DATED 29th DECEMBER 1994

(1) INDUSTRY-WIDE MINEWORKERS' PENSION SCHEME CO-ORDINATOR LIMITED

(2) INDUSTRY-WIDE MINEWORKERS' PENSION SCHEME TRUSTEES LIMITED

TRUST DEED AND RULES

relating to

THE INDUSTRY-WIDE MINEWORKERS' PENSION SCHEME

We hereby certify this to be a true copy of it original.
Signed ..Clifford Chance
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THE INDUSTRY-WIDE MINEWORKERS' PENSION SCHEME

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THIS TRUST DEED is made the 29th day of December 1994
BETWEEN



(1) **INDUSTRY-WIDE MINEWORKERS' PENSION SCHEME CO-ORDINATOR LIMITED** registered in England No. 3,003,338 ("the Co-ordinator"); and

(2) **INDUSTRY-WIDE MINEWORKERS' PENSION SCHEME TRUSTEES LIMITED** registered in England No. 3004573 ("the First Trustee").

WHEREAS

(A) The Co-ordinator wishes to establish an industry-wide retirement benefits scheme for the coal industry to be known as "The Industry-Wide Mineworkers' Pension Scheme" ("the Scheme").

(B) The Co-ordinator wishes to appoint the First Trustee as the first trustee of the Scheme and the First Trustee has agreed to accept such appointment.

NOW THIS DEED WITNESSES as follows:-

ESTABLISHMENT OF SCHEME AND DECLARATION OF TRUST

1 - The Co-ordinator hereby establishes the Scheme under irrevocable trusts with effect on and from 29th December 1994 (hereinafter called "the Commencement Date") and appoints the First Trustee to be the first trustee of the Scheme and the Co-ordinator hereby covenants with the First Trustee and successive trustees from time to time of the Scheme to observe and perform the provisions of the Trust Deed and the Rules.

CONTRIBUTIONS

2 - (1) Every Employer shall pay as Standard Contributions a sum equal to the recommended percentage of the Contribution Earnings paid by him to members employed or deemed to be employed by him in respect of any period during which a member is in Contributing Service. For the purpose of this Clause the "recommended percentage" means in relation to an Employer the percentage (including a nil percentage) recommended from time to time by the Actuary for this purpose under Clause 20 or 21(2)(a)(i).

(2) Every Employer shall pay as Deficiency Contributions after the coming into operation of any determination of Deficiency Contributions made by the Actuary under Clause 21 such payments as may become payable by him thereunder or as may be necessary on the advice of the Actuary.

(3) The total amount of any Standard Contributions or Deficiency Contributions payable by an Employer during any period shall be reduced by an amount equal to the difference between the total amount of any Contributions Equivalent Premiums paid during that period insofar as they relate to periods of service in respect of which a pension would or might otherwise have become payable under Rule 12 to or in respect of members and former members whose last or only period of contracted-out employment by reference to the Scheme was employment with that Employer and the total of the amounts recovered from such members and former members during that period under or by virtue of section 61 of the 1993 Act.

(4) (a) Every Employer shall pay to the Committee of Management on the last day of every month (or on such other dates as may from time to time be determined by the Committee of Management) the following amounts in respect of the period since the last preceding payment made under this paragraph:-

(i) the amount of contributions payable under the Rules by or in respect of members employed or deemed to be employed by such Employer insofar as they are calculated on the basis of Earnings paid or deemed to be paid by that Employer; and

(ii) the amount of all sums payable by that Employer as Standard Contributions and Deficiency Contributions.

(b) Every payment made under sub-paragraph (a) of this paragraph shall be accompanied by a statement in writing of how the amount paid is made up, and if it shall subsequently be discovered that the amount so shown and paid was greater or less than the true amount payable the over-payment or under-payment shall be adjusted by a deduction from or addition to the next succeeding payment required to be made under sub-paragraph (a) of this paragraph insofar in the case of an over-payment as it is sufficient for that purpose, and if in such case that payment is not so sufficient, the excess shall be payable in cash on demand.

(c) The provisions of regulations made under section 56A of the Pensions Act requiring the furnishing of information regarding the failure of an employer to

forward sums deducted, or due to be deducted, from a member's remuneration shall apply to the Scheme as if references in the regulations to sums deducted, or due to be deducted, from a member's remuneration to meet the member's liability to contribute to the Scheme included sums payable by an Employer to meet the Employer's liability to contribute to the Scheme and as if (in relation to an Employer's contribution) the reference to the date on which the sums were, or were due to be, deducted were a reference to the date on which the Employer's contribution was due to be paid to the Committee of Management.

(5) (a) All instalments of Standard Contributions or Deficiency Contributions payable by each Employer to the Scheme shall be paid within one month of the date on which each contribution becomes payable. In the case of Standard Contributions, such contributions shall become payable at such intervals not greater than three months as the Committee of Management shall from time to time determine. The timing of payment of Deficiency Contributions shall be provided for in any determination of Deficiency Contributions made by the Actuary under Clause 21.

(b) In the event of any Standard or Deficiency Contributions payable hereunder not being paid in full by the date determined in accordance with sub-paragraph (a) above the relevant Employer shall pay to the Scheme together with the outstanding contributions such additional supplement as shall be determined by the Committee of Management on the advice of the Actuary having regard to the length of delay and relevant financial factors.

(c) In the event that an Employer shall fail to pay any outstanding Standard or Deficiency Contribution together with any supplement determined in accordance with this paragraph on demand the Trustee shall (without prejudice to its power to deem that an Employer ceases to contribute for the purposes of Clause 41(2)) deliver a demand for payment to the Employer and if such demand is not satisfied within 21 days the Committee of Management shall in the name of the Trustee institute legal proceedings for the recovery of the same as a debt of the Employer due to the Scheme.

(6) Each Employer shall pay to the Co-ordinator such amounts and at such times as the Co-ordinator shall determine and notify to the Employer, as contributions towards the costs and expenses of the Co-ordinator. The amounts so determined in respect of each Employer shall represent an appropriate proportion of the total costs and expenses of the Co-ordinator, on such basis as the Co-ordinator shall determine from time to time.

3 - For the purposes of Clause 2 -

(a) a member shall be deemed to be employed by any person or persons (including any body of persons incorporated or unincorporated) who is or are an Employer in relation to him;

(b) such Earnings of a member engaged in Inspection Activities as consist of payments made to him in relation to such Inspection Activities shall be deemed to be paid to him by the persons (including any body of persons incorporated or unincorporated) who are his Employer for the purposes of such Inspection Activities in the same proportions as the proportions of such payments or of the funds from which such payments are made which those persons are respectively responsible for making or providing.

4 - Each member shall contribute such sums as may from time to time be provided under the Rules. Each Employer shall be responsible for the collection of all contributions payable by or in respect of members employed or deemed to be employed by such Employer and for the payment of all such contributions to the Scheme.

ADMISSION OF OTHER EMPLOYERS AND NEW MEMBERS

5 - (1) (a) With effect on and from each Transfer Day the Committee of Management shall admit to participation in the Scheme any person body of persons or corporate body which on such Transfer Day becomes the employer of any one or more individuals employed in the undertaking to which the restructuring scheme (within the meaning of section 12 of the 1994 Act) relates and the transfer of which takes effect on such Transfer Day (being individuals who immediately before such Transfer Day were Contributors under MPS who had not attained the Pensionable Age under MPS), subject to the provisos to paragraph (3) of this Clause.

(b) With effect on and from each Transfer Day the Committee of Management shall admit to participation in the Scheme any corporate body (being a corporate body which immediately before such Transfer Day employed any one or more individuals who were then contributing members of MPS and who had not then attained the Normal Retiring Age under MPS) which on such Transfer Day ceases to be a subsidiary of the British Coal Corporation, subject to the provisos to paragraph (3) of this Clause.

(2) With effect on and from the First Transfer Day the Committee of Management shall admit to participation in the Scheme any person body of persons Trade Union or corporate body in relation to which such date is the Transfer Day, subject to the provisos to paragraph (3) of this Clause.

(3) The Committee of Management shall admit to participation in the Scheme any person body of persons Trade Union or corporate body which at any time on or after the Commencement Date and other than on and as a result of a Transfer Day occurring becomes the employer of an individual who is a Protected Employee in circumstances in which such individual does not thereupon cease to be a Protected Employee ("the new employer") Provided that:-

(i) the new employer shall enter into a deed by which it covenants with the Co-ordinator and Committee of Management to comply with and observe the provisions of the Scheme so far as they are applicable to it as an Employer; and

(ii) the participation of the new employer will not prejudice Inland Revenue Approval of the Scheme.

(4) (a) New employees of Employers (subject to the exceptions mentioned in sub-paragraph (b) of this paragraph) shall not be eligible for membership of the Scheme.

(b) The following categories of new employees shall be excluded from the provisions of sub-paragraph (a) of this paragraph:-

(i) new employees who immediately before entering the employment of the Employer were employed by another Employer, who were Protected Employees by reference to the Scheme while in the employment of that other Employer and who have not ceased to be Protected Employees; and

(ii) new employees (not within (i) above) who at any time before entering the employment of the Employer were members of MPS or the Staff Scheme or BCSSS or members of the Scheme but only if the Employer has requested that they be eligible for membership of the Scheme and if the Committee of Management have approved that request.

CONSTITUTION OF THE SCHEME

6 - (1) With effect on and from the Commencement Date, the monies of the Scheme shall constitute the Pension Fund.

(2) The First Trustee shall be the first and sole trustee of the Scheme and of the Pension Fund.

(3) In the event of the First Trustee ceasing for any reason to be the trustee of the Scheme and of the Pension Fund, the Co-ordinator shall forthwith procure that a new trustee or trustees of the Scheme is or are appointed which is or are either:-

(a) a new corporate trustee whose Articles of Association would be in a form corresponding as closely as may be possible to those of the First Trustee and would provide for the appointment of a committee of management consisting of ten persons, of whom five would be appointed by and would be subject to removal by the Co-ordinator, and five would be appointed by and would be subject to removal in accordance with rules to be agreed between the Co-ordinator and such organisations as at that time represent substantial proportions of the classes of the employees who are members of the Scheme, Provided that

(i) the five persons appointed by such organisations shall be persons who are or immediately before retirement were Contributors; and

(ii) in the event that it is not possible to agree such rules or there is a dispute as to which organisations represent substantial proportions of the classes of the employees who are members of the Scheme the matter shall be referred to a single Arbitrator to be named by the President for the time being of The Law Society and the Arbitrator so named shall have all the powers conferred on Arbitrators by the Arbitration Acts 1950 and 1979; or

(b) ten individual trustees subject to appointment and removal as aforesaid.

(4) The Co-ordinator shall, in connection with the aforesaid appointments, make pursuant to Clause 38, such amendments to the Scheme and the Rules as may be necessary to give effect to the provisions of paragraph (3) above.

(5) Save insofar as the Pension Fund or any part of it is for the time being vested in any nominee or custodian trustee appointed under Clause 12(3) or in any person appointed under Clause 14(1), the Pension Fund shall be vested in the Trustee. The management and administration of the Scheme, in accordance with the provisions thereof, shall be vested in the Trustee.

(6) (a) All powers expressed by the Scheme, in whatever terms, to be vested in, conferred on or exercisable or to be exercised by the Committee of Management shall be vested in the Trustee.

(b) Such powers and all other powers vested in, conferred on or exercisable or to be exercised by the Trustee under or by virtue of the Scheme shall be exercised by it and on its behalf by and through the Committee of Management in their capacity as the Committee of Management of the Trustee (within the meaning of the Articles of Association of the Trustee (hereinafter called "the Articles") in the case of a body corporate which is for the time being the sole trustee of the Scheme) or any other person or body of persons required, authorised or empowered to exercise such powers or any of them by or under any provisions of the Scheme (and by or under the Articles).

(c) Save in relation to Clause 39 and the meanings assigned to "the Committee of Management" by Clause 43(2), any reference in the Scheme, in whatever terms, to the Committee of Management shall be construed as a reference to the Trustee acting by and through the Committee of Management in the capacity specified in sub-paragraph (b) above, or any other person or body of persons required, authorised or empowered to act for it or on its behalf for that purpose by or under any provision of the Scheme (and by or under the Articles).

7 - There shall be paid into or held to the credit of the Pension Fund -

(a) all Standard Contributions and Deficiency Contributions payable by the Employers;

(b) all sums collected by the Employers as members' contributions;

(c) all sums accepted by the Scheme by way of Transfer Payments from any other scheme;

(d) all dividends, interest and benefits arising out of the investment or employment of the Pension Fund or any part thereof;

(e) all other sums received or held by the Committee of Management in connection with or for the purposes of the Scheme.

8 - There shall be paid by the Committee of Management out of the Pension Fund -

(a) all benefits payable to any person (subject to any deductions to be made therefrom) under the Rules;

(b) all costs and expenses of the administration of the Scheme;

(c) any sums payable under the Rules as they have effect from time to time by way of Transfer Payments or other payments by way of transfer to any other scheme;

(d) all sums payable by law out of the Pension Fund or by the Committee of Management in their capacity as trustees or administrators of the Pension Fund or of the Scheme.

Notwithstanding the foregoing provisions of this Clause the liability of the Committee of Management to make any payment to or in respect of a Relevant Beneficiary (as defined in Clause 9) shall be limited to the value of the Employer's Fund at the time at which such payment is to be made.

EMPLOYERS' FUNDS

9 - (1) For the purposes of the Scheme there shall be within the Pension Fund an Employer's Fund in relation to each Employer (including a former Employer in the case of an Employer's Fund which has not been dealt with in accordance with Clause 41) and the value of Units standing to the credit of an Employer's Fund together with any net credit or debit balances held by the Committee of Management in an administration account in respect of that Employer for the purposes of paragraphs (4), (7) and (8) of this Clause at any time shall represent the value at that time of the part of the Pension Fund (after excluding the assets of the AVC Scheme referred to in Rule 6) attributable to the participation in the Scheme of the Employer to whom that Employer's Fund relates.

(2) For the purposes of this Clause all amounts received or payable pursuant to the AVC Scheme referred to in Rule 6 shall be disregarded.

(3) Subject to the provisions of paragraph (4) of this Clause on a Subscription Day the Committee of Management shall credit to an Employer's Fund the Units referred to in paragraph (6) hereof in respect of all amounts received by the Scheme from or in respect of Relevant Beneficiaries since the immediately preceding Subscription Day.

(4) The Committee of Management may retain out of the amounts received and referred to in paragraph (3) of this Clause such sum as in their opinion is likely to be required before the immediately following Subscription Day for the payment of benefits or Transfer Value Payments in respect of Relevant Beneficiaries or for the payment of premiums under any insurance policy or contract insuring any liability in respect of Relevant Beneficiaries or for the payment of such of the expenses of the Scheme as in the opinion of the Committee of Management should be borne by that Employer's Fund and any such retention in respect of expenses shall be credited by the Committee of Management to the Expenses Fund referred to in paragraph (19) of this Clause. The Committee of Management may (but are not required to) charge or credit interest in respect of any administration accounts maintained by them for the purposes of this paragraph (4) of this Clause as they shall in their absolute discretion determine from time to time.

(5) Subject to the provisions of paragraphs (7) and (8) of this Clause the amounts referred to in paragraph (3) of this Clause after the deduction of all amounts retained under paragraph (4) of this Clause are referred to in this Clause as the "Subscription Day Credit".

(6) The number of Units to be credited to an Employer's Fund on a Subscription Day shall be calculated by dividing the Subscription Day Credit by the Unit Offer Value at that Subscription Day, the resulting figure being adjusted to the nearest second place of decimals.

(7) If during the period which ends on a Subscription Day and which began on the immediately preceding Subscription Day the payments actually made (as referred to in paragraph (4) of this Clause) exceed the amount retained for the purpose on the immediately preceding Subscription Day the Committee of Management may either deduct the excess from the amount which would otherwise be the Subscription Day Credit on the later Subscription Day or debit the Employer's Fund on the later Subscription Day with the number of Units calculated by dividing the amount of such

excess by the Unit Bid Value at that Subscription Day the resulting figure being adjusted to the nearest second place of decimals.

(8) If on a Subscription Day no amount is retained under paragraph (4) of this Clause and during the period which ends on the day immediately following Subscription Day payments (as referred to in paragraph (4) of this Clause) are made the Committee of Management may either deduct the amount of the payments so made from the amount which would otherwise be the Subscription Day Credit on the later Subscription Day or debit the Employer's Fund on the later Subscription Day with the number of Units calculated by dividing the amount of such payments by the Unit Bid Value at that Subscription Day the resulting figure being adjusted to the nearest second place of decimals.

(9) The Committee of Management shall supply a written statement at least once every twelve months to each Employer giving details of the transactions in Units which have taken place for the Employer's Fund since the effective date of the last statement and the total number of Units standing to the credit of the Employer's Fund at the date to which the statement relates.

(10) For the purposes of this Clause a valuation of the Pension Fund shall be made in accordance with the following provisions of this Clause Provided that any amounts of uninvested cash held by the Committee of Management at any Subscription Day (other than in the Expenses Fund) shall be included in the valuation of the Pension Fund at face value if denominated in Sterling.

(11) The following shall be left out of account in valuing the Pension Fund on a Subscription Day:-

(i) all Subscription Day Credits on that Subscription Day and

(ii) all amounts of excess referred to in paragraph (7) of this Clause in respect of which a debit to an Employer's Fund is to be made on that Subscription Day and

(iii) the amount of all payments referred to in paragraph (8) of this Clause in respect of which a debit to an Employer's Fund is to be made on that Subscription Day and

(iv) the Expenses Fund.

(12) Where an agreement exists for the unconditional sale or purchase of assets on behalf of the Pension Fund which has not been completed, it is to be assumed that it had been completed.

(13) The Committee of Management may deduct from the Pension Fund their reasonable estimate of any accrued liabilities payable out of the Pension Fund.

(14) The Committee of Management may add to the Pension Fund their reasonable estimate of the amount of any claims for repayment of tax and of income due but not received.

(15) In relation to assets valued in a foreign currency, the Committee of Management shall convert that value into sterling at a rate of exchange which, unless the Committee of Management decide in their reasonable opinion to adopt an alternative method of conversion, represents the mid point between the highest and lowest rates of exchange quoted for conversion of that currency into sterling.

(16) Unless the Committee of Management decide in their reasonable opinion to adopt an alternative method of valuation, any assets traded on a market approved by the Committee of Management shall be valued at an amount which:-

(a) if the valuation is on an offer basis, is the amount which would be payable to buy the assets increased by the Committee of Management's estimate of the charges which would be payable by a buyer of the assets;

(b) if the valuation is on a bid basis, is the amount which would be received on a sale of the assets, reduced by the Committee of Management's estimate of the charges which would be payable by a seller of the assets.

In each case it shall be assumed that the transaction would be on the best terms available on the market in what, in the reasonable opinion of the Committee of Management, is a transaction of a standard size except that the Committee of Management may value assets by reference to the terms available in relation to their actual, rather than a standard, size, if in their reasonable opinion it would be more appropriate to do so. If any assets are traded on more than one market approved by the Committee of Management, the market to be used for this purpose shall be selected by the Committee of Management.

(17) Any other assets shall be valued at an amount decided by the Committee of Management in their discretion, which is not greater than the amount which would be

payable to buy the assets and not less than the amount which would be received on selling the assets, in each case on the best terms available and in an arm's length transaction for immediate settlement. The Committee of Management may, however, determine in their reasonable opinion to adopt an alternative method of valuation.

(18) In valuing the Pension Fund for the purposes of this Clause the Committee of Management may rely on advice on any matter relevant to the valuation obtained from a person whom they reasonably believe is qualified to give the advice.

(19) For the purposes of the Scheme there shall be within the Pension Fund an Expenses Fund for the purposes of meeting the costs and expenses of managing and administering the Scheme (as referred to in Clause 15) to which there shall be credited any amounts retained by the Committee of Management in respect of the expenses of the Scheme pursuant to paragraph (4) of this Clause. The Committee of Management may in addition on any Subscription Day and from time to time debit from each Employer's Fund and credit the same to the Expenses Fund amounts calculated on such basis as the Committee of Management shall from time to time determine. The Committee of Management may in their absolute discretion on any Subscription Day debit from the Expenses Fund and include in an Employer's Subscription Day Credit amounts as they determine to be appropriate, including (without limitation) in the circumstances of a termination of the Scheme pursuant to Clause 40 or a partial termination of the Scheme pursuant to Clause 41.

(20) In this clause:-

"Relevant Beneficiaries" means in relation to an Employer the members employed by such Employer and all persons entitled or prospectively entitled to benefits under the Scheme claiming under or through such members. For the purpose of this definition "employed" is to be interpreted as including "formerly employed" except in the case of a member formerly employed by an Employer who has subsequently become employed by another Employer and only if (in such a case) and to such extent (if any) as an Internal Transfer Payment has been made in respect of the member in accordance with the provisions of Clause 10.

"Subscription Day" means the last business day in each month. The Committee of Management may change the Subscription Day for a month to any other business day in that month and may select a business day to be an additional Subscription Day in a month.

"Unit" means a unit of the Pension Fund. The Committee of Management shall decide the number of Units into which the Pension Fund is to be divided on the first day on which a sum is received by the Committee of Management for the credit of the Pension Fund.

"Unit Bid Value" means the amount calculated by dividing the value (calculated on the bid basis) of the Pension Fund at the close of business on a Subscription Day by the total number of Units in issue at the opening of business on that Subscription Day. The Unit Bid Value is rounded to the nearest penny.

"Unit Offer Value" means the amount calculated by dividing the value (calculated on the offer basis) of the Pension Fund at the close of business on a Subscription Day by the total number of Units in issue at the opening of business on that Subscription Day. The Unit Offer Value is rounded to the nearest penny.

TRANSFERS BETWEEN EMPLOYERS' FUNDS

10 - (1) Subject to Clause 11, if a member ceases to be in Contributing Service by reference to a particular Employer ("the earlier employer") and enters the employment of another Employer or subsequently re-enters the employment of the same Employer (in either case "the later employer") in circumstances in which he remains or becomes liable while in the employment of the later employer (or would remain or become liable but for his period of Contributing Service (including Contributing Service under MPS) having totalled 40 complete years) for the payment of Normal Contributions, the Committee of Management shall, if the member elects (in such manner as the Committee of Management may from time to time prescribe) to transfer his accrued entitlements from the Employer's Fund of the earlier employer to the Employer's Fund of the later employer, debit the Employer's Fund of the earlier employer with such number of Units (as defined in Clause 9) as shall be determined by the Actuary as representing such member's Internal Transfer Payment (as determined pursuant to paragraph (2) of this Clause) and shall credit the same number of Units to the Employer's Fund of the later employer as provided in paragraph (3) of this Clause.

(2) For the purposes of this Clause:-

(i) where the date the member makes the election referred to in paragraph (1) of this Clause is on or before 31 December 1999, the Internal Transfer Payment in respect of any member shall be determined by the Actuary as the actuarial value of the benefits which have accrued to and in respect of the member up to

the date of the cessation of his Contributing Service with the earlier employer calculated using the same methodology and the same actuarial assumptions and with an adjustment for market conditions calculated the same way, as is applicable for transfers from MPS under Rule 35(1); and

(ii) where the date the member makes the election referred to in paragraph (1) of this Clause is after 31 December 1999 Internal Transfer Payments in respect of any member shall be determined by the Actuary on such basis as shall be determined by the Committee of Management acting on the advice of the Actuary after having consulted the Co-ordinator, the earlier employer and the later employer.

Actuarial values to be determined for the purposes of this Clause will be determined using the member's age and benefit entitlement at the date of the election pursuant to paragraph (1) of this Clause and the market conditions prevailing at the Subscription Day nearest to the date of such election.

(3) The number of Units which have the same aggregate bid value as the Internal Transfer Payment determined under paragraph (2) above shall be transferred from the Employer's Fund of the earlier employer to that of the later employer at the first Subscription Day following the determination by the Actuary of the number of Units to be so transferred.

(4) If pursuant to this Clause, Internal Transfer Payments are being made to the Employer's Fund of a later employer in respect of members whose cessation of Contributing Service and change of employment is connected with a transfer of an undertaking or a part of an undertaking from the earlier employer to the later employer, the later employer and the earlier employer may agree that the accrued entitlements in the Employer's Fund of the earlier employer attributable to some or all of the former employees of the earlier employer (being pensioners, deferred pensioners and others claiming benefit through such pensioners and deferred pensioners) ("the Other Beneficiaries") shall also be transferred to the Employer's Fund of the later employer. Such transfers shall only be made with the consent of the Committee of Management and the members affected. In such circumstances the number of Units to be transferred as determined by the Actuary as representing the Internal Transfer Payment in respect of such former employees and Other Beneficiaries in the Employer's Fund of the earlier employer, shall be credited to the Employer's Fund of the later employer and for this purpose the Internal Transfer Payment in respect of such members and Other Beneficiaries shall be determined by

the Actuary in a manner consistent with that used for the Internal Transfer Payment being made at that time in respect of members moving to the employment of the later employer.

(5) Contributing Service of a member shall be determined separately by reference to each Employer of the member and upon the member becoming employed by another Employer a new period of Contributing Service shall commence in respect of which entitlements under the Scheme shall be calculated separately UNLESS an Internal Transfer Payment under this Clause is made in respect of the member to the Employer's Fund of the later employer. If an Internal Transfer Payment under this Clause is so made, Contributing Service of the member completed with the earlier employer shall be treated as Contributing Service with the later employer for all purposes of the Scheme and the Rules.

SUBSTITUTION AND AMALGAMATION OF EMPLOYERS' FUNDS

11 - If an Employer ("the original employer") enters into liquidation for the purposes of reconstruction or amalgamation and immediately thereafter the undertaking which is the product of that reconstruction or amalgamation ("the successor employer"):-

(a) employs every member who is liable (whilst so employed) to pay Normal Contributions or who would be so liable but for his period of Contributing Service (including Contributing Service under MPS) having totalled 40 complete years and who, immediately before the reconstruction or amalgamation, was employed by the original employer; and

(b) is either already an Employer in respect of other members or is admitted to the Scheme as an Employer in accordance with paragraph (3) of Clause 5,

then all of the assets and liabilities of the Employer's Fund of the original employer shall be transferred to the Employer's Fund of the successor employer with effect from the date on which the employments of the members referred to in paragraph (a) hereof are transferred to the successor employer or, if later, the date with effect from which the successor employer is admitted to the Scheme as an Employer.

MANAGEMENT OF PENSION FUND

12 - (1) So much of the moneys of the Scheme as shall not from time to time be required for application in the payment of pensions or other benefits or otherwise shall as soon as practicable be invested by the Committee of Management in or upon the security of such investments whatsoever and wheresoever situate whether or not involving liability or whether or not producing income and whether or not otherwise authorised by law for the investment of trust funds as the Committee of Management shall in their absolute discretion think fit to the intent that the Committee of Management shall have the same unrestricted powers of making, varying, managing and transposing investments as if they were absolutely entitled to such moneys beneficially.

(2) Without prejudice to the generality of the foregoing powers the Committee of Management shall have power:-

(a) to effect and maintain policies of insurance;

(b) to retain or place any such moneys on deposit or current account with any bank or on deposit with any company, local authority, building society or insurance company in any part of the world and for such periods as they shall think fit; and

(c) to carry out any improvements of any kind to land or buildings in which the Scheme has an interest including the erection demolition and reconstruction of any buildings and the development of land and other property.

(3) The Committee of Management shall have power to appoint one or more nominees or custodian trustees to hold investments on behalf of the Committee of Management.

(4) The Committee of Management shall have power to raise or borrow any sum or sums of money and to secure the repayment thereof in such manner and upon such terms as they think fit and to charge the sums so raised or borrowed or any part thereof on all or any part of the Pension Fund.

(5) The Committee of Management shall have power to enter into any transaction which is not authorised by any of the other provisions of the Scheme or otherwise by law and which in their opinion is beneficial to the Scheme and, without prejudice to the generality of the foregoing, the Committee of Management shall have power:-

(a) to lend any investments of the Pension Fund to any person or corporation on such terms and for such purposes as the Committee of Management may think fit;

(b) to underwrite, sub-underwrite or guarantee the subscription of any stocks, shares, debenture stocks or other investments; and

(c) to give any warranty or indemnity in connection with the exercise of their powers under this Clause.

(6) Moneys may be invested or laid out in or upon any investment or transaction of any nature hereby authorised notwithstanding that the same may be acquired or entered into by the Committee of Management jointly or in common with any other person or corporation.

(7) The Committee of Management shall have power to enter into any arrangement approved for the purposes of this sub-clause by the Board of Inland Revenue under which the whole or a part of the assets of the Pension Fund is pooled for investment purposes with assets of any other Retirement Benefits Scheme that is an Exempt Approved Scheme on such terms as to the mode of investment, apportionment of capital and income, incidence of taxation, subsequent severance, fees and other expenses in connection with the investment and administration of such pooled fund and generally in all respects as the Committee of Management shall think fit.

13 - (1) The Committee of Management by themselves or any nominee on their behalf shall have power to do all or any of the following:-

(a) to carry on any business or other activity in partnership whether in the United Kingdom or elsewhere;

(b) to enter into any business or other partnership with others whether in the United Kingdom or elsewhere, or to acquire by subscription or otherwise an interest whether freely transferable or not in any such partnership;

(c) from time to time to finance or provide funds whether by way of loan or further investment or otherwise for any partnership or proposed partnership of which they or their nominee may for the time being be partners or propose to become partners; and

(d) from time to time to enter into any arrangement or agreement whether by way of substitution for or modification of any then subsisting arrangement or agreement or otherwise with all or any of the other partners or proposed partners in any partnership or proposed partnership of which they or their nominee may for the time being be partners or propose to become partners.

(2) The Committee of Management or any nominee on their behalf shall have power without being liable for any loss occasioned thereby to leave the entire management of any business or activity carried on by any partnership of which they or such nominee may for the time being be partners to any other partners or partner without any obligations on their or such nominee's part to attend thereto further than to require such other partners or partner to render an account thereof from time to time as the Committee of Management or such nominee may think appropriate.

(3) For the avoidance of doubt the Committee of Management shall have power:-

(i) to employ any moneys of the Scheme not required for payment of pensions or other benefits; and

(ii) to enter into transactions in connection with such a partnership as though such a partnership were an investment authorised under paragraph (1) of Clause 12.

(4) For the purposes of this Clause "business" includes any trade, profession or occupation.

14 - (1) Without prejudice to the provisions of or to any powers conferred by section 23 of the Trustee Act 1925 or Clauses 12, 13 and 35, the Committee of Management shall have power to employ such nominees or agents as the Committee of Management may think fit in the transaction of any business of the Scheme (including the payment of pensions and other benefits) and any valid receipt therefor given to or by such nominee or agent shall be a good and sufficient discharge to the Committee of Management.

(2) Without prejudice to the generality of the foregoing and the provisions of Clause 35 the Committee of Management shall have power to appoint and remove one or more investment managers to the Scheme and to authorise any such investment manager to exercise all or any of their powers set out in Clauses 12, 13 and paragraph (1) of this Clause on such terms as to remuneration and otherwise as shall from time to time be

agreed between the Committee of Management and such investment manager or managers.

(3) The Committee of Management shall from time to time appoint an actuary or a firm of actuaries (who shall be a Fellow or a firm of Fellows of the Institute of Actuaries or of the Faculty of Actuaries in Scotland or a body corporate or government department or agency making available to the Committee of Management the services and advice of such a Fellow and accepting responsibility for such advice) on such terms as to remuneration and otherwise as the Committee of Management shall think fit. No trustee of the Scheme and none of the directors or executive officers of any corporate trustee of the Scheme shall be eligible for appointment as the actuary.

(4) The Committee of Management shall from time to time appoint some person or firm with proper professional qualifications to be the Scheme's legal adviser upon such terms as to duties and remuneration as the Committee of Management may think proper and which terms shall be agreed with the legal adviser from time to time and incorporated into a letter of appointment issued by the Committee of Management. No trustee of the Scheme and none of the directors or executive officers of the Co-ordinator or of any of the Employers or of any corporate trustee of the Scheme shall be eligible for appointment as the Scheme's legal adviser.

COSTS OF ADMINISTRATION

15 - The costs and expenses of managing and administering the Scheme shall be borne by the Expenses Fund except that if the Committee of Management considers that a cost or expense relates (in whole or in part) to one or more (but not all) Employers such cost or expense (or such part thereof) shall be borne by the Employer's Fund which relates to that Employer (or if more than one in such proportions as the Committee of Management considers to be equitable).

ACCOUNTS AND AUDIT

16 - The Committee of Management shall cause to be kept full and true accounts of the Pension Fund and of each Employer's Fund and of all sums of money received and payments made by the Committee of Management and by all persons employed by or under the Committee of Management and shall cause to be kept full and correct records of all matters necessary or proper to be recorded. Separate accounts shall be

kept in relation to additional voluntary contributions made by members under Rule 6. The accounts and records of the Committee of Management shall be at all times open to the inspection of the members of the Committee of Management.

17 - The Committee of Management shall from time to time appoint some person or firm with proper professional qualifications to be the auditor to the Scheme upon such terms as to duties and remuneration as the Committee of Management may think proper. No member of the Committee of Management and none of the directors or executive officers of the Co-ordinator or of any of the Employers or of any corporate trustee of the Scheme shall be eligible for appointment as the auditor to the Scheme. The terms of any appointment of auditor under this Clause shall comply with The Occupational Pension Schemes (Auditors) Regulations 1987.

18 - (1) The Committee of Management shall cause statements of account including balance sheets, to be prepared as of 31 December 1995 and thereafter as hereinafter provided.

(2) The said statements shall be made up to 31 December in each year or to such other date as the Committee of Management may determine.

(3) Each such statement shall be completed not later than six Months after the date to which it is made up, and the Auditors shall make a report on such statement which shall be attached to it.

(4) The Auditors shall have a right of access at all times to the books and accounts of the Committee of Management and all vouchers relating to the items shown therein and shall be entitled to require from the Committee of Management and their officers such information and explanations as they deem necessary for the performance of their duties.

19 - A copy of every annual statement of account and of the Auditors' report attached thereto shall be delivered to the Co-ordinator and each Appointing Union within three months of the date on which they are completed.

EMPLOYER'S INITIAL RATE OF STANDARD CONTRIBUTIONS

20 - In respect of the period from the date of an Employer's first participation in the Scheme to the periodic review (referred to in Clause 21) which next follows such date the Actuary shall recommend the rate of that Employer's Standard Contributions to the Scheme.

PERIODIC VALUATIONS

21 - (1) The Actuary shall make periodic reviews of the financial condition of the Scheme. The Committee of Management shall determine the date as at which the first such periodic review shall be made. Each period in respect of which such a subsequent periodic review is made:-

(a) shall not in any event exceed three and a half years;

(b) shall be determined by the Committee of Management.

(2) (a) On each such periodic review:-

(i) The Actuary shall recommend the rate of each Employer's Standard Contributions to the Scheme. Such rates shall be expressed as a percentage of the Contribution Earnings of the members employed or deemed to be employed by such Employer or in such other form as may be agreed between the Committee of Management and the Actuary.

(ii) The Actuary shall determine whether or not, at the review date, there is a surplus or deficiency in each Employer's Fund if contributions after the review date are paid at the rate or rates recommended in sub-paragraph (i) of this paragraph.

(iii) If there is such a deficiency in an Employer's Fund, the Actuary shall determine the total periodic sum, either fixed in money terms or linked to average earnings or prices, (in this paragraph called "the deficiency sum") which, in his opinion, is required to be paid by way of Deficiency Contributions to the Employer's Fund over a period of such number of years not exceeding twenty, commencing on such date not earlier than the review date and at such periodic intervals all as shall be determined by the Co-ordinator.

(3) On each periodic review the Actuary shall make a report to the Committee of Management on the financial condition of the Scheme and of each Employer's Fund specifying the recommendations and determinations made by him under paragraph (2) of this Clause. A copy of each review and report so made on an Employer's Fund shall be delivered by the Committee of Management to the Co-ordinator to the

relevant Employer and to each Appointing Union, together with any recommendation they may wish to make having regard thereto.

(4) In respect of each Employer's Fund the Committee of Management shall submit to the Board of Inland Revenue in any of the circumstances referred to in Schedule 22 to the Taxes Act proposals which shall have been approved by the Committee of Management and by the relevant Employer and which comply with paragraph 3(2) to (4) of Schedule 22 to the Taxes Act and shall carry out any such proposals if they are approved by the Board of Inland Revenue PROVIDED THAT except on the discontinuance of the Scheme under Clause 40 the Committee of Management shall neither submit to the Board of Inland Revenue nor carry out any proposal which would lead to the transfer or payment of any part of the Pension Fund to any of the Employers.

ADMINISTRATION

22 - (1) The management and administration of the Scheme shall be vested in the Committee of Management as provided under the Articles or subject to Clause 36 constituted as hereinafter provided.

(2) The costs of such management and administration by the Committee of Management and all costs and expenses incurred by virtue of the exercise of the powers conferred by paragraph (2) of Clause 14 shall be borne by the Expenses Fund.

COMMITTEE OF MANAGEMENT

23 - (1) The Committee of Management shall (subject to the exercise of the powers conferred by this Clause and to the proviso to paragraph (5) of this Clause and to Clause 36) consist of ten members. The Co-ordinator shall have the power to appoint and remove five members and the Eligible Unions shall have the power to appoint and remove an aggregate number of five members. The Co-ordinator and the Eligible Unions may in respect of each person appointed by them appoint and remove a person to be an alternate member of the Committee of Management and such alternate member shall in the absence of such member be entitled to attend and vote at all meetings of the Committee of Management on behalf of the member in respect of whom he is appointed and generally in the absence of such member to perform and exercise all the duties, powers and discretions of such absent member. An alternate member shall cease to be an alternate member if the member for whom he acts as an alternate ceases for any reason to be a member of the Committee of Management.

(2) The Committee of Management comprise the following:-

(i) Five individuals appointed by the Co-ordinator (together "the Co-ordinator's First Committee Members").

(ii) Three individuals appointed by the Union (together "the NUM's First Committee Members").

(iii) Two individuals appointed by the Union of Democratic Mineworkers (together "the UDM's First Committee Members").

(3) The Co-ordinator shall have the power to remove from the Committee of Management all or any of the Co-ordinator's First Committee Members (and all or any of the members of the Committee of Management appointed in their place) and to appoint a new member of the Committee of Management in place of each member so removed, the National Union of Mineworkers shall have the power to remove from the Committee of Management all or any of the NUM's First Committee Members (and all or any of the members of the Committee of Management appointed in their place) and to appoint a new member of the Committee of Management in place of each member so removed and the Union of Democratic Mineworkers shall have the power to remove from the Committee of Management all or any of the UDM's First Committee Members (and all or any of the members of the Committee of Management appointed in their place) and to appoint a new member of the Committee of Management in place of each member so removed. The Co-ordinator shall have the power to appoint and remove a person to be the alternate for each of the Co-ordinator's First Committee Members (including members of the Committee of Management appointed in their place), the National Union of Mineworkers shall have the power to appoint and remove an alternate for each of the NUM's First Committee Members (including members of the Committee of Management appointed in their place) and the Union of Democratic Mineworkers shall have the power to appoint and remove an alternate for each of the UDM's First Committee Members (including any members of the Committee of Management appointed in their place).

(4) Each Eligible Union shall have the power to appoint and remove the number of members determined in accordance with paragraph (5) of this Clause, subject to the aggregate number of members appointed by the Eligible Unions not exceeding five. Each member of the Committee of Management, whether appointed by the Co-ordinator or an Eligible Union, shall cease to hold office on the next Appointment

Date unless he is re-appointed or prior to that date he ceases to be a member of the Committee of Management pursuant to the provisions of the Scheme.

(5) The number of members of the Committee of Management to be appointed by each Eligible Union shall be determined according to the percentage which the number of Relevant Members of that Eligible Union at the Relevant Time bears to the aggregate number of Relevant Members of both Eligible Unions at the Relevant Time as follows:-

Percentage of aggregate number of Relevant Members	Number of members of the Committee of Management
10% or more but less than 30%	1
30% or more but not more than 50%	2
More than 50% but not more than 70%	3
More than 70% but not more than 90%	4
More than 90%	5

Provided that if it is determined that both Eligible Unions have exactly 50% of the aggregate number of Relevant Members, the number of members of the Committee of Management shall with effect on and from the next Appointment Date be reduced to eight and the references in paragraph (1) of this Clause to "ten" and "five" shall be deemed to be references to "eight" and "four" respectively until a different percentage shall be determined in accordance with the following provisions of this Clause.

(6) Each Employer shall subject to the provisions of paragraph (12) of this Clause at three-yearly intervals not later than 31st December in the relevant year notify the Co-ordinator of the number of its employees who were members of the Scheme and considered accordingly to the records of the Employer as being contributing members of that Eligible Union at the Relevant Time. Such notification shall include confirmation of the verification by the Employer's auditors of the particulars contained therein. As soon as practicable following their receipt of such notifications from all of the Employers the Co-ordinator shall notify each Eligible Union of the number of employees of each Employer who were members of the Scheme and attributed as being contributing members of that Eligible Union at the Relevant Time, the aggregate number of persons so considered in respect of both Eligible Unions and the number of members of the Committee of Management which that Eligible Union has power to appoint pursuant to paragraph (5) of this Clause. Such notification shall be

accompanied by a copy of each Employer's auditors' confirmation of the verification of such Employer's particulars notified to the Co-ordinator.

(7) Within 10 days of receipt of a notification by the Co-ordinator pursuant to paragraph (6) of this Clause an Eligible Union may give notice in writing to the Co-ordinator that it intends to make submissions to an Employer's auditors pursuant to this paragraph. Upon receipt of such notice the Co-ordinator shall forthwith notify in writing the other Eligible Union which may within 10 days thereafter also give notice in writing to the Co-ordinator that it intends to make submissions to such Employer's auditors pursuant to this paragraph. An Eligible Union which has given such notice may within 30 days following the receipt of a notification by the Co-ordinator pursuant to paragraph (6) of this Clause submit to such Employer's auditors the number of those persons who the Eligible Union considers were Relevant Members of the Eligible Union at the Relevant Time together with the full name and such identifying details of each such person and such evidence of contributing union membership as such Employer's auditors may from time to time consider necessary.

(8) If an Eligible Union makes submissions to such Employer's auditors pursuant to paragraph (7) of this Clause it shall forthwith notify the Co-ordinator and such Employer in writing. The Employer shall provide to its auditors such further information from its records as its auditors may reasonably require.

(9) In respect of its employees each Employer shall instruct its auditors to determine so far as practicable by reference to the records of the Employer the number of persons included by an Eligible Union in any submissions pursuant to paragraph (7) of this Clause who were Relevant Members of the Relevant Time Provided that where any person included in the Eligible Union's submissions was not considered as a contributing member of that Eligible Union in the records of the Employer at the Relevant Time the auditors shall:-

(a) satisfy themselves that such person was a contributing member of the Eligible Union at the Relevant Time or, failing that;

(b) endeavour to obtain from such person his written confirmation as to the Eligible Union, if any, of which he intended his Employer to treat him as being a contributing member at the Relevant Time and until they receive such confirmation shall not count that person as a member of the Eligible Union in question.

The Employer shall instruct its auditors to notify the Co-ordinator of its determination.

(10) If at any stage the Co-ordinator is satisfied following any submissions by either or both of the Eligible Unions pursuant to paragraph (7) of this Clause that the number of members of the Committee of Management which either Eligible Union has the power to appoint in accordance with the notification by the Co-ordinator under paragraph (6) of this Clause will not require change then such notification by the Co-ordinator shall stand and the Co-ordinator shall give notice to the Eligible Unions accordingly but if the Co-ordinator becomes satisfied that its notification contains a discrepancy which materially affects the number of members of the Committee of Management which the Eligible Union has the right to appoint the Co-ordinator shall prior to the 1st March next following its notification determine the necessary revisions to such notification and give forthwith a revised notification to each Eligible Union accordingly.

(11) Following receipt of a notification or revised notification from the Co-ordinator pursuant to the provisions of this Clause each Eligible Union shall have power to appoint with effect on and from the next Appointment Date such number of members of the Committee of Management as shall have been notified to it.

(12) In any year when a notification would not normally be given by the Co-ordinator pursuant to paragraph (6) of this Clause an Eligible Union may give notice to the Co-ordinator by not later than 5th April in that year that it requires the Co-ordinator to give a notification pursuant to paragraph (6) of this Clause in that year. In that event the Co-ordinator shall by not later than 31st December in that year give notification to each Eligible Union pursuant to paragraph (5) of this Clause and the provisions of paragraphs (6) to (11) of this Clause shall apply mutatis mutandis.

(13) The costs of an Employer's auditors in connection with this Clause (including costs incurred by the Co-ordinator on behalf of an Employer's auditors) shall be borne by the Expenses Fund save that if an Eligible Union makes submissions or gives notice pursuant to paragraph (7) or (12) of this Clause which do not result in an increase in the number of members of the Committee of Management which that Eligible Union has power to appoint at the next Appointment Date the costs of an Employer's auditors in connection with and arising from such submissions or notice (including costs incurred as aforesaid) shall be borne by such Eligible Union or, if more than one Eligible Union, by them in such proportions as the auditors shall determine as appropriate.

24 - The appointment and removal of any member of the Committee of Management and of any alternate member thereof shall be effected by an instrument in writing signed on behalf of the Co-ordinator or an Appointing Union as the case may be and delivered to the Secretary. Whenever a vacancy occurs on the Committee of Management it shall be filled by a new appointment by the Co-ordinator or an Appointing Union as the case may be.

25 - Subject to the provisions of paragraphs (1), (2), (3) and (4) of Clause 23 any appointment of a member or alternate member of the Committee of Management may be expressed to be for a specified term or until the happening of some specified event and upon the expiration of such term or the happening of such event the member or alternate member so appointed shall cease to be a member or alternate member of the Committee of Management.

26 - The office of a member or alternate member of the Committee of Management shall determine if he shall by instrument in writing delivered to the Secretary resign his office or if he shall become bankrupt or of unsound mind.

27 - The Co-ordinator shall appoint the Chairman of the Committee of Management from amongst the members of the Committee appointed by it and may prescribe the period for which he is to hold the office of Chairman.

28 - The Co-ordinator and the Appointed Unions acting jointly shall each appoint from amongst the members of the Committee appointed by it or them respectively a person to be a Joint Deputy Chairman of the Committee of Management and may prescribe the period for which he is to hold the office of Joint Deputy Chairman.

29 - The Committee of Management may, subject to the provisions of the Scheme, meet together for the despatch of business, adjourn and otherwise regulate their proceedings as they think fit. The Chairman of the Committee of Management or in his absence one of the Joint Deputy Chairmen (to be chosen if both are present by agreement between them or in default of such agreement by lot) shall take the Chair at every meeting of the Committee of Management at which he is present. The continuing members of the Committee of Management may act notwithstanding any vacancy in their body provided that the necessary quorum is available to enable them to act. The quorum necessary for the transaction of the business of the Committee of Management shall be one half of the total number of members thereof of whom one must be the Chairman or the Joint Deputy Chairman appointed by the Co-ordinator.

30 - Subject to the provisions of sub-paragraph (a) of paragraph (4) of Clause 38 differences arising at any meeting of the Committee of Management shall be determined by a majority of votes. In the case of an equality of votes the Chairman of the meeting shall have a second or casting vote.

31 - The Committee of Management shall cause proper minutes to be made of all meetings of the Committee of Management and of all business transacted at such meetings. Any such minute of any such meeting if purporting to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting shall be conclusive evidence without any further proof of the fact stated therein.

32 - A resolution in writing signed by such members of the Committee of Management as would constitute a quorum as specified in Clause 29 for a meeting of the Committee of Management shall be as valid and effectual as if it had been passed at a meeting of the Committee of Management duly convened and held. Such resolution in writing may consist of two or more documents in the like terms each signed by one or more of the said members of the Committee of Management.

33 - There shall be a joint Secretary to act as secretary of the Committee of Management. The Co-ordinator and each Appointing Union shall have the power to appoint and remove one such joint Secretary. If an Eligible Union ceases to be an Appointing Union the joint Secretary appointed by it shall immediately cease to hold office. If there shall for the time being be a vacancy in the office of the joint Secretaries the surviving or continuing joint Secretary or joint Secretaries shall have full power to act and the Committee of Management may at any time and from time to time nominate any person to perform any of the duties of the joint Secretaries of the Committee of Management in any case in which it is impracticable or inconvenient for the joint Secretaries or the surviving or continuing joint Secretary or joint Secretaries to act.

34 - The Committee of Management shall have power to appoint and to delegate all or any of their powers (other than the power to make regulations) to sub-committees consisting of one or more persons being members or alternate members of their own body or officers or servants of the Committee of Management or other persons as the Committee of Management shall think fit and may make any regulations for the conduct of the proceedings of such sub-committees. The meeting and proceedings of every such sub-committee consisting of two or more persons shall be regulated by the provisions of the Scheme relating to the meetings and proceedings of the Committee of Management insofar as the same may be applicable and are not superseded by any regulations made under this Clause by the Committee of Management.

35 - The Committee of Management may make and from time to time revoke or vary regulations for the general administration of the Scheme by the Committee of Management not being inconsistent with the provisions of the Scheme or of the Rules.

36 - If and for so long as a body corporate is for the time being the sole trustee of the Scheme, then Clauses 23 to 35 (inclusive) shall be read and construed as being subject to the provisions for the time being in force of the Articles relating to the committee of management thereof, which provisions shall prevail over Clauses 23 to 35 (inclusive) in the event of there being any inconsistency or ambiguity, and the following provisions shall apply:-

(1) The Committee of Management may from time to time with the approval of the Co-ordinator appoint such persons as may be requisite for their administration of the Scheme at such remuneration and upon such conditions as the Committee of Management, with the concurrence of the Co-ordinator, shall deem proper. The remuneration of such persons shall also be such as the Committee of Management shall from time to time determine.

(2) The Committee of Management shall from time to time with the consent of the Co-ordinator appoint a secretary and such other persons as may be requisite to administer the Scheme and may at any time remove any person or persons appointed under this Clause. The remuneration of the secretary and any other persons so appointed to perform services in connection with the Scheme shall be agreed by the Co-ordinator and the Committee of Management and be paid and borne in the same manner as the costs referred to in whichever is applicable of Clause 15 and Clause 8(b).

(3) The Secretary appointed under paragraph (2) above shall -

(i) keep the records of the membership of the Scheme together with books and papers relating to the Scheme and the business thereof;

(ii) report to the Committee of Management, in such manner as the Committee of Management may from time to time direct, on the costs of managing and administering the Scheme, applications for allowances or payments under the Scheme, and other matters to be brought under the consideration of the Committee of management;

(iii) be a member, in so far as the Committee of Management so agree, of any sub-committee (if any) to which powers are delegated under paragraph (4) of

this Clause 36 but shall not be entitled to vote at meetings of such sub-committees; and

(iv) perform such other duties in connection with the Scheme as the Committee of Management may from time to time direct.

(4) (i) The Committee of Management may delegate any of the powers referred to in Clause 6(6)(a) to any sub-committee consisting (subject to the provisions of paragraph (3) of this Clause 36 and the Articles) of such member or members of its body, with or without other persons not being members of its body, as it shall think fit.

(ii) Any sub-committee so appointed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Committee of Management. The meetings and proceedings of any sub-committee consisting of two or more members shall, subject to the provisions of the Articles, be governed by such of those provisions as relate to the meetings and proceedings of the Committee of Management so far as the same may be applicable and are not superseded by any regulation made for such sub-committee under this Clause.

(5) (i) Without prejudice to the provisions of or to any powers conferred by section 23 of the Trustee Act 1925 or Clauses 12, 13, 14 and 36(4), the Committee of Management may delegate to any one or more persons or bodies of persons (each of whom or which is in this Clause called "the delegate") in any part of the world, whether nominated directly by the Committee of Management or nominated by any other person or body of persons authorised by them to do so (and including, for the avoidance of doubt, any nominee or custodian or other trustee appointed under Clause 12, any person or body of persons with whom or which any agreement is or has been entered into under Clause 14 or any sub-committee appointed under paragraph (4) of this Clause) the exercise of all or any of the powers referred to in Clause 6(6)(b), for such period and on and subject to such terms, limitations and conditions, if any, as the Committee of Management may think fit.

(ii) The terms and conditions referred to in paragraph (5)(i) of this Clause may, without prejudice to the generality of that paragraph and if and insofar as the Committee of Management may think fit, include terms and conditions:-

(a) authorising the delegate, or any other person or body of persons (whether or not a direct sub-delegate of the delegate but in this Clause called "a sub-delegate") to whom a sub-delegation or further delegation has been made by virtue of any such authorisation, to exercise in relation to the powers delegated to him or it the same or any of the same powers as are conferred on the Committee of Management by this Clause; and

(b) providing in such manner as the Committee of Management may think fit for the protection and convenience of persons or bodies of persons dealing with the delegate or a sub-delegate.

(iii) The Committee of Management may at any time cancel or vary any delegation made under paragraph (5)(i) of this Clause or any such sub-delegation or further delegation as is referred to in paragraph (5)(ii)(a), but no person or body of persons dealing with the delegate or a sub-delegate in good faith and without notice of the cancellation or variation shall be affected thereby.

AMENDMENT OF TRUST DEED AND RULES

38 - (1) Subject to the provisions of paragraph (3) of this Clause, the Co-ordinator may from time to time and at any time (and with the consent of the Committee of Management where this is required under paragraph (2) or (4) of this Clause) amend the Trust Deed or the Rules by the alteration, deletion or addition of any provisions, but no alteration, deletion or addition shall be made which would have the effect of:-

(a) altering the main purpose of the Scheme from that of providing pensions for members on retirement;

(b) making any of the moneys of the Scheme payable to any Employer;

(c) reducing the amounts of any benefits already earned or accrued;

(d) terminating the liability of any of the Employers to contribute to the Pension Fund in respect of the Protected Benefits of any Protected Person;

(e) permitting the discontinuance of the Scheme other than in the circumstances contemplated in Clause 40(3) at any time while there are in relation to any Employer any beneficiaries of the Scheme who are Protected Persons.

(2) Subject to the provisions of paragraph (3) of this Clause no amendment shall be made to Clauses 2 (other than paragraph (6) thereof), 5, 6, 23, 38, 40 and 41 of the Trust Deed or the proviso to Clause 21(4) of the Trust Deed unless it has been approved by all the members for the time being of the Committee of Management.

(3) No amendment shall be made to Clause 40(3) or Clause 40(7) during such time as the liabilities of the Scheme include liabilities in respect of the Protected Benefits of any Protected Person.

(4) No amendment shall be made to the Trust Deed or Rules unless such amendments shall have been proposed by the Co-ordinator and approved in any case to which paragraph (2) of this Clause does not apply, by resolution passed by the votes of a majority of the members for the time being of the Committee of Management or their alternates.

MISCELLANEOUS

39 - (1) Save to the extent that they are covered by external insurance the persons protected by this Clause are

(a) the members and alternate members of the Committee of Management and of every sub-committee of the Committee of Management;

(b) each of the joint Secretaries and the Pensions Officer;

(c) any other person to whom the Committee of Management shall have determined under paragraph (4) of this Clause that this Clause shall apply (but subject to the terms of any determination so made).

(2) Unless and except to the extent that he is otherwise covered by external insurance, every person indemnified by this Clause shall together with his estate and effects be indemnified and kept at all times indemnified out of the moneys of the Scheme against all actions proceedings claims demands costs charges losses damages expenses and liabilities of any nature whatsoever and however arising which he or his estate or effects shall or may incur or sustain by reason of any act done or omitted in relation to the affairs of the Scheme except as a result of a wilful or reckless act or omission by that person known by him to be a breach of trust or breach of duty in relation to the Scheme or done or omitted by him recklessly as to whether or not it is such a breach of trust or duty.

(3) No person protected by this Clause shall be accountable or answerable for the acts receipts neglects or defaults of any other person acting in relation to the Scheme or by joining in any receipt for the sake of conformity or for the acts receipts neglects or defaults of any bankers or other persons with whom any moneys investments or effects belonging to the Scheme shall or may be lodged or deposited for safe custody or for the insufficiency or deficiency of any security or investment upon which any moneys of the Scheme shall or may be placed out or invested or for any loss misfortune or damage which the Scheme or any beneficiary or other person claiming under the Scheme shall or may sustain except as a result of a wilful or reckless act or omission by the protected person known by him to be a breach of trust or breach of duty in relation to the Scheme or done or omitted by him recklessly as to whether or not it is such a breach of trust or duty.

(4) The Committee of Management may in their discretion if they consider such action in the interests of the Scheme determine in relation to any person who is engaged to perform any functions or services for the purposes of the Scheme and is not otherwise protected by this Clause that such person shall, to such extent and on such terms as the Committee of Management may think fit, be afforded the benefit of indemnity under paragraph (2) of this Clause.

TERMINATION OF THE SCHEME

40 - (1) This Clause shall override any other provisions of the Trust Deed or the Rules which are inconsistent with it.

(2) The words and expressions used in this Clause shall have the same meanings as in the 1993 Act.

(3) Subject to Clause 42, the Scheme shall continue for such period as is allowed by law. The date on which the Scheme determines by operation of law or otherwise the effective date of termination of the Scheme shall be referred to as "the Termination Date". Subject as hereinafter provided upon the discontinuance of the Scheme, the AVC Scheme referred to in Rule 6 and each Employer's Fund shall be dealt with for the benefit of those members and Dependants entitled to benefits therefrom by (subject to the provisions of paragraph (10) of this Clause) realisation of the Employer's Fund and the AVC Scheme at such time or times as the Committee of Management shall think fit in the light of prevailing investment conditions and application of the net proceeds thereof in accordance with the following paragraphs of this Clause.

Notwithstanding the foregoing provisions the Committee of Management shall have power on giving notice to each of the members to transfer, with the consent of the members, the Employer's Funds and the AVC Scheme (or the appropriate part or parts thereof) in such amounts and on such terms as the Actuary may certify as equitable, having regard to the rights to and expectations of benefits of those members for whom provision is made in this way, to one or more new or existing retirement benefits schemes approved for the purpose of this Clause by the Board of Inland Revenue PROVIDED THAT any such transfer shall, if it is to be made in circumstances in which regulation 9 of The Coal Industry (Protected Persons) Pensions Regulations 1994 applies, only be made in circumstances where the Committee of Management are satisfied that the requirements of the said regulation 9 are complied with.

(4) On the discontinuance of the Scheme, the Committee of Management shall be entitled to reserve out of the Pension Fund such amount as they consider may be necessary to meet all proper costs, charges and expenses of and incidental to the realisation and/or transfer of the Pension Fund and the winding up of the Scheme and all taxes and duties for which the Committee of Management may be accountable under the Scheme.

(5) Subject to the provisions of paragraph (4) of this Clause and subject in all cases to the Inland Revenue Limits, the balance of each Employer's Fund and the AVC Scheme shall be applied for the benefit of those members and other persons whose rights to and expectations of benefits have not been secured by a transfer to any other retirement benefit scheme pursuant to paragraph (3) of this Clause and relate to such Employer's Fund or (as the case may be) to the AVC Scheme and in the case of a member who was paying Normal Contributions to the Scheme on the Termination Date on the basis that he ceased to pay Normal Contributions on that date:-

(a) in securing separately in respect of each Employer's Fund and the AVC Scheme (in equal priority as between themselves) to any other liabilities in respect of the said members and other persons liabilities in respect of:-

(i) guaranteed minimum pensions and accrued rights to guaranteed minimum pensions;

(ii) any such benefits as are excluded by section 13(6) of the 1993 Act from earners' guaranteed minimum pensions;

(iii) pensions and other benefits in respect of which entitlement to payment has already arisen other than those included in sub-paragraphs (a)(i) and (a)(ii) of this paragraph;

(iv) state scheme premiums;

(v) where an earner has attained Pensionable Age, pensions and other benefits, insofar as they do not fall within the foregoing provisions of this paragraph

(a) to which the earner will be entitled on ceasing to be in employment; and

(b) to which the earner's Widow or any Dependant of the earner will be entitled on the death of the earner;

(vi) where an earner has retired before Pensionable Age with an immediate pension but at the time of winding-up has not attained Normal Retiring Age, pensions and other benefits, insofar as they do not fall within the foregoing provisions of this paragraph, to which the earner's Widow or any Dependant of the earner will be entitled on the death of the earner; and

(vii) benefits attributable to any period of service before 6th April 1978;

(b) subject to sub-paragraph (a), in securing (in equal priority as between themselves) separately in respect of each Employer's Fund and the AVC Scheme liabilities in respect of:-

(i) entitlement to pensions and other benefits of those members who had ceased to pay Normal Contributions on or before the date of discontinuance and who had not attained at that date Pensionable Age;

(ii) entitlement to a refund of contributions pursuant to paragraph (4) of Rule 22 for those members who are paying Normal Contributions at the date of discontinuance and, on the date of discontinuance, had less than two years of Qualifying Service; and

(iii) entitlement to pensions and other benefits of Dependants whose benefits are expectant or contingent on the death of any such member as is referred to in sub-paragraph (b)(i) of this paragraph

PROVIDED THAT:-

(A) subject to proviso (B), below, if the Employer's Fund is not sufficient to meet in full the liabilities in sub-paragraphs (a) and (b) above, it shall be applied first to meet the liabilities specified in sub-paragraphs (a)(i) to (a)(iii), second to meet the liabilities specified in sub-paragraphs (a)(iv) to (a)(vi), third to meet the liabilities specified in sub-paragraph (a)(vii), and shall then be applied to meet the liabilities specified in sub-paragraphs (b)(i) to (b)(iii);

(B) subject always to the requirements of the Contracting-out Rules, in circumstances where proviso (A) above is applicable the Employer's Fund shall first be applied in accordance with proviso (A) above having regard only to those liabilities in respect of Protected Benefits.

(6) Subject as provided in paragraphs (7), (9) and (10) below:-

(a) The amount allocated (after consultation with the Actuary) to or in respect of each member and Dependant pursuant to paragraph (5) of this Clause shall be applied (in so far as is practicable) either in the payment of state scheme premiums or in the purchase of a non-assignable and (save as herein otherwise provided) non-commutable annuity from such Recognised Insurance Company as the Committee of Management in each case may determine.

(b) In the case of existing pensioners and members who have reached Pensionable Age but remain in Eligible Employment such annuity shall be an immediate annuity and in the case of prospective pensioners such annuity shall be a deferred annuity commencing not earlier than Pensionable Age.

(c) Any such annuity shall be commutable so as to provide a cash lump sum on such terms as may be approved by the Board of Inland Revenue.

(d) The obligation to provide annuities to secure Children's benefits pursuant to Rule 25 shall be limited to Children born prior to the date of discontinuance or within twelve months of such date.

(7) For the avoidance of doubt, the Committee of Management shall not apply the assets of the Pension Fund in the purchase of annuities (or by the transfer, assignment or substitution of policies or contracts of assurance) in respect of the Protected Benefits of any Protected Person without that Protected Person first having ceased to be entitled to protection in accordance with regulation 3(2) of The Coal Industry (Protected Persons) Pensions Regulations 1994 in respect of those benefits.

(8) If, after application of the AVC Scheme pursuant to paragraph (5) of this Clause there shall remain any surplus thereof the Committee of Management shall apply such surplus in accordance with the provisions of proviso (c) to paragraph (8) of Rule 6 and if, after application of the Employer's Fund pursuant to paragraph (5) of this Clause, there shall remain any surplus thereof the Committee of Management shall (in so far as is practicable and subject in all cases to the Inland Revenue Limits) apply such surplus, so far as they have not done so, in making provision for increases in the benefits required to be secured as aforesaid (other than in respect of additional voluntary contributions made under Rule 6 and benefits purchased therefrom) in the following sequence of priorities:-

(a) in increasing annually after the Termination Date the amount of each of the annuities (whether payable or prospectively payable) pursuant to sub-paragraphs (a)(iii), (a)(v), (a)(vi), (a)(vii) and sub-paragraphs (b)(i) and (b)(iii) of paragraph (5) of this Clause by indexation in line with the increase in the Index of Retail Prices, calculated by applying (to the extent possible) the provisions of Rule 28, but limited in any year to 5 per cent, or Rule 29 as appropriate;

(b) in increasing annually after the Termination Date the amount of certain of the annuities specified in sub-paragraph (a) of this paragraph by indexation in line with the increase in the Index of Retail Prices calculated by applying (to the extent possible) the provisions of Rule 28 to those pensions specified in sub-paragraphs (a) and (c) of paragraph (2) of Rule 28 insofar as it may, in any year, exceed 5 per cent;

(c) in increasing annually after the Termination Date the annuities secured for members who are paying contributions at the time of discontinuance and for whom no transfer is made pursuant to paragraph (3) of this Clause by indexation in line with the increase in the Index of Retail Prices calculated by applying (to the extent possible) the provisions of Rule 28 insofar as it may,

in any year, exceed 5 per cent to the extent that this has not already been provided pursuant to sub-paragraph (b) of this paragraph of this Clause;

(d) in making such other increases (whether initially or by annual indexation as aforesaid or by both such means) in all or any of the annuities (whether payable or prospectively payable) secured pursuant to paragraphs (5) and (6) of this Clause as the Committee of Management (after consultation with the Actuary) may consider fair as between the respective persons for whom the same are to be secured; and

(e) subject to the approval of the Board of Inland Revenue, in the payment to the Employer (after deduction of any tax due thereon) of the balance (if any) of the Employer's Fund which may remain and in such event the Employer may retain the whole or any part of the balance of the Pension Fund so paid to it

Provided that if no Recognised Insurance Company (either alone or in conjunction with any other Recognised Insurance Company) is willing to offer terms for annuities which increase in accordance with the provisions of sub-paragraphs (a), (b) or (c) of this paragraph which the Committee of Management (after consultation with the Actuary) in their discretion are willing to accept, then the Committee of Management shall have a discretion to vary the provisions of subparagraphs (a), (b) and (c) of this paragraph upon such terms and subject to such conditions as may be agreed between the Committee of Management (after consultation with the Actuary) and the Recognised Insurance Company.

(9) Instead of purchasing an annuity:-

(i) the Committee of Management may pay to any person whose annuity (if purchased) would be treated by the Board of Inland Revenue as trivial such sum as (when added to any tax payable by the Committee of Management as a consequence of such payment) would in the opinion of the Committee of Management otherwise have been applied in the purchase of an annuity for that person;

(ii) the Committee of Management may transfer to the trustees of a scheme referred to in section 95(2) of the 1993 Act or to some other properly authorised person under it such sum or assets as in the opinion of the Committee of Management would otherwise have been realised and applied in the purchase of the annuity or such greater sum or such assets of greater value as the Employer requests (unless the Employer has entered into liquidation) and the Committee of Management with the advice of the

Actuary approve and the provisions of Rule 33 shall apply to such transfer as if it were effected under Rule 33 and if no such scheme is in existence but the Committee of Management are satisfied that such a scheme will be established they may with a view to making such a transfer enter into such temporary arrangements for the provision of benefits which ought to be provided under this Clause as they think fit PROVIDED THAT any transfer under this sub-paragraph (ii) shall, if it is to be made in circumstances in which regulation 9 (or regulation 8, in the case of a partial termination pursuant to Clause 41) of The Coal Industry (Protected Persons) Pensions Regulations 1994 applies, only be made in circumstances where the Committee of Management are satisfied that the requirements of the said regulation 9 (or regulation 8, as the case may be) are complied with; and

(iii) the Committee of Management shall do what is needed to carry out any valid requirement of a member in relation to his cash equivalent for the purposes of Chapter IV of Part IV of the 1993 Act.

(10) If on the discontinuance of the Scheme the assets of an Employer's Fund or the AVC Scheme referred to in Rule 6 include annuity or assurance or sinking fund contracts or policies with any insurance company the Committee of Management instead of realising those contracts and policies and purchasing annuities may (subject to paragraph (6) of this Clause) exercise one or more of the following powers in relation to those contracts and policies:-

(i) the power to enter into any arrangements with the insurance company with which the contract or policy was effected under which the whole or part of any benefit secured on the life of any person under the contract or policy is transferred to or secured to or in trust for that person;

(ii) the power to enter into any arrangements with the insurance company with which the contract or policy was effected under which the insurance company is released from all liability to pay any benefits under the whole or any part of the contract or policy in consideration of the insurance company agreeing in respect of another scheme:-

(I) to issue a fresh annuity or assurance contract or policy; or

(II) to amend an existing annuity or assurance contract or policy issued by the insurance company

in order to secure in respect of the other scheme benefits similar to and in substitution for those benefits in respect of which the Committee of Management release the insurance company from liability; and

(iii) the power (subject where required to the consent of the insurance company with which the contract or policy was effected) to assign the whole or any part of the contract or policy and the benefits and moneys assured by it to the trustees for the time being of another scheme or to some other properly authorised person under it on the understanding that the contract or policy which is assigned will be kept in force or in existence upon such terms (consistent with the existing formal approval of the other scheme by the Board of Inland Revenue) as the Committee of Management consider to be just and equitable having regard to the accrued rights and interests of beneficiaries and prospective beneficiaries under the Scheme which may be affected by the assignment.

PROVIDED THAT

(I) the Committee of Management shall not exercise the power in sub-paragraph (i) of this paragraph unless the contract or policy satisfies the requirements of section 19 of the 1993 Act; and

(II) the Committee of Management shall not exercise either of the powers in sub-paragraphs (ii) and (iii) of this paragraph in relation to another scheme unless that other scheme is a scheme referred to in section 95(2) of the 1993 Act; and

(III) the Committee of Management shall not exercise either of the powers in sub-paragraphs (ii) and (iii) of this paragraph in relation to another scheme without the written consent or written request of the member or (if the member is dead) the widow or widower of the deceased member if that consent or request is required by regulations made under the Social Security Act 1973 or the Pensions Act relevant to the circumstances in which the arrangements are to be entered into or the assignment is to be made.

PARTIAL TERMINATION OF THE SCHEME

41. (1) Subject to the provisions of paragraph (3) of this Clause an Employer may terminate its liability to contribute to the Scheme at any time by giving not less than three months' notice in writing to the Committee of Management. On or as soon as practicable after receipt of such notice the Committee of Management shall notify the

Co-ordinator and the Appointing Unions of the Employer which gave the notice and the date of termination of the Employer's liability to contribute to the Scheme. On such termination the Employer shall cease to be an Employer. Any such termination shall be without prejudice to any accrued liability of the Terminating Employer (as defined in paragraph (13) of this Clause) to contribute to the Scheme and to any liability which it may incur under section 144 of the 1993 Act.

(2) Subject to the provisions of paragraph (3) of this Clause if a payment of contributions by an Employer which has fallen due is unpaid or is paid in part but not in full and the Committee of Management are of the opinion that the Employer has ceased to contribute to the Scheme the Committee of Management shall pass a resolution to that effect and the Employer shall thereupon cease to be an Employer. Such cessation shall be without prejudice to the accrued liability of the Terminating Employer to contribute to the Scheme and to any liability which it may incur under section 144 of the 1993 Act. As soon as practicable following the passing of the resolution the Committee of Management shall notify the Employer to whom the resolution applies and shall notify the Co-ordinator and the Appointing Unions of the Employer which is ceasing to be an Employer.

(3) No such notice as is referred to in paragraph (1) of this Clause shall be given and no such resolution as is referred to in paragraph (2) of this Clause shall be passed by or in relation to an Employer unless at the time at which the notice is given or the resolution is passed none of the liabilities of the Employer's Fund relating to such Employer are liabilities in respect of a Protected Person.

(4) If the Committee of Management are of the opinion that the continued participation in the Scheme of an Employer would prejudice Inland Revenue Approval of the Scheme they shall pass a resolution to that effect. Subject to the provisions of paragraph (6) of this Clause the Employer shall cease to be an Employer upon the passing of the Committee of Management's resolution. As soon as practicable following the passing of the resolution the Committee of Management shall notify the Employer to whom the resolution applies and shall notify the Co-ordinator and the Appointing Unions of the Employer which is ceasing to be an Employer.

(5) If an Employer enters into liquidation it shall (subject to the provisions of paragraph (6) of this Clause) cease to be an Employer immediately it enters into liquidation.

(6) If an Employer ceases to be an Employer in accordance with the provisions of paragraph (4) or (5) of this Clause it shall nevertheless be deemed to remain an

Employer for such period if any (referred to in this paragraph and in paragraph (7) of this Clause as "the Agreed Period") as may be agreed between the Co-ordinator the Employer and the Committee of Management and approved by the Board of Inland Revenue. However the Agreed Period shall not extend beyond the anniversary of the Commencement Date next but one following the date on which the Employer would otherwise cease to be an Employer.

(7) Subject to the provisions of paragraph (12) of this Clause the part of the Scheme applicable to an Employer shall become a terminated scheme upon whichever of the following dates applies:-

(i) if there is no Agreed Period the date on which the Employer ceases to be an Employer; or

(ii) if there is an Agreed Period the date on which it expires.

Whichever date applies is referred to in this Clause as the "Partial Termination Date".

(8) When the part of the Scheme applicable to the Terminating Employer (as defined in paragraph (13) of this Clause) becomes a terminated scheme the Committee of Management shall subject to the provisions of paragraphs (9) and (10) of Clause 40 realise the relevant Employer's Fund and such part of the AVC Scheme referred to in Rule 6 as the Committee of Management with the advice of the Actuary shall decide to be appropriate (such part of the AVC Scheme being referred to in this paragraph as the "Appropriate Part"). However, if the Committee of Management decide to exclude from the part of the Scheme which becomes a terminated scheme any of the benefits referred to in paragraph (9) of this Clause they shall not realise that part of the relevant Employer's Fund and of the Appropriate Part of the AVC Scheme which the Committee of Management with the advice of the Actuary decide to retain in respect of those benefits.

(9) The Committee of Management may in their absolute discretion decide to exclude from the part of the Scheme which becomes a terminated scheme all or any of the following benefits, namely:-

(i) benefits then payable to Pensioned Members (as defined in paragraph (13) of this Clause) (and for the purpose of this paragraph those Seceding Members who are Pensioned Members by virtue of being in the employment of the Employer on the Partial Termination Date and who have attained Pensionable

Age shall be deemed to have ceased to be in the employment of the Employer on the day immediately preceding the Partial Termination Date);

(ii) benefits contingently payable on the death of Pensioned Members;

(iii) benefits then payable to persons claiming under or through deceased Seceding Members; and

(iv) benefits prospectively payable to or in respect of Non-Pensioned Members.

(10) The Committee of Management shall apply the proceeds of realisation (under paragraph (8) of this Clause) of the Employer's Fund (after the payment of all costs charges and expenses incurred in giving effect to the provisions of paragraph (8), this paragraph and paragraph (11) of this Clause out of the part of the Expenses Fund attributable to that Employer, and from the proceeds of realisation of the Employer's Fund if that part of the Expenses Fund is insufficient) and so far as the moneys available permit in the manner and order of priority set out in paragraphs (5), (6) (7), (8), (9) and (10) of Clause 40.

(11) The Committee of Management shall apply the proceeds of realisation (under paragraph (8) of this Clause) of the Appropriate Part of the AVC Scheme referred to in Rule 6 in the payment of the costs charges and expenses referred to in paragraph (10) of this Clause only to the extent (if any) to which the appropriate part of the Expenses Fund and the proceeds of realisation of the Employer's Fund are insufficient to pay those costs charges and expenses and so far as the moneys available permit in the manner and order of priority set out in paragraphs (5) (other than sub-paragraphs (a) (i), (a) (ii) and (a) (iv) thereof), (6), (7), (8), (9) and (10) of Clause 40.

(12) Notwithstanding the provisions of paragraph (8) of this Clause the Committee of Management may defer the realisation referred to in paragraph (8) of this Clause and instead of terminating the part of the Scheme applicable to the Terminating Employer continue it as a closed scheme with no further contributions until whichever of the following dates and events is the first to occur:-

(i) the discontinuance of the Scheme in accordance with the provisions of Clause 40;

(ii) the passing of a resolution by the Committee of Management to the effect that the part of the Scheme applicable to the Terminating Employer is to be

terminated at any time after it could have been terminated but for the decision of the Committee of Management to continue it as a closed scheme; and

(iii) the date on which the relevant Employer's Fund and the Appropriate Part of the AVC Scheme are exhausted.

If the part of the Scheme applicable to the Terminating Employer is continued and the relevant Employer's Fund and the Appropriate Part of the AVC Scheme are not exhausted when the first of the above dates and events occurs the provisions of paragraph (8) of this Clause shall then have effect.

(13) In this Clause:-

"Non-Pensioned Members" means those Seceding Members who are not Pensioned Members;

"Pensioned Members" means those Seceding Members who are entitled to the receipt of benefits at the Partial Termination Date and those Seceding Members who are in the employment of the Employer on that date and who have attained Pensionable Age;

"Seceding Members" means:-

(i) those employees of the Terminating Employer on the Partial Termination Date who do not become employees of another Employer and do not continue as contributing members of the Scheme; and

(ii) those former employees of the Terminating Employer who have not become employees of another Employer and have not continued as contributing members of the Scheme;

"Terminating Employer" means an Employer which has ceased (or is to cease, as the context requires) to be an Employer in accordance with the provisions of this Clause.

PERPETUITY

42 - The trusts hereof shall not in any event continue beyond the expiration of eighty years from the date of this Deed (or such longer period as may be lawful by reason of the Scheme qualifying or continuing to qualify for exemption from the operation of the rules of law relating to perpetuities) and at the end of such period the trusts of the Scheme shall

determine and the Scheme shall be wound up in accordance with the provisions of the Trust Deed.

INTERPRETATION

43 - (1) The following provisions of this Clause shall have effect in the construction of the Scheme.

(2) The following words and expressions shall, unless the subject, the context or the Contracting-out Appendix otherwise requires, have the meanings hereby respectively assigned to them, that is to say -

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

"**1994 Act**" means the Coal Industry Act 1994.

"**Actuarial Value**" means actuarial value as determined by or on behalf of the Actuary and "**Actuarially Equivalent**" has a corresponding meaning.

"**Actuary**" means the actuary, or firm of actuaries or body corporate or government department or agency, for the time being appointed by the Committee of Management under Clause 14(3) to perform the actuarial duties required by the Scheme and/or the Rules.

"**Appointing Union**" means an Eligible Union which for the time being has the power to appoint members of the Committee of Management by virtue of the provisions of Clause 23.

"**Appointment Date**" means 1st April in any year.

"**Articles**" has the meaning assigned thereto by Clause 6(6)(b).

"**Associated Employer**" means:-

(i) any employer of which an Employer has (or had at the relevant time) control; and

(ii) any employer of which some other person has (or had at the relevant time) control in a case in which that other person at the same time has (or had) control of any of the Employers

and for the purpose of this definition "control" in relation to a body corporate has the same meaning as in section 840 of the Taxes Act or (in the case of a close company for the purposes of Part XI of the Taxes Act) section 416 of the Taxes Act.

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

"**Auditors**" means the auditor or auditors appointed by the Committee of Management under Clause 17.

"**BCSSS**" means the British Coal Staff Superannuation Scheme which by a resolution of the National Coal Board dated 31st December 1946 was established on 1st January 1947.

"**Branch Secretary**" means a whole-time secretary of any Branch of the Eligible Unions.

"**Capped Member**" means any member or former member unless the circumstances in which he became a member are such that the Board of Inland Revenue have directed the Committee of Management that he may be treated as an Uncapped Member and includes any former Uncapped Member who has elected to be deemed to have become a Capped Member.

"**Certified Employment**" means an insurable employment within the meaning of the Industrial Injuries Act which was immediately before the termination of the Industrial Injuries Scheme certified for the purposes of that Scheme by the British Coal Corporation and the Union to be within the coal mining industry or, if the British Coal Corporation and the Union could not agree, was so determined by a decision then in force and made under Article 23 of that Scheme or any provisions directly or indirectly replaced by it.

"**Child**" in relation to a member or other person includes his posthumous child, stepchild, a child whom he has legally adopted and a child for whose care and maintenance he was, in the opinion of the Committee of Management, responsible at

the date of his death or such other date as the Committee of Management may consider relevant.

"**Colliery Accident**" means any accident happening to a Colliery Worker on or after 5th July 1948 but before 30th March 1970, and arising out of and in the course of his employment as a Colliery Worker, which is found by the authority by whom that question is to be determined under the Social Security Act or any statutory provisions directly or indirectly replaced by it to be an industrial accident as defined in section 107(5) of that Act or any statutory provisions so replaced by that provision.

"**Colliery Disease**" means, in relation to any Colliery Worker, any disease or personal injury prescribed under section 76 of the Social Security Act or any statutory provisions directly or indirectly replaced by it in relation to the employment of that Colliery Worker, which

(a) Before 1st January 1978 was determined in accordance with the Industrial Injuries Scheme or any provisions directly or indirectly replaced by it to be due to the nature of his employment as a Colliery Worker and to have developed on or after 5th July 1948 but (unless he was not a member of the Scheme when it developed) before 30th March 1970; or

(b) Insofar as it was not so determined, is due to the nature of such employment and has so developed, or if and insofar as is necessary is determined to be so due and to have so developed, in either case under and in accordance with the Rules.

"**Colliery Worker**" means any person employed on or after 5th July 1948 but before 30th March 1970 in a Certified Employment, otherwise than as a clerical worker, in or about a colliery (other than an opencast working) or at a workshop (whether in or about a colliery or not) at which work is done wholly or mainly for one or more collieries, who is below the rank of under-manager or any similar grade and who is employed by the Employer or a Small Mine Licensee.

Provided for the avoidance of doubt that for the purposes of this definition the expression "coal mining activities" in the definition of "Small Mine Licensee" in this paragraph shall not include opencast working.

"**Commencement Date**" means the date referred to in Clause 1 as the date on which the Scheme commences.

"**Committee of Management**" subject to the provisions of Clause 6, means the Committee of Management (within the meaning of the Articles) of the First Trustee.

"**Compound Interest**" means compound interest with yearly rests.

"**Contracting-out Appendix**" means the Appendix I to the Rules.

"**Contracting-out Rules**" means the rules in the Contracting-out Appendix.

"**Contributing Service**" in relation to any person means (subject as hereinafter provided and subject to the provisions of paragraph (5) of Clause 10 and paragraph (2) of Rule 3) -

(a) Service by him in Eligible Employment after the date with effect from which he is admitted to membership of the Scheme until he attains Pensionable Age but shall not include any Period of Strike Absence;

(b) Where the person is a Transferred MPS Member such period of Contributing Service as applied to him under MPS on Transfer Day as notified to the Committee of Management by the Committee of Management of MPS;

(c) Where a Transfer Payment is made to the Scheme from another Occupational Pension Scheme in respect of that person under Rule 34, such period of Contributing Service (if any) as may be credited to him by virtue of such Transfer Payment, under and subject to the terms referred to in paragraph (2) of that Rule on which such period of Contributing Service is so credited to him; and

(d) Any period of Contributing Service credited to him by virtue of the operation of Rule 4;

Provided that -

(i) no period of service in Eligible Employment shall be taken into account more than once;

(ii) except for the purpose of calculating any benefits payable to him under paragraph (4) of Rule 22 upon the termination of that period of service, no period of service in respect of which a Contributions

Equivalent Premium has been paid and has not been refunded or in respect of which a refund of contributions is, subject to sub-paragraph (c) of paragraph (4) of Rule 22, paid or payable to him under sub-paragraph (b) of that paragraph, or both, shall be taken into account; and

(iii) no period of service in Eligible Employment in respect of which Earnings are received shall be taken into account unless Normal Contributions calculated by reference to those Earnings are paid if due

in determining or calculating the period of Contributing Service in relation to any person.

"Contribution Earnings" means Earnings except that if the member is a Capped Member there shall be disregarded the amount (if any) by which his Earnings in any Income Tax Year exceed the amount of which the annual equivalent is the Permitted Maximum for that Income Tax Year.

"Contributions Equivalent Premium" has the meaning assigned thereto by section 55(6) of the 1993 Act.

"Co-ordinator" means Industry-Wide Mineworkers' Pension Scheme Co-ordinator Limited provided that any reference in the Contracting-Out Appendix to the "principal employer" shall be construed as a reference to the Co-ordinator.

"Deficiency Contributions" means contributions payable by an Employer under paragraph (2) of Clause 2.

"Dependant" in relation to a member or other person means -

(a) Any other person who is, or insofar as is relevant was at the date of the death, Retirement from or termination of service in Eligible Employment of that member or other person, financially dependent on him; and

(b) If and insofar as the Committee of Management in their discretion think fit, any Child of that member or other person (other than a child who is or was a Child of that member or other person solely because that member or other person is or was in the opinion of the Committee of Management responsible

for such child's care and maintenance) who does not satisfy the conditions specified in paragraph (a) of this definition but is for the time being under the age of 18 or undergoing full-time education or vocational training or both.

"Earnings" in relation to any person -

(a) Means the aggregate of:-

(i) the total weekly emoluments of that person within the meaning of section 183 of the Income and Corporation Taxes Act 1970 from Eligible Employment assessable under Schedule E of the said Act (before any deductions of reliefs under that Act or for the purposes of that Schedule), which shall include or if and insofar as may be necessary shall be deemed to include sums payable to that person by reference to Eligible Employment:-

(A) by way of maternity pay;

(B) in respect of arrears of pay in pursuance of an order for reinstatement or re-engagement;

(C) by way of pay in pursuance of an order for the continuation of a contract of employment; or

(D) by way of remuneration in pursuance of a protective award;

under the Employment Protection (Consolidation) Act 1978;

(ii) the total weekly payments to that person in relation to Trade Union Activities;

(iii) the total weekly payments made to that person in relation to Inspection Activities.

(b) In respect of any Period of Strike Absence in respect of which a member has elected to pay special contributions in accordance with Rule 4 shall mean the amount of his Estimated Earnings.

"**Eligible Employment**" means (subject to the provisions of paragraph (2) of Rule 3) regular full-time employment on and after Transfer Day (including any employment which would have been regular full-time employment had the person employed not been engaged in Trade Union Activities or Inspection Activities or both) which fulfils the following conditions:-

(i) it is by an Employer;

(ii) it is otherwise than in a grade eligible for the Staff Scheme and otherwise than as a member of the Staff Scheme; and

(iii) it is in an activity which immediately before Transfer Day was carried on by an employer which was then participating in MPS disregarding participation in respect of persons engaged in Trade Union Activities or Inspection Activities.

"**Eligible Unions**" means the National Union of Mineworkers and the Union of Democratic Mineworkers; and references to "Eligible Union" shall be construed accordingly.

"**Employer**" means an employer participating in the Scheme and in relation to any member means that one of the Employers by whom he is or was most recently employed; in relation to any person who is a Branch Secretary means the person or persons responsible for the payment of wages (other than wages in respect of Trade Union Activities or Inspection Activities) to such member; in relation to a member engaged in Trade Union Activities means the Recognised Trade Union in activities in respect of which or for the purposes of which he is engaged; in relation to a member engaged in Inspection Activities means the person or persons (including any body of persons incorporated or unincorporated) responsible for making payments to the member in relation to such Inspection Activities or for providing the funds from which such payments to the member are made; and in relation to any other member for the time being in Eligible Employment means that member's employer; but so however that for the purposes of the Scheme and the Rules there may at the same time be more than one Employer in relation to a member.

"**Employer's Fund**" means in relation to each Employer the Employer's Fund referred to in Clause 9.

"**Estimated Earnings**" means in relation to any Period of Strike Absence the notional amount which the Pensions Officer shall estimate the member would have received as Earnings if he had worked normally during the Weeks of Strike Absence in question.

"**Exempt Approved Scheme**" has the same meaning as in section 592(1) of the Taxes Act.

"**Expenses Fund**" means the fund referred to in Clause 9(19).

"**First Transfer Day**" means the first day on which the duty specified in paragraph 3(3) of Schedule 5 to the 1994 Act arises in accordance with paragraph 3(2) of that Schedule.

"**First Trustee**" means Industry-Wide Mineworkers' Pension Scheme Trustees Limited.

"**Former MPS Member**" means an individual who is eligible for membership of the Scheme by virtue of paragraph (1) of Rule 1 and who becomes a member with effect on and from Transfer Day.

"**Incapacity**" has the meaning conferred on it by paragraph 11 of the Mineworkers Sick Pay Scheme dated 20th March 1970 between the British Coal Corporation and the Union.

"**Income Tax Year**" means any period from 6th April in one calendar year to 5th April in the next following calendar year inclusive.

"**Index of Retail Prices**" has the meaning assigned thereto by Rule 28.

"**Industrial Accident**" in relation to any person means any accident arising out of or in the course of his employment in Eligible Employment.

"**Industrial Death and Retirement Scheme**" means the N.C.B. Industrial Death and Retirement Scheme.

"**Industrial Disease**" in relation to any person means any disease or personal injury prescribed under section 76 of the Social Security Act or any statutory provisions directly or indirectly replaced by that section in relation to his employment, being a disease or injury due to the nature of his employment in Eligible Employment.

"**Industrial Injuries Act**" means the National Insurance (Industrial Injuries) Act 1965.

"**Industrial Injuries Deed**" means the Deed dated 31st December 1977 and made between George Clifford Shephard and Others of the one part and the British Coal Corporation of the other part relating to the termination of the Industrial Injuries Scheme.

"**Industrial Injuries Scheme**" means the National Insurance (Industrial Injuries) Colliery Workers Supplementary Scheme set forth in Schedule 1 to the National Insurance (Industrial Injuries) (Colliery Workers Supplementary Scheme) Amendment & Consolidation Order 1970.

"**Inland Revenue Approval**" means approval by the Board of Inland Revenue for the purposes of Chapter I of Part XIV of the Taxes Act.

"**Inland Revenue Limits**" means the limits on the form and the amount of benefit which may not be contravened or exceeded without prejudicing Inland Revenue Approval of the Scheme including those set out in the Inland Revenue Limits Appendix.

"**Inland Revenue Limits Appendix**" means Appendix II to the Rules.

"**Inspection Activities**" means activities in the course of or for the purposes of -

(a) An inspection carried out by virtue of sub-section (2) or (3) of or under such agreement as is mentioned in sub-section (4) of section 123 of the Mines and Quarries Act 1954 by a member who is for the time being -

(i) a member of a panel appointed under sub-section (1) of the said section; or

(ii) an adviser selected to accompany a member of such a panel by virtue of sub-section (5) of the said section when such inspection is carried out; or

(b) An inspection carried out by virtue of the provisions of the Agreement dated 6th March 1978 made between the National Coal Board (1) the Union (2) the National Association of Colliery Overmen Deputies and Shotfirers (3) and the British Association of Colliery Management (4).

"Internal Transfer Payment" has the meaning assigned thereto by Clause 10(1).

"Month" means calendar month.

"MPS" means the Mineworkers' Pension Scheme established by a resolution of the National Coal Board dated 25th October 1951 with effect from 1st January 1952.

"National Insurance Act" means the National Insurance Act 1965.

"Normal Contributions" means contributions payable by or in respect of a member under Rule 5.

"Occupational Pension Scheme" means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with service qualifying them therefore in an employment of any such description or category.

"Partial Termination Date" has the meaning assigned thereto in Clause 41(7).

"Payment" in relation to Trade Union Activities means any money payment made by a Recognised Trade Union to a member for or in respect of Trade Union Activities or expenses incurred in carrying out Trade Union Activities in respect of or for the purposes of that Recognised Trade Union which is of a type or falls within a category agreed between the Co-ordinator and that Recognised Trade Union; and in relation to Inspection Activities means any money payment made to a member for or in respect of Inspection Activities or expenses incurred in carrying out Inspection Activities which is of a type or falls within a category agreed between the Co-ordinator and any other persons (including any body or persons incorporated or unincorporated) who are the Employer in relation to that member for the purposes of Inspection Activities in which that member is engaged.

"Pension Fund" has the meaning assigned thereto by Clause 6(1).

"Pensionable Age" means the age of 60.

"Pensionable Earnings" has the meaning assigned thereto by Rule 10.

"the Pensions Act" means the Social Security Pensions Act 1975 and, unless the context otherwise requires, includes a reference to any Regulations made under it for the time being in force.

"Pensions Officer" means a person appointed by the Committee of Management to administer the Scheme.

"Period of Strike Absence" means any period comprising a number of consecutive Weeks of Strike Absence, when that number exceeds one Week.

"Permanently Incapable of Self-Support" in relation to any person means that he is, in the opinion of the Scheme's Medical Adviser, incapable of supporting himself by reason of physical or mental infirmity and likely to remain so incapable for a prolonged period.

"Permitted Maximum" has the same meaning as in section 590C(2) of the Taxes Act.

"Personal Pension Scheme" means a scheme approved or provisionally approved by the Board of Inland Revenue under Chapter IV of Part XIV of the Taxes Act.

"Protected Benefits" means the benefits under the Scheme but only to the extent to which the reduction thereof would be contrary to regulations made under paragraph 4(2) of Schedule 5 to the 1994 Act.

"Protected Employee" means an employee of an Employer who is a person to whom the duty specified in paragraph 3(3) of Schedule 5 to the 1994 Act is owed, other than any such person who has failed to exercise within 2 months of the duty arising in relation to him, the option referred to in paragraph 3(3) of the said Schedule 5 or who (having exercised the said option) has subsequently ceased under paragraph 4(7) to 4(9) of the said Schedule 5 to be entitled to the protection referred to in paragraph 4(6) of the said Schedule 5 (except as respects pension rights which have accrued to him before the time referred to in paragraph 4(8) of the said Schedule 5 or before the change referred to in paragraph 4(9) of the said Schedule 5).

"Protected Person" shall have the meaning ascribed to the term "protected person" in regulation 2(1) of the Coal Industry (Protected Persons) Pensions Regulations 1994.

"Qualifying Service" has the meaning assigned thereto by Rule 9.

"Recognised Insurance Company" means an insurance company which is authorised by the competent authority of a member State of the European Communities under either Article 6 or Article 27 of Council Directive 79/267/EEC.

"Recognised Trade Union" means a Trade Union in relation to which an agreement in writing for the time being subsists between an Employer and that Trade Union to the effect that that Trade Union should be a Recognised Trade Union for all the purposes of the Scheme and the Rules.

"Relative" means a lawful widow or widower, a Child as defined in this paragraph, a lineal descendant or ascendant in a direct line not being a Child as defined in this paragraph stepfather stepmother, brother, sister, half-brother, half-sister, stepbrother or stepsister. and any person who is such a relative in consequence of legal adoption or would have been such a relative if some person born illegitimate had been born legitimate.

"Relevant Members" means contributing members of an Eligible Union who are in Eligible Employment and are members of the Scheme.

"Relevant Scheme" means a Retirement Benefits Scheme (other than the Scheme) which is in receipt of or seeking Inland Revenue Approval and any Relevant Statutory Scheme.

"Relevant Service" means all periods of service with any of the Employers and Associated Employers.

"Relevant Statutory Scheme" means a relevant statutory scheme as defined in section 611A of the Taxes Act.

"Relevant Time" means, in the case of employees paid weekly, the end of the last period of seven days by reference to which an employee's remuneration is normally calculated in which all weekdays (Mondays to Fridays inclusive) fall in October or, in the case of other employees the end of October in any year.

"Retirement" and **"Retire"** and cognate expressions have the meaning assigned thereto by paragraph (1) of Rule 3.

"**Retirement Annuities**" means contracts and trust schemes approved under Chapter III of Part XIV of the Taxes Act (or the corresponding provisions of any preceding legislation).

"**Retirement Benefits Scheme**" means a retirement benefits scheme as defined in section 611(1) of the Taxes Act.

"**Rules**", subject to the provisions of paragraph (3) of this Clause, means the rules annexed hereto, as amended from time to time and unless the subject or the context otherwise requires references to the Rules shall include references to the Appendices and Schedules to those rules.

"**Scheme**", subject to the provisions of paragraph (3) of this Clause, means the Industry-Wide Mineworkers' Pension Scheme and unless the subject or the context otherwise requires references to the Scheme shall include references to the Rules and the Appendices and Schedules to the Rules.

"**Scheme's Medical Adviser**" means any qualified Medical Practitioner appointed or approved by the Co-ordinator and the Committee of Management for the purposes of the Scheme and references to the opinion or certificate of the Scheme's Medical Adviser shall be construed as references to such opinion or certificate or, as the case may be, to the determination of an independent Medical Consultant given under Rule 52.

"**Secretary**" means the Secretary appointed under Clause 36(2) or Clause 33 (whichever is for the time being in force).

"**Small Mine Licensee**" means any individual who worked coal by virtue of the grant of a gale in the Forest of Dean or in any other part of the Hundred of St. Briavels and any person or body of persons who was engaged in coal mining activities by virtue of a licence originally granted by the National Coal Board or British Coal Corporation under section 36(2)(a) of the Coal Industry Nationalisation Act 1946, who was bound by the provisions of MPS in relation to persons employed by that individual or that person or body of persons prior to the Commencement Date.

"**Social Security Act**" means the Social Security Act 1975.

"**Social Security Legislation**" means the Social Security Act 1975 and the Industrial Injuries and Diseases (Old Cases) Act 1975 and all provisions of any Acts of

Parliament consolidated by those Acts, including any provisions of such Acts remaining or deemed to remain in force for any purpose, and the Social Security (Consequential Provisions) Act 1975, and also any regulations made or taking effect under any of the above-mentioned Acts or provisions for the time being in force or deemed to be in force.

"Special Dependant" has the meaning assigned thereto by Part III of the Third Schedule.

"Staff Scheme" means the retirement benefits scheme established by Industry-Wide Coal Staff Superannuation Scheme Co-ordinator Limited and known as The Industry-Wide Coal Staff Superannuation Scheme.

"Standard Contributions" means contributions payable by an Employer by virtue of paragraph (1) of Clause 2.

"State Pensionable Age" means the age of 65 in the case of a man and the age of 60 in the case of a woman or in either case such other age as legislation may determine as State pensionable age.

"subsidiary" shall have the meaning ascribed to that term in section 736 of the Companies Act 1985.

"Supplementary Fatal Injury Benefit" means a pension or allowance under Article 4(1)(c), (d) or (e) of the Industrial Injuries Scheme or under Clause 5(1) or (3) of the Industrial Death and Retirement Scheme.

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

"Termination Date" has the meaning assigned thereto in Clause 40(3).

"Trade Union" has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992.

Trade Union Activities" means activities by a member (other than a Branch Secretary) in respect of or for the purposes of a Recognised Trade Union.

"**Transfer Day**" means:-

(a) in relation to an undertaking (or any part thereof) of the British Coal Corporation or of any of its subsidiaries which is transferred in accordance with a restructuring scheme (within the meaning of section 12 of the 1994 Act) other than a restructuring scheme which provides for the transfer of property rights or liabilities to the "Authority" (within the meaning of the 1994 Act) the date on which such restructuring scheme comes into force;

(b) in relation to a subsidiary of the British Coal Corporation which after the Commencement Date ceases to be a subsidiary of the British Coal Corporation, the date of such cessation; and

(c) in relation to any employer which was participating in MPS immediately before the First Transfer Day and which was neither the British Coal Corporation nor a subsidiary of the British Coal Corporation, the First Transfer Day,

and means:-

(i) in relation to an employee whose employment is with an undertaking to which paragraph (a) above applies, a subsidiary to which paragraph (b) above applies or an employer to which paragraph (c) above applies, the first date which is the Transfer Day for the purposes of an undertaking in which he is employed; and

(ii) in relation to an employee to whom paragraph (i) above does not apply, the date on which he is first in employment with an Employer,

Provided that no employee shall have more than one Transfer Day.

"**Transfer Payment**" means a payment or transfer of assets in accordance with the provisions of Rule 33 or 34.

"**Transferred MPS Member**" means a Former MPS Member in respect of whom a Transfer Payment has been made to the Scheme Fund from MPS pursuant to Rule 28A of MPS.

"**Trust Deed**" means this trust deed, as amended from time to time.

"**Trustee**" means the First Trustee and shall include any other trustee or trustees of the Scheme for the time being.

"**Uncapped Member**" means any member or former member who became a member in circumstances such that the Board of Inland Revenue have directed the Committee of Management that he may be treated as an Uncapped Member. He may however elect to be deemed to have ceased to be an Uncapped Member and to have become a Capped Member provided he makes the election before whichever is the earliest of the date on which benefit becomes payable to him under the Scheme, the date on which he attains the age of 75 years and the date on which under Rule 32 or 33 or otherwise a Transfer Payment is made in respect of him to another scheme or to secure benefits with an insurance company or a friendly society. The election shall be made by giving notice in writing to the Committee of Management in the form (if any) required by the Board of Inland Revenue or (if no such form is required) in such form as the Committee of Management shall require and a member or former member who has made this election shall thereafter not be an Uncapped Member.

"**the Union**" means the National Union of Mineworkers.

"**Week**" for the purpose of determining a person's contributions, credits or Earnings and for the purpose of the definition of "**Week of Strike Absence**" means the period of seven days by reference to which that person's wages are normally calculated.

"**Week of Strike Absence**" means any Week in a person's period of Eligible Employment during the whole of which a person is absent from work during his normal working hours due to strike action by him or is absent from work or unable to work during his normal working hours by reason of strike action by any other member or members of the Trade Union to which he belongs. Without prejudice to the generality of the foregoing a person shall be deemed to be absent from work due to strike action by him during any period in which any other member or members of that Trade Union are taking part in strike action affecting his normal place of work if he is absent from work without prior authorisation by the Employer at a time when he is not prevented from working by Incapacity.

"**Widow**" means:-

(a) in relation to a man his lawful widow; and

(b) in relation to a woman her lawful widower.

(3) Unless the subject or the context otherwise requires, references to any Act, Regulations, Agreement, Scheme, Rules or Schedule or any provision thereof shall be construed as references to the same as amended or re-enacted from time to time or, as the case may be, to any Act, Regulations, Agreement, Scheme, Rules or Schedule or any provision thereof repeating or revoking and replacing the same.

(4) In the construction of references to the age of any person, that person shall be deemed to have attained that age if he survives until midnight of the day preceding the anniversary of his birth on which he will have lived for the number of years being the number specified.

(5) Unless the subject or the context otherwise requires, words in the singular include the plural and words in the plural include the singular and words importing the masculine gender include the feminine.

The headings to the Scheme, the Rules and the Appendices and Schedules to the Rules are intended for convenience of reference only and are not to be deemed to be or construed as part of the Scheme.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written

THE RULES OF THE INDUSTRY-WIDE MINEWORKERS' PENSION SCHEME
I - MEMBERSHIP AND TERMINATION OF EMPLOYMENT AND SERVICE

ELIGIBILITY AND ADMISSION TO MEMBERSHIP

1 - (1) No person shall be eligible for membership of the Scheme unless he satisfies the conditions set out in either paragraph (2) or paragraph (3) of this Rule.

(2) Persons who become Protected Employees with effect from Transfer Day, who have not subsequently ceased to be Protected Employees and who have not attained Pensionable Age, shall be eligible for membership of the Scheme if they are in Eligible Employment.

(3) On and after the Commencement Date:-

(a) persons who before Transfer Day were members of MPS but did not become Protected Employees with effect on and from Transfer Day; and

(b) persons who became Protected Employees with effect on and from Transfer Day and have subsequently ceased to be Protected Employees; and

(c) persons who had previously been contributing members of the Staff Scheme or of the Scheme,

and who are under Pensionable Age shall if the Employer so determines, be eligible to become (or again to become) members of the Scheme if they are in Eligible Employment.

(4) Every person who, satisfying the eligibility conditions set out in either paragraph (2) or paragraph (3) of this Rule, delivers to the Committee of Management an application for membership of the Scheme in such form and within such period after satisfying the eligibility conditions as the Committee of Management shall prescribe, shall thereupon be admitted to membership of the Scheme and such admission shall have effect from such date as the Committee of Management shall determine.

CEASING NORMAL CONTRIBUTIONS

2 - (1) A member who, while remaining in Eligible Employment, wishes to cease to pay Normal Contributions in accordance with the provisions of Rule 5, shall give written

notice to the Pensions Officer. The notice required to be given for the purposes of this paragraph shall be in such form as the Committee of Management may from time to time prescribe and may, if the contributing Member is a Protected Person, contain advice as to the consequences of ceasing to be in service in Eligible Employment and Contributing Service. On the giving of such notice his service in Eligible Employment and Contributing Service shall be deemed to terminate pursuant to the provisions of Rule 13 with effect from such date as Normal Contributions to the Scheme cease to be deducted from his Earnings.

(2) A person who has given written notice pursuant to paragraph (1) of this Rule and who has ceased to pay Normal Contributions as required by Rule 5, may if the Employer so requests be permitted to re-commence payment of Normal Contributions from such date and on such terms and subject to such conditions as the Committee of Management, in their absolute discretion, may think fit.

(3) An Employer may at any time by giving not less than three months notice to the Committee of Management terminate the payment of Normal Contributions in accordance with the provisions of Rule 5 by a member who is in Eligible Employment and who is not a Protected Employee. On the expiry of such notice the member's service in Eligible Employment and Contributing Service shall be deemed to terminate pursuant to the provisions of Rule 13.

RETIREMENT AND TERMINATION OF EMPLOYMENT AND SERVICE

3 - (1) (a) Where for the purposes of the Rules reference is made to a member's Retirement, such Retirement shall be deemed to take effect on the termination otherwise than by reason of death of his service in Eligible Employment, and "Retire" shall be construed accordingly.

(b) The service in Eligible Employment of a member who would but for this sub-paragraph be treated as remaining in Eligible Employment after the expiration of a period of five years after he attains Pensionable Age shall for all the purposes of the Rules be deemed to terminate, and (subject to the provisions of sub-paragraph (c) of this paragraph of this Rule) he shall for those purposes be deemed to Retire, upon the expiration of that period.

(c) In the case of a Capped Member, notwithstanding that his service in Eligible Employment is deemed to terminate he shall not be deemed to Retire until either he ceases to be in Eligible Employment (otherwise than by reason of

death) or (while remaining in Eligible Employment) he attains the age of 75 years.

(2) For the purposes of awarding or determining the amount of benefits on or subsequent to Retirement or termination of service in Eligible Employment under the Rules in relation to any person and for the purposes of determining whether a person's service in Eligible Employment or Contributing Service is continuous or comprises consecutive periods within the meaning of the Rules that person's service in Eligible Employment shall be deemed not to have terminated and his service in Eligible Employment or Contributing Service, as the case may be, shall be deemed to have been continuous and to have comprised consecutive periods if -

(a) Notwithstanding that such service has ceased -

(i) he re-enters Eligible Employment or his Contributing Service re-commences, as the case may be, within not more than one Month after such cessation or pursuant to the exercise of a right to return to work under section 45(1) of the Employment Protection (Consolidation) Act 1978; or

(ii) within not more than six Months (or such longer period as may be allowed in a particular case under regulation 36(1)(e) of the Occupational Pension Schemes (Contracting-out) Regulations 1984) and before attaining Pensionable Age he re-enters Eligible Employment or his Contributing Service recommences, as the case may be, and either no Contributions Equivalent Premium has been paid in respect of him in connection with such cessation or any Contributions Equivalent Premium so paid is refunded; or

(b) Notwithstanding that a person's period of Contributing Service ceases by reason of any Period of Strike Absence and his Contributing Service recommences more than six months later and immediately after any such Period of Strike Absence,

Provided that no period between such cessation and such re-entry or re-commencement shall be taken into account as a period of Eligible Employment or Contributing Service as the case may be by virtue of this paragraph.

II - CONTRIBUTIONS

SPECIAL CONTRIBUTIONS

4 - (1) Any member in Eligible Employment may elect to pay special contributions in respect of any Period of Strike Absence in accordance with the following provisions of this Rule.

(2) A Transferred MPS Member who elected to pay special contributions under MPS in respect of any Period of Strike Absence and who but for Transfer Day would have paid special contributions pursuant to that election on or after Transfer Day shall be deemed to have elected to pay those special contributions to the Scheme.

(3) The Pensions Officer shall determine the total amount of such special contributions by reference to such member's Estimated Earnings and the Normal Contributions he would have paid pursuant to Rule 5 if his Estimated Earnings had been Earnings. He shall further determine the weekly amounts of special contributions and the number of Weeks over which such weekly amounts shall be payable. Such determinations shall be notified to such member.

(4) Within four weeks of such notification such member may elect to pay such special contributions by notifying the Pensions Officer in writing. Upon the making of such an election he shall pay to the Scheme (subject to Rule 7) the weekly amounts of special contributions over the number of weeks determined by the Pensions Officer under paragraph (2) of this Rule.

(5) When any such person shall make an election in accordance with paragraph (3) of this Rule, then notwithstanding any other provisions of the Scheme and Rules but subject to paragraph (6) of this Rule:-

(a) such Period of Strike Absence shall be deemed to be included in his total period of Contributing Service, and

(b) such Estimated Earnings shall be deemed to be his Earnings during the Period of Strike Absence.

(6) If as a result of the operation of Rule 7 a person actually pays less special contributions than he would otherwise have paid (or he pays no special contributions) the extent (if any) to which the Period of Strike Absence and the Estimated Earnings are deemed respectively to be included in his Contributing Service and to be his

Earnings during the period of Strike Absence shall be determined by the Pensions Officer on the advice of the Actuary.

(7) For the purpose of determining the Employer's obligation to pay Standard Contributions under Clause 2 the amount of special contributions in accordance with this Rule shall not be treated as contributions payable under the Rules by or in respect of the members or persons concerned. Such amounts shall be paid by the Employer at the times the special contributions are paid and the weekly amounts deducted or at the Employer's option may be paid in capitalised amounts at such times, over such periods and in such manner as may be agreed with the Actuary.

NORMAL CONTRIBUTIONS

5 - (1) Subject to the provisions of paragraph (1) of Rule 2 and of Rule 7 every member shall pay contributions (in the Rules called "Normal Contributions") in respect of any period during which he is in Eligible Employment after the date with effect from which he is admitted as a member of the Scheme and not later than whichever is the earlier of the Week in which his period of Contributing Service (including Contributing Service under MPS) totals 40 complete years or the Week in which he attains Pensionable Age at the rate of 5¼% of the amount of the Member's Contribution Earnings.

(2) References in the Scheme to the amount of a member's contributions under Rule 4 or 5 include (in relation to a Transferred MPS Member) his contributions (other than additional voluntary contributions) to MPS.

ADDITIONAL VOLUNTARY CONTRIBUTIONS

6 - (1) This Rule sets out the terms upon which a member may elect to make additional voluntary contributions to the AVC Scheme in order to secure additional benefits.

(2) In this Rule

(a) "AVC Scheme" means the scheme embodied in this Rule for the provision of certain additional benefits;

(b) "the AVC Interest" shall mean in relation to a member contributing or who has contributed to the AVC Scheme his interest in the AVC Scheme in respect of his contributions to the AVC Scheme as determined by the Committee of

Management where appropriate on such advice as they think fit and shall include in relation to a Transferred MPS Member his interest in the AVC Scheme in respect of his contributions to the AVC Scheme of MPS determined in the same way.

(3) No member may elect in accordance with paragraph (4) of this Rule if he is then subject to notice to terminate his employment.

(4) (a) Subject to paragraph (3) of this Rule and to Rule 7 a member may elect to pay additional voluntary contributions at any time prior to Pensionable Age.

(b) Additional voluntary contributions will be payable only while the member continues to be in Eligible Employment and will be deducted from the Earnings becoming payable to a member.

(c) A member may, on giving reasonable notice not exceeding 12 months to the Pensions Officer reduce, increase or terminate his additional voluntary contributions provided that a reduction in his additional voluntary contributions must not result in the payment of contributions of less than such amount as the Committee of Management may from time to time determine having regard to paragraph (8) of regulation 2 of the Pension Schemes (Voluntary Contributions Requirements and Voluntary and Compulsory Membership) Regulations 1987.

(5) Additional voluntary contributions shall be payable promptly and the member's AVC Interest shall be applied by the Committee of Management to provide additional benefits in respect of the member in such form (consistent with Inland Revenue Approval) as the member shall, with the consent of the Committee of Management, determine Provided that no part of the additional benefit shall take the form of a cash payment payable to the member during his lifetime. Such additional benefits must be reasonable having regard to the amount of the additional voluntary contributions and to the value of the other benefits under the Scheme.

(6) On the death of a member before his AVC Interest shall be applied pursuant to paragraph (7) of this Rule the member's AVC Interest shall be held by the Committee of Management upon trust with power to pay or apply the same within two years from the date of the member's death to or for the benefit of (or by way of settlement or otherwise to trustees for the benefit of) such one or more of the member's Dependants or Relatives in such shares and proportions (if more than one) upon such trusts and in such manner (including the provision of annuities) as the Committee of

Management shall in their discretion think fit. Any part of the AVC Interest not so paid or applied within such period of two years shall be paid to the legal personal representatives of the member except that if the member's AVC Interest would vest in the Crown as bona vacantia, the Committee of Management shall hold such AVC Interest under the trusts of the Scheme to apply the same to such of the purposes thereof as they shall decide. The Committee of Management may, but without being in any way bound to do so, have regard to any document signed by the member concerned expressing his wishes relating to the disposal of his AVC Interest.

(7) On a member becoming entitled to benefit under Rule 14 (whether or not increased under Rule 15), Rule 16, Rule 17, Rule 18, Rule 19, Rule 20 or Rule 22 his AVC Interest shall be applied by the Committee of Management in accordance with the wishes of the member expressed to the Committee of Management in writing subject to the proviso to paragraph (5) of this Rule Provided that:-

(a) if the member has not expressed any wishes in writing to the Committee of Management they shall be entitled to apply the AVC Interest in providing such benefits (consistent with Inland Revenue Approval) within the Inland Revenue Limits for the member, his Dependants or Relatives as the Committee of Management in their absolute discretion shall think appropriate subject to the proviso to paragraph (5) of this Rule;

(b) if the wishes of the member expressed pursuant to this paragraph would result in any of the benefits for which the member has elected exceeding the Inland Revenue Limits then the surplus of the money in the AVC Interest shall be applied by the Committee of Management at their discretion in providing such other benefits (consistent with Inland Revenue Approval) within the Inland Revenue Limits for his Dependants or Relatives as the Committee of Management in their absolute discretion shall deem appropriate; and

(c) if the Committee of Management have provided the maximum benefits to or in respect of a member which they may provide under the Inland Revenue Limits then any remaining surplus of the money in the AVC Interest shall be paid to the member (or if the member has died to the personal representatives of the member) after deducting the amount of any tax to which the Scheme's administrator is charged by section 599A of the Taxes Act by virtue of making the payment.

(8) Any benefit provided pursuant to paragraph (7) of this Rule shall be secured by the Committee of Management by contracts or policies taken out in the United Kingdom with a Recognised Insurance Company.

(9) On a member ceasing to be in Eligible Employment before attaining Pensionable Age without becoming entitled to an immediate pension then:-

(a) the additional voluntary contributions payable by such member shall cease forthwith;

(b) if the member to whom this paragraph applies takes a refund of his Normal Contributions his AVC Interest shall be returned to him subject to deduction of tax pursuant to Rule 47;

(c) if a transfer is made to another retirement benefits fund, scheme or arrangement in respect of part or all of a member's benefit under the Scheme a like transfer shall be made in respect of the AVC Interest; and

(d) subject to the preceding provisions the AVC Interest shall be applied in providing benefits in accordance with paragraph (7) of this Rule at Pensionable Age or such earlier date on which any benefits under Rule 16, Rule 17, Rule 18, Rule 19 or Rule 20 commence to be payable.

MAXIMUM CONTRIBUTIONS

7 - The total contributions payable by a member when aggregated with contributions (if any) to all Associated Schemes which are Exempt Approved Schemes in any Income Tax Year shall not exceed the amount allowed to be deducted by virtue of section 592(7) to (8E) of the Taxes Act as an expense in that Income Tax Year.

PAYMENT OF CONTRIBUTIONS

8 - (1) The amount of any Normal Contributions payable by a member under Rule 5 shall be deducted from any payment of Earnings made to that member.

(2) In assessing the amount of any Normal Contributions payable in relation to any Week any half or greater fraction of a penny shall be treated as a whole penny and any smaller fraction of a penny shall be ignored.

III - BENEFITS

QUALIFYING SERVICE

9 - (1) Subject as hereinafter provided, where under the Rules provision is made for benefits to be awarded by reference to Qualifying Service such service shall be credited to a person as follows -

(a) For any service by him in Eligible Employment on or after Transfer Day and before he attains Pensionable Age (excluding, except on the termination of that period of service, any period of service in respect of which a Contributions Equivalent Premium has been paid and has not been refunded or in respect of which a refund of contributions is, subject to sub-paragraph (c) of paragraph (4) of Rule 22, paid or payable to him under sub-paragraph (b) of that paragraph, or both) he shall be credited with Qualifying Service equal to the length of such service in Eligible Employment;

Provided that if he has given written notice pursuant to paragraph (1) of Rule 2 he shall not be credited with Qualifying Service in respect of any period of service in Eligible Employment after the date on which Normal Contributions ceased to be deducted from his Earnings.

(b) Subject to the exclusion in sub-paragraph (a) of this paragraph (which shall be interpreted as if references to provisions of the Scheme included the corresponding provisions of MPS), a Former MPS Member shall be credited with Qualifying Service of the length notified to the Committee of Management by the administrator of MPS

(i) of any Pre-Transfer Day Contributing Service

(ii) for units under MPS with which he was credited under MPS

(iii) for back service credit with which he was credited under MPS

(iv) for any transfer payment in respect of him from some other scheme to MPS

and for the purposes of this sub-paragraph "Pre-Transfer Day Contributing Service" means service before Transfer Day in employment that was "Contributing Service" as defined in and for the purposes of MPS.

(c) Where a Transfer Payment (other than a Transfer Payment from MPS in respect of a Transferred MPS Member) is made to the Scheme from another Occupational Pension Scheme in respect of the person under Rule 34 he shall be credited in accordance with the terms referred to in that Rule or in accordance with the preservation requirements (within the meaning of section 69(2) of the 1993 Act) with any period of Qualifying Service provided for by those terms or those requirements.

(2) Where the total of the Qualifying Service to be credited to a person in accordance with paragraph (1) of this Rule includes a fraction of a year, the said fraction, if it is equal to one-half or more, shall be deemed to be a complete year, and if it is less than one-half shall be ignored.

(3) For the purposes of paragraph (2) of this Rule a year shall be deemed to consist of exactly 52 weeks.

PENSIONABLE EARNINGS

10 - (1) Subject as hereinafter provided, for the purpose of the Rules "Pensionable Earnings" in relation to any person means:-

(a) The amount of that person's average total weekly Earnings during a period of 3 consecutive years falling within the final continuous period not exceeding 13 consecutive years of his Contributing Service, such period of 3 consecutive years being the period during which the amount of his average total weekly Earnings equals or exceeds the amount of his average total weekly Earnings during any other period of 3 consecutive years during such final continuous period; or

(b) If that person's total final continuous period of Contributing Service comprises less than 3 consecutive years, the amount of his average total weekly Earnings during such final continuous period.

(2) Any amount of Earnings of any person taken into account for the purpose of calculating that person's Pensionable Earnings shall be adjusted by reference to changes in the Index of Retail Prices if and insofar as is provided by Rule 28.

(3) For the purposes of this Rule "year" means Income Tax Year.

(4) For the purposes of this Rule **"Contributing Service"** in the case of a Former MPS Member who is not a Transferred MPS Member includes service before Transfer Day which was Contributing Service for the purposes of MPS.

(5) If the person is a Capped Member Pensionable Earnings shall not exceed the Permitted Maximum for the year in which the final continuous period of his Contributing Service ends.

(6) For the purposes of this Rule the definition of "Earnings" in Clause 43 of the Scheme is to be interpreted as if:-

(a) references to Eligible Employment included employment before Transfer Day that was Eligible Employment within the meaning of Clause 41 of MPS; and

(b) the reference in paragraph (c) to special contributions in accordance with Rule 4 included special contributions in accordance with Rule 3 of MPS.

INLAND REVENUE LIMITS

11 - (1) Notwithstanding any provisions of the Rules to the contrary neither the form of any benefit or benefits payable to or by reference to any person under or by virtue of the Rules nor the amounts or aggregate amounts of -

(a) any such benefit or benefits; and

(b) any other benefit or benefits payable to or by reference to that person which the Board of Inland Revenue require to be taken into account for that purpose;

shall contravene or exceed the Inland Revenue Limits.

(2) If but for the provisions of paragraph (1) of this Rule the form of any benefit or benefits payable to or by reference to any person under or by virtue of the Rules or the amount or aggregate amount, of any such benefit or benefits as are mentioned in

that paragraph, or both, would contravene or exceed the Inland Revenue Limits, the form or the amount or aggregate amount, or both, of the benefit or benefits so payable under or by virtue of the Rules shall be modified or reduced, as the case may be, in such manner as the Pensions Officer may determine, to such extent as may be necessary to ensure compliance by the first-mentioned benefit or benefits with the Inland Revenue Limits.

CONTRACTING OUT

12 - If any employment becomes contracted-out employment by reference to the Scheme, the provisions of the Contracting-out Appendix shall apply.

CESSATION OF MEMBERSHIP

13 - If a member exercises his right to discontinue the payment of Normal Contributions, in accordance with the provisions of paragraph (1) of Rule 2 or if an Employer exercises his right to terminate the payment of Normal Contributions by a member in accordance with the provisions of paragraph (3) of Rule 2 his service in Eligible Employment and Contributing Service shall be deemed for the purposes of the Rules as having terminated on the date of such discontinuance or termination in accordance with the provisions of Rule 22. This Rule shall override any other provisions of the Scheme, the Rules and the Schedules to the Rules insofar as they are inconsistent with it.

NORMAL RETIREMENT

14 - (1) Subject as hereinafter provided, benefit shall be payable under this Rule to a member on Retirement on or after attaining Pensionable Age.

(2) Subject as hereinafter provided, the benefit payable under this Rule to a member having Qualifying Service of 5 years or more shall be a pension comprising the aggregate of such of the following weekly amounts as shall be applicable:-

(a) A weekly amount consisting of one-sixtieth of the amount of the member's Pensionable Earnings for each complete year of the member's Contributing Service and one-fifty-second part of one-sixtieth of the amount of the member's Pensionable Earnings for each week of such Contributing Service not thus taken into account Provided that the maximum period of Contributing Service to be taken into account for the purpose of this sub-paragraph in relation to a member shall be forty complete years with the option of electing

to take a lump sum payment in accordance with the provisions of paragraph (4) of this Rule.

(b) In the case of a Transferred MPS Member a weekly amount consisting in respect of the periods specified in column (2) and any subsequent column of the Sixth Schedule of the amounts shown in those columns respectively against item (1) of that Schedule for each complete year of the member's service in Eligible Employment during the period from 6th January 1964 to 5th April 1975 and of the amounts so shown divided by 52 for each week of such service not thus taken into account.

(c) In the case of a Transferred MPS Member a weekly amount consisting in respect of the periods specified in column (2) and any subsequent column of the Sixth Schedule of the amounts shown in those columns respectively against item (2) of that Schedule for each complete year of the member's service in Eligible Employment during the period from 3rd April 1961 to 5th January 1964 and of the amounts so shown divided by 52 for each week of such service not thus taken into account.

(d) In the case of a Transferred MPS Member if the member had units standing to his credit under MPS, representing service before 3rd April 1961, a weekly amount consisting in respect of the periods specified in column (2) and any subsequent column of the Sixth Schedule of the amounts shown in those columns respectively against item (3) of that Schedule for every such unit.

(e) In the case of a Transferred MPS Member if the total of:-

(i) The aggregate of the weekly amounts ascertained in accordance with sub-paragraphs (a) to (d) of this paragraph; and

(ii) the weekly rate of any graduated pension payable to the member under the Social Security Legislation so far as such pension is attributable to the member's having been treated under section 58 of the National Insurance Act as having paid graduated contributions to the National Insurance Fund in respect of service which was Eligible Employment for the purposes of MPS or service in respect of which the member has paid contributions to BCSSS; and

(iii) the weekly amount of any other pension payable to the member under the Rules (other than Rule 12), so far as such pension is in respect of service in Eligible Employment on or after 3rd April 1961; and

(iv) in the case of a member who, having been a contributor to the Staff Scheme or BCSSS, transfers to Eligible Employment , the weekly amount of any pension payable to the member under the Staff Scheme or BCSSS;

is in respect of the periods specified in column (2) and any subsequent column of the Fourth Schedule, less than the weekly amounts shown in those columns respectively against item (2) of that Schedule in relation to the member's period of Qualifying Service, the difference between the said total and that amount.

(3) Subject as hereinafter provided, the benefit payable under this Rule to a member having Qualifying Service of less than 5 years shall be a pension of a weekly amount calculated in accordance with sub-paragraph (a) of paragraph (2) of this Rule.

(4) A member may, prior to his pension becoming payable, elect to commute within the Inland Revenue Limits up to 25% of his pension for a lump sum payment on the basis of £9 for each £1 of pension commuted.

DEFERRED RETIREMENT

15 - (1) Subject as hereinafter provided, a member who remains in Eligible Employment after attaining Pensionable Age shall on Retirement (or on his 75th birthday if he is a Capped Member and remains in Eligible Employment until his 75th birthday) be entitled to receive the same benefits in all respects as he would have received if he had retired on attaining Pensionable Age but increased within the Inland Revenue Limits by such amount as the Committee of Management acting on the advice of the Actuary may determine.

(2) No increase in benefit shall be provided by this Rule unless the member's Retirement shall be deferred by at least one complete year after Pensionable Age and thereafter shall be increased by such further amount as the Committee of Management acting on the advice of the Actuary may determine in respect of each complete week of deferment.

(3) In calculating any increase of benefit under this Rule -

(a) the period of deferment in relation to a member shall be deemed to commence on the date on which the member attains Pensionable Age and to terminate on the date on which his service in Eligible Employment terminates or is deemed to terminate; and

(b) not more than five years of deferment shall be taken into account in relation to any member.

INCAPACITY RETIREMENT

16 - (1) Subject as hereinafter provided, benefit shall be payable under this Rule to a member who Retires before attaining Pensionable Age if he is certified by the Scheme's Medical Adviser to be so incapacitated as a result of accident or ill-health that he is unable and likely to remain unable to undertake any form of employment that his Employer (other than a Recognised Trade Union) is able to offer him or if there is no such form of employment the form of employment in Eligible Employment upon which he was last engaged.

(2) Subject as hereinafter provided benefit shall be payable under paragraph (3) of this Rule to a member who satisfies the requirements specified in paragraph (1) of this Rule if:-

(i) he has Qualifying Service of 5 years or more; or

(ii) the Committee of Management in their discretion determine that he shall be treated for the purposes of this Rule as if he had 5 years' Qualifying Service.

(3) Subject as hereinafter provided, the benefit under this paragraph shall be a pension comprising the aggregate of such of the weekly amounts as are specified in paragraph (2) of Rule 14 and payable from the date of the member's Retirement. The provisions of sub-paragraph (e) of paragraph (2) of Rule 14 shall apply to such pension but if the member has less than five years' Qualifying Service he shall be deemed to have five years' Qualifying Service. Where the provisions of sub-paragraph (e) of paragraph (2) of Rule 14 are to apply to the benefit under this paragraph in respect of a member who has less than five years' Qualifying Service, such part of the weekly amount of pension payable as a consequence of the member being deemed to have five years' Qualifying Service as exceeds the amount of pension which would have been payable

had he not been so deemed, shall be reduced by the amount of pension payable to the member by operation of Rule 12(2) of MPS as exceeds the weekly amount of pension the member would have received under MPS had the member not been deemed under Rule 12(2) of MPS to have had five years' qualifying service under MPS.

(4) In any case where the Scheme's Medical Adviser is unable to certify that the member's incapacity is likely to be permanent, the Committee of Management may in their discretion make a provisional award of a pension, calculated as provided in paragraph (3) of this Rule, for such period and subject to such conditions as the Committee of Management may determine, but without prejudice to his rights under any other provisions of the Rules in respect of any period after the termination of his service in Eligible Employment during which such pension is not payable.

(5) A member entitled to benefit under this Rule may elect in accordance with the provisions of paragraph (4) of Rule 14.

INCAPACITY RETIREMENT - SPECIAL CASES

17 - (1) Subject as hereinafter provided a member shall be entitled to a pension under this Rule on Retirement before attaining Pensionable Age -

(a) If he satisfies the conditions specified in paragraph (1) of Rule 15 of the Rules of MPS as they had effect immediately before 6th April 1975; and

(b) Where -

(i) he does not upon his Retirement become entitled to benefit under Rule 32 or any benefit payable in lieu thereof by virtue of paragraph (2) of that Rule; and

(ii) his period of contracted-out employment by reference to the Scheme, within the meaning of section 55(2) of the 1993 Act, is less than five years;

if he elects for benefit under this Rule.

(2) The benefit payable under this Rule shall be calculated and paid in accordance with the provisions of Rule 15 of the Rules of MPS as they had effect immediately before 6th April 1975, save that -

(a) For the reference to the amount of £1.20 specified in paragraph (4) of the said Rule there shall be substituted in respect of the periods specified in column (2) and any subsequent column of the Fourth Schedule references to the amounts shown in those columns respectively against item (3) of that Schedule;

(b) For each reference in the said Rule to a week before or a week after the member retires, or is deemed to retire, for the purposes of the National Insurance Act, there shall be substituted a reference to a week before or a week after, as the case may be, the date upon which the member attains Pensionable Age;

(c) The references to Rules 10, 10(1)(d), 10(1)(f), 14(3)(c) and 14(5)(b) shall be construed as references to the provisions so designated in the Rules of MPS as they had effect immediately before 6th April 1975;

(d) For the references to Rule 14(3) and to Rule 17 respectively there shall be substituted references to Rule 12(4) and to sub-paragraph (b) of paragraph (4) of Rule 9A, and Rule 16 of the Rules of MPS as they have effect at any time on and after 6th April 1975; and

(e) For the avoidance of doubt it is declared that -

(i) any reference in the said Rule 15 to the Industrial Injuries Scheme shall be construed as including references to Rule 19 and to any provision of the Industrial Injuries Deed, or any provision of the Industrial Death and Retirement Scheme giving effect to it, providing for payment of benefits in respect of those which would have been payable under the Industrial Injuries Scheme but for its termination; and

(ii) any reference in the said Rule 15 to supplementary disablement pension under the Industrial Injuries Scheme shall be construed as including references to any pension payable under Rule 19 or payable pursuant to Clause 3 of the Industrial Injuries Deed or any provision of the Industrial Death and Retirement Scheme giving effect to it in respect of any supplementary disablement pension which would have been payable under the Industrial Injuries Scheme but for its termination.

INCAPACITY RETIREMENT - INDUSTRIAL DISABLEMENT

18 - (1) Where a member -

(a) Retires; and

(b) Satisfies the requirements specified in paragraph (1) of Rule 16; and

(c) Suffers from loss of physical or mental faculty resulting from an Industrial Accident which occurs, or an Industrial Disease which develops, on or after 30th March 1970; and

(d) Is, at the time such accident occurs or Industrial Disease develops, a member of the Scheme who has not given notice and ceased to pay Normal Contributions pursuant to paragraph (1) of Rule 2 or a member of the Industrial Death and Retirement Scheme or was, at the time such accident occurred or Industrial Disease developed, a member of MPS who had not given notice and ceased to pay Normal Contributions to MPS pursuant to paragraph (1) of Rule 1A of the rules of MPS or a member of the Industrial Death and Retirement Scheme,

the provisions of this Rule shall apply in relation to him.

(2) (a) Where the provisions of this Rule apply in relation to a member, he shall be entitled to a pension under this Rule and not to a pension under Rule 16 or Rule 17 in respect of any period not earlier than his Retirement during which the degree of disablement resulting from the loss of faculty referred to in sub-paragraph (c) of paragraph (1) of this Rule will be treated, for the purposes of the provisions of the Social Security Legislation relating to industrial injuries and industrial diseases, as not less than 50% Provided that where the member is suffering also from loss of faculty as a result of a Colliery Accident or Colliery Disease, then if he so opts by notice in writing to the Pensions Officer within three Months after the option date, the degree of disablement resulting from such loss shall be taken into account for the purpose of this paragraph with effect from the option date.

(b) For the purposes of this paragraph "the option date" means a date on or after the member's Retirement being the earliest date with effect from which, in the

circumstances then existing, he could become entitled to a pension by exercising an option under this paragraph.

(3) The benefit payable under this Rule shall be a pension consisting of whichever shall be applicable of the following weekly amounts -

(a) For the period until the date on which the member attains Pensionable Age whichever shall be the greater of -

(i) the weekly amount consisting in respect of the periods specified in column (2) and any subsequent column of the Fourth Schedule of the amounts shown in those columns respectively against item (4) of that Schedule and against the degree of the member's disablement which, for the time being, is taken into account for the purpose of paragraph (1) of this Rule, disregarding any degree of disablement in respect of which the member has received a supplementary disablement gratuity under the Industrial Injuries Scheme or has received benefit pursuant to Clause 3 of the Industrial Injuries Deed in respect of any supplementary disablement gratuity to which he would have been entitled under the Industrial Injuries Scheme but for its termination, increased for any week in respect of which he is in receipt of an allowance under section 63 of the Social Security Act by the weekly amount consisting in respect of the periods specified in column (2) and any subsequent column of the Fourth Schedule of the amount shown in those columns respectively against item (5) of that Schedule; and

(ii) the weekly amount of the pension which would apart from this Rule be payable to him for such period under Rule 16 or Rule 17; and

(b) For the period beginning with the date on which the member attains Pensionable Age whichever shall be the greater of:-

(i) the rate mentioned in sub-paragraph (a) of this paragraph; and

(ii) a weekly amount equal to the aggregate of the weekly amounts specified in sub-paragraphs (a)(i) and (a)(ii) of this paragraph but not exceeding the aggregate of the weekly amount specified in sub-paragraph (a)(i) of this paragraph and a weekly amount of £1.50.

(4) The degree of disablement taken into account for the purposes of this Rule shall not exceed 100%, nor shall it exceed the difference between 100% and the degree of disablement in respect of which the member is entitled for the time being to a supplementary disablement pension under the Industrial Injuries Scheme, a pension under Rule 19 or benefit payable pursuant to Clause 3 of the Industrial Injuries Deed in respect of any supplementary disablement pension to which he would have been entitled under the Industrial Injuries Scheme but for its termination.

(5) If a member to whom a pension is payable under this Rule returns to Eligible Employment or to other regular whole-time employment with the Employer or a Small Mine Licensee, he shall not be entitled to a pension under this Rule in respect of any period after such return, but this shall not prevent his becoming entitled to such a pension in respect of a subsequent period if he Retires again and in respect of such Retirement satisfies the requirements of paragraph (1) of this Rule.

DISABLEMENT - COLLIERY ACCIDENTS AND DISEASES

19 - (1) Where:-

(a) A pension has become payable to a member or other person under any other provision of the Rules of MPS (including the Rules as they had effect at any time before 1st January 1978); and

(b) But for the termination of the Industrial Injuries Scheme and but for Transfer Day having passed a supplementary disablement pension would have been payable to him under that Scheme; and

(c) No commutation of benefits otherwise payable to him has taken place under or in pursuance of Clause 4 of the Industrial Injuries Deed or any provision of the Industrial Death and Retirement Scheme giving effect to that Clause;

he shall if he so elects be entitled to receive as a pension under this Rule the amount of the supplementary disablement pension to which he would have been entitled under the Industrial Injuries Scheme but for its termination and but for Transfer Day having passed.

(2) For the purposes of paragraph (1) of this Rule "supplementary disablement pension" means a pension which was or would but for the termination of the Industrial Injuries

Scheme have been supplementary disablement pension within the meaning of that Scheme.

OPTIONAL EARLY RETIREMENT

20 (1) Subject to the provisions of paragraphs (4) and (5) of this Rule, a member whose service in Eligible Employment terminates shall be entitled to exercise the option conferred by this Rule.

(2) A member shall have the option exercisable by giving written notice to the Committee of Management at any time after the date of termination of service in Eligible Employment and prior to attainment of Pensionable Age of receiving a benefit under this Rule prior to Pensionable Age Provided that no such option shall be exercisable before the member shall attain the age of 50 and no such benefit shall be payable with effect from a date earlier than the date of the member's fiftieth birthday. Any such notice may be revoked by a member giving written notice to that effect to the Committee of Management at any time prior to the commencement of payment of the benefit under this Rule.

(3) The benefit payable under this Rule shall be calculated in accordance with the provisions of Rule 14 but the amount payable will be of such reduced amount as the Committee of Management, on the advice of the Actuary and with the agreement of the Employer, shall determine having regard to its earlier commencement Provided that no such reduction shall be applied to the benefit payable to any member who shall have attained the age of 59 when his or her service in Eligible Employment terminates.

(4) Benefit shall not be payable under the provisions of paragraph (3) of this Rule unless the Committee of Management, on the advice of the Actuary, are satisfied that the pension payable to the member at State Pensionable Age will not be less than the guaranteed minimum pension payable under the combined provisions of Rule 12 and the Contracting-out Appendix.

(5) A member shall not be entitled to exercise the option conferred by this Rule if upon termination of service in Eligible Employment the member becomes entitled to benefit under Rule 16, 17 or 18 or if the member has given written notice pursuant to Rule 2.

LEVELLING OPTION

21 - Subject as hereinafter provided, at the option of a member who is in Eligible Employment and has attained the age of 59 and who becomes entitled to benefits under Rule 14 (whether or not increased under Rule 15), Rule 16 or Rule 20, the Committee of Management may determine that the amount of such member's benefits shall until State Pensionable Age be increased and thereafter be reduced by such amounts as may be determined by the Committee of Management after consulting the Actuary and as may be approved by the Employer and based on the amount of the single person's retirement pension payable by the State under the provisions of the Social Security Act at the time of the determination Provided that:-

(i) The member shall notify the Committee of Management in writing of his intention to exercise the option contained in this Rule at the time the pension becomes payable.

(ii) Any exercise of the option contained in this Rule shall be irrevocable.

(iii) The rates of reduction and increase determined by the Committee of Management to be applicable to a member who has exercised the option contained in this Rule shall be fixed and shall remain unaltered despite any increase in the rates of pension save that the Committee of Management shall in the case of a member who has retired before Pensionable Age having exercised the said option and who subsequently re-enters service in Eligible Employment adjust the rates applicable to his normal benefits on his subsequent retirement and the benefits payable on attaining Pensionable Age will be actuarially adjusted in respect of the first retirement.

(iv) The Committee of Management may at their discretion require a member wishing to exercise the option contained in this Rule to provide evidence of normal health having regard to the age of the member as may be required by the Employer.

(v) The option contained in this Rule shall be exercisable only if in the opinion of the Actuary the pension payable after the member's State Pensionable Age shall not be less than the guaranteed minimum pension payable under the combined provisions of Rule 12 and the Contracting-out Appendix.

(vi) For the purpose of calculating benefits payable on the death of a member any option exercised under this Rule shall be ignored.

TERMINATION OF SERVICE

22 - (1) Subject as hereinafter provided, benefit shall be payable under this Rule to any member whose service in Eligible Employment terminates otherwise than by reason of death and who does not upon such termination become entitled to benefit under any of the preceding Rules (other than the combined provisions of Rule 12 and the Contracting-out Appendix).

(2) (a) Benefit shall be payable under this paragraph:-

(i) if the member has Qualifying Service of 5 years or more and the termination of his service in Eligible Employment is not due to and does not arise out of his misconduct or his voluntary withdrawal; and

(ii) if at the date of such termination the member has attained the age of 50.

(b) The benefit payable under this paragraph shall be a pension consisting of a weekly amount calculated in accordance with paragraph (2) of Rule 14.

(c) The pension payable under this paragraph shall be payable from the date on which the member attains Pensionable Age.

(3) (a) Benefit shall be payable under this paragraph:-

(i) if the member does not become entitled to benefit under any of the preceding provisions of this Rule; and

(ii) if the member has Qualifying Service of two years or more.

(b) The benefit payable to a member under this paragraph shall be a pension consisting of a weekly amount calculated in accordance with paragraph (3) of Rule 14 payable from the date on which the member attains Pensionable Age.

(4) (a) Benefit shall be payable under this paragraph:-

(i) if the member does not become entitled to benefit under any of the preceding provisions of this Rule or to benefit under Rule 32 or any

benefit payable in lieu thereof by virtue of paragraph (2) of that Rule; and

(ii) if he has Qualifying Service of less than two years.

(b) The benefit payable to a member under this paragraph shall consist of a refund of the total amount of the contributions payable by or in respect of him under Rule 4 or Rule 5 in relation to any period of his Contributing Service.

(c) Where benefit is payable to any person under this paragraph, and a Contributions Equivalent Premium falls to be paid in respect of him the amount of benefit payable under subparagraph (b) of this paragraph shall, pursuant to section 61(7) of the 1993 Act, be reduced by the amount (if any) which the Employer is entitled to recover pursuant to section 61 of the 1993 Act.

(5) A member entitled to benefit under this Rule may elect in accordance with the provisions of paragraph (4) of Rule 14.

SURVIVING SPOUSE'S BENEFIT

23 - (1) Subject as hereinafter provided and to the provisions of Rule 24, where any member (in this Rule called "the deceased") dies benefit shall be payable to his Widow by reference to him under and in accordance with this Rule.

(2) Benefit shall be payable under paragraph (3) of this Rule by reference to the deceased if any one or more of the following conditions are satisfied -

(a) he dies while he is in Eligible Employment; or

(b) he has prior to the date of his death retired from Eligible Employment in such circumstances that a pension is or would had he survived have become payable to him under any of Rule 14 (whether or not increased under Rule 15), Rule 16, Rule 17, Rule 18, Rule 19, Rule 20 or paragraph (2) of Rule 22; or

(c) his service in Eligible Employment terminates in such circumstances that a pension is or would had he survived have become payable to him under paragraph (3) of Rule 22.

(3) The benefit payable under this paragraph shall be a pension calculated in accordance with paragraphs (4) and (5) of this Rule.

(4) (a) Subject to paragraph (6) of this Rule, the weekly amount of the pension payable under paragraph (3) of this Rule by reference to the deceased shall consist of either:-

(i) where the deceased dies whilst he is in Eligible Employment before attaining Pensionable Age two-thirds of the amount of the weekly pension which would had he retired on the day before the date of his death have been payable to him at the date of his death under Rule 16; or

(ii) where the deceased dies whilst he is in Eligible Employment and on or after attaining Pensionable Age, two-thirds of the amount of the weekly pension which would had he retired on the day before the date of his death have been payable to him at the date of his death under Rule 14 and, if applicable, Rule 15; or

(iii) where at the time of his death he was in receipt of a pension, two-thirds of the amount of the pension he was receiving at the date of his death ignoring any reduction in his pension arising from the exercise of the option contained in Rule 20; or

(iv) where (i) and (ii) above do not apply and at the time of his death no pension is payable to the deceased, two-thirds of the amount of the pension which would have become payable had he attained Pensionable Age on the day before the date of his death.

(b) Notwithstanding any provision of sub-paragraph (a) of this paragraph, where no Supplementary Fatal Injury Benefit is payable by reference to the deceased the weekly amount of the pension payable under paragraph (3) of this Rule (otherwise than solely by virtue of sub-paragraph (c) of paragraph (2) of this Rule) by reference to the deceased shall not be less than a weekly amount, in respect of the period specified in column (2) and any subsequent column of the Fourth Schedule, equal to the amount shown in those columns respectively against item (5A) of that Schedule. The weekly amounts of any additional benefit provided by operation of this sub-paragraph (b) shall be reduced by any

additional benefits payable in respect of the deceased by operation of Rule 16(4)(b) of MPS.

(5) Notwithstanding any other provisions of this Rule, where a member or other person retires from Eligible Employment or his service in Eligible Employment terminates, the amount of any pension payable by reference to him under paragraph (3) of this Rule shall not be less than one half of the guaranteed minimum pension payable under the combined provisions of Rule 12 and the Contracting-out Appendix.

(6) Where the deceased dies leaving a Widow, so much of any pension payable under paragraph (3) of this Rule by reference to him as notwithstanding Rule 24 is payable to such Widow and is payable solely by virtue of sub-paragraph (a) or (b) of paragraph (2) of this Rule may at the discretion of the Committee of Management be withheld if the deceased's marriage to such Widow takes place after such Retirement or termination and within six Months before his death.

(7) In addition to any benefit payable under paragraph (3) of this Rule -

(a) If before the date of his death the deceased retires in such circumstances that a pension is payable to him under Rule 14 (whether or not increased under Rule 15) or Rule 20, or his service in Eligible Employment terminates on his being made redundant and a pension becomes payable to him under paragraph (2) or (3) of Rule 22, and he dies before the fifth anniversary after the date upon which such pension first becomes payable to him, lump sum benefit shall be payable by reference to him of an amount equal to the weekly pension which is payable to him at the date of his death multiplied by the number of weeks (a fraction of a week being treated as a whole week) between the deceased's death and the fifth anniversary of the date when such pension first becomes payable to him; and

(b) If before the date of his death the deceased retires in such circumstances that a pension is or would had he survived have become payable to him under any one or more of Rule 16, Rule 17 and Rule 18 and he dies before, on or within five years after the date when such pension, or if more than one the first of such pensions to become payable to him, first becomes so payable, lump sum benefit shall be payable by reference to him of an amount equal to the excess of the greatest amount or total amount of the weekly pensions which at any time have been or would had he survived have been or become payable to him under any one or more of Rules 16, 17 and 18 (not taking into account any

annual increases by reference to changes in the Index of Retail Prices provided for by Rule 28 falling to be made after the date of his death), multiplied by 260, over the total of the amounts (if any) by way of pension which have been paid or become payable to the deceased under such one or more of Rules 16, 17 and 18 as shall have been applicable.

(8) (a) In addition to any other benefit payable under this Rule, lump sum death in service benefit shall be payable under this paragraph by reference to the deceased if he dies while he is in Eligible Employment.

(b) The amount of the lump sum death in service benefit payable under this paragraph shall subject to sub-paragraph (c) be whichever one of the following applicable amounts is the greatest -

(i) an amount of 156 times the amount of any weekly pension which would have been or become payable to the deceased referred to in and as calculated for the purposes of paragraph (4) of this Rule;

(ii) the aggregate of the amount specified in Part I of the Third Schedule in relation to this paragraph, and the amount of any benefit payable under sub-paragraph (a) of paragraph (6) of Rule 25 by reference to the deceased; and

(iii) an amount of 104 times the amount of his Pensionable Earnings.

(c) The lump sum payable under this paragraph shall be reduced by a sum equal to the amount of any benefit payable under Rule 16(7), Rule 16(9) and Rule 16(10) of MPS.

(9) (a) Subject as hereinafter provided where after Retirement the deceased dies as a result of an Industrial Accident or at premises on which persons are in Eligible Employment, lump sum industrial death benefit shall be payable to his Widow under this paragraph by reference to him if one or both of the following conditions are satisfied -

(i) the deceased's death ensues within 3 months of the Industrial Accident of which it is the result; or

(ii) that death ensues without the deceased having ceased to be incapable of work.

(b) The amount of the lump sum industrial death benefit payable under this paragraph shall be whichever shall be applicable of the following amounts -

(i) if the deceased retires before attaining Pensionable Age an amount of 156 times the amount of the weekly pension which is payable to him at the date of his death under Rule 16, or, which would had he survived have become payable to him under that Rule Provided that for the purposes of this sub-paragraph it shall be deemed that a pension is or would have become payable to him under that Rule and that Rule only notwithstanding that by virtue of the Rules any pension might be or have become payable to him under some other Rule and Provided also that, in determining the amount of any weekly pension which would had he survived have become payable to him under Rule 16 only such annual increases (if any) by reference to changes in the Index of Retail Prices provided for by Rule 28 as shall have fallen to be made on or before the date of the deceased's death shall be taken into account;

(ii) if the deceased retires on or after attaining Pensionable Age, an amount of 156 times the amount of the weekly pension payable to him at the date of his death under Rule 14 (and if applicable increased under Rule 15);

(iii) the amount specified in Part I of the Third Schedule in relation to this paragraph, if that amount, taken together with the amount of any benefits payable under sub-paragraph (a) of paragraph (6) of Rule 25 by reference to the deceased, is greater than whichever shall be applicable of the amounts specified in sub-paragraph (b)(i) and (ii) above.

(10) Where, apart from this paragraph, any person would for the time being be entitled to a pension or pensions under the provisions of this Rule or Rule 24 or MPS by reference to more than one member or other person, she shall be entitled only to such pension as is the larger or largest taking into account any increase under Rule 28 (or under MPS).

(11) For the purposes of determining the amount of any pension or lump sum death payment payable under this Rule any option exercised under Rule 21 shall be ignored.

SURVIVING SPOUSE'S BENEFIT - SUPPLEMENTARY PROVISIONS

24 - (1) Paragraph (3) of this Rule shall apply where at the date of the death of a member (in this paragraph and paragraphs (2) and (3) of this Rule called "the deceased") there is living any person (in this Rule called an "alternative beneficiary") who does not upon such death become the deceased's Widow but who, if the deceased is a man and retires from Eligible Employment or his service in Eligible Employment terminates, is a Dependant in relation to him, and -

(a) is at the date of his death living with the deceased as his wife and being maintained by him; and or alternatively

(b) has at the date of his death the care and maintenance of any Child of the deceased to whom benefit is payable under Rule 25 by reference to the deceased; and or alternatively

(c) is being wholly or mainly maintained by him at the date of his death and is not and has not at any time been entitled to benefit under Rule 25 by reference to the deceased as a Child of his.

(2) For the avoidance of doubt it is declared that paragraph (3) of this Rule:-

(a) Is capable of applying whether or not the deceased has left a Widow surviving him; and

(b) Shall continue to apply if the conditions specified in paragraph (1) of this Rule are satisfied and if the deceased has left a Widow surviving him but such Widow dies or ceases to be a Widow in relation to him.

(3) (a) Where this paragraph applies any benefit payable under paragraphs (3), (7), (8) or (9) of Rule 23 by reference to the deceased shall be payable wholly to the deceased's Widow (if any) unless the Committee of Management in their discretion determine to deal with it in either of the following ways, namely -

(i) they may award such benefit wholly to an alternative beneficiary; or

(ii) they may divide such benefit between the deceased's Widow (if any) and any alternative beneficiaries, or any of them, in such proportions as the Committee of Management may decide;

and the Committee of Management may determine to deal with different forms of benefit in different ways.

(b) Where this paragraph applies, any benefit payable under paragraphs (7) or (8) of Rule 23 by reference to the deceased shall be payable to or applied for the benefit of such person or persons including the deceased's Widow and alternative beneficiaries as the Committee of Management may in their discretion determine and the Committee of Management may determine to deal with different forms of benefit in different ways.

(c) The Committee of Management may at any time review any determination previously made by them under this paragraph and on such review make a fresh determination in respect of future payments or vary or revoke any determination previously made by them under this paragraph.

(d) Any determination made by the Committee of Management under this paragraph shall be binding so far as concerns the person or persons to whom any benefit referred to in sub-paragraph (a) of this paragraph shall be paid, and if and insofar as applicable in what proportions such benefits shall be paid, and in the provisions referred to in sub-paragraph (a) of this paragraph the expression "person to whom benefit is payable" shall be construed accordingly.

(e) Any reference in the Rules to any pension or other benefit payable, paid or received under Rule 23 shall include a reference to any such pension or other benefit payable, paid or received as the case may be to or by any person by virtue of paragraphs (1) and (2) and this paragraph of this Rule.

(4) In making any determination under paragraph (3) of this Rule the Committee of Management shall not have regard to any pension payable to the deceased's Widow (if any) under the combined provisions of Rule 12 and the Contracting-out Appendix, and shall proceed as if no such pension was payable, whether or not the total amount of the pensions payable by reference to the deceased to such Widow and any alternative beneficiaries under the Rules is increased by virtue of that Rule, such determination and this sub-paragraph.

(5) For the avoidance of doubt and for the purposes of the interpretation of paragraph (1) of this Rule, any reference to the words "man" and "wife" shall be read if the deceased is a woman as a reference to the words "woman" and "husband" respectively.

CHILDREN'S BENEFIT

25 - (1) Subject as hereinafter provided, benefit shall be payable under and in accordance with this Rule to the Child of a deceased member.

(2) (a) Subject as hereinafter provided, benefit shall be payable under this paragraph to every Child of the deceased if and so long as there is living any person to whom benefit has been paid by reference to the deceased under Rule 23.

(b) The benefit payable under this paragraph shall be a pension consisting in respect of the periods specified in column (2) and any subsequent column of the Fourth Schedule of the weekly amounts shown in those columns respectively against item (6) of that Schedule.

(3) (a) Subject as hereinafter provided, benefit shall be payable under this paragraph to every Child of the deceased if and so long as there is not living any person to whom benefit has been paid by reference to the deceased under Rule 23;

(b) The benefit payable under this paragraph shall be a pension consisting of the weekly amount which in respect of the periods specified in column (2) and any subsequent column of the Fourth Schedule exceeds by the amounts shown in those columns respectively against item (7) of that Schedule (or, in the case of any Child to whom benefit is payable after he has attained the age of 16, the amounts shown in those columns respectively against item (8) of that Schedule)

(i) the aggregate of the weekly rates at which for the time being guardian's allowance payable under the Social Security Legislation and child benefit are (or would if they were both payable in respect of him be) payable in respect of that Child; less

(ii) the weekly amount or aggregate weekly amounts (if any) of guardian's allowance payable under the Social Security Legislation and or alternatively child benefit for the time being payable in respect of that Child.

(c) For the purposes of sub-paragraph (b) of this paragraph "child benefit" means child benefit within the meaning of section 1(1) of the Child Benefit Act 1975.

(4) In any case where the Committee of Management have exercised their discretion under paragraph (3) of Rule 24 to determine to divide the benefit payable under Rule 23 between any of the deceased's Widow and any such other person or persons as are referred to in paragraph (1) of Rule 23, the Committee of Management shall have power, exercisable at their discretion on the death of any of the persons between whom it was determined that any such benefit should be so divided, to decide that the benefit payable to any Child of the deceased shall consist of the weekly amount specified in paragraph (3) of this Rule instead of the weekly amount specified in paragraph (2) of this Rule.

(5) (a) Any benefit payable under any of the foregoing provisions of this Rule to a Child of the deceased shall be payable to such Child -

(i) until he attains the age of 16; and

(ii) after he has attained that age, for so long as the requirements of sub-paragraph (b) of this paragraph are satisfied in relation to him.

(b) The requirements referred to in sub-paragraph (a)(ii) of this paragraph are as follows -

(i) that such Child is Permanently Incapable of Self-Support; or

(ii) that such Child is under the age of 21 and is for the time being undergoing -

(A) full-time instruction at any university, school or other educational establishment; or

(B) training by any person for any trade, profession or vocation in such circumstances that such Child is required to devote the whole of his time to such training for a period of not less than two years; and while he is undergoing such training the emoluments receivable by him, or payable by the person providing such training in respect of him, exclusive of any emoluments receivable or payable by way of return of any

premium paid in respect of such training, do not exceed £5.80 per week.

(6) (a) Subject as hereinafter provided, in addition to any benefit payable under the foregoing provisions of this Rule lump sum benefit shall be payable under this paragraph to any Child of the deceased by reference to the deceased if benefit is payable to such Child under the foregoing provisions of this Rule by reference to the deceased and if the deceased dies

(i) while he is a member in Eligible Employment; or

(ii) as a result of an Industrial Accident or at premises at which persons are in Eligible Employment in circumstances satisfying either of the conditions specified in sub-paragraph (a) of paragraph (9) of Rule 23.

(b) The amount of any lump sum benefit payable under this paragraph shall be the amount specified in Part I of the Third Schedule in relation to this paragraph Provided that subject to sub-paragraph (d) of this paragraph, if but for the proviso specified in Part I of the Third Schedule the total of the amounts so specified in relation to this paragraph would have exceeded £500, the sum of £500 so specified shall be divided equally between each Child of the deceased entitled to lump sum benefit under this paragraph.

(c) If the deceased leaves a Child who is Permanently Incapable of Self-Support and who is not under the age of 21 at the date of his death and no benefit is payable by virtue of the death of the deceased -

(i) under paragraph (9) of Rule 23; or

(ii) to any other Child of the deceased by virtue of subparagraph (a) of paragraph (5) of this Rule;

such Child Permanently Incapable of Self-Support shall be entitled to receive benefit under paragraph (2) of Rule 26 in lieu of benefit under this paragraph.

(d) If it appears that the deceased was maintaining more than one family, the Committee of Management may, in their discretion, divide the total of the benefits payable under this paragraph between some or all of the Children of the deceased entitled under the foregoing provisions of this paragraph to

receive such benefits in such proportions as the Committee of Management may determine.

(e) For the avoidance of doubt it is declared that this Rule has effect in relation to the death of a woman as well as of a man.

(7) Notwithstanding anything contained in this Rule, no Child who is for the time being entitled to a pension under this Rule or under MPS shall become entitled to any additional pension under this Rule.

OTHER DEATH BENEFITS

26 - (1) Benefit shall be payable under this Rule in respect of the death of any member or other person specified in this Rule (such member or other person being in this Rule and in the Fifth Schedule called "the deceased").

(2) Where the deceased dies -

(a) while he is a member in Eligible Employment; or

(b) after Retirement as a result of an Industrial Accident at premises at which persons are in Eligible Employment in circumstances satisfying either of the conditions specified in sub-paragraph (a) of paragraph (9) of Rule 23;

but without leaving any person to whom benefit is payable by reference to him under Rule 23 or Rule 25 (other than sub-paragraph (c) of paragraph (6) of Rule 25), lump sum benefits of the amounts specified in Part I of the Third Schedule in relation to this paragraph shall be payable under this Rule by reference to the deceased to the persons indicated in that Schedule.

(3) Subject to the provisions of paragraph (4) of this Rule, lump sum benefit consisting of the aggregate of whichever shall be applicable of the following amounts shall be payable under this rule to the estate of the deceased by reference to him -

(a) Where the deceased dies -

(i) while he is a member in Eligible Employment; or

(ii) in the circumstances specified in sub-paragraph (b) of paragraph (2) of Rule 23 whether or not leaving any person to whom benefit is payable by reference to him under that Rule; or

(iii) after becoming a member of the Scheme and after he has Retired but not in the circumstances specified in sub-paragraph (b) of paragraph (2) of Rule 23;

an amount in respect of a refund of the contributions paid or deemed to be paid or payable by or in respect of the deceased (in the Fifth Schedule called "the deceased's contributions") and (if the deceased was a Transferred MPS Member and if and insofar as shall be applicable) of units standing to the deceased's credit calculated in accordance with the provisions of the Fifth Schedule and with Compound Interest at 3% per annum until the date of the deceased's death calculated in accordance with Rule 48 and in the case of units standing to the deceased's credit from 3rd April 1961.

(b) If the deceased dies while in Eligible Employment but without leaving any person to whom benefit is payable by reference to him under Rule 23 whichever one of the following applicable amounts is the greatest -

(i) if the deceased dies before attaining Pensionable Age an amount of 156 times the amount of the weekly pension which had the deceased retired on the day before the date of his death would have been payable to him at the date of his death under Rule 16 or, if no such pension would have been payable to him under that Rule, the weekly pension (if any) which would have become payable to him had he retired as mentioned above but survived Provided that for the purposes of this provision it shall be deemed that a pension would have been or become payable to him under that rule and under that Rule only notwithstanding that by virtue of the Rules a pension might have been or become payable to him under some other rule and Provided also that in determining the amount of any weekly pension which would had the deceased survived have become payable to him only such annual increases (if any) by reference to changes in the Index of Retail Prices provided for by Rule 28 as shall have fallen to be made on or before the date of the deceased's death shall be taken into account; or

(ii) if the deceased dies on or after attaining Pensionable Age, an amount of 156 times the amount of the weekly pension which had the deceased retired on the day before the date of his death and on or after attaining Pensionable Age would have been payable to him at the date of his death under Rule 14 (and if and insofar as applicable Rule 15); or

(iii) an amount of 104 times the amount of his Pensionable Earnings.

(c) Where the deceased dies in the circumstances specified in sub-paragraph (b) or (c) of paragraph (2) of Rule 23 but without leaving any person to whom benefit is payable by reference to him under Rule 23 the amount of the benefit (if any) which would have been payable by reference to him under paragraph (7) of Rule 23 had there been any person to whom it was payable.

(d) Where the deceased dies -

(i) in the circumstances specified in sub-paragraph (b) of paragraph (2) of Rule 23; or

(ii) after becoming a member of the Scheme and after he has Retired but not in the circumstances specified in sub-paragraph (b) of paragraph (2) of Rule 23;

but without leaving any person to whom benefit is payable by reference to him under Rule 23 the amount of the benefit (if any) which would have been payable by reference to him under paragraph (9) of Rule 23 had there been any person to whom it was payable.

(4) There shall be deducted from the amount of the lump sum benefit payable to the deceased's estate by virtue of sub-paragraph (a) of paragraph (3) of this Rule the aggregate of whichever shall be applicable of the following amounts:-

(a) An amount representing the Actuarial Value as at the date of the deceased's death of any benefits payable by reference to him under paragraph (3) of Rule 23, by virtue of paragraph (2) of that Rule or under Rule 25;

(b) The amount as at the date of the deceased's death of any benefits paid or payable to the deceased under Rule 14 (whether or not increased under Rule

15), Rule 16, Rule 18 or Rule 22 disregarding the excess of any amount paid or payable to him under Rule 18 in respect of any week over the amount (if any) which would have been payable to him in respect of that week under Rule 16 or Rule 17 had he not been entitled in respect of that week to a pension under the said Rule 18 (or, if in those circumstances no amount would have been payable to him under either the said Rule 16 or the said Rule 17 in respect of that week, the whole amount paid or payable to him in respect of that week under the said Rule 18);

(c) The amount of any lump sum benefit payable by reference to the deceased under paragraph (7) of Rule 23 or sub-paragraph (c) of paragraph (3) of this Rule;

(d) The excess of the amount of any lump sum benefit payable by reference to the deceased under paragraphs (8) and or alternatively (9) of Rule 23 or alternatively any lump sum benefit payable under sub-paragraph (d) of paragraph (3) of this Rule over the aggregate of whichever shall be applicable of the following amounts:-

(i) the amount specified in Part I of the Third Schedule in relation to paragraph (8) of Rule 23 as shall have been taken into account for the purposes of determining the amount of any lump sum benefit payable by reference to the deceased under paragraph (9) of Rule 23;

(ii) the amount specified in Part I of the Third Schedule in relation to paragraph (9) of Rule 23, insofar as any lump sum benefit is payable by reference to the deceased under that paragraph; and

(iii) the total amount of the benefits (if any) referred to in sub-paragraph (c) of this paragraph payable by reference to the deceased.

RE-EMPLOYED PENSIONERS

27 - (1) This Rule applies to any person (in this Rule called "the re-entrant") who, having become entitled to a pension (in this Rule called "the Terminated Pension") under Rule 14 (whether or not increased under Rule 15), Rule 16, Rule 17, Rule 18, Rule 20 or Rule 22, re-enters service in Eligible Employment .

(2) Subject as otherwise provided, from the date of the re-entry into Eligible Employment referred to in paragraph (1) of this Rule, the entitlement of the re-entrant to the Terminated Pension shall cease.

(3) Subject as hereinafter provided, on any termination of the re-entrant's service in Eligible Employment after the re-entry referred to in paragraph (1) and the cessation referred to in paragraph (2) of this Rule -

(a) Such benefit (if any) shall be payable to or by reference to him under and in accordance with such of the Rules (including Rule 15) as shall be applicable having regard to the circumstances of such subsequent termination; and

(b) Except for the purposes of Rule 10 all units standing to the credit of the re-entrant and all his periods of service in Eligible Employment and periods of Contributing Service, whether or not they relate to service after any such re-entry as is referred to in paragraph (1) of this Rule, before such re-entry shall so far as material to the calculation of benefit under the Rules referred to in sub-paragraph (a) of this paragraph be taken into account for the purpose of such calculation.

(4) (a) Notwithstanding anything in paragraphs (2) and (3) of this Rule but subject as hereinafter provided, the re-entrant shall be entitled on any termination otherwise than by reason of death of his service in Eligible Employment after the re-entry referred to in paragraph (1) of this Rule to a pension of an amount not less than the amount of the Terminated Pension and payable from the date of such termination of service in Eligible Employment or, if later, the date on which the Terminated Pension would have become payable to him; and if at any time or for any period the amount of the pension payable in accordance with this sub-paragraph exceeds the amount of the pension which is payable to him in accordance with sub-paragraph (3) of this Rule the pension payable to him by virtue of this Rule shall at that time or for that period be payable to him in accordance with the provisions of this sub-paragraph and shall or the purposes of the Rules be deemed to be payable under the provisions of the Rules under which the Terminated Pension would have been payable to him had he not re-entered service in Eligible Employment as specified in paragraph (1) of this Rule.

(b) The provisions of sub-paragraph (a) of this paragraph shall not apply to any such person as is referred to in paragraph (5) of Rule 18 who, having become

entitled to a pension under Rule 18, re-enters service in Eligible Employment and subsequently Retires again in such circumstances that the requirements of paragraph (1) of Rule 18 are satisfied in relation to him, and on such subsequent Retirement any benefit payable to that person shall be calculated in accordance with the provisions of Rule 18 and of paragraph (3) of this Rule.

ADJUSTMENTS FOR CHANGES IN INDEX OF RETAIL PRICES

28 - (1) (a) For the purposes of the Rules "Index of Retail Prices" means -

(i) the General Index of Retail Prices for all items shown in the monthly Digest of Statistics published by the Central Statistical Office; or

(ii) in the event of that Index ceasing to be published, such other national index as the Committee of Management having regard to the advice of the Actuary shall determine as being the most suitable for the purposes of this Rule Provided that such adjustment if any shall be made in the figures of the said index having regard to principles analogous to those provided for in paragraph (5) of this Rule as may be determined by the Actuary.

(b) For the purposes of this Rule -

(i) "the Review Date" in relation to any year means 1st October;

(ii) "Agreed Month" means any Month agreed by the Co-ordinator and the Committee of Management for the purposes of this Rule; and

(iii) "the relevant date" in relation to the Index of Retail Prices and in relation to any Agreed Month means the date falling within that Agreed Month selected for the purpose of the computation of the Index of Retail Prices relating to that Month.

(2) Subject as hereinafter provided -

(a) The total weekly amount at the Review Date of any pension payable under the Rules to any member or other person, but excluding the weekly amount of any guaranteed minimum pension which has become payable under the provisions

of Rule 12 and the weekly amount of any pension payable to any member or other person pursuant to Rule 6;

(b) The amount of any payment of Earnings taken into account for any purpose in calculating Pensionable Earnings in relation to any person under Rule 10; and

(c) The total weekly amount of any pension which will become payable under the provisions of paragraph (2) of Rule 22.

shall if and insofar as is provided by the following provisions of this rule be increased by reference to changes in the Index of Retail Prices on the Review Date in each year or on such other date within one month before or after the Review Date as shall be agreed by the Co-ordinator and the Committee of Management in relation to that year Provided that no increase shall be made under this Rule in any year to:-

(i) the amount specified in sub-paragraph (b) of this paragraph if before the Review Date in that year the service in Eligible Employment of the person referred to in that sub-paragraph had terminated; or

(ii) the amount specified in sub-paragraph (b) of this paragraph insofar as it consists of the amount of any payment of Earnings payable during an Income Tax Year beginning in that year.

(3) Subject to paragraph (4) of this Rule, the amount of the increase (if any) in any year falling to be made under paragraph (2) of this Rule shall be an amount equal to such percentage of the weekly amount or amount of payment of earnings falling to be increased under that paragraph as is equal to the increase (if any) in the index figure at which the Index of Retail Prices stood for the relevant date in relation to the Agreed Month immediately preceding the Review Date in that year from the index figure at which the said Index stood for the relevant date in relation to the Agreed Month immediately preceding either the Review Date in the last preceding year or if earlier the last preceding Review Date on which an increase fell to be made under paragraph (2) of this Rule expressed as a percentage of the last mentioned index figure.

(4) Notwithstanding anything in paragraph (3) of this Rule, the percentage amount of the increase made by virtue of this Rule in any weekly amount or amount of payment of Earnings in any year or period of years shall not exceed such amount as the Actuary shall have certified to be the maximum amount (for the purposes of this Rule called

"the Normal Increase Amount") sustainable in relation to Relevant Beneficiaries (within the meaning of Clause 9(20) of the Trust Deed) in respect of such year or period of years by the Employer's Fund without any additional payment (other than any increase in Standard Contributions) being made by the Employer except by such amount (if any) or to such extent (if any) (which amount or extent when added to the Normal Increase Amount in respect of such year or period of years shall not produce an amount exceeding the amount of the increase which would have been payable in such year or period of years under the provisions of paragraph (3) of this Rule had they been applicable) as shall be determined by agreement between the Employer and the Union or as in default of such agreement shall be determined by the Employer and so that different amounts or extents may be determined under this paragraph in respect of different descriptions or categories of weekly amounts or amounts of payments of Earnings and so that any descriptions or categories of weekly amounts or amounts of payments of Earnings may be excluded from any such determination.

(5) In the event of any change in the reference base used to compile the Index of Retail Prices the index figure at which the said Index shall be taken to stand for the purposes of this Rule after any such change shall be the index figure at which it would have stood had the reference base immediately before the change been retained.

(6) For the purposes of this Rule -

(a) "pension" shall include short service benefit in pension form;

(b) "short service benefit" shall bear the meaning assigned to it by sub-paragraph (c) of paragraph (3) of Rule 32; and

(c) "guaranteed minimum pension" means any pension payable or paid under or by virtue of or calculated by reference to the combined provision of Rule 12 and the Contracting-out Appendix, whether or not it is also payable or paid under or by virtue of or calculated by reference to any other provision of the Rules.

REVALUATION OF DEFERRED PENSIONS

29 - (1) This Rule shall apply to any pension awarded to any member whose service in Eligible Employment has terminated or terminates other than by reason of death and which is not revalued under the provisions of Rule 28.

(2) That part of any pension referred to in paragraph (1) of this Rule which is in excess of the guaranteed minimum pension as defined in section 14(2) of the 1993 Act shall if the member's Contributing Service terminates at least one year prior to his attaining Pensionable Age or one year prior to his earlier death if he dies before attaining Pensionable Age be increased in accordance with the provisions of paragraph (3) of this Rule.

(3) That part of the pension referred to in paragraph (2) of this Rule shall be increased each year prior to the member attaining Pensionable Age or his earlier death by the appropriate percentage specified in an Order made by the Secretary of State for Social Security under Schedule 3, paragraph 2, of the 1993 Act.

(4) Notwithstanding the foregoing provisions of this Rule, if a member's Contributing Service terminated at least one year prior to his attaining Pensionable Age or one year prior to his earlier death if he dies before attaining Pensionable Age that part of the pension which is in excess of the guaranteed minimum pension payable to, or by reference to, such member shall be increased in accordance with the provisions of this Rule or, if greater, the provisions of sections 52A and 52B of, and Schedule 1A to, the Pensions Act as originally enacted in the Social Security Act 1986 and not as amended by the Social Security Act 1990.

(5) For the purpose of this Rule any notional period of Contributing Service credited to a member in accordance with sub-paragraphs (c) and (d) of the definition of Contributing Service contained in Clause 43 shall be taken to have ended immediately before the member's actual Contributing Service began.

(6) For the avoidance of doubt, this Rule shall not apply to pensions in payment which will be increased in accordance with the provisions of Rule 28.

INCREASES TO FOURTH SCHEDULE

30 - Where any benefit is expressed to be payable by reference to an amount specified in column (2) and any subsequent column of the Fourth Schedule to the Rules as from time to time amended, such benefit shall be increased in each year in accordance with the provisions of Rule 28 and the increased amounts shall be entered in a subsequent column of that Schedule.

INCREASES TO SIXTH SCHEDULE

31 - The amounts specified in column (2) and any subsequent column of the Sixth Schedule shall be increased with effect from 1st January in each year commencing in 1995 by the percentage referred to in paragraph (3) of Rule 29 and the increased amounts shall be entered in a subsequent column of that Schedule.

PRESERVATION OF BENEFIT

32 - (1) This Rule is incorporated into the Rules in order to ensure compliance by the Scheme with the preservation requirements (within the meaning of section 69(2) of the 1993 Act).

(2) This Rule shall override any other provisions of the Scheme which are inconsistent with it (including any which would otherwise have the effect of overriding this Rule) Provided that -

(a) (i) if at any time or for any period benefit in the form of one or more pensions is payable to any person (in this sub-paragraph called a "beneficiary") under the provisions of any other Rule or Rules (other than the combined provisions of Rule 12 and the Contracting-out Appendix) and benefit in the form of a pension would but for the provisions of this paragraph also be payable to that beneficiary under the provisions of this Rule by reference to the same member or other person; and or alternatively

(ii) if by virtue of any event or circumstances benefit in the form of one or more lump sums is payable to any person (in this sub-paragraph also called a "beneficiary") under the provisions of any other Rule or Rules and benefit in the form of a lump sum would but for the provisions of this paragraph also be payable to that beneficiary under the provisions of this Rule by reference to the same member or other person;

benefits shall be or continue to be payable to that beneficiary under such other Rule or Rules in lieu of being payable under this Rule, but in either case any such pensions or lump sums shall if and insofar as is necessary be increased to the amount of the benefit in the same form which would but for this paragraph have been payable to him under this Rule (and if more than one

pension or lump sum is so increased each such pension or lump sum shall be increased by the proportion of the total increase which the amount prior to any increase under this paragraph of that pension or lump sum bears to the aggregate amount prior to any increase under this paragraph of the pensions or lump sums so increased) and in the case of benefit in the form of one or more lump sums shall be payable to that beneficiary not later than the time when benefit in the form of a lump sum would but for this paragraph have been payable to him under this Rule;

(b) Nothing in this Rule shall prevent benefits being paid to any person in circumstances in which benefit is not payable under this Rule;

(c) Nothing in this Rule shall be deemed to authorise or require the payment of any benefit contravening or exceeding the Inland Revenue Limits.

(3) For the purposes of this Rule -

(a) "Long service benefit" means the benefits to which any of a member, and his Widow, Dependants and estate or personal representatives by reference to him, will be entitled under the Rules if he remains in Eligible Employment until attaining Pensionable Age;

(b) "Preservation service" in relation to any person means the aggregate of the following periods, namely -

(i) any periods (whether or not continuous) of service in Eligible Employment; and

(ii) for the purposes of sub-paragraph (e)(ii) of this paragraph and paragraph (4) of this Rule, any periods of service whilst such person was a member of another Occupational Pension Scheme relating to the same or any other employment in respect of which additional rights to long service benefit are granted under the Rules in substitution for accrued rights under such other Occupational Pension Scheme,

Provided that no account shall be taken of any period which does not qualify such person for long service benefit and Provided also that no period shall be reckoned twice;

(c) "short service benefit" means the benefits which are or would but for paragraph (2) of this Rule have been payable to or by reference to any person under this Rule on or subsequent to termination of his service in Eligible Employment (otherwise than by reason of death) before he has attained Pensionable Age, such benefits consisting of or comprising benefits of any description (whether pension or lump sum and including any option contained in the Rules to substitute the one for the other in whole or in part) which would have been payable to or in respect of him or available to him as long service benefit;

(d) "supplementary credits" has the meaning assigned thereto by section 75(1) of the 1993 Act; and

(e) A person's period of service in Eligible Employment shall be deemed not to have terminated if his service in Eligible Employment has ceased, but -

(i) he subsequently re-enters Eligible Employment within the period of not more than one Month referred to in sub-paragraph (a) of paragraph (2) of Rule 2 or pursuant to the exercise of a right to return to work under section 45(1) of the Employment Protection (Consolidation) Act 1978; or

(ii) having completed or been credited with two years' pensionable service he subsequently re-enters Eligible Employment.

(4) Subject to the provisions of paragraph (2) of this Rule, a person (in this Rule called "a person entitled to short service benefit") whose service in Eligible Employment terminates (otherwise than by reason of death) before he has attained Pensionable Age shall be entitled to have short service benefit paid to and by reference to him if at the date of such termination he has completed or been credited with two years' pensionable service.

(5) Subject to the provisions of paragraph (7) of this Rule, short service benefit shall be payable in the same manner as long service benefit on attainment by the person entitled to short service benefit of Pensionable Age or (as the case may require) on his subsequent death or within such time after such death as long service benefit would be payable.

(6) (a) Subject as hereinafter provided and subject to the provisions of paragraph (7) of this Rule, short service benefit shall be computed on the same basis as long service benefit.

(b) In the case of so much of any long service benefit as -

(i) accrues at a higher rate or otherwise more favourably in the case of persons with a period of pensionable service of some specified minimum length or of persons remaining in pensionable service up to some specified minimum age; or

(ii) is of an amount or at a rate unrelated to the length of person's pensionable service or the amount of contributions payable by, for, or in respect of the person entitled to such benefit;

the corresponding short service benefit shall be calculated on the basis of uniform accrual, bearing the same proportion to long service benefit at the time when the service in Eligible Employment of the person entitled to short service benefit terminates as the period of pensionable service completed by that person bears to the period of pensionable service which would have been completed by him had he remained in Eligible Employment until he attained Pensionable Age.

(c) (i) Short service benefit payable in respect of supplementary credits shall be calculated in accordance with the provisions of paragraph (7) of this Rule and not in accordance with the provisions of sub-paragraph (b) of this paragraph if and insofar as the effect of the method of calculation prescribed in the said paragraph (7) is inconsistent with the effect of the provisions of the said sub-paragraph (b);

(ii) in the calculation of any period of pensionable service which was or would have been completed by a person for the purposes of sub-paragraph (b) above there shall notwithstanding any other provision of the Rules be taken into account only his actual period or periods of service in Eligible Employment;

(iii) the short service benefit payable to and by reference to any person shall if and where necessary be increased so that its value will to the reasonable satisfaction of the Committee of Management exceed or compare reasonably with the amount of contributions paid by that person (including contributions

paid by way of deduction from Earnings or otherwise) and not refunded in any form.

(7) (a) Subject as hereinafter provided, short service benefit shall include all supplementary credits to which a person would be entitled as long service benefit, including any supplementary credit which -

(i) has been granted, either at the time that person's membership of the Scheme commenced or subsequently, in respect of service by him prior to the date of the grant; or

(ii) is not related to length of his pensionable service or the number or amount of contributions paid by or in respect of him; or

(iii) represents a transfer of accrued rights from another scheme.

(b) In the case of any supplementary credits for which a person entitled to short service benefit who would have become entitled thereto as long service benefit was to pay a fixed amount, and such fixed amount has not been paid in full at or before the date when his service in Eligible Employment terminates, the short service benefit payable to and by reference to him in respect of such supplementary credits shall include so much of the amount of the whole of such supplementary credits as bears the same proportion to that amount as the amount which he has paid before his service in Eligible Employment terminates bears to such fixed amount.

(c) Subject to sub-paragraph (b) of this paragraph, in the case of -

(i) any supplementary credits to which a person entitled to short service benefit who would have become entitled thereto as long service benefit was to contribute the whole or part of the cost where such whole or part has not been fully contributed by the time his service in Eligible Employment terminates; and

(ii) any supplementary credit of a description specified in sub-paragraph (a) or (b) of this paragraph to which a person entitled to short service benefit who would become entitled thereto as long service benefit has not contributed;

short service benefit payable to or by reference to that person in respect of any such supplementary credit shall include such proportion of the amount of the whole of such supplementary credits as the period of his preservation service since the date on which in the case of such supplementary credits as are referred to in sub-paragraph (c)(i) above the contribution to be made by him or the first part thereof became due or in the case of any such supplementary credits as are referred to in sub-paragraph (c)(ii) above the benefit was granted bears to the period from such date until he attains or would have attained Pensionable Age.

(8) Increases in pensions shall be added to short service benefit or to any benefit payable in lieu thereof by virtue of paragraph (2) of this Rule in accordance with Rule 28 at the same time and in the same manner as to long service benefit.

(9) A person entitled to short service benefit or to have paid to or by reference to him any benefit payable in lieu of short service benefit may, as an alternative to such entitlement, elect, by notice in writing given to the Pensions Officer on the termination of his service in Eligible Employment or at any later time before attaining Pensionable Age and subject to the agreement of the Pensions Officer, for payment of a Transfer Payment in accordance with the provisions of Rule 33 provided that a transfer payment may be made in respect of him without his consent as an alternative to such entitlement in the circumstances specified in Rule 33.

(10) (a) Subject as hereinafter provided any provisions of the Rules relating to assignment and surrender of benefits, to charge or lien on benefits or the resources of the Pension Fund, forfeiture and cognate matters shall apply in relation to this Rule and to any benefit payable in lieu of short service benefit by virtue of paragraph (2) of this Rule.

(b) (i) No provision of the Rules shall operate so as to deprive a person otherwise entitled to receive short service benefit or benefit payable in lieu thereof by virtue of paragraph (2) of this Rule of such benefit by reason of failure by that person or any other person to make a claim for or obtain such benefit or any payment due as benefit Provided that -

(A) this sub-paragraph shall not prevent reliance on any enactment relating to the limitation of actions; and

(B) where any payment by way of short service benefit or benefit payable in lieu thereof by virtue of paragraph (2) of this Rule is not claimed within six years of the date on which it becomes due, the person who would but for this provision have been entitled to receive such payment shall forfeit that entitlement.

(ii) no provision of the Rules shall operate so as to deprive a person otherwise entitled to receive short service benefit or benefit payable in lieu thereof by virtue of paragraph (2) of this Rule of such benefit by reason of failure by that person or any other person at any time after the service in Eligible Employment of the person entitled to short service benefit terminates to give any notice or comply with any formality required by the Scheme as a condition of entitlement;

(11) On the winding-up of the Scheme, members then in Eligible Employment and under Pensionable Age shall be entitled to short service benefit as if their service in Eligible Employment had then terminated, and the provisions of Clause 40 and insofar as it has effect Clause 41 of the Scheme shall apply Provided that -

(a) Any short service benefit and any benefit payable in lieu thereof by virtue of paragraph (2) of this Rule in course of payment shall be subject to the same degree of priority as any long service benefit in course of payment; and

(b) Transfer payments may be made in relation to short service benefit or benefit payable in lieu thereof by virtue of paragraph (2) of this Rule without the consent of the persons in respect of whom such Transfer Payments are made in the circumstances specified in Rule 33.

(12) On the death of a person entitled to short service benefit before such benefit becomes payable, benefits shall be payable if and insofar as is provided by the foregoing provisions of the Rules.

(13) A person who is not entitled to short service benefit under paragraph (5) of this Rule on termination of service in Eligible Employment shall be entitled to benefits if and insofar as is provided by the foregoing provisions of the Rules.

(14) Any pension becoming payable under Rule 15,16,17,18,19 or 20 before Pensionable Age shall, if it is equal to or larger than that which would be required to constitute

short service benefit, be not less than the actuarial equivalent of the pension which would have been payable by virtue of sections 83 and 84 of the 1993 Act from Pensionable Age.

TRANSFERS AND BUY-OUTS

33. (1) In this Rule a Cash Equivalent Member means a member to whom Chapter IV of Part IV of the 1993 Act applies and who acquires under it a right to a cash equivalent. If a Cash Equivalent Member who has not lost his right to a cash equivalent:-

(i) exercises on or before the last option date (within the meaning of section 95(8) of the 1993 Act the option conferred by section 95(1) of the 1993 Act (namely to have the cash equivalent used to acquire transfer credits under another scheme or to purchase one or more annuities or partly in one way and partly in the other way) by making an application in the manner specified in sections 95(1) and 95(9) of the 1993 Act; and

(ii) has not made in accordance with section 100 of the 1993 Act a valid withdrawal of his application or (if he has made a valid withdrawal of his application) has made a valid further application which he has not withdrawn,

the Committee of Management shall (subject to the provisions of section 99(3) to (5) of the 1993 Act) do what is needed to carry out what the member requires within the time specified in section 99(2) of the 1993 Act.

(2) Without prejudice to the rights of a Cash Equivalent Member referred to in paragraph (1) of this Rule and subject to the restrictions contained in paragraph (3) of this Rule the Committee of Management may with the consent of the Employer make a transfer of assets or a payment of a cash sum from the Employer's Fund and (if applicable) the AVC Scheme referred to in Rule 6 in respect of the benefits which would otherwise be payable from them in respect of a member or in respect of an individual claiming under or through a deceased member (referred to in this Rule as an "Other Person"):-

(i) to another scheme provided it is a scheme which satisfies the requirements prescribed for the purpose of section 95(2) of the 1993 Act; or

(ii) to purchase from one or more insurance companies (as mentioned in section 19(4) of the 1993 Act), one or more annuities which satisfy the requirements prescribed for the purpose of section 19 of the 1993 Act.

(3) The restrictions on the power conferred upon the Committee of Management by paragraph (2) of this Rule are as follows:-

(i) without the prior consent of the Board of Inland Revenue no transfer or payment shall be made to a Retirement Benefits Scheme which does not have Inland Revenue Approval and which is neither a Relevant Statutory Scheme nor a Personal Pension Scheme;

(ii) unless the transfer or payment is made at the member's request no transfer or payment shall be made to another scheme without the consent of the member in any case in which such consent is required by section 73(2) of the 1993 Act or by regulations made under section 38(1) of the Pensions Act and in a case in which such consent is not required if prescribed conditions are fulfilled no such transfer or payment shall be made unless those conditions are fulfilled;

(iii) unless the transfer or payment is made with the written consent (in the form prescribed by the relevant regulations made under section 52C of the Pensions Act) or at the written request of the member or Other Person no transfer or payment to an insurance company shall be made unless either the conditions specified in paragraph (4) of regulation 9 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 are satisfied or (notwithstanding that the said conditions are not satisfied) the consent of the member or Other Person is not required by regulations made under the Social Security Act 1973 or the Pensions Act;

(iv) the transfer or payment shall be in respect of the whole of the benefits which would otherwise be payable from the Employer's Fund and the AVC Scheme in respect of the member or Other Person unless the transfer or payment is to another scheme and the other scheme is not a scheme which fulfils the conditions set out in Contracting-out Rule 9.1 in which case the transfer or payment shall be in respect of the whole of the benefits but excluding all benefits (if any) in respect of which an entitlement is conferred by Contracting-out Rule 4;

(v) in a case in which the transfer or payment is made to purchase one or more annuities the annuity or annuities so purchased shall be of the same kind and amount and contain the same options (or as nearly as may be) as the pension and other benefits which but for the payment or transfer would have been provided under the Scheme except that with the consent of the member or Other Person and subject to the provisions of the Contracting-out Appendix the annuity or annuities so purchased may be of such a kind and amount and contain such options as may be

arranged between the member or Other Person the Committee of Management and the insurance company from which the annuity is purchased; and

(vi) the amount transferred or paid shall be decided by the Committee of Management and shall not exceed the amount of the cash equivalent to which a member or Other Person has a right under Chapter IV of Part IV of the 1993 Act (or if the member or Other Person does not have such a right the amount which in the opinion of the Pensions Officer would have been the amount of the cash equivalent if he had such a right ("the notional cash equivalent")) except that the Committee of Management may if so requested by the Employer transfer or pay an amount greater than the cash equivalent (or notional cash equivalent) if the Committee of Management with the advice of the Actuary approve the transfer or payment of the amount requested.

(4) When using a cash equivalent under paragraph (1) of this Rule or when making a transfer of assets or a payment of a cash sum under paragraph (2) of this Rule:-

(i) in respect of the cash equivalent or assets or cash sum the Pensions Officer shall provide the trustees or managers of the other scheme or (as the case may be) the insurance company with a statement of the amount representing:-

(I) contributions (if any) paid by the member in accordance with the provisions of the Scheme; and

(II) any amount contained in a statement obtained by the Pensions Officer in accordance with the provisions of paragraph (5) of Rule 34 representing contributions made by the member and any interest thereon;

(ii) if the member has at least two years' Qualifying Service the Pensions Officer shall notify the trustees or managers of the other scheme (or as the case may be the insurance company) of this;

(iii) upon request the Pensions Officer shall certify to the trustees or managers of the other scheme (or as the case may be the insurance company) the maximum lump sum retirement benefit that may be provided (other than in exceptional circumstances of serious ill-health of the member or in circumstances of triviality) by the other scheme or under the policy or contract issued by the insurance company in consideration of receipt of the cash equivalent or assets or cash sum; and

(iv) in a case in which the cash equivalent or assets or cash sum is paid or transferred to a Personal Pension Scheme and:-

(I) if the member is aged 45 or over at the time at which the cash equivalent or assets or cash sum is paid or transferred; or

(II) if at any time within the period of ten years immediately preceding:-

(a) in the case of a Cash Equivalent Member the date on which the member acquired the right to a cash equivalent under Chapter IV of Part IV of the 1993 Act; or

(b) in the case of a member who is not a Cash Equivalent Member the date on which the Committee of Management exercise the power conferred upon them by paragraph (2) of this Rule,

in respect of an employment to which the cash equivalent or assets or cash sum relates the member has been either a Controlling Director (as defined in the Inland Revenue Limits Appendix) or in receipt of annual remuneration in excess of £60,000 or (if greater) the allowable maximum within the meaning of section 640A(2) of the Taxes Act for the Tax Year in which the cash equivalent or assets or cash sum is transferred or paid; or

(III) if the cash equivalent or cash sum or assets derive in whole or in part from a scheme described in (ii) of paragraph (3) of Rule 34,

the Pensions Officer shall provide the administrator of the Personal Pension Scheme with a certificate of the maximum lump sum retirement benefit that may be provided by the Personal Pension Scheme (other than in exceptional circumstances of serious ill-health of the member or in circumstances of triviality) in consideration of receipt of the cash equivalent or assets or cash sum

PROVIDED that the provisions of this paragraph of this Rule shall not apply in a case in which a transfer of assets or a payment of a cash sum is made after the death of the member.

(5) Notwithstanding anything to the contrary in the preceding provisions of this Rule in a case in which in respect of a member the Scheme provides the alternative to short service benefit described in regulation 9 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (namely benefits which are different from short service benefit

and which are appropriately secured by a transaction to which section 19 of the 1993 Act applies) and the exception in regulation 9(3) of those Regulations does not apply the amount of the payment or the value of the assets transferred by the Committee of Management to the insurance company shall be increased where necessary so that the Committee of Management are reasonably satisfied that the amount of the payment made or the value of the assets transferred is not less than the amount specified in regulation 11 of those Regulations.

(6) The Committee of Management shall be discharged from any and every obligation to provide benefits from the Scheme to or in respect of the member or Other Person immediately the Committee of Management use his cash equivalent in accordance with the provisions of paragraph (1) of this Rule or immediately a transfer of assets or a payment of a cash sum is made in accordance with the provisions of paragraph (2) of this Rule and (in a case in which the member or Other Person is a member) the member shall cease to be a member except that:-

(i) in the case of a member:-

(I) who acquired a right to a cash equivalent under Chapter IV of Part IV of the 1993 Act which did not relate to the whole of the benefits in respect of the member;

(II) who exercised the option conferred by section 95(1) and (2) of the 1993 Act; and

(III) in respect of whom the Committee of Management did what was needed to carry out what the member required,

the member shall not cease to be a member but the benefits in respect of the member shall be reduced by excluding the part of the benefits to which the cash equivalent related as prescribed by regulations made under paragraph 12(2A) of Part II of Schedule 1A to the Pensions Act; and

(ii) in a case in which a transfer or payment to another scheme is made in respect of benefits which exclude benefits in respect of which an entitlement is conferred by Contracting-out Rule 4 the member shall remain a member for the purposes of the Contracting-out Appendix but shall cease to be a member for all other purposes.

ACCEPTANCE OF TRANSFER PAYMENTS

34 (1) Subject to the provisions of paragraphs (2) (3) and (4) of this Rule and with the consent of the Employer and subject to the terms of any undertaking which the Committee of Management may have given to the Board of Inland Revenue for the purposes of this Rule the Committee of Management may if the Pensions Officer in his discretion so determines accept in respect of a member :-

(i) the transfer to them of a part of the assets of another scheme which is in receipt of Inland Revenue Approval or (if not in receipt of Inland Revenue Approval) is a scheme the trustees or administrators of which have been authorised by the Board of Inland Revenue to make such a transfer or which is a Personal Pension Scheme or a Relevant Statutory Scheme;

(ii) the assignment to them from a member of a policy or contract referred to in section 19 of the 1993 Act or any other policy or contract securing benefits in respect of a previous period of membership of the Scheme or another Retirement Benefits Scheme; or

(iii) the assignment to them from a member of a contract approved under Chapter III of Part XIV of the Taxes Act.

Such assets or policy or contract are referred to in this Rule as "Transferred Assets" and the other scheme under (i) above is referred to in this Rule as the "Transferor Scheme". The Committee of Management may arrange for such part (if any) of the Transferred Assets as derives from voluntary contributions paid by the member to be included in whole or in part in the AVC Scheme referred to in Rule 6 but otherwise they shall arrange for Transferred Assets to be included in the relevant Employer's Fund.

(2) Except in a case in which either the Transferor Scheme is a scheme in which the Employer participates or the Board of Inland Revenue has authorised the treatment of service to which the Transferor Scheme relates as if it were service to which the Scheme relates, in respect of a member who is (or following the transfer under paragraph (1) of this Rule will be or be entitled to be) an Uncapped Member the Committee of Management shall endeavour to obtain from the administrator of the Transferor Scheme (or from the insurance company with which the policy or contract was effected in the case an assignment) a certificate of the maximum lump sum retirement benefit that the Committee of Management are permitted to provide under paragraph (4) of Rule 14 other than in special circumstances (meaning exceptional circumstances of serious ill-health of the

member or where the pension would be regarded by the Board of Inland Revenue as trivial) in consideration of receipt of the Transferred Assets.

(3) In a case in which the Pensions Officer (after making suitable enquiries) is reasonably satisfied that:-

(i) the Transferor Scheme is a fund to which section 608 of the Taxes Act applies; or

(ii) the Transferor Scheme is a Retirement Benefits Scheme which is in receipt of Inland Revenue Approval and provides retirement benefits wholly in the form of non-commutable pension (other than in exceptional circumstances of serious ill-health of members thereof or on account of triviality),

no transfer under paragraph (1) of this Rule shall be accepted unless the Pensions Officer receives from the administrator of the Transferor Scheme a certificate stating that other than in special circumstances (as defined in paragraph (2) of this Rule) the Scheme is not permitted to provide a lump sum retirement benefit in consideration of receipt of the Transferred Assets.

(4) In a case in which the Pensions Officer (after making suitable enquiries) is reasonably satisfied that the benefits that would have been provided by the Transferred Assets but for a transfer under paragraph (1) of this Rule derive:-

(i) in whole or in part from voluntary contributions to a Retirement Benefits Scheme which is in receipt of Inland Revenue Approval and which were paid by the member under a commitment entered into after 7 April 1987; or

(ii) in whole or in part from an earlier transfer of assets accepted by the Transferor Scheme from a fund or scheme referred to in (i) or (ii) of paragraph (3) of this Rule,

no transfer under paragraph (1) of this Rule shall be accepted unless the Pensions Officer receives from the administrator of the Transferor Scheme (or from the insurance company with which the policy or contract was effected in the case of an assignment) a certificate specifying how much of the Transferred Assets derive from those voluntary contributions or from that earlier transfer of assets and stating that other than in special circumstances (as defined in paragraph (2) of this Rule) the Scheme is not permitted to provide a lump sum retirement benefit in consideration of receipt of the Transferred Assets so specified.

(5) In connection with the acceptance of a transfer or assignment under paragraph (1) of this Rule the Pensions Officer shall endeavour to obtain from the administrator of the Transferor Scheme (or from the insurance company with which the policy or contract was effected):-

(i) a written statement in respect of the Transferred Assets of the total amount (if any) representing contributions made by the member and any interest thereon;

(ii) a written statement whether the whole or any part of the Transferred Assets derives from contributions to a Personal Pension Scheme or from an earlier transfer or assignment from a Personal Pension Scheme; and

(iii) a written statement of the period of the member's service in employment to which the Transferor Scheme (or any scheme from which the Transferor Scheme or insurance company accepted an earlier transfer or assignment) related and which is linked qualifying service for the purposes of section 179(1) of the 1993 Act in relation to service in employment to which the Scheme relates.

If no statement as referred to in (i) above is forthcoming the Committee of Management shall be entitled to assume that no part of the Transferred Assets represents contributions made by the member. If no statement as referred to in (iii) above is forthcoming the Committee of Management shall be entitled to assume that the period of linked qualifying service for the purposes of section 179(1) of the 1993 Act is at least two years.

(6) Unless the Transferor Scheme is MPS and the member is or becomes a Transferred MPS Member or the Transferor Scheme is the Staff Scheme, in consideration of receipt of Transferred Assets which are included in the Employer's Fund the Committee of Management shall (subject to the provisions of paragraph (10) of this Rule) provide from the Employer's Fund in relation to the member by such means as the Committee of Management shall determine benefits which shall be payable in addition to the benefits which would otherwise be payable from the Employer's Fund in respect of the member. However the Committee of Management shall not treat a period before the member's admission to membership of the Scheme as if it were Contributing Service unless the Employer consents. Subject to Inland Revenue Limits and subject to the provisions of paragraphs (7), (8), (9) and (10) of this Rule and the combined provisions of Rule 12 and the Contracting-out Appendix the benefits shall be in such form and of such amount and subject to such terms and conditions as will not prejudice Inland Revenue Approval of the Scheme and (if the member's Qualifying Service exceeds two years) as will conform with the preservation requirements (within the meaning of section 69(2) of the 1993 Act) and

(subject thereto) as the Committee of Management with the advice of the Actuary shall decide.

(7) In a case in which the member is an Uncapped Member (except in a case in which either the Transferor Scheme is a Retirement Benefits Scheme in receipt of Inland Revenue Approval in which the Employer participates or the Board of Inland Revenue has authorised the treatment of service to which the Transferor Scheme relates as service to which the Scheme relates) the benefits provided from the Employer's Fund under paragraph (6) of this Rule shall not be in the form of a lump sum retirement benefit or commutable pension (other than in exceptional circumstances of serious ill-health of the member or in circumstances in which the pension of the member or other person would be regarded by the Board of Inland Revenue as trivial) unless the Pensions Officer has received the certificate referred to in paragraph (2) of this Rule and except to the extent (if any) specified in that certificate except that the amount certified shall be increased in proportion to the increase in the Retail Prices Index between the date of the transfer and the date of payment of the lump sum retirement benefit or (as the case may be) of commutation of the pension.

(8) If in respect of a member a transfer or assignment has been accepted in accordance with the provisions of paragraph (1) of this Rule and in connection with the transfer or assignment the Pensions Officer receives from the administrator of the Transferor Scheme (or from the insurance company with which the policy or contract was effected in the case of an assignment) the certificate referred to in paragraph (3) of this Rule the benefits provided from the Employer's Fund under paragraph (6) of this Rule shall not be in the form of a lump sum retirement benefit or commutable pension (other than in exceptional circumstances of serious ill-health of the member or in circumstances in which the pension of the member or other person would be regarded by the Board of Inland Revenue as trivial).

(9) If in respect of a member a transfer or assignment has been accepted in accordance with provisions of paragraph (1) of this Rule and in connection with the transfer or assignment the Pensions Officer receives from the administrator of the Transferor Scheme (or from the insurance company with which the policy or contract was effected in the case of an assignment) the certificate referred to in paragraph (4) of this Rule the benefits provided from the Employer's Fund under paragraph (6) of this Rule shall not be in the form of a lump sum retirement benefit or commutable pension (other than in exceptional circumstances of serious ill-health of the member or in circumstances in which the pension of the member or other person would be regarded by the Board of Inland Revenue as

trivial) to the extent to which the benefits are provided in consideration of receipt of the Transferred Assets specified for the purpose of paragraph (3) of this Rule.

(10) Subject to the combined provisions of Rule 12 and the Contracting-out Appendix no benefits shall be provided from the Employer's Fund under this Rule in relation to a member if:-

(i) in connection with any one or more transfers or assignments accepted in accordance with the provisions of paragraph (1) of this Rule there is a written statement (as referred to in (i) of paragraph (5) of this Rule) of an amount representing contributions made by the member and any interest thereon; and

(ii) the member becomes entitled to benefit under paragraph (4) of Rule 22.

ENTRANTS FROM MPS AND THE STAFF SCHEME

35 - (1) A Former MPS Member who within six months after first becoming a member of the Scheme requests pursuant to Rule 28A of MPS that a Transfer Payment shall be made in respect of him from the fund of MPS to the Pension Fund shall on such Transfer Payment being made become a Transferred MPS Member. Subject to the provisions of the Scheme the contributions made to MPS by a Transferred MPS Member shall be treated as if they had been made to the Scheme and any such contributions which were refunded under MPS shall be treated as if they had been refunded from the Scheme.

(2) The Committee of Management shall from time to time on request from the trustee or trustees of MPS, supply such information to the said trustee or trustees regarding the identity, numbers, salary details, and health of and other information relating to Former MPS Members.

(3) (a) Where a person who was a contributor to or entitled to benefits under the Staff Scheme having entered Eligible Employment in a grade eligible for membership of the Scheme is admitted to membership of the Scheme and the Committee of the Staff Scheme make to the Scheme a transfer payment in respect of his accrued benefits under the Staff Scheme he shall be granted benefits under the Scheme actuarially equivalent in value to such transfer payment and calculated in accordance with tables from time to time prepared by the Actuary.

(b) If on or after the date when a member who is also entitled to benefits under the Staff Scheme retires or withdraws from Eligible Employment the Committee of the Staff Scheme make to the Scheme a transfer payment in respect of his accrued benefits under the Staff Scheme, the Committee of Management shall pay under the Scheme the benefits which would, if that transfer payment had not been made, have been payable to or by reference to him under the Staff Scheme, and the provisions of Rules 36 to 53 of the Scheme shall apply to any benefits so payable.

V - MISCELLANEOUS : ADMINISTRATION

GENERAL DISCRETION

36 - An Employer may in its discretion, after consultation with the Committee of Management, grant special terms to any individual member or person who had become a member within the age and pension limits of the Scheme and the Rules; any additional cost shall be paid to the Scheme by that Employer in such manner as the Committee of Management may determine.

EXTENSION OF TIME LIMITS

37 - Where in these Rules provision is made for anything to be done at a certain time or within a certain period, the Committee of Management may, in relation to any person, in their discretion substitute a later time or extend such period.

PAYMENT OF BENEFITS

38 - (1) Subject as otherwise provided in these Rules, any lump sum or refund of contributions payable thereunder to a person or his estate, or to any Relative or Dependant of a person, shall be paid not later than the expiration of 28 days after the event upon which it becomes payable or upon proof of the entitlement of the person claiming it, whichever occurs the later Provided that if such person may subsequently satisfy the conditions specified in sub-paragraph (a) of paragraph (2) of Rule 3, no such lump sum or refund of contributions shall be payable to him until the Pensions Officer is satisfied that he will not or cannot satisfy any of those conditions.

(2) (a) Subject as hereinafter provided, any pension payable under the Rules shall be paid -

(i) with effect from the beginning of the week next following the date of the event creating the entitlement; and

(ii) at such time as shall be agreed between the Co-ordinator and the Committee of Management, not being more than 13 weeks after the end of the week to which it relates;

Provided that for the purposes of determining the amount of any pension which would have been payable to any member had he retired on the day before the date of his death, whether or not under any specified conditions or in any specified circumstances, the first payment of such pension shall be deemed to become payable on the date of such deemed retirement.

(b) Where for any reason beyond the control of the Committee of Management any payment of pension cannot be made at the time agreed in pursuance of the preceding sub-paragraph, it shall be made as soon as reasonably practicable thereafter.

(3) Where any person who is entitled to a pension under the Rules becomes entitled to such pension at a changed rate, such pension shall be paid at that changed rate with effect from the beginning of the week next following the date of the event causing the change or if before the beginning of such week such pension has been paid in respect of one or more weeks subsequent to the event causing the change, with effect from the beginning of the week next following the last week in respect of which such pension has been so paid.

(4) On the death of any person who is entitled to a pension under the Rules or the occurrence of any other event whereby he ceases to be entitled to such pension -

(a) No sums shall, by reason of the occurrence of that death or other event, be repayable in respect of any payment of such pension already made;

(b) If, apart from the occurrence of that death or other event, a payment of pension would have been due or deemed to be payable on the date of that death or other event, such payment shall be made or deemed to be payable as if that death or other event had not occurred;

(c) If, apart from the occurrence of that death or other event, a payment of pension for any period including the date of that death or other event would not have been due until after that date, there shall be paid as soon as reasonably practicable a sum equal to such part of that payment as would have been attributable to the part of that period ending with the date of that death or other event, and for the purposes of this paragraph pension shall be deemed to accrue from day to day.

(5) Where any person (in this paragraph called "the deceased") who is entitled to a pension under the Rules dies and some other person thereupon becomes entitled to a pension by reference to the deceased, the pension payable to that other person shall be paid with effect from the beginning of the week next following the week which includes the last date in respect of which pension is payable to the deceased.

(6) Benefits payable under the Rules shall be paid at such place and in such manner as the Committee of Management may from time to time determine and no person shall be disqualified from receiving such benefits by reason of being absent from the United Kingdom. Any payment made through the post or otherwise at the written request of the person entitled thereto will be made at the risk of that person.

(7) Where any amount payable by way of benefit under the Rules would otherwise include a fraction of a penny, such fraction shall be treated as a whole penny.

UNCLAIMED BENEFITS

39 - The right to any benefit payable under the Rules (other than any sum expressed to be payable under the Rules to the estate of the deceased member or other person) shall be extinguished if payment thereof is not obtained within a period of 12 months from the date on which that sum becomes payable under the Rules unless in any case the Committee of Management in their discretion extend the said period.

PERSONS NOT RESIDENT IN THE UNITED KINGDOM

40 - Any payment of pension to a person resident outside the United Kingdom shall be made in sterling to an account opened with a banker in the United Kingdom, being an account nominated by notice in writing addressed to the Pensions Officer by the person entitled to such pension, and an acknowledgement by that banker shall be a sufficient discharge to the Committee of Management for any such payment.

MEDICAL EXAMINATIONS

41 - Every member shall, when required so to do by the Committee of Management, submit himself for medical examination by the Scheme's Medical Adviser.

EVIDENCE BY MEMBERS, CLAIMANTS AND BENEFICIARIES

42 - (1) Every person claiming benefit under the Rules shall -

(a) In such circumstances as may be prescribed by the Committee of Management submit his claim in such form as the Committee of Management shall prescribe or approve; and

(b) Furnish such evidence in support of his claim, and in particular, but without prejudice to the generality hereof, such evidence of his age as the Committee of Management may require.

(2) Every person entitled to any pension under the Rules shall -

(a) Give notice in writing to the Pensions Officer of his place of residence at the time of becoming so entitled;

(b) Forthwith give notice in writing of any change of his place of residence;

(c) Furnish from time to time such evidence of his being alive as the Committee of Management may require; and

(d) Forthwith give notice in writing to the Pensions Officer of the occurrence of any event affecting his entitlement.

(3) Where any person fails to give such evidence as is required by sub-paragraph (c) of paragraph (2) of this Rule the Committee of Management may suspend or terminate the payment of any further benefits to or by reference to him.

BENEFITS NOT ASSIGNABLE

43 - (1) Benefits under the Rules shall not be assignable or chargeable and shall cease to be payable to a person (in this Rule called "the assignor") who would but for this provision be entitled thereto in the event of the bankruptcy of the assignor or upon

the execution by him of any assignment for the benefits of his creditors or of any attempts to mortgage, charge or otherwise assign the same to any person; and if any of those events shall occur on or after 6th April 1975, whether or not the benefits referred to in this paragraph have previously become payable, the provisions of paragraph (2) of this Rule shall apply.

(2) Where the provisions of this paragraph apply, the Committee of Management shall have power in their absolute discretion to pay or apply from the Pension Fund an amount or amounts (not exceeding in aggregate the amount or amounts of the benefits which would but for paragraph (1) of this Rule have become payable to the assignor) for any one or more of the following purposes -

(a) For the benefit of the assignor;

(b) If and for so long as the assignor is a party to a marriage, for the maintenance of the other party to such marriage;

(c) For the maintenance, education or training of any Child of the assignor who for the time being has not attained the age of 18 or who, having attained that age, has not ceased to undergo full-time education or training; and

(d) For the making of reasonable provision for the care or maintenance of any dependent relative of the assignor.

(3) Notwithstanding the provisions of paragraph (1) of Clause 43 for the purposes of paragraph (2) of this Rule -

(a) "Child" in relation to the assignor means:-

(i) any legitimate child, step-child or adopted child of the assignor or of any person (in this paragraph called "the assignor's spouse") who is for the time being such a person as is specified in sub-paragraph (b) of paragraph (2) of this Rule; and

(ii) any person who is not for the time being in the care of any person in relation to whom he is a legitimate child, adopted child or step-child, and who has before attaining the age of 18 been in the care of the assignor for substantial periods;

(b) "dependent relative" in relation to the assignor means a relative of the assignor or of the assignor's spouse who is incapacitated by old age or infirmity from maintaining himself, or the mother of the assignor or of the assignor's spouse, if and for so long as such mother is widowed or living apart from her husband or, in consequence of dissolution or annulment of marriage, single woman.

INCAPACITY OF BENEFICIARY

44 - (1) This Rule shall apply where any person entitled to benefit under the Rules is, in the opinion of the Committee of Management, having regard to the advice of the Scheme's Medical Adviser, unable to act (whether because of mental disorder or for any other reason).

(2) Where this Rule applies the Committee of Management may in their discretion pay any sum to which that person is entitled under the Rules to any other person for the maintenance of such first-mentioned person or his dependants, and the receipt of the person to whom any money is so paid shall be a sufficient discharge for the payment of the amount mentioned therein.

(3) Where this Rule applies any pension which would otherwise be payable to the first-mentioned person by virtue of Rule 12 and is not for the time being paid under paragraph (2) of this Rule shall be held by the Committee of Management to be paid by them at their discretion, while that person remains unable to act as specified in paragraph (1) of this Rule, in accordance with paragraph (2) of this Rule, and subject thereto shall be held by them for that person until he again becomes able to act or, if he dies without so doing, for his estate.

PAYMENT OF BENEFITS ON DEATH

45 - (1) The following provisions of this Rule shall have effect with respect to the payment, on the death of a member or other person (in this Rule called "the deceased") entitled to benefit under the Rules, of -

(a) Any sums expressed to be payable under the Rules to the estate of the deceased; and

(b) Any sums which accrued due to the deceased under the Rules during his lifetime and were unpaid at the time of his death (other than any sums which have ceased to be payable by virtue of Rule 39).

(2) Subject as hereinafter provided, any such sum as is referred to in paragraph (1) hereof shall be paid, on production of probate or letters of administration, to the personal representatives of the deceased.

(3) Where:-

(a) The personal representatives of the deceased do not send a written claim to the Pensions Officer within 12 Months after the date of the death for any such sum as is referred to in paragraph (1) hereof; or

(b) The total amount of the sums referred to in paragraph (1) hereof does not exceed £5,000 or such higher amount as may be specified for the time being by Order under section 6 of the Administration of Estates (Small Payments) Act 1965;

the sums referred to in paragraph (1) hereof, or any part of them, may be paid to or expended for the benefit of any one or more of the Relatives or Dependants of the deceased, or, if there be no such Relatives or Dependants, may be retained in the Pension Fund.

(4) Out of the sums referred to in paragraph (1) of this Rule the Committee of Management may pay sums not exceeding a total of the amount specified in Part I of the Third Schedule in relation to this paragraph to any person or persons who have incurred expense in providing for the funeral of the deceased Provided that no payment shall be made under this paragraph in a case where a payment has been made under paragraph (2) of Rule 26 to any person or persons by reason of their having incurred such expense as is referred to in this paragraph.

(5) Subject as hereinbefore provided the Committee of Management shall have an absolute discretion as to whether, and to whom, to make any payments under paragraphs (3) and (4) of this Rule and the receipt of any person to whom any money is paid in pursuance of either paragraph shall be a sufficient discharge for the payment of the amount mentioned therein.

PAYMENT OF CHILDREN'S BENEFITS

46 - Benefits expressed to be payable under the Rules to or in respect of a Child may be paid at the discretion of the Committee of Management to the Child in respect of whom they are payable or to any other person for the benefit of such Child, and the receipt of any person to whom such benefits are so paid shall be a sufficient discharge for the payment of such benefits.

INCOME TAX

47 - If any liability to income tax shall arise in respect of any benefit failing to be paid to any person under the Rules, the Committee of Management may deduct the amount of such income tax (including any interest payable thereon) from such benefit and account for the same to the proper authorities before paying such benefit to the person entitled thereto or may postpone payment of such benefit until the liability for such tax and any interest payable thereon has been paid or provided for to the satisfaction of the Committee of Management.

CALCULATION OF COMPOUND INTEREST

48 - (1) In calculating Compound Interest under the Rules any fraction of a year in the period for which such interest is payable shall be deemed to be a year if it is equal to six months or more and shall otherwise be ignored.

(2) Whichever shall be applicable of paragraphs (3) and (4) of this Rule shall apply where the amount of a refund with Compound Interest thereon of any contributions (in this Rule called "refundable contributions") paid or deemed to be paid or payable by or in respect of any person (in this Rule called "the contributor") falls to be calculated for any purpose under the Rules.

(3) If and insofar as the contributor's refundable contributions are paid or deemed to be paid or payable by or in respect of the contributor in respect of any period ending on or after 6th April 1975 -

(a) The total amount of the contributor's refundable contributions shall be divided by the number of years comprised in such period (such number of years being calculated in accordance with paragraph (1) of this Rule), and the amount resulting from such division shall in this paragraph and paragraph (4) of this Rule be called a "yearly amount"; and

(b) The contributor shall be deemed for the purposes of this Rule to have paid one yearly amount on the day one year before the end of the period to which the refund relates, a further yearly amount on the day one year before the first-mentioned day, and so on until all yearly amounts in relation to him have been thus taken into account.

(4) Rests for the purpose of calculating interest shall be deemed to occur -

(a) On days on which any refundable contributions (including any yearly amount) are deemed to have been paid, other than the earliest such day;

(b) At the end of the period to which the refund relates; and

(c) If the period for which interest is payable continues after the end of the period to which the refund relates, at yearly intervals after the end of the period to which the refund relates.

TRUST DEED AND RULES TO BE SUPPLIED TO MEMBERS

49 - A copy of the Trust Deed and the Rules shall be supplied to every member requiring the same.

VI - DETERMINATION OF CLAIMS AND DISPUTES

DETERMINATIONS BY COMMITTEE OF MANAGEMENT

50 - Subject to Rule 53 every question or dispute which may arise in connection with eligibility for membership of the Scheme or any claim to credit or benefit under the Rules, whether as regards the administration of the Scheme or the interpretation or construction of any provision thereof or of the Rules, shall be referred to and determined by the Committee of Management whose decision shall subject to Rule 51 be final.

APPEALS

51 - If the Committee of Management are unable to agree on any matter referred to them under Rule 50 the matter shall be referred to a single arbitrator, to be appointed by the President for the time being of the Law Society, whose decision shall be final.

DETERMINATION OF MEDICAL QUESTIONS

52 - Any person who is aggrieved by the determination of the Scheme's Medical Adviser as to any matter as to which under the Rules his opinion or certificate is required to be given may (subject to the requirements of any insurance company ("the Underwriter") with whom the Committee of Management have arranged underwriting of any benefits payable from the Scheme) require the Committee of Management to refer the matter to an independent Medical Consultant appointed or approved by that Committee and thereupon the matter shall be so referred. The determination of such independent Medical Consultant upon the matter so referred shall, subject to the requirements of the Underwriter, be final.

INDUSTRIAL INJURIES QUESTIONS

53 - The determination under the provisions of the Industrial Injuries Act or any of the provisions of the Social Security Legislation relating to industrial injuries and industrial diseases of any question or dispute in connection with any claim to benefit under that Act or that Legislation respectively shall be conclusive for the purpose of any related claim to benefit made under or insofar as applicable made by reference to Rule 18 or Rule 23.

SUPPLY OF INFORMATION TO MPS

54 - The Committee of Management shall be entitled on request from time to time, to provide the committee of management of MPS with all such information in its possession relating to those members of the Scheme, who retire, die, withdraw from Contributing Service or otherwise become eligible to receive benefit under the Scheme in any circumstances, as may reasonably be required for the purposes of that scheme as may be requested by the committee of management of MPS.

APPENDIX I - CONTRACTING-OUT

GMP MODEL RULES
(CODE: OPB/SR - REVISED 12/89)

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CONTRACTING-OUT

1. **Interpretation**

1.1. **Definitions.** In this Appendix the following words have the following meanings:-

"1973 Act" means the Social Security Act 1973.

"1975 Act" means the Social Security Pensions Act 1975.

"Actuary" means a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries or a person with other actuarial qualifications who is approved by the Secretary of State for Social Security, at the request of the Trustees, as being a proper person to act in this capacity.

"Contracted-out Employment" of a Member means his contracted-out employment by reference to the Scheme (which expression shall have the same meaning as in the 1975 Act).

"Fixed Rate Revaluation" means the method of revaluing a GMP before State Pension Age described in (C) in Rule 6.2.

"GMP" means the guaranteed minimum pension of a Member, Widow or Widower as defined in the 1975 Act.

"Insurer" means:-

(1) an insurance company authorised under section 3 or 4 of the Insurance Companies Act 1982 to carry on ordinary long-term insurance business and acting through a branch or office in the United Kingdom; or

(2) a friendly society enabled under regulations made under section 71(1) of the 1973 Act as amended by section 4 of the Social Security Amendment Act 1974 or under article 67 of the Social Security Pensions (Northern Ireland) Order 1975 to conduct such business as is described in that section or article.

"Limited Revaluation" means the method of revaluing a GMP before State Pension Age described in (B) in Rule 6.2.

"Member" means a member of the Scheme (including a person who is no longer in the pensionable service of any employer participating in the Scheme but in respect of whom benefits are still immediately or prospectively payable under the Scheme).

"Normal Retiring Date" means the day on which a Member attains his normal pension age (within the meaning of the 1975 Act) under the Scheme.

"Protected Rights" has the same meaning as in Schedule 1 to the Social Security Act 1986.

"Qualifying Service" has the same meaning as in the 1973 Act.

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

"Scheme" means this occupational pension scheme.

"Section 21 Revaluation" means the method of revaluing a GMP before State Pension Age described in (A) in Rule 6.2.

"Section 49 money purchase scheme" means a scheme which was a contracted-out money purchase scheme and which the Occupational Pensions Board are under a duty to supervise under section 49 of the 1975 Act.

"Section 49 salary related scheme" means a scheme which was a contracted-out salary related scheme and which the Occupational Pensions Board are under a duty to supervise under section 49 of the 1975 Act.

"Short Service Benefit" means the benefit to which an early leaver who satisfies the qualifying conditions must be entitled under the preservation requirements.

"State Pension Age" means a man's 65th birthday and woman's 60th birthday.

"Trustees" means the trustees or administrators of the Scheme.

"Widow" and "Widower" mean respectively the widow and the widower of a Member. If a Member has married under a law which allows polygamy and, on the day of the Member's death has more than one spouse, none of them will qualify as a Widow or Widower. However, if only one spouse survives, that survivor will be the Widow or Widower.

1.2 **Legislation.** References to any piece of legislation include any legislative modification or re-enactment of it, any regulations made under it and any equivalent Northern Ireland legislation.

2. **Application of Appendix**

2.1 **Application of Appendix.** This Appendix shall apply if any Member's employment becomes Contracted-out Employment by reference to the Scheme and the Scheme is not contracted-out on a money purchase basis.

The Appendix will only apply so long as anyone has a GMP or a prospective right to receive a GMP under the Scheme.

2.2 **Overriding effect of Appendix.** This Appendix overrides any inconsistent provisions elsewhere in the Scheme except provisions which are necessary in order that Inland Revenue approval for the purposes of Chapter I Part XIV of the Income and Corporation Taxes Act 1988 is not prejudiced.

3. **Amendment of Appendix**

3.1 **Power to alter Appendix.** The persons or bodies having the power of alteration in relation to the rest of the Scheme may make in writing any alteration to this Appendix necessary to comply with the contracting-out requirements of the 1975 Act applicable to salary related contracted-out schemes and Section 49 salary related schemes. This power of alteration may be exercised by them without any condition except the one in Rule 3.2.

3.2 **OPB's consent.** No alteration to this Appendix may be made without the consent of the Occupational Pensions Board. This applies whether the alteration is made under Rule 3.1 or under any other power of alteration in the Scheme.

4. **Entitlement to GMP**

4.1 **Guaranteed Minimum.** Rule 4 applies to a Member, Widow or Widower where the Member has a guaranteed minimum in relation to the pension provided for the Member under the Scheme in accordance with section 35 of the 1975 Act.

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

(1) if the employment is employment to which the Scheme relates and the postponement is not for more than 5 years after State Pension Age, or

(2) if the Member consents to the postponement.

4.3 **Widow's GMP.** Where the Member is a man and dies at any time leaving a Widow, she shall be entitled, subject to Rule 4.4, to receive a pension from the Scheme paid at a rate equivalent to a weekly rate of not less than half that guaranteed minimum.

4.4 The pension shall be paid for life to any Widow.

4.5 **Widower's GMP.** Where the Member is a woman and dies at any time on or after 6 April 1989 leaving a Widower, he shall be entitled, subject to Rule 4.6, to receive a pension from the Scheme paid at a rate equivalent to a weekly rate of not less than half of that part of that guaranteed minimum which is attributable to earnings for the tax year 1988/89 and subsequent tax years.

4.6 The pension shall be paid for life to any Widower.

4.7 **Offsetting pension against GMP.** Any pension payable to the Member, Widow or Widower under any other provision of the Scheme may be offset against his or her pension entitlement under Rule 4 except to the extent that:-

(1) any part of the other pension is an equivalent pension benefit within the meaning of the National Insurance Act 1965, or

(2) any part of the other pension is the "appropriate amount" under Part I of Schedule 1A of the 1975 Act, or

(3) offsetting would contravene Rule 7.

5. **Increasing a Member's GMP after State Pension Age or a Widow's or Widower's GMP**

Any GMP to which a Member, Widow or Widower is entitled under Rule 4 shall, insofar as it is attributable to earnings in the tax years from and including 1988/89, be increased in accordance with the requirements of section 37A of the 1975 Act.

6. **Revaluation of GMP**

6.1 **After State Pension Age.** If the commencement of any Member's GMP is postponed for any period after State Pension Age, that GMP shall be increased to the extent, if any, specified in sections 35(6), (6A) and (6B) of the 1975 Act.

6.2 **Before State Pension Age.** Where a Member ceases to be in Contracted-out Employment before State Pension Age, the Member's GMP at State Pension Age or at the Member's earlier death will be calculated by increasing the accrued rights to GMP at cessation of Contracted-out Employment under (A) or (B) or (C) below.

(A) **Section 21 Revaluation**

The increase will be by the percentage by which earnings factors for the tax year in which Contracted-out Employment ceases are increased by the last order under section 21 of the 1975 Act to come into force before the tax year in which the Member reaches State Pension Age or dies (if earlier).

(B) **Limited Revaluation**

The increase will be by the lesser of:-

(1) 5 per cent compound for each tax year after that in which Contracted-out Employment ceases up to and including the last complete tax year before the Member reaches State Pension Age or dies (if earlier), and

(2) the percentage by which earnings factors for the tax year in which Contracted-out Employment ceases are increased by the last order under section 21 of the 1975 Act to come into force before the tax year in which the Member reaches State Pension Age or dies (if earlier).

The Trustees must pay a limited revaluation premium in respect of the Member to the Secretary of State.

(C) **Fixed Rate Revaluation**

The increase will be by such rate as regulations made under section 45(1)(b) of the 1975 Act specify as being relevant at the date Contracted-out Employment ceases, for each tax

year after the tax year containing that date up to and including the last complete tax year before the Member reaches State Pension Age or dies (if earlier).

The Trustees and the principal employer participating in the Scheme shall decide whether (A) or (B) or (C) applies to the Scheme. They may at any time decide that one of the other two methods shall be used, instead of the method currently being used, for all Members ceasing to be in Contracted-out Employment after a specified date. They must notify the Occupational Pensions Board whenever the method of revaluation for the Scheme is changed.

6.3 **Transfers in.** Where a transfer payment is received in respect of a Member from another scheme ("the transferring scheme") which includes accrued rights of the Member to a GMP, the earnings factors used in calculating that GMP will normally be revalued using Section 21 Revaluation during the Member's Contracted-out Employment and Rule 6.2 will apply if that Contracted-out Employment ceases before State Pension Age. The Trustees may, however, decide, if the provisions of the transferring scheme so allow, to use either Fixed Rate Revaluation or Limited Revaluation from the date on which the Member ceased to be in contracted-out employment by reference to the transferring scheme until the Member attains State Pension Age (or dies, if earlier) but:-

(1) Fixed Rate Revaluation may not be used as regards any part of the GMP being transferred which arose from contracted-out employment in relation to a previous scheme and which the transferring scheme is already revaluing by Limited Revaluation (or vice versa), and

(2) the Trustees may not make that decision in respect of any Member if, when he becomes a Member, his contracted-out employment before he became a Member is treated as continuing for the purposes of the 1975 Act.

Where under Rule 6.3 Limited Revaluation is to be used, the Trustees shall have power to pay out of the transfer payment in respect of that Member any limited revaluation premium payable as a result of the Member ceasing to be in contracted-out employment by reference to the transferring scheme.

Where the Scheme accepts the proceeds of or the assignment of an insurance policy which consists of or includes accrued rights to GMP condition (1) above applies unless the Trustees use Section 21 Revaluation.

6.4 **Transfers out.** Where a Member's accrued rights to GMPs are transferred to another contracted-out salary related scheme or to a section 49 salary related scheme, the Trustees may agree with the administrator of that scheme that the Member's GMP shall, instead of being revalued using

the method currently being adopted under Rule 6.2, be revalued using another method which would be permitted if that scheme contained a rule in the same terms as Rule 6.3 but, where Limited Revaluation is to be used, that administrator must make arrangements for the payment of any limited revaluation premium (unless it has already been paid by the Trustees).

7. Anti-Franking

Except as provided in sections 37A and 41A - 41E of the 1975 Act, no part of a Member's, Widow's or Widower's pension under the Scheme may be used to frank an increase in the Member's, Widow's or Widower's GMP under Rule 5 or Rule 6.

8. Transfers into the Scheme

8.1 **Acceptance of transfers.** The Trustees may accept:-

(1) a transfer payment in respect of the Member's accrued rights to GMPs under a contracted-out salary related scheme, a section 49 salary related scheme or an annuity policy of the type described in section 52C of the 1975 Act,

(2) a transfer of the liability for the payment of GMPs to or in respect of any person who has become entitled to them, or

(3) a transfer of Protected Rights in respect of the Member from another scheme which is, or was, an appropriate personal pension scheme, a scheme contracted-out on a money purchase basis or a section 49 money purchase scheme.

Transfers may be accepted only as provided in the appropriate regulations.

8.2 **Effect of transfers.** Where a transfer is accepted under Rule 8.1(1), the Member's accrued rights to GMPs under the Scheme will be increased accordingly.

Where a transfer is accepted under Rule 8.1(3), the Member's, Widow's and Widower's GMPs under the Scheme will be increased by amounts equal to the GMPs to which they would have been treated as entitled by reason of the Member's membership of the transferring scheme if the transfer payment had not been made.

9. **Transfers of GMPs out of the Scheme**

9.1 **Conditions for transfer of GMPs.** A transfer payment made out of the Scheme may include a Member's accrued rights to GMPs or the liability for the payment of GMPs to or in respect of any person who has become entitled to them only if the following conditions are fulfilled. These conditions depend on the type of scheme or policy to which the transfer is being made:-

(1) **All transfers**

The Member must consent to the transfer unless:-

(a) it is made to another contracted-out salary related scheme or section 49 salary related scheme where either the scheme is a scheme of the same employer or the transfer involves all of or a group of the Members of the Scheme and either the transfer results from a financial transaction between the Member's old and new employers, or the receiving scheme is a scheme of an employer connected with the Member's old employer for the purposes of section 51A of the 1975 Act; or

(b) it is to allow benefits to be bought out where the Member has between 2 and 5 years' Qualifying Service, or to allow the Trustees to buy out the benefits of the Widow or Widower of such a Member.

The transfer will be subject to any requirements of the Inland Revenue.

The receiving scheme or policy must be an appropriate personal pension scheme, a contracted-out occupational pension scheme, a section 49 money purchase or section 49 salary related scheme, an overseas occupational pension scheme to which the Occupational Pensions Board approve the transfer or an annuity policy of the type described in section 52C of the 1975 Act.

(2) **Contracted-out salary related schemes and section 52C annuity policies**

The receiving scheme or policy must provide the Member and the Member's Widow or Widower with GMPs equal to their accrued GMPs under the Scheme up to the date of transfer, together with revaluation until the Member reaches State Pension Age (or dies, if earlier). In the case of GMPs already in payment the receiving scheme must provide for the pensions to commence from the date from which liability for payment has been assumed by it, and for the conditions of payment relating to its own GMPs to apply equally to such pensions.

(3) **All occupational pension schemes (except overseas schemes covered by (6))**

In the case of transfer of accrued rights to GMPs (other than transfers in accordance with regulations 2(4) and 2A(4) of SI 1985/1323) the Member must have entered employment with an employer which is (or, in the case of a section 49 scheme, is or was) a contributor to the receiving scheme.

(4) **Appropriate personal pension schemes and occupational pension schemes which are or were contracted-out by the money purchase test**

That part of the transfer payment which relates to the Member's accrued rights to GMPs must be of an amount at least equal to the cash value of those accrued rights and applied by the receiving scheme in providing money purchase benefits for or in respect of the Member.

(5) **Section 49 money purchase or section 49 salary related schemes**

No transfer payment may be made to such a scheme without the approval of the Occupational Pensions Board, who may impose any conditions they consider appropriate.

(6) **Overseas occupational pension schemes not covered by (2), (4) or (5) above**

The Member must have entered employment outside the United Kingdom to which the receiving scheme applies.

No transfer payments may be made to such a scheme without the approval of the Occupational Pensions Board, who may impose any conditions they consider appropriate.

9.2 **Effect of such transfers.** Where the Member's accrued rights to GMPs or liability for GMPs already in payment are transferred in accordance with Rule 9.1, the Member and the Member's Widow or Widower will cease to have any entitlement to a GMP under the Scheme. If the transfer does not relate to the whole of the Member's rights to benefits under the Scheme, the Member's remaining benefits under the Scheme may be reduced to allow for the fact that the Member's GMP rights have been transferred.

10. **Transfer premiums**

Where a Member ceases to be in Contracted-out Employment before Normal Retiring Date and the Member's accrued rights to benefits (other than GMPs) are transferred to another

occupational pension scheme which is neither a contracted-out scheme nor one which was formerly contracted-out and which remains under the supervision of the Occupational Pensions Board in accordance with section 49 of the 1975 Act, the Trustees may elect to pay a transfer premium to the Secretary of State for Social Security. No such election may be made where the Member has completed less than 2 years' Qualifying Service or where an accrued rights premium is payable in respect of the Member.

Where a transfer premium is paid, the Member's accrued rights to GMPs under the Scheme shall be extinguished.

11. Commutation of GMP

11.1 **Commutation Condition**. The Commutation Condition is that the aggregate of the pensions and the pension equivalent of any lump sum benefits to which the person is entitled under the Scheme and under all other retirement benefit schemes relating to employment with the same employer as the employment in respect of which the benefits are payable does not exceed £104 per annum (or such greater amount as may be prescribed by regulations made under paragraph 15(4) of Schedule 16 of the 1973 Act and section 39(1) of the 1975 Act and is permitted by the Inland Revenue). In determining whether the Commutation Condition is satisfied:-

(a) Where commutation is taking place before State Pension Age, other than on the death of the Member, Fixed Rate Revaluation or Limited Revaluation must be applied to any GMP included in the aggregate pension and such GMP must be revalued to State Pension Age for the purposes of calculating that aggregate. For this purpose, Limited Revaluation is to be taken as 5% per annum compound.

(b) Where the Member's pension, being an alternative to short service benefit, becomes payable before Normal Retiring Date, the value of that pension must, to the reasonable satisfaction of the Trustees reflect the revaluation to Normal Retiring Date that the deferred pension would have attracted in accordance with Schedule 1A of the 1975 Act had it been provided by the Scheme at Normal Retiring Date and the revaluation of GMP referred to in (a) above.

(c) Where the Member's pension is equal to or larger than Short Service Benefit and becomes payable earlier than at Normal Retiring Date with the Member's consent, the pension to be taken into account to meet the Commutation Condition is the actuarial equivalent of the benefit which would have been payable if it had been payable only from Normal Retiring Date.

(d) Where commutation of the whole of a Member's deferred pension is taking place at Normal Retiring Date (or on the winding up of the Scheme if earlier) the Member's pension in excess of GMP must be revalued up to Normal Retiring Date in accordance with Schedule 1A of the 1975 Act.

(e) In any event, the basis of commutation must be certified as reasonable by an Actuary.

11.2 **Circumstances in which GMP may be commuted**

(1) **Member's GMP**. The Member's GMP may be commuted if the Commutation Condition is satisfied and all his/her other benefits under the Scheme are being commuted and

(a) his/her benefits have become payable; or

(b) the Scheme is being wound up.

(2) **Widow or Widower's GMP**. The Widow or Widower's GMP may be commuted if the Commutation Condition is satisfied and all her/his other benefits under the Scheme are being commuted and

(a) her/his benefits have become payable; or

(b) the Member's benefits are being commuted on grounds of triviality.

(3) If the Member is a member of more than one retirement benefit scheme relating to the same employment the requirements of this rule must be satisfied by each of the schemes.

12. **Securing GMPs**

GMPs may be secured through the Scheme provided it has been established under an irrevocable trust subject to the laws of any part of the United Kingdom. Otherwise, a GMP must be secured by means of an insurance policy or annuity contract with an Insurer.

13. **Winding-up of the Scheme**

13.1 **Priorities on winding-up**. On a winding-up of the Scheme for any reason, priority must be given over any other liability to provide benefits to any benefit which falls within any one or more of the following:-

(1) Pensions and other benefits in respect of which entitlement to payment has already arisen.

(2) GMPs and accrued rights to GMPs.

(3) State scheme premiums.

(4) Equivalent pension benefits within the meaning of the National Insurance Act 1965.

13.2 **Order of priorities**. The Trustees and the principal employer participating in the Scheme may elsewhere in the provisions of the Scheme specify an order of priorities amongst the items listed in Rule 13.1 but the order of priorities shall not give any liability to provide benefits which are not listed in Rule 13.1 priority equal to or exceeding the priority given to any item which is listed there.

13.3 **Voluntary contributions**. Where Members' voluntary contributions to the Scheme are being used to provide benefits equivalent on a money purchase basis to the voluntary contributions paid and where there are separately identifiable assets attributable to those voluntary contributions within the Scheme, Rule 13.1 shall not apply to those separately identifiable assets. That part of those assets which is attributable to the voluntary contributions of a Member shall be used to provide benefits for or in respect of that Member of the types specified in the other provisions of the Scheme. No regular payments may be made by the employer unless they are used solely for the purpose of meeting administrative expenses.

14. **Scheme ceasing to be a contracted-out salary related scheme**

If the Scheme ceases to be a contracted-out salary related scheme, the Trustees must seek the Occupational Pensions Board's approval to any proposed arrangements for securing GMPs. If it is decided to buy Members back into the State Earnings Related Pension Scheme, then accrued rights premiums or pensioner's rights premiums must be paid to the Secretary of State for Social Security in the manner required by regulations made under the 1975 Act. Once these premiums have been paid, the GMPs will be extinguished. The other benefits of the Members, Widows or Widowers concerned under the Scheme shall be reduced by the amount of the GMP accrued at the date the Scheme ceased to be contracted-out increased to State Pension Age (or the Member's death, if earlier) by Fixed Rate Revaluation or Section 21 Revaluation.

15. **Upper age limit for entry**

Membership of the Scheme must be open to persons who enter employments to which the Scheme relates more than 6 years before Normal Retiring Date. If the Scheme has an annual entry date, this 6 year period may be increased to a period of between 6 and 7 years beginning with that annual entry date. Where the Scheme and one or more other contracted-out schemes relate to employment with the same employer, those schemes may be treated as if they were a single scheme in deciding whether the requirements of this Rule 15 are satisfied.

16. **Contributions equivalent premiums**

16.1 A contributions equivalent premium shall be paid, subject to Rule 16.2, in respect of a Member who ceases to be in Contracted-out Employment before whichever is the earlier of the Member's Normal Retiring Date and the end of the tax year preceding that in which the Member will reach State Pension Age with less than 2 years' Qualifying Service and less than 2 years' Contracted-out Employment. A contributions equivalent premium shall not be paid where the Member's accrued rights include rights transferred from a personal pension, nor where the Member is a woman who dies in contracted-out employment in respect of Widower's GMP.

Payment of the contributions equivalent premium extinguishes the Member's accrued rights to GMPs under the Scheme. Therefore, where the premium is paid, any refund of contributions to the Member or any transfer payment from the Scheme in respect of the Member shall be reduced by the certified amount (as defined in the 1975 Act) in relation to that premium and any pension benefit under the Scheme for the Member or the Member's Widow or Widower shall be reduced so as to allow for the fact that their accrued rights to GMPs have been extinguished.

16.2 The premium shall not be payable if:-

(1) its amount is less than £17 (or such greater amount as is specified in regulations made under the 1975 Act); or

(2) the Member's accrued rights to GMPs are transferred to another scheme or policy in accordance with Rule 9; or

(3) the Member is a woman who has been paying primary Class 1 National Insurance contributions at the reduced rate; or

(4) the Member becomes entitled to an immediate or deferred pension under the Scheme on ceasing to be in Contracted-out Employment.

APPENDIX II

INLAND REVENUE LIMITS
(MODEL RULES PS 123 2/94)

DEFINITIONS

In this Appendix the following expressions shall have the meanings ascribed to them:-

1. **"Administrator"** shall mean the person or persons having the management of the Scheme.

2. **"Aggregate Retirement Benefit"** shall mean the aggregate of:-

   (a) the Member's pension under the Scheme and any Associated Scheme; and

   (b) the pension equivalent of the Member's Lump Sum Retirement Benefit.

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

4. **"Associated Scheme"** shall mean any Relevant Scheme providing benefits in respect of Service.

5. **"Class A Member"** shall be any Member who is not a Class B or Class C Member.

6. **"Class B Member"** shall mean any Member:-

   (a) who, on or after 17th March 1987 and before 1st June 1989, joined the Scheme being a scheme which commenced before 14th March 1989; or

   (b) who the Board of Inland Revenue have agreed in writing to be a Class B Member by virtue of previous membership of a Relevant Scheme;

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

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

8. **"Connected Scheme"** shall mean any Relevant Scheme which is connected with the Scheme in relation to the Member ie. if:-

(a) there is a period during which the Member has been the employee of 2 Associated Employers;

(b) that period counts under both schemes as a period in respect of which benefits are payable; and

(c) the period counts under one scheme for service with one employer and under the other for service with the other employer.

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

10. **"Final Remuneration"** shall mean the greater of:-

(a) the highest remuneration upon which tax liability has been determined for any one of the 5 years preceding the Relevant Date being the aggregate of:-

(i) the basic pay for the year in question; and

(ii) the yearly average over 3 or more consecutive years* ending with the expiry of the corresponding basic pay year of any Fluctuating Emoluments provided that Fluctuating Emoluments of a year other than the basic pay year may be increased in proportion to the increase in the Index from the last day of that year up to the last day of the basic pay year. Remuneration that is received after the Relevant Date and upon which tax liability has been determined will be treated as a Fluctuating Emolument (providing it was earned or qualified for prior to the Relevant Date). In these circumstances it may be included provided the yearly average of 3 or more consecutive years begins no later than the commencement of the basic pay year; or

(b) the yearly average of the total emoluments from the Employer which are assessable to income tax under Case I or II of Schedule E and upon which tax liability has been determined for any 3 or more consecutive years ending not earlier than 10 years before the Relevant Date. Where such emoluments are received after the Relevant Date but are earned or qualified for prior to that date, they may be included provided that in these

circumstances the yearly average of 3 or more consecutive years begins no later than the commencement of the year ending with the Relevant Date.

Provided that:-

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

(ii) in relation to a Controlling Director, Final Remuneration shall be the amount ascertained in accordance with (b) above and (a) above shall not apply;

(iii) in relation to any other employee whose remuneration in any year subsequent to 5th April 1987 used for the purpose of calculating benefits has exceeded £100,000, (or such other figure as may be prescribed by the Treasury), Final Remuneration shall not exceed the amount ascertained in accordance with (b) above and (a) above shall not apply, unless the individual chooses to adopt £100,000 (or such other figure as may be prescribed by the Treasury);

(iv) where Final Remuneration is computed by reference to any year other than the last complete year ending on the Relevant Date, the Member's remuneration or total emoluments of any year may be increased in proportion to any increase in the Index from the last day of that year up to the Relevant Date. For a Class C Member this proviso shall not apply to the calculation of the maximum Lump Sum Retirement Benefit unless the Member's aggregate total benefits are similarly increased beyond the maximum amount which could be paid but for this proviso and/or the first sentence of (a)(ii) above and then only to the same proportionate extent;

(v) for Class A Members Final Remuneration shall not exceed the Permitted Maximum;

(vi) for the purpose of calculating the maximum Lump Sum Retirement Benefit of a Class B Member Final Remuneration shall not in any event exceed £100,000 (or such other figure as may be prescribed by the Treasury);

(vii) an employee who remains, or is treated as remaining, in service but by reason of Incapacity is in receipt of a much reduced remuneration ie. under a sick pay or permanent health insurance scheme, for more than 10 years up to the Relevant Date, may calculate

Final Remuneration under (a) or (b) above with the Final Remuneration calculated at the cessation of normal pay and increased in accordance with the Index;

(viii) the total amount of any profit related pay (whether relieved from income tax or not) may be classed as pensionable remuneration and treated as a Fluctuating Emolument; and

(ix) an early retirement pension in payment from the Employer may not be included in Final Remuneration.

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

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

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

(*Where Fluctuating Emoluments have not been paid for the full three years, they should be averaged over the period from the commencement of their entitlement to payment (or the beginning of the three year period, if later) to the end of the relevant basic pay year. Where, however, it is proposed to include in Final Remuneration a Fluctuating Emolument which was payable in a single year only the agreement of the Pension Schemes Office must be sought.)

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

12. **"Incapacity"** shall mean physical or mental deterioration which is sufficiently serious to prevent the Member from following his normal employment, or which seriously impairs his earning capacity.

13. **"Index"** shall mean the Government's Index of Retail Prices.

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

15. **"Member"** shall mean a person who has been admitted to membership of the Scheme.

16. **"Normal Retirement Age"** shall mean the age of 60.

17. **"Pensionable Service"** shall have the meaning ascribed to it by section 70(2) of the Pension Schemes Act 1993.

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

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

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

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

22. **"Retained Death Benefits"** shall mean any lump sum benefits payable on the Member's death from:-

    (a) retirement benefits schemes approved or seeking approval under Chapter I Part XIV of the Taxes Act or relevant statutory schemes as defined in section 611A thereof;

(b) funds to which section 608 of the Taxes Act applies;

(c) retirement benefits schemes which have been accepted by the Inland Revenue as "corresponding" in respect of a claim made on behalf of the Member for the purposes of section 596(2)(b) of the Taxes Act;

(d) retirement annuity contracts approved under Chapter III Part XIV of the Taxes Act;

(e) personal pension schemes approved under Chapter IV Part XIV of the Taxes Act; or

(f) transfer payments from overseas schemes held in a type of arrangement defined in (a), (d) or (e) above

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

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

PART 1 : INLAND REVENUE LIMITS RULE

CLASS A MEMBERS

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

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

   (a) on retirement at any time between attaining age 50 and attaining age 75, except before Normal Retirement Age on grounds of Incapacity, a pension of 1/60th of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Inland Revenue Approval;

   (b) on retirement at any time before Normal Retirement Age on grounds of Incapacity a pension of the amount which could have been provided at Normal Retirement Age in accordance with paragraph 1(a) above, Final Remuneration being computed as at the actual date of retirement;

   (c) on leaving Pensionable Service before attaining age 75, a pension of 1/60th of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Inland Revenue Approval. The amount computed may be increased by 5 per cent for each complete year or, if greater, in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the pension begins to be payable. Any further increase necessary to comply with Social Security legislation is also allowable.

   (d) Benefits for a Class A Member are further restricted to ensure that his total retirement benefit from the Scheme and from any Associated Scheme or Connected Scheme does not exceed a pension of 1/30th of the Permitted Maximum for each year of Service, subject to a maximum of 20/30ths. For the purpose of this limit, service is the aggregate of Service and any period of service which gives rise to benefits under a Connected Scheme provided that no period is to be counted more than once.

   (e) For the purpose of calculating the Aggregate Retirement Benefit or the total retirement benefit in (a) to (d) above, the pension equivalent of any Lump Sum Retirement Benefit is one-twelfth of its total cash value.

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

(a) on retirement at any time between attaining age 50 and attaining age 75, except before Normal Retirement Age on grounds of Incapacity, 3/80ths of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Inland Revenue Approval;

(b) on retirement at any time before Normal Retirement Age on grounds of Incapacity the amount which could have been provided at Normal Retirement Age in accordance with paragraph 2(a) above, Final Remuneration being computed as at the actual date of retirement;

(c) on leaving Pensionable Service before attaining age 75, a lump sum of 3/80ths of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Inland Revenue Approval. The amount computed may be increased in proportion to any increase in the Index which has occurred between the date of termination of Pensionable Service and the date on which the benefit is first paid.

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

(a) £5,000;

(b) 4 times the annual rate (subject to the Permitted Maximum) of the Member's basic salary or wages at the date of death or leaving Pensionable Service together with the yearly average of Fluctuating Emoluments received in the 3 years (or the whole period of Service if less) up to the date of death or leaving Pensionable Service; and

(c) 4 times the Member's Final Remuneration disregarding provisos (i), (ii), (iii) and (vi) of that definition less Retained Death Benefits.

CLASS B OR C MEMBERS

Notwithstanding anything to the contrary in the Scheme provisions, the benefits payable to a Class B or a Class C Member or to his Dependants or other beneficiaries in respect of him shall not when

aggregated with all benefits of a like nature provided under all Associated Schemes exceed the limits set out below.

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

(a) on retirement at or before Normal Retirement Age except before Normal Retirement Age on grounds of Incapacity, a pension of 1/60th of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Inland Revenue Approval;

(b) on retirement before Normal Retirement Age on grounds of Incapacity a pension of the amount calculated in accordance with paragraph 1(a) above as if the Member had remained in Service until the Normal Retirement Age, Final Remuneration being computed as at the actual date of retirement;

(c) on retirement after Normal Retirement Age, a pension of the greatest of:-

(i) the amount calculated in accordance with paragraph 1(a) above on the basis that the actual date of retirement was the Member's Normal Retirement Age;

(ii) the amount which could have been provided at Normal Retirement Age in accordance with paragraph 1(a) above increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period; and

(iii) where the Member's total Service has exceeded 40 years, the aggregate of 1/60th of Final Remuneration for each year of Service before Normal Retirement Age (not exceeding 40 such years) and of a further 1/60th of Final Remuneration for each year of Service after Normal Retirement Age, with an overall maximum of 45 reckonable years.

Final Remuneration being computed in respect of (i) and (iii) above as at the actual date of retirement;

(d) on leaving Pensionable Service before Normal Retirement Age, a pension of 1/60th of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Inland Revenue Approval. The amount computed may be increased by 5 per cent for each complete year or, if greater, in proportion to any increase in the Index which has occurred between the

date of termination of Pensionable Service and the date on which the pension begins to be payable. Any further increase necessary to comply with Social Security legislation is also allowable.

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

(a) on retirement at or before Normal Retirement Age, except before Normal Retirement Age on grounds of Incapacity, 3/80ths of Final Remuneration for each year of Service (not exceeding 40 years) or such greater amount as will not prejudice Inland Revenue Approval;

(b) on retirement before Normal Retirement Age on grounds of Incapacity the amount calculated in accordance with paragraph 2(a) above as if the Member had remained in Service until the Normal Retirement Age, Final Remuneration being computed as at the actual date of retirement;

(c) on retirement after Normal Retirement Age, the greatest of:-

(i) the amount calculated in accordance with paragraph 2(a) above on the basis that the actual date of retirement was the Member's Normal Retirement Age;

(ii) the amount which could have been provided at Normal Retirement Age in accordance with paragraph 2(a) above together with an amount representing interest thereon; and

(iii) where the Member's total Service has exceeded 40 years, the aggregate of 3/80ths of Final Remuneration for each year of Service before Normal Retirement Age (not exceeding 40 such years) and of a further 3/80ths of Final Remuneration for each year of Service after Normal Retirement Age, with an overall maximum of 45 reckonable years.

Final Remuneration being computed in respect of (i) and (iii) above as at the actual date of retirement;

(d) on leaving Pensionable Service before Normal Retirement Age, a lump sum of 3/80ths of Final Remuneration for each year of Service prior to leaving Pensionable Service (not exceeding 40 years) or such greater amount as will not prejudice Inland Revenue Approval. The amount computed may be increased in proportion to any increase in the

Index which has occurred between the date of termination of Pensionable Service and the date on which the benefit is first paid.

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

(a) £5,000;

(b) 4 times the annual rate of the Member's basic salary or wages at the date of death or leaving Pensionable Service together with the yearly average of Fluctuating Emoluments received in the 3 years (or the whole period of Service if less) up to the date of death or leaving Pensionable Service; and

(c) 4 times the Member's Final Remuneration disregarding provisos (i), (ii), (iii) and (vi) of that definition less Retained Death Benefits.

4. The preceding provisions of this rule shall be modified in their application to a Member who is a Controlling Director as follows:-

(a) the amount of the maximum Aggregate Retirement Benefit in paragraph 1 and of the maximum Lump Sum Retirement Benefit in paragraph 2 shall be reduced, where necessary for Inland Revenue Approval, to take account of any corresponding benefits under retirement annuity contracts or trust schemes approved under Chapter III Part XIV of the Taxes Act or under personal pension schemes approved under Chapter IV Part XIV of the Taxes Act; and

(b) where retirement takes place after Normal Retirement Age but not later than the Member's 70th birthday, paragraph 1(c)(ii) and (iii) and paragraph 2(c)(ii) and (iii) shall not apply, and if retirement is later than the attainment of that age the paragraphs shall apply as if the Member's 70th birthday had been specified in the Rules as his Normal Retirement Age so as not to treat as Service after Normal Retirement Age any Service before the Member reaches the age of 70.

PART 2 : OTHER CONDITIONS RELATING TO CLASS A MEMBERS

1. MEMBER'S CONTRIBUTIONS

(a) Each Member is required to contribute to the Scheme in accordance with the provisions of Rule 5. The rate of contribution determined in accordance with Rule 5 will not be altered before the expiry of a period of 12 months from the date on which the first payment at the current rate became due without the specific agreement of the Board of Inland Revenue.

(b) In addition the Member may make voluntary contributions to the Scheme to secure additional benefits for himself and/or his Dependants. Any retirement benefits so secured must be in the form of non-commutable pension except to the extent to which the provisions of the Scheme allow commutation of trivial pensions or on the grounds of serious ill health.

(c) The contributions paid to the Scheme by a Member in a year of assessment shall not exceed either:-

(i) when aggregated with the Member's contributions to any other exempt approved schemes, 15 per cent of the Member's Remuneration; or

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

2. CONTINUED LIFE COVER

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

3. PAYMENT OF RETIREMENT BENEFITS

(a) The payment of a Member's retirement benefits shall not commence earlier than the Member attaining age 50, except on retirement on grounds of Incapacity, nor later than attaining age 75.

(b) No part of the Member's retirement benefits is to be paid in advance of actual retirement except as necessary to comply with paragraph 3(a) above or to the extent necessary to comply with the requirements of the Pension Schemes Act 1993.

PART 3 : OTHER CONDITIONS RELATING TO CLASS B OR C MEMBERS

1. MEMBER'S CONTRIBUTIONS

(a) Each Member is required to contribute to the Scheme in accordance with the provisions of Rule 5. The rate of contribution determined in accordance with Rule 5 will not be altered before the expiry of a period of 12 months from the date on which the first payment at the current rate became due without the specific agreement of the Board of Inland Revenue.

(b) In addition the Member may make voluntary contributions to the Scheme to secure additional benefits for himself and/or his Dependants. Where such contributions commence on or after 8th April 1987 any retirement benefits so secured must be in the form of non-commutable pension except to the extent to which the provisions of the Scheme allow commutation of trivial pensions or on the grounds of serious ill health.

(c) The total contributions paid by the Member in a year of assessment to this and any Associated Scheme shall not exceed 15 per cent of his Remuneration for that year.

2. TRANSFERS

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

(b) When, on or after a transfer having been made to another occupational pension scheme, the administrator of that scheme requests such a certificate as is referred to in paragraph 2(a) above the Administrator shall calculate as at the date of the transfer the maximum lump sum payable on retirement from the transfer value and certify that amount to the receiving scheme.

PART 4 : OTHER CONDITIONS RELATING TO ALL MEMBERS

1. DEPENDANTS' PENSIONS

Any pension for a Dependant, when aggregated with the pensions, other than those provided by surrender or allocation of the Member's own pension, payable to that Dependant under all Associated Schemes, shall not exceed an amount equal to 2/3rds of the maximum Aggregate Retirement Benefit payable to the Member immediately before death under Part 1 above. Where the death of the Member occurs whilst in Service before Normal Retirement Age the maximum is that appropriate had the Member retired on grounds of Incapacity on the date of death entitled to no retained benefits from previous employments.

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

2. INCREASES OF PENSIONS IN PAYMENT

The maximum amount of a pension ascertained in accordance with Part 1 and Part 2 of this rule less any pension which has been commuted for a lump sum or the pension equivalent of any benefits in lump sum form and any pension surrendered to provide a Dependant's pension may be increased by 3 per cent for each complete year or, if greater, in proportion to any increase in the Index since the pension commenced.

3. SURPLUS AVCs

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

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

4. TRANSFERS

(a) The benefits arising on retirement from a transfer value shall not be capable of commutation nor shall they be paid in lump sum form if the transfer is accompanied by a certificate from the administrator of the transferring scheme to the effect that the transfer value is not to be used to provide benefits in lump sum form.

(b) When making a transfer to an approved personal pension scheme the Administrator shall provide a certificate of the maximum lump sum payable on retirement from the transfer value if the transferring member:-

(i) was aged 45 or more at the time that the transfer payment was made; or

(ii) has, at any time within the 10 years preceding the date on which the right to the cash equivalent being transferred arose, been, in respect of any employment to which the transfer payment or any part of it relates, either:-

(I) a Controlling Director; or

(II) in receipt of annual remuneration in excess of £60,000 or, if greater, the allowable maximum (ie. the equivalent for personal pension schemes of the Permitted Maximum) for the year of assessment in which the date of transfer falls; or

(iii) is entitled to benefits included in the transfer payment which arise from an occupational pension scheme under which the normal retirement age is 45 or less.

FIRST SCHEDULE

Table of Lump Sum Widows' Benefit

(1) Length of member's Qualifying Service	(2) Lump sum payable to Widow
	£
Less than 20 years	150
20 years	157
21 "	168
22 "	179
23 "	190
24 "	201
25 "	213
26 "	226
27 "	238
28 "	251
29 "	265
30 "	278
More than 30 years	293

SECOND SCHEDULE

Table of Lump Sum Benefits
Fifth Schedule

Units	Lump Sum
(1)	(2)
	£
78	4
156	10
234	16
312	22
390	29
468	36
546	43
624	51
702	59
780	67
858	75
936	83
1014	91
1092	100
1170	109
1248	118
1326	127
1404	137
1482	147
1560	157
1638	168
1716	179
1794	190
1872	201
1950	213

THIRD SCHEDULE

Part I - Amounts of Certain Lump Sum Benefits

Description of Benefit	Amount
Death in service benefit under Rule 23(8) and industrial death benefit under Rule 23(9)	£300
Children's benefit under Rule 25(6)	£50 or, if no benefit is payable in respect of the death under Rule 23(8), £100 Provided that the total amount of benefits paid under Rule 25(6) shall not exceed £500 in respect of any death.
Death benefits under Rule 26(2)	(a) If the deceased person leaves Special Dependants, such sums not exceeding £300 in total as the Pensions Officer may in his discretion award to any or all of the Special Dependants provided that no one person shall be awarded more than £200. (b) If the deceased person does not leave Special Dependants, such sum not exceeding £100 as the Pensions Officer may in his discretion award to a Relative of the deceased person or to a person living in the same household as the deceased person, or to any person or persons who have incurred expense in providing for the funeral of the deceased person.
Payment towards funeral expenses under Rule 45(4)	£500

Part II - Special Dependants

For the purposes of this Schedule the expression "Special Dependants" in relation to any person means any other persons who, in the opinion of the Committee of Management, are or were at the date of the death of the first-mentioned person, or any such other date as the Committee of Management may consider relevant, wholly or mainly dependent on the first-mentioned person for financial support.

FOURTH SCHEDULE

1. Where in any provision of the Rules, an amount is specified by reference to an item number in this Schedule relating to that provision, that amount shall in respect of the periods specified in column (2) and any subsequent column of this Schedule, be the weekly amount shown in those columns respectively against such item number and where applicable against the period of Qualifying Service or degree of disablement specified in column (1) of this Schedule of the person in relation to whom such amount falls to be computed.

2. The amounts specified in column (2) and any subsequent column by reference to items numbered (1) to (4) inclusive in this Schedule are based on a complete election having been made in accordance with the provisions of paragraph (4) of Rule 14. In the event of such a complete election not being made, the said amounts shall be adjusted in such manner as the Committee of Management may determine on the advice of the Actuary.

Item No.	Provision of the Rules	
	(1)	(2)
(1)	-	-
(2)	Rule 14(2)(e) Period of Qualifying Service	
	5 years	£14.02
	6 years	£16.80
	7 years	£19.62
	8 years	£22.43
	9 years	£25.20
	10 years or more	£27.99
(3)	Rule 17(2)(a)	£ 2.27
(4)	Rule 18(3)(a) Degree of Disablement	
	1% to 5%	£ 0.46
	6% to 10%	£ 0.86
	11% to 15%	£ 1.26
	16% to 20%	£ 1.62
	30%	£ 2.47
	40%	£ 3.33
	50%	£ 4.14
	60%	£ 5.01
	70%	£ 5.81
	80%	£ 6.62
	90%	£ 7.47
	100%	£ 8.78
(5)	Rule 18(3)(a)	£ 3.73
(5A)	Rule 23(4)(b)	£15.12
(6)	Rule 25(2)(b)	£ 5.26
(7)	Rule 25(3)(b)	£ 6.33
(8)	Rule 25(3)(b)	£18.66

FIFTH SCHEDULE

1. The amount in respect of a refund of the deceased's contributions and (if and insofar as shall be applicable) of units standing to the deceased's credit referred to in sub-paragraph (a) of paragraph (3) of Rule 26 shall consist of the aggregate of such of the following amounts as shall be applicable -

   (a) The total amount of contributions payable by or in respect of him under Rules 4 and 5 and of any other contributions specified in sub-paragraph (b) of paragraph (4) of Rule 22 (excluding the amount of any contributions previously refunded under paragraph (4) of Rule 22 before any reduction under sub-paragraph (c) of that paragraph.

   (b) The total amount of the deceased's contributions for the period referred to in paragraph (1) of Rule 5 of the rules of MPS as they had effect before 6th April 1975 and for any part of the period beginning on 3rd April 1961 and ending on 5th April 1975 in respect of which he is entitled to a pension under the rules of MPS or would have been or become entitled to a pension under the said rules or the Rules had he retired on the day before the date of his death but on or after 6th April 1975 in such circumstances that a pension was or would had he survived have become payable to him under Rule 10 (whether or not increased under Rule 11) or Rule 12 but under no other Rule; and

   (c) If the deceased has units standing to his credit, representing service before 3rd April 1961, the amount of the lump sum specified in column (2) of the Second Schedule, according to the number of units standing to his credit.

2. For the purposes of paragraph 1(b) of this Schedule -

   (a) The number of the deceased's contributions for the period referred to in paragraph (1) of Rule 5 of the rules of MPS as they had effect before 6th April 1975 shall be deemed to be equal to the number of weeks of his service in Eligible Employment during that period, calculated in accordance with Rule 9 of the rules of MPS as they had effect immediately before 6th April 1975.

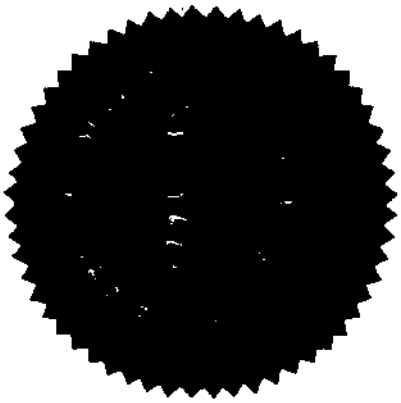
   (b) The number of the deceased's contributions for any part of the period beginning on 3rd April 1961 and ending on 5th April 1975 in respect of which he is or would had he retired as specified in sub-paragraph (b) of paragraph 1 of this Schedule and if applicable survived have been or become entitled to a pension shall be deemed to be equal to the number of weeks of his service in Eligible Employment by reference to which such pension was or would have been calculated; and

   (c) The amount of the deceased's contributions for the periods referred to in sub-paragraphs (a) and (b) of this paragraph shall not include the amount of any contributions referred to in paragraph (10) of Rule 5 of the rules of MPS as they had effect immediately before 6th April 1975.

SIXTH SCHEDULE

Item No.	Provision of the Rules	On and after 1 January 1994
	(1)	(2)
(1)	Rule 14(2)(b)	£0.08107
(2)	Rule 14(2)(c)	£0.05444
(3)	Rule 14(2)(d)	£0.02527

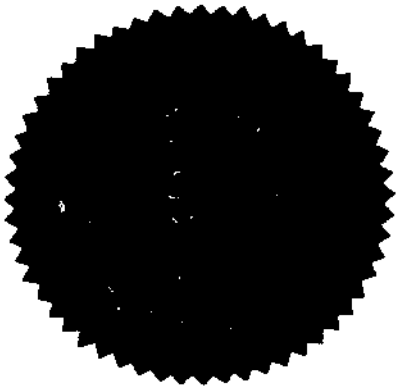
The amounts specified in column (2) and any subsequent column of the above Table are based on a complete election having been made in accordance with the provisions of paragraph (4) of Rule 14. In the event of such a complete election not being made the said amounts shall be adjusted in such manner as the Committee of Management may determine on the advice of the Actuary.



(The COMMON SEAL of INDUSTRY-WIDE
(MINEWORKERS' PENSION SCHEME
(CO-ORDINATOR LIMITED was hereunto
(affixed in the presence of:-

Director

~~Secretary~~/Director



(The COMMON SEAL of INDUSTRY-WIDE
(MINEWORKERS' PENSION SCHEME
(TRUSTEES LIMITED was hereunto
(affixed in the presence of:-

Director

~~Secretary~~/Director