sharing order” means any order or provision as referred to in section 28(1) of the 1999 Act ⁽⁸⁾;

“qualifying arrangement” has the same meaning as in paragraph 6(1) of Schedule 5 to the 1999 Act;

“rules” means rules made under section 67 of the Act;

“the Act” means the Pensions Act 2008;

“the corporation” means the trustee corporation as referred to in section 75 of the Act ⁽⁹⁾;

“the panels” mean the members’ and employers’ panels;

“the Scheme” means the pension scheme established by paragraph (1) of article 3;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999 ⁽¹⁰⁾;

“the Trustee” means the person appointed as Trustee of the Scheme;

“workers without qualifying earnings” mean workers to whom section 9(1) of the Act applies.

PART 2

Establishment, Appointment and Constitution of the Scheme

Establishment of the [] Pension Scheme

- 3.**—(1) There is to be a pension scheme to be known as the [] Pension Scheme.
(2) The Scheme is established as an occupational pension scheme.
(3) The purpose of the Scheme is the provision of pensions and other benefits in relation to its members.

Trustees

- 4.**—(1) The trustee corporation is appointed as first Trustee in relation to the Scheme.
(2) The Secretary of State may revoke the appointment of a person as trustee, including that made by paragraph (1), by serving notice in writing on that person.

⁽⁸⁾ Section 28(1) has been amended by the Civil Partnership Act 2004 (c.33), section 261(1) and Schedule 27.

⁽⁹⁾ The trustee corporation was established by section 75 of the Act, and named by S.I. [].

⁽¹⁰⁾ 1999 c.30.

Appointment of members of the trustee corporation

5.—(1) While the corporation is a Trustee of the Scheme and where the member's panel is in being, then, in relation to the appointment by the corporation of a person as a member of the corporation, or a member as chair of the corporation—

- (a) the corporation must consult the members' panel with respect to any job description or selection criteria that it proposes to use;
- (b) the members' panel must nominate one of their members to participate in any meeting or other discussion that is to be held by the corporation with respect to the creation of a shortlist of candidates, and in any interview of a candidate; and
- (c) the corporation must supply that member with a copy of any documents that the corporation is to consider when it decides who should be included in the shortlist, or who should be appointed, and must take into account any views expressed by that member before it makes its decision.

Consultation of members and employers

6.—(1) The Trustee must make and maintain such arrangements as it considers expedient for consulting members of the Scheme and participating employers about the operation, development and amendment of the Scheme.

- (2) Those arrangements must include the establishment and maintenance of—
 - (a) the members' panel, and
 - (b) the employers' panel.

Composition and functions of the panels

7.—(1) The Trustee must make provision in relation to—

- (a) the composition of the members' and employers' panels,
 - (b) the selection and appointment of their members, and
 - (c) the functions of the panels.
- (2) Such provision must—
- (a) ensure that, in relation to each panel, the minimum number of members is 9 and the maximum number is 15;
 - (b) ensure that the members' panel cannot be comprised entirely of persons who are not members of the Scheme;
 - (c) ensure that the employers' panel cannot be comprised entirely of persons who are not employers participating in the Scheme; and
 - (d) provide for the functions of the members' panel to include –
 - (i) in each tax year ⁽¹¹⁾ making a report on the extent to which the Trustee takes account of the views of members of the Scheme, and of the members' panel (with respect to views that the panel is able to express pursuant to its functions), when it makes decisions about the operation, development or amendment of the Scheme;
 - (ii) participating in the process for the appointment of a person as a member or chair of the corporation, as set out in article 5;

⁽¹¹⁾ See section 99 of the Act.

- (iii) without prejudice to the generality of sub-paragraph (iv), being consulted by the Trustee on the contents of any statement of investment principles, as set out in paragraph (4);
 - (iv) giving any assistance and advice that the Trustee may require or that the panel may consider expedient, in connection with the operation, development or amendment of the Scheme.
- (3) In relation to the report referred to in paragraph (2)(d)(i)—
- (a) The members’ panel must send a copy of it to the Secretary of State and the Trustee; and
 - (b) The Trustee must make it available by -
 - (i) posting a copy of it on the internet; and
 - (ii) sending a copy of it to any person who requests a copy.
- (4) Where the members’ panel is in being, the Trustee must, before preparing or revising a statement of investment principles, consult that panel.
- (5) In this article, “statement of investment principles” has the same meaning as in section 35 of the Pensions Act 1995 ⁽¹²⁾.

Establishment of the panels

- 8.**—(1) The Trustee must take all reasonable steps to—
- (a) establish the panels, and
 - (b) ensure that their initial members are appointed,

as soon as practicable and, in any event, within one year after the day on which the scheme first accepts a contribution to the Scheme fund in relation to a member.

Payments to panel members

- 9.**—(1) The Trustee may make provision for reasonable payments to be made to members of the panels from the Scheme fund.
- (2) The Trustee must include details of such remuneration in the annual report prepared for the purposes of paragraph 17 of Schedule 1 to the Act.

Application of the Trustee Act 2000

10. The Trustee Act 2000 ⁽¹³⁾ applies as if this Order and any rules made under section 67 of the Act were a trust instrument.

PART 3

Functions of the Trustee

Disclosure of requested data to the Secretary of State

- 11.**—(1) This article applies where the Secretary of State (S) requests the disclosure of data held by the Trustee (“requested data”) which is—
- (a) not personal data, and

⁽¹²⁾ 1995 c.26; section 35 was substituted by section 244 of the Pensions Act 2004 (c. 35).

⁽¹³⁾ 2000 c.29.

- (b) in any event, anonymised.
 - (2) The Trustee must disclose requested data to S if that data is necessary for S or the Trustee—
 - (a) to comply with any—
 - (i) legal obligation (in particular the duty of S to establish a pension scheme, contained in section 67 of the Act); or
 - (ii) requirement to notify or otherwise inform another person,
 which, if S did not receive that data would result in a breach of that obligation or requirement;
 - (b) to comply with any request made by a person appointed by S under section 74 of the Act to review any of the matters listed in subsection (1) of that section.
 - (3) The Trustee must disclose requested data to S for the purpose of the matters listed in paragraph (4) where—
 - (a) the Trustee considers that to comply with S’s request would not involve disproportionate cost, time or effort; or
 - (b) the Trustee—
 - (i) considers that to comply with S’s request would involve disproportionate cost, time or effort and gives reasons to S accordingly, and
 - (ii) reaches agreement with S to disclose that data.
 - (4) The matters are the—
 - (a) assessment by S of the performance, administration or management of the Scheme;
 - (b) use for the purposes of functions relating to private pensions policy or retirement planning.
- (5) “Private pensions policy” has the same meaning as in paragraph 4 of Schedule 10 to the Pensions Act 2004 ⁽¹⁴⁾ and “retirement planning” has the same meaning as in paragraph 2 of that Schedule.

Disclosure of relevant personal data to the Secretary of State

- 12.—**(1) This article applies where the Trustee is requested by the Secretary of State (S) to obtain the consent of one or more—
- (a) members of the Scheme;
 - (b) participating employers,
- in order that those members or participating employers may be contacted by S for the purpose of research.
- (2) The Trustee may contact any number of members or participating employers to obtain their consent, as the Trustee sees fit to comply with the request of S.
- (3) Where—
- (a) consent is given, the Trustee may then disclose relevant personal data to S;
 - (b) consent is not given, the Trustee must not disclose any relevant personal data to S.
- (4) Where paragraph (3)(a) applies—
- (a) the Trustee must only disclose relevant personal data to S after satisfying itself that there is a secure means of disclosing it, agreed with S,
 - (b) S may contact the person from whom the consent was obtained, and
 - (c) S must state to that person its specified and lawful purposes related to research.

⁽¹⁴⁾ Paragraph 4 of Schedule 10 to the Pensions Act 2004 was inserted by the Act, section 63(1).

(5) In this article, “relevant personal data” means personal data which allows S to contact a member of the Scheme or an employer of a member of the Scheme, and may include a person’s—

- (a) email address;
- (b) address; or
- (c) telephone number.

Disclosure: References to the Secretary of State

13.—(1) In articles [*disclosure of requested data to the Secretary of State*] and [*disclosure of relevant personal data to the Secretary of State*], references to the Secretary of State apply equally to—

- (a) a person providing services to, or on behalf of, the Secretary of State or the Northern Ireland Department; or
- (b) the Northern Ireland Department.

(2) “The Northern Ireland Department” means the Department for Social Development in Northern Ireland.

Protection

14.—(1) The Trustee, the members of the trustee corporation and its employees shall not be personally liable in damages for any acts or omissions arising out of the administration or management of the scheme except for a breach of trust arising from their own wilful neglect or default, fraud or dishonesty.

(2) The Trustee may indemnify itself, the members of the trustee corporation, and its employees against any losses, costs and damages they may incur as a result of their role except for a breach of trust arising from their own wilful neglect or default, fraud or dishonesty.

(3) The Trustee may make provision for payments to be made from the scheme fund to insure—

- (a) the scheme against any loss caused by it, the members of the trustee corporation, its’ employees or agents; and
- (b) itself, the members of the trustee corporation and its’ employees against liability arising out of the administration or management of the scheme except for a breach of trust arising from their own wilful neglect or default, fraud or dishonesty.

Providing information about the Scheme

15. The Trustee may take such steps as it considers appropriate for promoting awareness of the Scheme.

Power to make Rules

16. The Trustee has the power to make rules under section 67 of the Act.

PART 4

The Scheme membership and employer participation

Duty to admit employers

17.—(1) The Trustee must admit to participation in the scheme, subject to the employer's agreement to trustee terms and conditions—

- (a) employers of jobholders who wish to comply with their duties under sections 3(2), 5(2) and 7(3) of the Act by enrolling jobholders who they employ into the Scheme; and
- (b) employers of workers without qualifying earnings who wish to comply with their duty under section 9(2) of the Act by enrolling workers who they employ into the Scheme.

(2) The Trustee may determine terms and conditions for admittance of employers.

(3) The Trustee may admit employers before sections 2 to 9 of the Act apply in relation to those employers.

Duty to admit members

18.—(1) The trustee must admit as members of the scheme—

- (a) jobholders,
- (b) workers without qualifying earnings,
- (c) self employed individuals, and
- (d) recipients of a pension credit made from a member's pension account.

(2) A member of the scheme is an individual—

- (a) who is within paragraph (1),
- (b) who has been admitted as a member of the scheme, and
- (c) whose pension account has not yet been used by the Trustee for one of the purposes within article [*benefits*].

Members accounts

19.—(1) The Trustee must allocate a member a pension account.

(2) Subject to articles [20-24] and any rules as referred to in paragraph (3) the Trustee must accept all contributions made—

- (a) by a member;
- (b) by an employer on behalf of a member; and
- (c) by an employer on their own account but in respect of the member.

(3) The rules referred to are any rules relating to —

- (a) the minimum level of contributions to be made by the persons referred to in paragraph (2); or
- (b) the form in which, or method by which, contributions are to be made.

(4) Contributions within paragraph (2) must be credited to the relevant member's pension account.

(5) The Trustee may provide to a member and the employer of that member a refund of contributions from the member's pension account—

- (a) where the member has given notice in accordance with section 8 of the Act;
- (b) where the Trustee determines the contributions have been paid in error;
- (c) where article [*annual contribution limit: refund of excess contributions*] applies; or
- (d) where the Trustee otherwise determines a refund is appropriate in all the circumstances.

Annual contribution limit

- 20.**—(1) Subject to the following paragraphs, the maximum amount of contributions that may be made by, on behalf or in respect of a member in a tax year (“annual contribution limit”) is £3600, based on the average earnings index for December 2005.
- (2) The annual contribution limit must be adjusted by the Trustee by the start of every tax year in accordance with changes in the average earnings index.
- (3) The Trustee must—
- (a) pursuant to paragraph (2), calculate the annual contribution limit, following any relevant provision relating to calculation contained in the rules where such provision is made; and
 - (b) publish that limit in any document considered appropriate by the Trustee.
- (4) Where the annual contribution limit is exceeded in a tax year, the Trustee may in accordance with article [*annual contribution limit: refund of excess contributions*], refund any contributions which exceed that limit to the member or employer.
- (5) The Trustee may determine that paragraph (1) does not apply to a member or class of member, in relation to a particular tax year.
- (6) In this article, “average earnings index” means the general index of average earnings (for all employees: whole economy: seasonally adjusted) published by the Office for National Statistics or, if that index is not published for a month for which it is relevant for the purposes of this article, any substituted index or index figures published by that Office.

PART 5

The Scheme Fund

Annual contribution limit: Meaning of contributions

- 21.**—(1) For the purposes of counting towards the annual contribution limit in article [*annual contribution limit*], “contributions” means any contributions made by, on behalf or in respect of a member of the Scheme and in particular—
- (a) contributions made to the Scheme by an employer, satisfying the quality requirement for a money purchase scheme as specified in section 20 of the Act, on behalf or in respect of a member of the Scheme (“minimum contributions”);
 - (b) any additional contributions made to the Scheme by an employer and a member in relation to a member which is more than 8% of the amount of the member’s qualifying earnings in the relevant pay reference period.
- (2) But for the same purposes “contributions” do not include—
- (a) a cash transfer sum within the meaning of the Pension Schemes Act 1993, section 101AB(3)⁽¹⁵⁾, used in the way described in section 101AE(2)(a) of that Act;
 - (b) the discharge by the trustees or managers of a scheme of their liability in respect of a pension credit to which Schedule 5 to the 1999 Act applies by—
 - (i) conferring appropriate rights under that scheme on a person entitled to the credit; or
 - (ii) paying the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit;

⁽¹⁵⁾ 1993 c.48. Section 101AB was inserted by the Pensions Act 2004, section 264.

- (c) any other transfer of any sum held for the purposes of, or representing accrued rights under a pension scheme so as to become held for the purposes of, or to represent rights under, the Scheme;
- (d) any payment of contributions refunded in accordance with requirements prescribed under section 8(2)(b) of the Act;
- (e) any payment of contributions made pursuant to—
 - (i) a compliance notice issued to a person under section 35 of the Act;
 - (ii) a third party compliance notice issued under section 36 of the Act; or
 - (iii) an unpaid contributions notice issued to an employer under section 37 of the Act;
 where the appropriate date to which that notice relates is not in the same tax year that the payment of contributions pursuant to the notice takes place;
- (f) any contributions not made to the Scheme by the due date, where the tax year in which that due date falls has already ended, unless the Trustee determines otherwise;
- (g) any payments made in error which are refunded by the Scheme;
- (h) any sum which exceeded the annual contribution limit—
 - (i) refunded under article [*Annual contribution limit: Refund of excess contributions*] in respect of the same tax year in which the contributions were made;
 - (ii) when the member was in multiple employment within the meaning of article [*multiple employment*](1).

(3) In this article, “appropriate date” has the same meaning as in section 38(5) of the Act.

(4) In paragraph (2)(f), “due date” has the same meaning as in sections 87 and 88 of the Pensions Act 1995 ⁽¹⁶⁾.

Annual contribution limit: Refund of excess contributions

22.—(1) This article applies in relation to contributions when the annual contribution limit is exceeded in a tax year.

(2) Contributions made to the Scheme either by—

- (a) a member, or
- (b) an employer on behalf of a member,

will not be applied to the member’s pension account in respect of that same tax year and may be refunded to the member.

(3) Subject to paragraph (2), contributions made to the Scheme by an employer in respect of a member may be refunded to that employer.

(4) The Trustee may not refund contributions under this article if the annual contribution limit is exceeded by an amount determined by the Trustee to be too small to necessitate refunding.

Timing of contributions

23. All contributions counting towards the annual contribution limit are to be treated as made to the Scheme when they are received by the Scheme.

Multiple employment

24.—(1) A person is in multiple employment if—

- (a) that person is a member of the Scheme,

⁽¹⁶⁾ 1995 c. 26.

- (b) that person is in employment with more than one employer, and
- (c) more than one of those employers makes contributions to the Scheme on behalf or in respect of that person.

(2) Where a person is in multiple employment, the Trustee may continue to accept contributions (including minimum contributions) made by an employer on behalf or in respect of that person, even if doing so exceeds the annual contribution limit.

(3) Where paragraph (2) applies, the rules are to make provision for the treatment by the Trustee of contributions which result in the annual contribution limit being exceeded.

Deductions from members' accounts

25.—(1) The Trustee must make deductions from members' pension accounts to contribute to the costs of setting up, administration and management of the scheme.

(2) The Secretary of State must determine the initial method of applying deductions and how long that method applies for.

(3) Subject to paragraph (4), the Trustee may determine subsequent methods of applying deductions.

(4) In determining a method of applying deductions, the Secretary of State or the Trustee must ensure that –

- (a) deductions will be applied on a consistent basis between pension accounts; and
- (b) a pension account of a member (“A”) will not be subject to a different level of deduction to another member’s pension account solely on the basis of–
 - (i) where A is a worker, the number of members who are, or may in the future be, workers in relation to A’s employer;
 - (ii) the amount of time during which contributions may be made by, on behalf of or in respect of A;
 - (iii) where A is a worker, the amount of time during which contributions may be made by, on behalf of or in respect of other members who are, or may in the future be, workers in relation to A’s employer;
 - (iv) the income that is, or may in the future be, earned by A;
 - (v) where A is a worker, the income that is, or may be the future be, earned by other members who are, or may in the future be, workers in relation to A’s employer,
 or solely on the basis of more than one of paragraphs (i) to (v) above, in any combination.

(5) The Trustee must determine the level of deductions to be made from members' accounts, using the method determined by the Secretary of State or the Trustee thereafter.

(6) Subject to paragraph (7) the Trustee shall set the deductions at a level that meets the cost of setting up, administration and management of the scheme.

(7) In determining the level, the Trustee may have regard to any other sources of income to, and costs payable from, the Scheme.

(8) The Trustee must consult with the members' panel before -

- (a) determining subsequent methods of applying deductions; or
- (b) making changes to the level of deductions from member’s pension accounts.

(9) The Trustee may make deductions from members pension accounts for such additional services as the Trustee may determine.

Power to invest the Scheme’s assets

26.—(1) The Trustee has the power to invest and apply all the assets of the Scheme.

(2) For the purposes of this power, the assets of the Scheme include—

- (a) contributions;

- (b) any other monies received by the Trustee, including under articles [*acceptance by trustee of cash transfer sums and pension sharing*];
- (c) returns from any investments and applications of (a) or (b).

(3) Without prejudice to the generality of the power conferred on the trustees of a trust scheme under section 34 of the Pensions Act 1995 ⁽¹⁷⁾ (power of investment and delegation), the power in paragraph (1) includes the ability of the Trustee to—

- (a) underwrite or sub-underwrite the subscription, offer or issue of any stocks, shares or other securities or investments, as the Trustee may determine;
- (b) give any warranty or indemnity the Trustee determines as appropriate in connection with the exercise of that power (or any other power conferred on it by law), to any person;
- (c) participate in stock lending arrangements within the meaning of section 263B of the Taxation of Chargeable Gains Act 1992 ⁽¹⁸⁾; and
- (d) invest in derivative instruments, as defined by regulation 4(11) of the Occupational Pension Schemes (Investment) Regulations 2005 ⁽¹⁹⁾.

Investment and default investment funds

27.—(1) The Trustee may establish any number of notional funds, by reference to such investment principles and criteria as the Trustee determines (“investment funds”).

(2) Subject to the following paragraph, investment funds may be arranged by the Trustee in such number, combination or type as the Trustee determines.

(3) From time to time, the Trustee may make different arrangements (including closing, withdrawing or terminating the availability of any investment funds).

(4) The Trustee must, subject to the provisions in the following paragraphs, direct scheme assets to at least one investment fund.

(5) Where a member does not express a choice as to where scheme assets attributable to their pension account are directed, the investment funds to which those scheme assets are directed shall be known as default investment funds.

(6) Any assets of the Scheme which the Trustee has the power to invest and apply are to be invested and applied by the Trustee in at least one default investment fund, except where—

- (a) the member expresses a choice that scheme assets attributable to their pension account be directed to an investment fund other than a default investment fund, in which case paragraph (7) applies;
- (b) contributions are made to the member’s pension account during the period prescribed in regulations made under section 8(4) of the 2008 Act (jobholder’s right to opt out: period within which an opt-out notice must be given);
- (c) assets of the Scheme are not attributable to a member’s pension account; or
- (d) the Trustee decides to invest the assets of the Scheme in cash or on deposit in circumstances where liquid reserves are required for the purposes of the Scheme,

and where sub-paragraphs (b), (c) or (d) apply, scheme assets are to be invested and applied as the Trustee determines.

⁽¹⁷⁾ 1995 c.26.

⁽¹⁸⁾ 1992 c.12. Section 263B was inserted, in relation to, and to transfers under, any arrangement made on or after 1 July 1997, by the Finance Act 1997 (c.16), section 76 (and paragraphs 5(1) and 7(1) of Schedule 10 to that Act).

⁽¹⁹⁾ S.I. 2005/3378.

(7) Where a member expresses a choice as to where scheme assets attributable to their pension account are directed—

- (a) this is subject to such terms contained in the rules which are determined by the Trustee as relevant; and
- (b) the Trustee must accept that choice unless the Trustee is of the opinion that in doing so it would breach any legal obligations on it, including those imposed by regulation 4 of the Occupational Pension Schemes (Investment) Regulations 2005.

Investments: Liability of the Trustee

28. Except in so far as section 33 of the Pensions Act 1995 applies, the Trustee is not liable for any loss, however caused, occasioned to a member of the Scheme by—

- (a) the arrangement by the Trustee of investment funds under paragraph (2) of article [*investment and default investment funds*], or
- (b) the member's choice to direct scheme assets attributable to their pension account to any particular investment fund.

Acceptance by trustee of cash transfer sums

29. Notwithstanding contributions which count towards the annual contribution limit within the meaning of article [*annual contribution limit: meaning of contributions*], the Trustee may accept in relation to a member of the Scheme, a cash transfer sum within the meaning of the Pension Schemes Act 1993, section 101AB(3), used in the way described in section 101AE(2)(a) of that Act.

Pension sharing

30.—(1) Where a pension credit derives—

- (a) from the Scheme, the Trustee may—
 - (i) confer appropriate rights on the person entitled to the pension credit;
 - (ii) pay the amount of the credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the person entitled to the credit, within the meaning of sub-paragraph 1(3) of Schedule 5 to the 1999 Act;
- (b) from another scheme, the Trustee may accept a payment of the amount of the pension credit by the trustees or managers of that scheme to which the pension credit relates, provided that the person to whom that pension credit relates is already a member of the Scheme.

(2) In this article, “appropriate rights” has the same meaning as in paragraph 5 of Schedule 5 to the 1999 Act.

Benefits

31.—(1) The Trustee may use a scheme member's pension account to—

- (a) where a member is alive, pay a member a lump sum or purchase a lifetime annuity policy in the name of the member, or both;
- (b) where a member has died –
 - (i) pay a lump sum to a person nominated by the member or to the personal representatives of that member;
 - (ii) pay a lump sum to the relatives of the deceased member;
 - (iii) pay a charity lump sum benefit; or
 - (iv) purchase a dependants' annuity.

(2) In this article, “dependants’ annuity” and “charity lump sum death benefit” have the same respective meanings as in Schedules 28 and 29 to the Finance Act 2004 ⁽²⁰⁾.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department

⁽²⁰⁾ 2004 c. 12.

Annex B: The draft Transfer Values (Disapplication) Regulations

STATUTORY INSTRUMENTS

2009 No.

PENSIONS

The Transfer Values (Disapplication) Regulations 2009

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 93(1B)(aa) and 101F(6A) of the Pension Schemes Act 1993 (21).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Transfer Values (Disapplication) Regulations 2009 and shall come into force on [].

(2) In these Regulations—

“the Act” means the Pension Schemes Act 1993;

“incapacity” has the meaning given in paragraph 1 of the rules made under section 67 of the Pensions Act 2008(22);

“member” has the meaning given in paragraph (2) of article [*duty to admit members*] of the [] Scheme Order 2009(23);

“normal minimum pension age” has the meaning given in section 279(1) of the Finance Act 2004;

“the Scheme” has the meaning given in article 2 of the [] Scheme Order 2009;

“the transfer value provisions” mean—

(a) Chapter IV of Part IV (Protection for Early Leavers), and

(21) 1993 c.48. Section 93(1B) was amended by the insertion of paragraph (aa), made by the Pensions Act 2008 (c.30) section 131(2). Subsection (6A) was added to section 101F by the Pensions Act 2008, section 131(3).

(22) Section 67(9) provides that if an order establishes a scheme, any further provision that may be made by order in relation to the scheme may also be made by rules.

(23) The [] Scheme Order (S.I. xxxx/xxxx) came into force on xxxx.

(b) Chapter II of Part IVA (Requirements Relating to Pension Credit Benefit) of the Act; “the Trustee” has the meaning given in article 2 of the [] Scheme Order 2009.

Disapplication of the transfer value provisions

2.—(1) Subject to paragraphs (2) and (3), the transfer value provisions do not apply in relation to the Scheme.

(2) Paragraph (1) does not apply, and so the transfer value provisions apply in relation to the Scheme, when a member of that scheme reaches normal minimum pension age and notifies the Trustee of their intention to—

- (a) take a right to the entirety of a cash equivalent acquired under section 94(1) of the Act in whichever of the ways listed in section 95(2); or
- (b) require the Trustee to use an amount equal to the entirety of the cash equivalent of their pension credit benefit under section 101F of the Act for one or more of the authorised purposes listed in section 101F(2).

(3) Paragraph (1) does not apply, and so the transfer value provisions apply in relation to the Scheme, when the Trustee is satisfied that a member is suffering from incapacity.

Signed by authority of the Secretary of State for Work and Pensions.

Address
Date

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations disapply provisions in the Pension Schemes Act 1993 (“the transfer value provisions”) which entitle members of occupational or personal pension schemes to acquire a right to a cash equivalent of any benefits which have accrued to or in respect of them. Those provisions allow transfers out from pension funds generally (under Chapter IV of Part IV of that Act) and of pension credit benefits (under Chapter II of Part IVA of the same Act).

Regulation 2(1) disapplies the transfer value provisions in respect of the [] Scheme.

Paragraph (2) of that regulation provides that the transfer value provisions apply in relation to that scheme when a member reaches normal minimum pension age (this means, before 6 April 2010, 50, and after then, 55) and notifies the Trustee of their intention to take a right to a cash equivalent in certain ways.

Paragraph (3) of that regulation provides that the transfer value provisions also apply in relation to that scheme when the Trustee is satisfied that a member is suffering from incapacity. Incapacity is defined in the rules (made under section 67 of the Pensions Act 2008) as meaning physical or mental impairment which renders the member incapable of carrying on any occupation.

Annex C: The draft scheme rules

RULES OF THE [] PENSION SCHEME

Preamble

These Rules are made pursuant to Section 67(9) of the 2008 Act and shall come in to force on the same day as the Order. Together with, and subject to, the Order these Rules, as amended from time to time, shall govern the [*name of scheme*].

1. DEFINITIONS

In these rules (unless the context otherwise requires):

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

"**1995 Act**" means the Pensions Act 1995;

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

"**2004 Act**" means the Pensions Act 2004;

"**2008 Act**" means the Pensions Act 2008;

"**Annual Contribution Limit**" has the same meaning as in article [20] of the Order;

"**Automatic Enrolment**" means automatic enrolment under section 3 of the 2008 Act where the Employer has nominated the Scheme as the Automatic Enrolment Scheme into which Jobholder is to be automatically enrolled;

"**Automatic Enrolment Date**" has the same meaning as in section 3(7) of the 2008 Act;

"**Automatic Enrolment Regulations**" means The Pensions (Automatic Enrolment) Regulations 200X S.I xxxx/xxxx;

"**Automatic Enrolment Scheme**" has the same meaning as in section 17 of the 2008 Act;

"**Automatic Re-enrolment**" means automatic re-enrolment under section 5 of the 2008 Act where the Employer has nominated the Scheme as the Automatic Enrolment Scheme into which Jobholder is to be automatically re-enrolled;

"**Automatic Re-enrolment Date**" has the same meaning as in section 5(8) of the 2008 Act;

"**Average Earnings Index**" has the same meaning as in article [20(6)] of the Order;

"**By Notice**" means a Joining Event whereby a person:

- (a) who is aged at least 16 and under 75;
- (b) whose Employer is a Participating Employer in relation to the Scheme;

- (c) who does not become a Member by reason of Automatic Enrolment, Automatic Re-enrolment or Opt-in; and
- (d) elects by notice in such form as the Trustees may require to contribute to the Scheme;

"Dependant" has the same meaning as in paragraph 15 of Schedule 28 to the Finance Act 2004;

"Employer" means an employer for the purposes of section 88(7) of the 2008 Act or any person who anticipates becoming an employer for the purposes of that section and who in either case applies to be admitted to participation in the Scheme;

"Employers' Panel" means the panel established under article [6] of the Order;

"Ex-Spouse" means a person who is entitled to a Pension Credit following the making of a Pension Sharing Order. "Ex-Spouse" shall include a former civil partner (as defined in the Civil Partnership Act 2004);

"General Account" means an account maintained by the Trustee recording the balance from time to time of that part of the Scheme's assets which is not allocated to Members' Pension Accounts, such assets to be applied for the general purposes of the Scheme;

"HMRC" means Her Majesty's Revenue & Customs;

"Incapacity" means physical or mental impairment which renders the Member incapable of carrying on any occupation. The Member shall be required to provide evidence to the Scheme Administrator from a registered medical practitioner that the Member is (and will continue to be) suffering from Incapacity as defined above and to certify that the Member has in fact ceased to carry on any occupation;

"Investment Funds" shall have the same meaning as in the Order;

"Jobholder" has the same meaning as in section 1 of the 2008 Act;

"Joining Event" means an event listed in rule [8.1] which applies on the first admission of a person to Membership and on any subsequent change in that person's circumstances which alters the basis on which contributions are paid under rules [7 and 9];

"Lifetime Annuity" has the same meaning as in paragraph 3 of Schedule 28 to the Finance Act 2004;

"Member" means a member admitted to membership of the Scheme under rule [8.1] and who has not opted-out under rule [11.1] and "Membership" shall be construed accordingly;

"Member's Employer" means the Participating Employer employing the Member;

"Members' Panel" means the panel established under article [6] of the Order;

"Minimum Contributions" has the same meaning as in article [21(1)(a)] of the Order;

"Nominal Benefit Age" means:

- (a) such age, between Normal Minimum Pension Age and immediately before age 75, as the Member shall notify to the Trustee (in such form as the Trustee shall require) being the age at which the Member intends to take their benefits under the Scheme; or
- (b) in the absence of a notification under (a) above, the date on which the Member attains:
 - (i) in case of a Member born on or before 5 April 1955, age 65;
 - (ii) in the case of Member born after 5 April 1955, State Pension Age;

"Nominated Beneficiary" means a person, body corporate, trust, charity, club or society nominated by the Member and notified to the Trustee from time to time in such form as the Trustee shall determine and notify to Members;

"Normal Minimum Pension Age" has the same meaning as in section 279 of the Finance Act 2004;

"Opt-in" means a Joining Event in respect of a Jobholder ("J"):

- (a) to whom section 7 of the 2008 Act applies;
- (b) who has by notice under section 7(3) of the 2008 Act required J's Employer to make arrangements for membership of an Automatic Enrolment Scheme; and
- (c) whose Employer has nominated the Scheme as the Automatic Enrolment Scheme for the purpose of giving effect to its obligations under section 7 of the 2008 Act.

"Opt-out Period" means the period referred to in regulation [11(2)] of the Automatic Enrolment Regulations or [*reference to the re-enrolment regulations when available*] commencing on the Opt-out Period Start Date;

"Opt-out Period Start Date" means, in the case of a Jobholder whose most recent Joining Event was Automatic Enrolment or Opt-in, the date on which the Employer provides information to the Scheme in relation to that Jobholder in accordance with regulation [4] of the Automatic Enrolment Regulations (and for the purposes of this definition, the Trustee shall be entitled to assume that the Employer has provided information to the Jobholder in accordance with regulation [7] of the Automatic Enrolment Regulations before providing the information to the Scheme required by regulation [4]) [*reference to re-enrolment regulations to be included when available*];

"Order" means The [] Pension Scheme Order 2009 (SI 2009/xxxx) which established the Scheme;

"Panels" means the Members' Panel and the Employers' Panel;

"Participating Employer" has the same meaning as in the Order;

"Pension Account" has the same meaning as in the Order;

"Pension Credit" has the same meaning as under section 29 of the 1999 Act;

"Pension Credit Benefits" means the benefits payable to or in respect of an Ex-Spouse in respect of whom a Pension Credit is discharged in the Scheme under Rule [24.1];

"Pension Sharing Order" means any order or provision as referred to in section 28(1) of the 1999 Act;

"Permitted Maximum" has the same meaning as in paragraph 2 of schedule 29 to the Finance Act 2004;

"Registered Pension Scheme" has the same meaning as in Chapter 2 of Part 4 of the Finance Act 2004;

"Qualifying Recognised Overseas Pension Scheme" means a scheme as defined in section 169 of the Finance Act 2004;

"Scheme" means the [] Pension Scheme established under the Order;

"Scheme Administrator" means the person appointed to act as administrator of the Scheme for the purposes of sections 270 to 274 of the Finance Act 2004;

"Self-employed" has the same meaning as in section 308(3)(b) of the 2004 Act;

"Serious Ill-Health" means that the Member is expected to live for less than one year. The Member shall be required to provide evidence of Serious Ill-Health to the Scheme Administrator from a registered medical practitioner;

"State Pension Age" has the same meaning as "pensionable age" for the purposes of section 126 and Schedule 4 of the 1995 Act;

"Statement of Investment Principles" has the same meaning as in section 35 of the 1995 Act;

"Tax Year" has the same meaning as in the 2008 Act.

"Transfer Value (Disapplication) Regulations" mean The Transfer Values (Disapplication) Regulations 200[9] SI xxxx/xxxx;

"Trivial Commutation Limit" means the value of the trivial commutation lump sum which can be paid taking into account the Member's other accrued pension benefits outside the Scheme in accordance with paragraphs 7 to 9 of Schedule 29 to the Finance Act 2004;

2. INTERPRETATION

2.1 Where terms are used in these rules which are defined in the 2008 Act or the Order, they shall have the same meaning in these rules as that given to them in the 2008 Act or the Order respectively.

2.2 These rules will be construed without reference to the introduction, the list of contents or the headings or the typeface in which they are printed, each of which is included or used for convenience only.

2.3 In these rules:

- 2.3.1 unless the context otherwise requires, the singular includes the plural and vice versa; and
- 2.3.2 references to any legislation include (where appropriate) legislation which it replaces, amends or supplements and legislation for the time being in force which replaces, amends or supplements it.

3. TRUSTEE POWERS

- 3.1 The Trustee may appoint a secretary to the Scheme and may at any time remove or replace the secretary.
- 3.2 The Trustee may appoint such professional advisers as the Trustee determines on such terms as it sees fit.
- 3.3 The Trustee may appoint any person or persons to be the Scheme Administrator in accordance with sections 270 to 274 of the Finance Act 2004.
- 3.4 The Trustee may open and maintain in its name a bank account or bank accounts for the Scheme with an institution authorised under the Financial Services and Markets Act 2000 to hold monies belonging to the Scheme. The Trustee may, with the agreement of that institution, set terms for the operation of that bank account or accounts.

4. ADMINISTRATIVE PROVISIONS

4.1 Trustee may benefit

The Trustee, and any of its members or employees, may be a Member and may retain any benefit from the Scheme received as a result of being a Member including any benefit resulting from the exercise of a discretion by the Trustee. No decision of the Trustee shall be invalidated or questioned on the grounds that the Trustee (or any of its members or employees) had a direct or personal interest in the subject matter of the decision.

4.2 Power to compromise claims

The Trustee shall have power to determine all questions and matters of doubt in relation to the Scheme and also to settle or compromise any claims relating to the Scheme or to the rights of any Member or other beneficiary.

4.3 Forfeiture and lien

- 4.3.1 If as a result of a criminal, negligent or fraudulent act or omission by a Member that Member is under a monetary obligation to an Employer, the Trustee shall have power to vary that Member's benefits and to make a corresponding payment to the Employer.
- 4.3.2 If a Member is convicted of an offence referred to in section 92 of the 1995 Act or regulations made under it, that Member's benefits may be forfeit.
- 4.3.3 This rule is subject to sections 91 to 95 of the 1995 Act.

4.4 Charges

- 4.4.1 Without prejudice to any specific rules relating to charges, the Trustee may determine that a charge be made in relation to:
 - 4.4.1.1 requests for information which the Trustee reasonably determines are excessively frequent or detailed;
 - 4.4.1.2 processing payments made to the Scheme by Members in excess of the Annual Contribution Limit;
- 4.4.2 The Trustee shall furnish Members with details of any charge to be made under this rule.

4.5 Taxation and charges

- 4.5.1 If the Trustee or the Scheme Administrator is or will become accountable or liable for any tax or charge in respect of any benefit or payment which is to be paid to or in respect of a Member, the Trustee or Scheme Administrator (as appropriate) may deduct the tax or charge from the relevant Member's Pension Account or from the benefit or payment giving rise to the tax or charge.
- 4.5.2 If a Member or beneficiary under the Scheme is or will become liable for any tax or charge arises in respect of any contributions payable by or in respect of any Member or in respect of any benefits or payments payable to or in respect of that Member or beneficiary that tax or charge shall be:
 - 4.5.2.1 met by the Member or other person on whom the liability to the tax or charge falls;
 - 4.5.2.2 to the extent permitted by law, deducted from the Member's Pension Account or from the benefit or payment giving rise to the charge; or
 - 4.5.2.3 met in such other way as the Trustee shall determine.

4.6 Relief at Source

To the extent that a Member is entitled to relief at source, as defined in section 192 of the Finance Act 2004, the Scheme Administrator may, to the extent permitted by law:

- 4.6.1 make a claim to HMRC in respect of that Member for any amount treated as income tax paid for the purposes of relief at source;
- 4.6.2 subsequently receive any amounts paid by HMRC pursuant to a claim under rule [5.1], provided such amounts are then paid by the Scheme Administrator to the Scheme on behalf of the relevant Member;
- 4.6.3 act on behalf of the Member in dealings with HMRC in relation to relief at source in so far as that relief relates to contributions paid or payable to the Scheme; and

4.6.4 do all such things necessary to make the good the position in respect of any Member who has claimed relief at source at a time when that Member was not entitled to do so.

4.7 Notices etc.

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

5. MEMBERS' AND EMPLOYERS' PANELS

5.1 Appointment

The Trustee shall:

5.1.1 appoint to the Members' Panel such Members and such other persons representing the interests of Members as it considers appropriate having regard to the membership profile of the Scheme from time to time;

5.1.2 appoint to the Employers' Panel such individuals who are, or who represent, a Participating Employer and such other persons representing the interests of Participating Employers as it considers appropriate having regard to the profile of employers participating in the Scheme from time to time.

5.2 Selection and appointment

The Trustee shall establish such procedures for attracting, selecting and appointing members of each of the Panels as it sees fit.

5.3 Reporting

5.3.1 Each of the Panels shall report to the Trustee periodically on the exercise of the Panel's functions in such format and at such intervals as the Trustee shall reasonably require, and recorded in the terms of reference to be prepared under rule [5.4] below.

5.3.2 The Trustee shall report to Members on the exercise of the Panels' functions in such format and at such intervals as the Trustee sees fit.

5.4 Terms of reference

5.4.1 The Trustee must secure that:

5.4.1.1 terms of reference are prepared and maintained for each of the Panels; and

5.4.1.2 that the terms of reference are reviewed at such intervals, and on such occasions, as the Trustee shall reasonably determine and, if necessary, revised.

5.4.2 The terms of reference shall document:

5.4.2.1 the functions of the Panels; and

5.4.2.2 matters relating to the administration and operation of the relevant Panels consistent with its functions.

5.4.3 The Trustee may, having consulted the relevant Panel, amend the terms of reference where the Trustee considers this to be necessary or desirable.

5.4.4 The terms of reference and any amendments to them from time to time shall be published in such a way as to be available to any interested person and such publication may be limited to electronic publication.

6. EMPLOYER PARTICIPATION

6.1 Subject to rule [6.2]

6.1.1 an Employer falling within article [17(1)] of the Order shall be admitted to participation; and

6.1.2 an Employer falling within article [17(3)] of the Order may be admitted to participation with the agreement of the Trustee.

6.2 Participation under rule [6.1] above is conditional on the Employer entering into an agreement to abide by and comply with the Order and Rules, and such other terms and conditions as the Trustee shall determine under article [17(2)] of the Order.

6.3 The agreement referred to in rule [6.2] shall be in such form and on such terms as the Trustee shall determine and notify to the Employer.

7. EMPLOYER CONTRIBUTIONS

7.1 Subject to articles [20 to 24] of the Order and rule [14]:

7.1.1 each Participating Employer must, in respect of Members for whom that Participating Employer has elected to use the Scheme to fulfil its duties under sections 3(2), 5(2) and 7(3) of the 2008 Act, pay such contributions as required in order to meet the quality requirement referred to in section 20(1) of the 2008 Act (except that during the transitional period referred to in section 29 of the 2008 Act the Participating Employer's contributions shall meet the requirements of that section 29);

7.1.2 any Participating Employer to which rule [7.1.1] does not apply may pay such contributions in respect of the Members employed by that Participating Employer as shall be notified to the Trustee and the Member; and

7.1.3 a Participating Employer may at any time pay additional contributions in respect of Members employed or formerly employed by that Participating Employer.

7.2 Any contributions paid by a Participating Employer under rule [7.1] shall be applied to the credit of the relevant Member's Pension Account.

8. ELIGIBILITY AND MEMBERSHIP

8.1 Joining Events

A person shall be admitted to Membership in accordance with the following rules (subject in each case to receipt by the Trustee of all information required from the person or the Employer in order to admit the person to Membership):

8.1.1 Automatic Enrolment and Re-enrolment

A person who joins the Scheme by reason of Automatic Enrolment or Automatic Re-enrolment shall be admitted to Membership with effect from the Automatic Enrolment Date or the Automatic Re-enrolment Date (as appropriate);

8.1.2 Opt-in

A person who joins the Scheme by reason of Opt-in shall be admitted to Membership with effect from *[date to be determined in regulations under s7(4)(c)]*;

8.1.3 Self-employed

A person who is Self-employed and elects to join the Scheme shall be admitted to Membership on such terms and with effect from such date as the Trustee shall determine.

8.1.4 By Notice

A person who joins the Scheme By Notice shall be admitted to Membership with effect from the date notified to the Trustee by the Member's Employer.

8.2 Multiple Joining Events

8.2.1 Where more than one Joining Event specified in rule [8.1] applies to a person that person shall be first admitted to Membership on the earliest of the applicable dates referred to that rule.

8.2.2 Contributions made for or in respect of a Member to whom multiple Joining Events apply shall be paid in accordance with rules [7] and [9] as applicable separately to each Joining Event currently applicable to the Member.

9. MEMBER CONTRIBUTIONS

9.1 Automatic Enrolment, Automatic Re-enrolment and Opt-in

Each Member who is admitted to Membership by Automatic Enrolment, Automatic Re-enrolment or Opt-in shall pay, and the Trustee shall accept, such contributions as may be required in order to meet the quality requirement referred to in section 20(1) of the 2008 Act (or, during the transitional period referred to in section 29 of that Act, the requirements of

that section) having regard to the contributions being paid by the Member's Employer under rule [6.1.1].

9.2 Other cases

Subject to rules [13 and 14], the Trustee shall accept such contributions from a Member whose most recent Joining Event was under rules [8.1.3 or 8.1.4] or from any other Member aged between 16 and 75 who has a Pension Account as that Member notifies to the Trustee.

9.3 Additional contributions

Subject to rule 14, a Member to whom rules [8.1.1 and 8.1.2] apply may pay such additional contributions at such rates as the Member may notify to the Trustee in such form as the Trustee may require.

9.4 Subsequent changes

Contributions shall be paid by reference to the most recent Joining Event applicable to that Member (whether on first admission to Membership or on a subsequent change in circumstances).

10. PENSION ACCOUNTS

10.1 The Trustee shall establish and maintain a single Pension Account for each Member to which all contributions paid by or in respect of that Member shall be credited.

10.2 The Trustee may make any other entry in the Pension Account of any Member as it may consider necessary or desirable in order to account for any other change in the value of the Scheme assets which is attributable to the Member's interest in the Scheme.

10.3 Each Member's Pension Account shall be maintained by the Trustee solely for the purpose of calculating the benefits payable to and in respect of the Member concerned, and no Member shall have a proprietary right to any of the investments for the time being representing the balance of the Member's Pension Account.

11. CEASING PAYMENT OF CONTRIBUTIONS

11.1 Right to opt-out

11.1.1 Those Members whose most recent Joining Event was Automatic Enrolment, Automatic Re-enrolment or Opt-in may give notice in accordance with section 8 of the 2008 Act at any time within the Opt-out Period.

11.1.2 On giving notice under rule [11.1.1] to opt-out of the Scheme, section 8(2) of the 2008 Act shall apply. Any refund of contributions pursuant to section 8(2)(b) of the 2008 Act shall be refunded in such manner as the Trustee shall determine.

11.2 Right to cease payment of contributions

11.2.1 Without prejudice to rule [11.1] any Member may at any time give notice to the Trustees in such form and in such manner as the Trustees may determine to cease paying contributions to the Scheme.

11.2.2 A Member who gives notice under rule [11.2.1] may subsequently and from time to time recommence the payment of contributions in accordance with rule [9] where any of those provisions apply. There shall be no restriction on the number of times that a Member can cease and recommence paying contributions to the Scheme.

12. MEMBERSHIP AND VESTING

12.1 Continuous Membership

Subject to rule [11.1], once a Member has been admitted to Membership that Member shall remain in Membership (whether or not contributions are being paid by or in respect of that Member) until such time as benefits are paid to or in respect of that Member under rules [16, 18 or 23] or rule [17] applies.

12.2 Vesting

If:

12.2.1 contributions paid to the Scheme on behalf or in respect of a Member cease to be paid (whether by reason of a notice under rule [11.2.1] or otherwise); and

12.2.2 the Opt-out Period has expired without the Member having given notice under rule [11.1]

the Member shall become entitled to benefits under the Scheme payable in accordance with rules [16, 18 or 23] or rule [17] applies.

13. CONTRIBUTIONS GENERAL PROVISIONS

All contributions to the Scheme shall be paid in such form, at (save in respect of contributions paid under rules [7.1 and 9.1]) such a level and by such method as the Trustee shall determine and notify to the Members and Participating Employers.

14. ANNUAL CONTRIBUTION LIMIT

14.1 Calculation of the Annual Contribution Limit

For the purposes of article [20(3)] of the Order the Trustee must calculate the Annual Contribution Limit:

14.1.1 on the first occasion, by multiplying the figure set out in article [20(1)] of the Order by the increase in the Average Earnings Index between December 2005 and the date closest to the date on which the Trustee makes the adjustment for which there is evidence of Average Earnings Index; and

14.1.2 on each subsequent occasion, by multiplying the Annual Contribution Limit calculated for the previous Tax Year by the increase in the Average Earnings Index between:

14.1.2.1 the date of the last Average Earnings Index used to calculate the Annual Contribution Limit under rule [14.1.1]; and

14.1.2.2 the date closest to the start of the following Tax Year for which there is evidence of the latest Average Earnings Index

provided that if the Average Earnings Index does not increase, or decreases, in the relevant period, the Trustee shall deem the increase for that period to be nil and the Annual Contribution for that Tax Year shall be the same as the Annual Contribution Limit calculated in respect of the previous Tax Year.

14.2 Other provisions in relation to the Annual Contribution Limit

14.2.1 The Trustee must round the Annual Contribution Limit calculated in accordance with rule [14.1] up to the nearest £100.

14.2.2 The Trustee must publish the Annual Contribution Limit calculated in accordance with rule [14.1] promptly (and in any event before the start of Tax Year for which it applies) in such form as the Trustee shall determine.

14.3 Refunds of excess contributions

14.3.1 Refunds of excess contributions under article [22] of the Order may be made in such manner and at such time as the Trustee shall determine.

14.3.2 No interest shall be paid on any refund of excess contributions under this rule.

14.3.3 Where article [22] of the Order applies and an Employer receives a refund of contributions made by or on behalf of a Member, that Employer:

14.3.3.1 shall hold the refund on trust for the Member; and

14.3.3.2 must remit it to the Member as soon as reasonably practicable.

14.4 Where article [24] of the Order applies the Trustee may:

14.4.1 retain the Minimum Contributions made by any Employer on behalf or in respect of a Member in excess of the Annual Contribution Limit and apply them to the relevant Member's Pension Account; or

14.4.2 refund any contributions in excess of the Minimum Contributions to an Employer or to the Member pursuant to articles [22(2) and 22(3)] of the Order.

14.5 Other treatment of excess contributions

14.5.1 The Trustee may reject any excess contribution which is not a Minimum Contribution paid to the Scheme by or on behalf of a Member if that contribution would or might result in the Annual Contribution Limit being exceeded in that Tax Year.

- 14.5.2 Where the Trustee does not refund excess contributions pursuant to article [22(4)] or continues to accept contributions pursuant to article [24] it shall apply those contributions to the Member's Pension Account in the Tax Year in which those contributions are made as if the Annual Contribution Limit had not been exceeded.
- 14.5.3 Where the Trustee does not refund excess contributions and rule [14.5.2] above does not apply, the Trustee may at the request of the Member apply those contributions (in so far as they relate to contributions made by that Scheme Member) to the Member's Pension Account in lieu of contributions otherwise payable by the Member in a subsequent Tax Year.
- 14.5.4 Excess contributions applied under rule [14.5.3] will count towards the Annual Contribution Limit in the Tax Year in which they are so applied.

14.6 Disapplication of the Annual Contribution Limit

- 14.6.1 The Trustee may determine that article [20] does not apply in the Tax Year in which:
 - 14.6.1.1a Member dies; or
 - 14.6.1.2the Trustee's liability in respect of a Member is discharged pursuant to rules [16, 18 or 23]
- 14.6.2 Except where rule [14.6.1] applies, article [22] shall still apply to any contributions in excess of the Annual Contribution Limit and which do not fall within article [22(4)] or article [24].

15. INVESTMENT

15.1 Limitations on Member's choice of Investment Funds

The Trustee may:

- 15.1.1 specify the form in which a Member may choose Investment Funds for the purposes of article [27] of the Order;
- 15.1.2 impose limits on the number of occasions that a Member can choose additional or alternative Investment Funds;
- 15.1.3 impose a reasonable charge on the Member for implementing a Member's choice of additional or alternative Investment Funds if the limit referred to in rule [15.1.2] is exceeded;
- 15.1.4 impose limits on the selection of multiple Investment Funds by a Member having regard to the value of the assets to be invested.

15.2 Consolidation etc of Investment Funds

15.2.1 If the Trustee decides to exercise the powers conferred by article [27(3)] of the Order, it must notify Members affected by that decision, explain the effect of that decision and invite the Member so affected to choose an alternative Investment Fund.

15.2.2 In the absence of any instructions from the Member following notification under rule [15.2.1], the Trustee shall allocate the assets referable to the relevant Member's Pension Account to the Default Investment Funds.

15.3 Investment Funds: charges

15.3.1 Where a deduction is to be made under article [25(9)] in relation to Investment Funds, the Trustee may determine that different charges apply to different Investment Funds, such charges to be determined having regard to the cost of providing those funds.

15.3.2 Any charge referred to in this rule [15.3] shall be applied on a consistent basis between the Pension Accounts of those Members to whom it applies.

15.3.3 The Trustee shall provide Members with information about the basis on which charges relating to each of the Investment Funds are made pursuant to this rule [15.3].

15.4 Investment Funds: general

15.4.1 The composition of the underlying investments attributed to each Investment Fund shall be determined by the Trustee.

15.4.2 No member shall be afforded any choice in relation to the composition of any underlying investment attributed to any Investment Fund.

16. PAYMENT OF BENEFITS

16.1 Nominal Benefit Age

On reaching Nominal Benefit Age a Member shall be entitled to have an amount equal to the value of the Member's Pension Account applied to provide benefits for or in respect of that Member in accordance with rules [16.4, 16.5 or 16.6].

16.2 Early commencement of benefits

A Member may give notice to the Trustee (in such form and within such time limits as the Trustee may reasonably require) requesting that the Member's Pension Account be applied to provide benefits for or in respect of that Member before the Member's Nominal Benefit Age. The Trustee shall comply with such request provided that such benefits may only be paid on or after the Member reaches Normal Minimum Pension Age unless the Member is suffering from Incapacity

16.3 Late commencement of benefits

A Member may defer having their Pension Account applied to provide benefits for or in respect of that Member beyond Nominal Benefit Age but not on or after attaining age 75. The Member shall give notice to the Trustee (in such form and within such time limits as the Trustee may reasonably require) when the Member wishes to have the Pension Account so applied.

16.4 Benefits

16.4.1 Subject to rule [16.6], a Member who becomes entitled to have their Pension Account applied under rules [16.1 to 16.3] shall have the following options:

16.4.1.1 the Member may direct the Trustee to pay a cash equivalent transfer value in accordance with rule [23.2]; or

16.4.1.2 the Member may direct the Trustee to apply their Pension Account to purchase a Lifetime Annuity in the Member's own name, such Lifetime Annuity to be selected by the Member

provided that in the case of a Member to whom rule [17.2] applies, may only apply their Pension Account in accordance with rule [16.4.1.2].

16.4.2 The Trustee shall take reasonable steps to ensure that Members are aware of the provisions of rule [16.5].

16.4.3 A Member may immediately before exercising the options at rule [16.4.1.2] above elect to commute part of their Pension Account (not exceeding the Permitted Maximum) for a lump sum.

16.4.4 The Trustee shall make such arrangements for the payment of the lump sum under rule [16.4.3] (including payment by an annuity provider as agent of the Trustee) as it sees fit.

16.4.5 The Trustee may make such arrangements and provide such information to Members as it shall see fit (subject to any restrictions imposed by law) in relation to the selection of an annuity and the provider of such annuity.

16.5 Default annuity

16.5.1 Subject to rules [16.6 and 17], if the Member does not exercise either of the options set out in rule [16.4.1] at least three months before the Member's 75th birthday the Trustee shall:

16.5.2 apply a proportion of the Member's Pension Account equal to the Permitted Maximum to provide a lump sum; and

16.5.3 apply the balance of the Member's Pension Account for the purchase in the Member's name of a single life non-escalating Lifetime Annuity selected by the Trustee and the Trustee shall notify the Member of the selection so made.

16.5.4 If a Member is traced after that Member's 75th birthday but does not exercise the option set out in rule [16.4.1] within five months of the Trustee being notified of the Member's whereabouts, the Trustee shall apply the balance of the Member's Pension Account for the purchase in the Member's name of a single life non-escalating Lifetime Annuity selected by the Trustee and the Trustee shall notify the Member of the selection so made.

16.6 Total Commutation

16.6.1 The Trustee may commute a Member's Pension Account for a lump sum if the Member is aged under 75 and:

16.6.1.1 the Member is suffering Serious Ill-Health; or

16.6.1.2 the value of the Member's benefits from the Scheme and from other pension schemes is less than the Trivial Commutation Limit and the requirements of paragraph 7 of Schedule 29 to the Finance Act 2004 are met; [or

16.6.1.3 the requirements of regulation [11 - *de minimis*] of the [The Registered Pension Schemes (Authorised Payments) Regulations 200x] are met.

16.6.2 The Trustee may commute a Member's Pension Account for a lump sum if the Member is aged over 75 and the requirements of regulation [9 - *members who were untraceable*] of the [The Registered Pension Schemes (Authorised Payments) Regulations 200x] are met]²⁴.

16.7 Discharge of Trustee's liability

Following the purchase of an annuity in accordance with rule [16.4 or 16.5] and/or the payment of a lump under rules [16.4.3 or 16.6] the Trustee shall be discharged from all further liability to provide the benefits secured by the annuity or in respect of which the Member has received a lump sum payment.

17. UNCLAIMED BENEFITS

17.1 The Trustee shall take reasonable steps to verify the whereabouts or the continued existence of any Member who does not claim benefits under the Scheme, or who is not notified to the Trustee as having died, before the Member's 75th birthday.

17.2 If the Trustee is unable to verify the whereabouts or continued existence of any Member under rule [17.1], the Trustee shall treat the Member's Pension Account as being held in suspense in accordance with paragraphs 11(6) and 11(7) of Schedule 28 to the Finance Act 2004 until the earlier of the following occurs:

17.2.1 the Member is traced and rule [16.4 or 16.5] applies;

²⁴ Rules 16.6.1.3, 16.6.2 and 18.8 are dependent on these regulations being made by HMRC

17.2.2 rule [17.3] applies; or

17.2.3 the Trustee is notified of the Member's death and either rule [18.1 or 18.4] applies.

17.3 If a Member's Pension Account remains unclaimed after that person has attained (or would if the Member had been alive attained) age 105 and the Trustee cannot trace the Member, the benefit shall cease to be payable and the Member's Pension Account shall become part of the General Account.

17.4 The Trustee may later to decide to pay any such benefit if claimed by the Member and the Trustee thinks fit to make the payment. The Trustee may determine in each case whether interest is payable on any such payment.

18. DEATH BENEFITS

18.1 On the death of a Member before age 75 the Trustee shall pay a lump sum equal to the value of the Member's Pension Account in accordance with rules [18.2 or 18.3].

18.2 The lump sum referred to in rule [18.1] shall be paid to any one or more Nominated Beneficiary.

18.3 In the event that:

18.3.1 the Member does not notify the Trustee of any Nominated Beneficiary; or

18.3.2 any Nominated Beneficiary cannot be identified or traced by the Trustee, having taken reasonable steps to do so; or

18.3.3 a Nominated Beneficiary has predeceased the Member or, in the case of a body corporate, trust, charity, club or society has ceased to exist before the Member's death;

then the lump sum payable under rule [18.1] (or the share of it payable to the Nominated Beneficiary who cannot be traced or who has predeceased the Member) shall be paid to the deceased Member's personal representatives.

18.4 On the death of a Member on or after age 75 the Trustee shall apply a sum equal to the value of the Member's Pension Account in accordance with rules [18.5 to 18.7].

18.5 Unless rule [18.8] applies and subject to rule [18.7], the Trustee shall apply the balance of the Member's Pension Account for the purchase of one or more dependants' annuities (as defined in paragraph 17 of Schedule 28 to the Finance Act 2004) in accordance with rule [18.6].

18.6 Each Dependant to whom a dependant's annuity is payable under rule [18.5] shall have the opportunity to select an annuity. If the dependant does not select an annuity, the Trustee shall select a single life non-escalating Lifetime Annuity and shall notify the relevant Dependant of the selection so made.

- 18.7 If the Member has no surviving Dependants, the Trustee shall apply the balance of the Member's Pension Account to pay a charity lump sum death benefit (as defined in paragraph 18 of Schedule 29 to the Finance Act 2004).
- 18.8 The Trustee may commute the Member's Pension Account for a lump sum death benefit if the Member dies on or after age 75 and the requirements of regulation [9 - *members who were untraceable*] of [The Registered Pension Schemes (Authorised Payments) Regulations 200x] are met.
- 18.9 If the death benefit payable under rule [18.1] is not made within two years of the date of the Member's death, or if later within two years of the date on which the Trustee could reasonably be expected to have known of the Member's death, that benefit shall be forfeit to the General Account.
- 18.10 In the event that on the death of a Member, rule [18.3] applies, if the total amount due from the Scheme under rule [18.1] is not more than £5000 and there is no Grant of Representation in place, the Trustee may pay or apply the relevant amount to or between any one of more of the Member's next of kin. The receipt of any person to whom the Trustee makes any payment under this rule [18.10] will be a complete discharge to the Trustee for the payment.
- 18.11 On payment of a death benefit under this rule [18] the Trustee shall be discharged from all further liability to provide benefits in respect of the Member on whose death the benefit was paid.

19. REQUIREMENTS OF REGISTRATION

Nothing in these rules shall entitle any person to a payment made to or in respect of that person under the Scheme which is not an authorised payment within the meaning given by the Finance Act 2004 and the Trustee shall be entitled to modify any payments accordingly.

20. PROVISION OF INFORMATION

Members and those claiming through them shall provide all information and supporting evidence required to establish the benefit and their entitlement to it and the Trustee may withhold benefits pending receipt of the required information.

21. INCAPACITY OF BENEFICIARY

If any Member, Nominated Beneficiary or other person entitled to a benefit under the Scheme is, in the opinion of the Trustee, unable by reason of minority, mental disorder or otherwise to manage that person's own affairs, the Trustee may in their discretion pay the benefit to any other person for the benefit of that beneficiary and the receipt of the person to whom the benefit is paid shall be sufficient to discharge the Trustee from its obligation to pay the benefit.

22. TRANSFERS IN

22.1 The Trustee will not in any circumstances accept into the Scheme any transfers made under section 73(2)(a)(i) of the 1993 Act.

22.2 The Trustee may accept a transfer of a cash sum within the meaning of section 101AB(3) of the 1993 Act, used in the way described in section 101AE(2)(a) of the 1993 Act in respect of a Member.

- 22.3 Any transfer accepted into the Scheme under this rule [22] or rule [24.1.1] shall be applied to the credit of the Member's Pension Account.

23. TRANSFERS OUT

- 23.1 The Trustee will not in any circumstances make any transfers from the Scheme under section 73(2)(a)(i) of the 1993 Act.
- 23.2 Subject to rules [23.3 to 23.5], at the request of a Member who has attained Normal Minimum Pension Age or who is suffering from Incapacity and who has become entitled to benefits under rule [16], the Trustee will transfer the realisable value of the entirety of that Member's Account to a Registered Pension Scheme or a Qualifying Recognised Overseas Pension Scheme nominated by the Member, in accordance with the provisions of the Transfer Values (Disapplication) Regulations.
- 23.3 A request under rule [23.2] must take such form and be made within such time period as the Trustee shall determine.
- 23.4 The Trustee may require the Member to provide details about any scheme nominated under rule [23.2] in such form as the Trustee shall determine.
- 23.5 The Trustee shall only effect a transfer under this rule [23] in respect of the entirety of a Member's Pension Account (including any part of that Pension Account attributable to a Pension Credit).

24. PENSION SHARING ON DIVORCE

24.1 Discharge of Liabilities

Where article [30(1)(a)] of the Order applies:

- 24.1.1 If the Ex-Spouse so requests, or if the Ex-Spouse does not make any request under rule [24.1.2], the Trustee shall discharge its liability in respect of a Pension Credit of an Ex-Spouse by conferring appropriate rights on the Ex-Spouse in accordance with paragraph 1(2) of Schedule 5 to the 1999 Act.
- 24.1.2 Subject to rule [23], the Trustee shall at the request of the Ex-Spouse discharge its liability in respect of a Pension Credit by paying an amount equal to the Pension Credit to the person responsible for a qualifying arrangement with a view to acquiring rights under that arrangement for the Ex-Spouse in accordance with paragraph 1(3) of schedule 5 of the 1999 Act provided that such request shall be made within such period of the making of the Pension Sharing Order as the Trustee shall determine.
- 24.1.3 If an Ex-Spouse dies after a Pension Sharing Order is made but before it is implemented by the Trustee, death benefits will be payable in respect of the Ex-Spouse as though the Pension Sharing Order had been implemented.

24.2 Rights and Benefits

24.2.1 An Ex-Spouse in respect of whom a Pension Credit is discharged under rule [24.1.1] shall become a Member and may make, and the Trustee shall (subject to rule [14]) accept, contributions to the Scheme in accordance with the Scheme rules.

24.2.2 An Ex-Spouse in respect of whom a Pension Credit is discharged in the Scheme under rule [24.1.1] shall, so far as is permitted by law, be entitled to the same benefits (including death benefits) payable in the same circumstances, as a Member admitted to membership under rule [8].

24.3 Acceptance of Pension Credit Rights into the Scheme

24.3.1 In accordance with article [30(1)(b)] of the Order, the Trustee may accept a payment in respect of a Pension Credit in accordance with rule [22] for a person who is already a Member, including an Ex-Spouse in respect of whom a Pension Credit is discharged in the Scheme under rule [24.1.1].

24.3.2 The individual in respect of whom the Pension Credit is accepted shall become a Member and shall be entitled to Pension Credit Benefits under the Scheme.

24.4 Identification of Benefits

The Trustee shall separately identify within each Member's Pension Account the Pension Credit Benefits attributable to that Member (including any such benefits transferred into the Scheme or into a Member's Pension Account under rules [24.1.1 or 24.3.1])

24.5 Charges

The Trustee may, in accordance with legislation, make charges for the provision of information or taking of appropriate action in accordance with the 1999 Act.

Annex D: Glossary of terms

Annual Contribution Limit	The maximum amount of contributions that may be made by, on behalf of or in respect of, a member in a tax year.
Automatic Enrolment	Employers will be required to make arrangements by which eligible jobholders become active members of an automatic enrolment scheme with effect from the automatic enrolment date. Automatic enrolment is not applicable if the jobholder is an active member of a qualifying scheme on that date.
Automatic Enrolment Date	Automatic enrolment will be triggered by: <ul style="list-style-type: none">• Implementation of the employer's duty to automatically enrol jobholders aged between 22 and pensionable age, and who have qualifying earnings.• Starting work and meeting the criteria (post implementation).• Meeting the criteria whilst in work by either:<ol style="list-style-type: none">1. reaching age 22 (in receipt of qualifying earnings);2. having qualifying earnings for the first time (aged 22 to pensionable age).
Compliance Regime	A set of powers and processes exercisable by the Pensions Regulator, which have the ultimate goal of maximising compliance with the employer duties and employment safeguards, as contained in Chapter 2 and Chapter 3 of the Pensions Act 2008.
Incapacity	A physical or mental impairment which renders the scheme member incapable of carrying on any occupation.
Jobholder	A worker who is working or ordinarily works in Great Britain under a contract, who is aged at least 16 and under 75, and has gross earnings between £5,035 and £33,540 (in 2006/07 terms).
Joining Event	An event which applies on the first admission of a person to scheme membership and on any subsequent change in that person's circumstances which alters the basis on which contributions are paid.

Lifetime Annuity	Purchased using the funds from a scheme member's pension account from an insurance company which the member must have had the opportunity to select, that provides the member with an income for life, and which meets the conditions imposed by the Finance Act 2004.
Minimum Contributions	Contributions made to the scheme by, on behalf of, or in respect of a jobholder and satisfying the quality requirement for a money purchase scheme as specified in section 20 of the Pensions Act 2008, and after taking into account the phasing requirements set out in section 29 of the Act.
Nominated Beneficiary	A person, body corporate, trust, charity, club or society nominated by the scheme member.
Normal Minimum Pension Age	Has the same meaning as in section 279 of the Finance Act 2004; and will be age 55 when the scheme is launched.
Opt-in	A jobholder who is not an active member of a qualifying scheme may by notice require the employer to arrange for them to become an active member of a scheme and benefit from minimum contributions.
Opt-out	A jobholder who has become an active member of a pension scheme has the right to opt out of membership within 30 days and obtain a refund of contributions.
Panels	The members' panel and employers' panel to be established and maintained by the trustee pursuant to the scheme order.
Participating employer	An employer as defined in section 88(7) of the 2008 Act or any person who anticipates becoming such an employer; and who in either case applies to be admitted to participate in the scheme.
Payment Schedule	A document which must be prepared, maintained and revised by the trustees of every occupational pension scheme, detailing the employer and member contributions due to be paid to a pension scheme by an employer, and the dates by which these contributions must be paid.

Pension account	An account maintained by the trustee for each member comprising the member's contributions, employer contributions, any sums transferred into the scheme in respect of the member, investment return and any other amounts paid to the trustee to be credited to the member's pension account less any expenses and outgoings which the trustee properly deducts from the member's pension account.
Phasing	The gradual introduction of employer contributions over three years - starting with 1 per cent in the first year, rising to 2 per cent in the second and then 3 per cent in the third year - with proportionate rates of employee contributions.
Qualifying Earnings	An earnings band of £5,035 to £33,540 per annum (in 2006/07 earnings terms), on which pensions contributions will be calculated for money purchase schemes. Having qualifying earnings (i.e. above £5,035) is a criterion for being a "jobholder" and is a factor in determining whether a worker is to be automatically enrolled.
Scheme Member	A member admitted to membership of the scheme and who has not opted-out.
Scheme Order	The order made under section 67 of the Pensions Act 2008 that will establish the scheme.
Scheme Rules	The rules of the scheme made under section 67 of the Pensions Act 2008.
Staging	The employer duty will be implemented in stages over a period rather than from a single launch date.
Statement of Investment Principles	A document which must be prepared, maintained and revised by the trustees of every occupational pension scheme to setting out how the scheme assets will be invested.
Tax Registered Pension Scheme	For a pension scheme to qualify for tax relief it must be registered and approved by HM Revenues and Customs for that purpose.

The Transfer Value (Disapplication) Regulations	Regulations made under the Pensions Act 1993 which will remove the right for a scheme member to transfer out the value of benefits accrued under the scheme and which will restore that right in specific circumstances.
Trustee Corporation	The corporate body which will be responsible for the scheme's governance and administration. The trustee corporation will be set up as a non-Departmental Public Body, sponsored by the Department for Work and Pensions.
Worker	An individual who has entered into work under a contract of employment or any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.

List of abbreviations

AEI	Average Earnings Index
DWP	Department for Work and Pensions
HMRC	HM Revenue and Customs
NDPB	non-Departmental Public Body
PADA	Personal Accounts Delivery Authority
SIP	Statement of Investment Principles
tPR	The Pensions Regulator
2007 Act	The Pensions Act 2007
2008 Act	The Pensions Act 2008

Annex E: List of organisations consulted

AEGON

Advocate General for Scotland

Age Concern

Association of British Insurers

Association of Chartered Certified Accountants

Association of Collaborative Lawyers, Northern Ireland

Association of Consulting Actuaries

Association of Corporate Trustees

Association of Independent Financial Advisors

Association of Pension Lawyers

Aviva (Norwich Union)

British and Civil Engineering Benefit Scheme

Better Regulation Executive

Business Application Software Developers' Association

British Computer Society Payroll Group

British Chambers of Commerce

Citizens Advice

Citizens Advice, Regional Office, Northern Ireland

Confederation of British Industry

Confederation of British Industry, Northern Ireland

Department for Business, Enterprise and Regulatory Reform

Department for Social Development Northern Ireland

Engineering Employers' Federation

Equality and Human Rights Commission

Equality Commission for Northern Ireland

The Faculty of Actuaries

Financial Services Authority

Federation of Small Businesses

Federation of Small Businesses, Northern Ireland

Forum of Private Business

GMB Union

Help the Aged

HM Courts Service

HM Revenue and Customs

HM Treasury

Investment Managers Association

Institute of Actuaries and

Institute of Chartered Accountants England and Wales

Institute of Chartered Accountants in Ireland

Institute of Chartered Accountants of Scotland

Institute of Chartered Secretaries and Administrators

Institute of Directors

Institute of Payroll Professionals

Irish Congress of Trade Unions

Law Society of England and Wales
Law Society of Northern Ireland
Law Society of Scotland
Legal and General
Ministry of Justice
National Assembly of Wales
National Association of Pension Funds
Northern Ireland Association of Citizen's Advice Bureaux
Northern Ireland Court Service
Northern Ireland Human Rights Commission
The Office of Fair Trading
The Pensions Advisory Service
Pensions Management Institute
Pensions Ombudsman
Pensions Policy Institute
Pension Protection Fund
The Pensions Regulator
Recruitment and Employment Confederation
Resolution, the Family Lawyers Association
Scottish Executive
Society of Pension Consultants
Standard Life
Unison, Northern Ireland
UNITE
UNITE the Union, Northern Ireland
Trades Union Congress
Wales Office
Watson Wyatt
Which?

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