

DRAFT 15 SEPTEMBER 2014

SCHEDULE

**MERCHANT NAVY RATINGS PENSION FUND  
TRUST DEED AND RULES**

MAYER • BROWN

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*[NB: Rules 12, 13 and 16 have been deliberately left blank to avoid renumbering; the same topic will thus have the same Rule number as it had in the 2001 edition of the Rules.]*

THIS TRUST DEED is made ~~the 1 August 2007~~ on \_\_\_\_\_ 2014 by MERCHANT NAVY RATINGS PENSION FUND TRUSTEES LIMITED whose registered office is situated at Leatherhead House, Station Road, Leatherhead, Surrey KT22 7ET ("Trustees").

WHEREAS:

- (a) by a Trust Deed dated 16 January 1978 the Pension Scheme known as the Merchant Navy Ratings Pension Fund (the "**Scheme**") was established and is now regulated by a Trust Deed (the "Former Trust Deed") dated ~~31 May 2001~~ 1 August 2007 and Rules (the "Former Rules") scheduled to ~~that the Former~~ Deed, as amended by ~~Deeds~~ a Deed of Variation dated ~~29 November 2001, 23 October 2002 and 22 December 2003 and an Interim Deed of Variation (the "Interim Deed") dated 31 July 2007~~ 13 December 2013;
- (b) the Trustees are the present trustees of the Scheme;
- (c) the Trustees pursuant to the powers contained in Clause 30 of the Former Trust Deed (having obtained the required approval of the Employers' and the Members' representatives) have resolved that the Former Trust Deed and the Former Rules shall be replaced by this Trust Deed and scheduled Rules
- (d) ~~the effect of this Deed will be to supersede in relation to the Scheme the provisions of the Interim Deed and of the Registered Pension Schemes (Modifications of the Rules of Existing Schemes) Regulations 2006 with effect from 6 April 2006. – [Add recital about court case.]~~

NOW IT IS HEREBY DECLARED AND AGREED as follows:

### **Marginal Notes and Index**

1. The marginal notes, index and headings to the Trust Deed and to the Rules shall not affect the construction hereof.

### **Adoption and effect of Trust Deed and Rules**

2. This Trust Deed and scheduled Rules and Appendices are adopted as the Trust Deed and Rules regulating the Scheme with effect from ~~6 April 2006~~ [●] in place of the Former Trust Deed and Former Rules but so that:
  - (i) ~~benefits payable to or in respect of Members who have on the Closure Date left service are in accordance with the Trust Deed dated 30 October 1994 as amended by the deeds dated 21 October 1997, 25 June 1999, 1 June 2000, 15 June 2000 and 7 February 2001, unless the contrary is expressly stated in this substituted Trust Deed and Rules; [Insert appropriate wording following the Court case];~~

(ii) ~~the new text of Clause 10.1 of the Trust Deed shall apply with effect from 1 August 2005 and the amendments relating to civil partners in Rules 2, 3, 6.6, 8, 9.1, 11.1, 11.2, 18.2 and 24.2(a) shall apply with effect from 5 December 2005;~~(iii) this Trust Deed and scheduled Rules and Appendices:

- (a) will not affect the Registration of the Scheme;
- (b) will comply with the preservation requirements of the 1993 Act;
- (c) will enable the Scheme to remain a Contracted-out Scheme as defined in the 1993 Act; and
- (ed) if amendments, deletions or additions are required by HM Revenue & Customs in relation to (a) above, the Trustees shall make them in such manner as shall least frustrate the objects and purposes of the alterations and modifications as presently set out in this substituted Trust Deed and Rules.

### **Name of Scheme**

3. The Scheme is and shall be known as the Merchant Navy Ratings Pension Fund (the "Scheme").

### **Definitions**

4. The Definitions contained in Rule 3 shall apply to this Trust Deed.

### **Irrevocable Trust**

5. The Fund shall be held by the Trustees upon irrevocable trust to apply the income and if and so far as necessary, the capital of the Fund in or towards providing benefits in accordance with the Trust Deed and the Rules.

### **Undertaking by Participating ~~Employer~~Employers**

6. Each Participating Employer shall undertake by entering into the form of Agreement set forth under the First Appendix or in such other form as shall be determined by the Trustees the obligations imposed upon a Participating Employer by the Rules. ~~After the Closure Date only a new Current Employer can become a new Participating Employer.~~

### **Expenses**

7. The Trustees shall be indemnified out of the Fund on account of all costs, charges and expenses properly incurred by them in the execution of their duties including in respect of any fees paid to Directors of the Trustees pursuant to resolution duly passed in general meeting of the Trustees.

### **Minutes**

8. The Trustees shall cause proper Minutes to be kept of the proceedings at their meetings which Minutes shall be signed by the Chairman of the Meeting to which they refer or of the next succeeding meeting. Any such Minutes so signed as aforesaid shall be accepted as evidence of the matters stated therein.

### **Appointment of Managers**

- 9.1 The Trustees may engage such managers (which may include subsidiary or associated companies of the Trustees) as they think fit for the purpose of administering or assisting in the administration of the Scheme and its investments and shall determine the terms and remuneration of such managers. The Trustees may delegate to such managers any of their powers, discretions or functions in relation to the Scheme except the discretion under Clause 30 of the Trust Deed and may give the managers power to sub-delegate.

### **Appointment of Consultants**

- 9.2 The Trustees may, whenever they think desirable or necessary for the proper execution of their duties, employ or consult lawyers, accountants, brokers, bankers and others and/or appoint or call into consultation such consultants or advisers as they see fit to advise them on questions relative to the investments of the Scheme. All expenses incurred and fees paid under this sub-Clause shall be chargeable to the Scheme.

### **Appointment of Actuary**

- 10.1 The Trustees shall appoint from time to time an individual, partnership or company to be the Actuary or Actuaries to the Scheme who shall, in the case of an individual, have been a Fellow of the Institute ~~of Actuaries or a Fellow of the~~ and Faculty of Actuaries for a period of not less than ten years or, in the case of a partnership, be a partnership in which at least one of the partners shall have been such a Fellow for such period or, in the case of a company, a company providing actuarial services which employs at least one employee who shall have been such a Fellow for such period. Where a partnership or company is appointed, any functions which the Pensions Acts 1995 or 2004 require to be performed by an individual shall be performed by a partner of that partnership or an employee of that company appointed by the Trustees for that purpose.

### **Appointment of Auditor**

- 10.2 The Trustees shall from time to time appoint an Auditor to the Scheme who shall be a person qualified to act as an auditor to the Scheme under section 47 of the 1995 Act.

### **Secretary and Staff**

11. The Trustees may appoint a Chief Executive and Secretary of the Scheme and such other officers and staff for the Scheme as they think necessary upon such terms and conditions and for such period of office as they shall decide. The Trustees may replace such persons from time to time by others. They may also appoint a body or

bodies corporate to perform such management and/or administrative duties as they may think necessary upon such terms as they may from time to time determine.

### **Joint Employment of Staff**

12. The Trustees may enter into such arrangement as they think desirable for the joint employment of staff and for the joint provision of administrative offices and machinery with one or more other occupational pension schemes.

### **Offices of the Scheme**

13. The office of the Scheme shall be at Leatherhead House, Station Road, Leatherhead, Surrey KT22 7ET or at such other place as may be decided from time to time.

The Trustees shall have power to occupy, purchase, take on lease, or otherwise acquire property of any tenure as offices for the purposes of the Scheme. Any such property shall be vested in the Trustees who shall hold it upon trust to deal with or dispose of it as the Trustees may from time to time determine and upon terms that all outgoings thereof of whatsoever nature shall be paid by the Scheme.

### **Administrator of Scheme**

14. The Trustees shall be the Administrator of the Scheme and shall manage the Scheme and administer the trust property in accordance with the Rules of the Scheme.

### **Trustees' Powers of Control and Decisions**

- 15.1 The Trustees shall have complete control over the administration of the Scheme with full powers conclusively to determine whether or not any person is entitled in accordance with the provisions of the Trust Deed and of the Rules to any pension or other allowance from the Scheme and to determine any other claim made upon the Scheme and all matters, questions and disputes touching or in connection with the affairs of the Scheme. In deciding any question of fact the Trustees shall have full liberty to act upon any evidence or presumption as they shall in their absolute discretion think fit, although the same may not be evidence legally admissible or a legal presumption. The Trustees shall also have full power conclusively to determine all questions or matters of doubt arising on the construction or operation of the Trust Deed or the Rules or otherwise relating to the Scheme. Every such determination or decision of the Trustees under this Clause, whether made upon a question actually raised or implied in the acts or proceedings of the Trustees, shall be conclusive and binding on all parties.

### **Appointment of Committee(s)**

- 15.2 The Trustees shall have power to appoint a committee or committees to exercise such of the Trustees' powers as the Trustees may delegate to such committee or committees from time to time.
- 15.3 The Trustees shall have power at any time to vary the qualification for Membership and if, in the exercise of such power, any such person or classes of persons are

admitted to membership, such variations (if any) relating to such persons or classes of person, may be made in the provision of the Scheme as regards contributions, benefits or otherwise as the Trustees, after consultation with the Actuary, shall think necessary or desirable.

### **Bank Accounts and their Operation**

16. The Trustees shall operate an account or accounts with such bank or banks, branch or branches as the Trustees may from time to time determine. They shall from time to time make such regulations as they shall think desirable for the operation of any such bank accounts, including for the signing and endorsement of cheques.

The Trustees shall pay all subscriptions, contributions, dividends, interest and other income, and all proceeds of sale, donations and bequests (if any) and other monies whatsoever received by the Trustees for or on behalf of the Scheme into one or other of such banking accounts. The Trustees may further from time to time retain any sums not immediately required for the payment of pensions or other expenses or payments out of the Fund.

### **Investment Powers**

- 17.1 The Trustees shall have the following powers which they may exercise in such a manner as they think fit:
- a) to retain as invested any investment or property from time to time held by the Trustees and forming part of the Fund or sell the same if they think fit; and
  - b) to invest any money forming part of the Fund that is not immediately required for the payment of benefits or to retain monies in cash of any currency upon accounts with any deposit taking institution without being liable for any gain foregone; and
  - c) to invest in stocks, shares, warrants, debentures, debenture stocks or securities howsoever constituted and wheresoever issued whether or not bearer including call or put options in respect of any such investment and underwriting, or sub-underwriting in connection with the issue or offer for sale of any such investments; and
  - d) to purchase or take a mortgage on any real or leasehold property of any kind whatsoever (including the cost of improvements thereof); and
  - e) to make loans to any bank or building society or other loans guaranteed or secured; and
  - f) to make loans of money or securities to any money broker engaged in the financing of primary market making; and
  - g) to invest in any currency or gold or bullion including any trading in financial futures under any form of currency contract; and

- h) to invest in commodities of whatever nature and wheresoever situated including put or call options and any trading in financial futures in respect of the same; and
- i) to invest in any annuity or deferred annuity policy or policies of insurance issued by an Insurance Company;
- j) to invest in or purchase derivatives of any kind (including, without limitation, interest rate swaps, swap options (also known as "**swaptions**"), spreadlocks and other derivatives within the meaning of that term as defined in the Glossary of Definitions to the FSA Handbook of Rules and Guidance as in force in September 2002); and
- k) to invest in any other like investment

with power to vary such investment to the intent that the Trustees shall have the same unrestricted power of investing and changing investments as if they were beneficially entitled to the Fund.

### **Borrowing**

- 17.2 The Trustees may whenever they think it desirable so to do raise or borrow any sum or sums of money in any currency and may secure the repayment of such monies in such manner and upon such terms and conditions in all respects as they think fit and in particular by charging or mortgaging all or any part of the Fund.

### **Donations**

18. The Trustees may accept donations or bequests from any person or body to be applied for the purposes of the Scheme.

### **Payments out of the Fund**

19. The Trustees shall pay out of the Fund the allowances and benefits for the time being chargeable against the Scheme together with such other expenses as fall to be borne by the Scheme.

### **Appointment of Custodian Trustee**

20. The Trustees may appoint a body corporate empowered to act as Custodian Trustee for the purpose of holding to their direction any of the investments of the Fund. The Trustees may from time to time remove such Custodian Trustee and appoint another in its stead. Any of the investments of the Fund may be made in the name of or transferred to such body corporate which shall hold those investments as Custodian Trustee for and on behalf of and to the direction of the Trustees. The Trustees may enter into such agreement with the body corporate as they may consider expedient for such purposes including the giving of an indemnity to the body corporate in respect of any liability arising out of its holding investment of the Fund.

### **Appointment of Nominees**



21. The Trustees may further appoint nominees for the purpose of holding to their direction and control and as they shall prescribe any investments of the Fund which they consider for dealing or other purposes ought to be so held.

### **Common Investment Fund**

22. The Trustees shall have power to pool or comingle the whole or any part of the investments or property from time to time held by the Trustees and forming the whole or part of the Fund with the assets of any other registered pension scheme (as defined in the Finance Act). The Trustees shall in relation to any such investments or property of the Fund comingled or pooled in such common investment fund be entitled to exercise all the powers of investment contained in this Trust Deed.

### **Accounts and Records**

23. The Trustees shall cause full and true accounts to be kept of the Scheme and of all sums of money expended in the payment of benefits, expenses or otherwise. The Trustees shall further cause full and true records to be kept of the time of commencement of membership by the individual Members, of the dates and amount of contributions and of all other chronological and other facts proper to be recorded. They shall also cause a Register to be kept of all Participating Employers and Members becoming party to or members of the Scheme.

### **Annual Accounts and Audit**

24. The accounts of the Scheme shall be made up to the 31st day of March in each year. Within three months of the end of each such financial year of the Scheme, or as soon thereafter as is practicable, an account and statement of assets prepared by the Trustees and exhibiting a true statement of the accounts shall be delivered by the Trustees to the Auditor together with all means of verifying and vouching the same. The Trustees, the Chief Executive, the Secretary and the other administrative officers and staff of the Scheme shall give to the Auditor every assistance in his investigation and give him access to all books, papers, records and accounts connected with the Scheme and shall obtain from him a report in writing upon the result of his audit.

### **Actuarial Valuation**

25. The Actuary to the Scheme shall investigate the financial position of the Scheme at least once in every three years. For that purpose all necessary accounts and information shall be furnished to the Actuary by the Trustees. The Actuary shall report to the Trustees upon the financial position of the Scheme and make such recommendations in respect thereof as he may think fit.

### **Administrative Expenses**

26. Subject to Rule 5, the administrative and other expenses of the Scheme shall be borne by the Scheme or by the Participating Employers in such manner and in such proportions as the Trustees shall determine.

## **Validity of Powers**

27. No decision of or exercise of a power by the Trustees shall be invalidated or questioned on the grounds that the Trustees or any of the Board of Directors of any Corporate Trustee had a direct or other personal interest in the mode or result of such decision or exercising such power.

## **Trustees**

28. The sole Trustee of the Scheme shall be Merchant Navy Ratings Pension Fund Trustees Limited.

## **Indemnity of Trustees and other Officers**

29. No Trustee nor any of the Directors of a Corporate Trustee nor the Chief Executive nor the Secretary, nor any other administrative officers and staff shall be liable for any loss sustained by the Scheme unless caused by a breach of trust or duty knowingly and intentionally committed by him. Every such person shall be entitled to an indemnity out of the Fund for any liability incurred by him in the performance of his duties in connection with the Scheme.

## **Amendments**

30. The provisions of the Trust Deed or of the Rules may be varied or added to in any way by Deed executed under the seal of the Trustees. Every such variation must first be approved by a majority of the full number of Participating Employers' representatives and also a majority of the full number of the Members' representatives serving as Trustees or as Directors on the Board of any Corporate Trustee which approval may be signified either by a resolution passed by such majorities or by an instrument in writing signed by such majorities PROVIDED that no variation or addition shall be made which:
- a) would have the effect of changing the main purposes of the Scheme, namely the provision of pensions for Members on retirement; or
  - b) would operate in any way to diminish or prejudicially affect the rights in respect of any Member annuitant or other beneficiary already earned; unless the Actuary shall advise that no other course is reasonably practical having due regard to the interests of all persons interested in the Scheme; or
  - c) would be contrary to the principle that the Participating Employers and the Members shall be equally represented on the Board of the Corporate Trustee of the Scheme; or
  - d) would contravene the requirements of sections 67 to 67I of the 1995 Act.

## **Notices and conduct of consultations**

- ~~31.~~31.1 Any notice required to be given under the Trust Deed or the Rules may be given by sending by first class prepaid post to the person for whom it is intended at his

registered or last known address. A notice so sent shall be deemed to have been served three days following that of posting if the addressee is in the United Kingdom or ten days if the addressee is outside the United Kingdom.

31.2 Where the Trust Deed or Rules require the Trustees to consult any person, that requirement will be satisfied if the Trustees:

- a) post documentation in relation to the consultation to that person's last known postal address or email documentation in relation to that consultation to that person's email address; and
- b) do not consult any person whose present postal address or electronic address is not known to them; and
- c) do not consult any person or in respect of whom the Trustees have sent correspondence to their last known postal address and that correspondence has been returned, or electronic address and the Trustees are satisfied that that correspondence has not been delivered.

The Common Seal of )  
MERCHANT NAVY RATINGS )  
PENSION FUND TRUSTEES )  
LIMITED was hereunto affixed in )  
the presence of: )

Director

Secretary

THE FIRST APPENDIX above referred to

**FORM OF AGREEMENT FOR  
PARTICIPATING EMPLOYERS**

To: THE TRUSTEES OF THE MERCHANT NAVY RATINGS PENSION FUND

WE,

of

having received a copy of the revised Trust Deed and Rules dated the \_\_\_\_\_ of \_\_\_\_\_ and constituting and regulating the Merchant Navy Ratings Pension Fund HEREBY AGREE to assume and be bound by the obligation undertaken by Participating



"Actuary"	means the Actuary or Actuaries of the Scheme appointed for the time being by the Trustees
"Additional Voluntary Contributions"	means contributions paid in addition to ordinary contributions paid under Previous Rule 5.6
"Administrator"	for the purpose of the Finance Act means the Trustees of the Scheme
"Auditor"	means the Auditor or Auditors of the Scheme appointed for the time being by the Trustees
"Average Revalued Pensionable Salary"	means the total of each payment of Pensionable Salary on or before the Closure Date as increased by Revaluation divided by the period of Service on or before the Closure Date
<u>"Buy-out Deficit"</u>	<u>is defined in Rule 5.5A(i)</u>
<u>"Buy-out Liabilities"</u>	<u>is defined in Rule 5.5A(i)(b)</u>
<u>"Buy-out Percentage"</u>	<u>is defined in Rule 5.5A(i)(e)</u>
"Civil Partner"	means, where a Member forms a civil partnership under the Civil Partnership Act 2004, the other party to that civil partnership, if he or she survives the Member
"Closure Date"	means 31 May 2001
"Contracted Out Employment"	means contracted out employment as defined by section 8 of the 1993 Act
"Current Employer"	means a Participating Employer named in the Appendix to the Rules or a company or organisation which <del>has become</del> <u>became</u> a Current Employer in place of an existing Current Employer under Rule 30 <u>of the Rules as they were immediately before [●]</u>
<del>"Current Employer's Percentage"</del>	<del>means, in respect of a Current Employer, the Percentage specified against that Current Employer in the Schedule of Percentages adopted as at the Closure Date by the Trustee after consulting the Actuary or fixed under Rule 30.2 when it became a Current Employer but the Percentage may be modified under Rule 30.8. The Schedule adopted as at the Closure Date will specify a Percentage for each Current Employer based on the liabilities relating to benefits accrued by Members or former Members whilst in the service of that Current Employer up to 31 October 1999 expressed as a percentage of such liabilities for all Current Employers</del>
"Custodian Trustee"	means a body corporate empowered to act as Custodian Trustee pursuant to the Trustee Act 1906 and any regulations thereunder
"Deferred Pensioner"	means a Member with an entitlement to benefits who is not a Pensioner or an

	Employee Member
"Employee Member"	means a Member who is an Employee Member for the time being under Rule 4 and "Employee Membership" shall be construed accordingly
<u>"Employer Debt Regulations"</u>	<u>means the Occupational Pension Schemes (Employer Debt) Regulations 2005, as they were on 31 January 2013</u>
<u>"Exit Amount"</u>	<u>means, for each Participating Employer, the amount calculated as described in Rule 31.6A</u>  <u>The Exit Amount will be calculated by the Actuary acting as expert and not as arbitrator and the Actuary's decision will be final</u>
<u>"Exit Amount Calculation Date"</u>	<u>means the date, decided by the Trustees, as at which the Exit Amount will be calculated</u>
<u>"Exit Amount Due Date"</u>	<u>means the date, decided by the Trustees, on which the Exit Amount becomes immediately due and payable to the Trustees. The Exit Amount Due Date cannot be earlier than the Exit Amount Calculation Date</u>
"Finance Act"	means the Finance Act 2004
"Fund"	comprises the assets which from time to time make up the monies and investments held by the Trustees for the purposes of the Scheme
"Guaranteed Minimum Pension"	means the guaranteed minimum pension as described under section 8 of the 1993 Act
<u>"Individual Payment Plan"</u>	<u>is described in Rule 5.2</u>
<u>"Insolvency Event"</u>	<u>means an "insolvency event" as described in Section 121 of the Pensions Act 2004, or insolvency proceedings under the law of a country other than England and Wales, Scotland or Northern Ireland which in the opinion of the Trustees is analogous</u>
<u>"Insolvent Employer"</u>	<u>is defined in Rule 5.5</u>
"Insurance Company"	has the same meaning as in section 659B of the 1988 Act
"Lower" and "Upper Earnings Limit"	means the annual equivalent of the amounts ascribed to them in the Social Security Contributions and Benefits Act 1992
"Member"	means a person who has been admitted to membership of the Scheme in accordance with the Rules and "Membership" shall be construed accordingly. No person shall become a Member on or after the Closure Date
"Merchant Navy Establishment"	means the body established pursuant to the terms of the Merchant Navy Established Service Scheme Agreement and charged with the performance of the administrative duties allocated to it under the terms of that Agreement
"MNOPF"	means The Merchant Navy Officers Pension Fund
"MNRPP"	means The Merchant Navy Ratings Pension Plan

"MNRPP Pensionable Salary"	means total annual earnings from employers participating in MNRPP <u>or, as the case may be, the MNRPP Successor Scheme</u> , less a sum equivalent to the Lower Earnings Limit at the time of payment of the total annual earnings
<u>"MNRPP Successor Scheme"</u>	<u>means the scheme or arrangement recognised by the Trustees as the successor to the MNRPP following the winding up of the MNRPP on [date]</u>
<u>"Net Buy-out Deficit"</u>	<u>is defined in Rule 5.5A(i)(d)</u>
"Normal Benefit Age"	means, in respect of a former spouse who is entitled to Pension Credit Rights under the Scheme, age 62
"Normal Pension Age"	means for all Members age 62
<u>"Orphan Liabilities"</u>	<u>means the sum of the percentages of the Scheme's liabilities allocated to a Participating Employer, in respect of which the Trustees receive advice from their legal and covenant advisers that the contributions payable in respect of those liabilities would be unlikely to be recoverable from that Participating Employer either at all, or without incurring disproportionate cost or within a reasonable time</u>
"Participating Employer"	means a Current Employer and any company or organisation which was a Participating Employer under the Previous Rules, <u>or which takes over some or all of the liabilities of a Participating Employer under Rule 30.1.</u>  In the case of a Participating Employer who is not resident for tax purposes in the UK, the Trustees may enter into such special arrangements with such Participating Employer as the Trustees in their absolute discretion may consider appropriate including variation in the calculation of contribution and benefit according to the particular circumstances of the participation
<u>"Participating Employer's Percentage"</u>	<u>is defined in Rule 5.2(iv)</u>
"Pension Credit"	means a credit under section 29(1)(b) of the 1999 Act
"Pension Credit Rights"	means rights to future benefits under the Scheme or any other scheme which are attributable (directly or indirectly) to a Pension Credit
"Pension Debit"	means a debit under section 29(1)(a) of the 1999 Act
"Pension Sharing Order"	means any order or provision as is mentioned in section 28(1) of the 1999 Act
"Pensionable Salary"	means Salary less a sum equivalent to one and a half times the Lower Earnings Limit at the time of payment of Salary
"Pensioner"	means a Member in receipt of pension out of the Fund or who would have been in receipt of such a pension had he not commuted the whole of his pension for a lump sum

"Pension Year"	means any year commencing on 1 April and terminating on the following 31 March
"Pre-78 Member"	means a Member who was contributing on 6 April 1978 or was on the Merchant Navy Establishment Register on that date and subsequently contributed to the Scheme within the Pension Year between 6 April 1978 and 5 April 1979 and was either a contributing Member on 1 April 1985 or had contributed between 1 April 1982 and 1 April 1985 and was on the Merchant Navy Establishment Register on 1 April 1985 or was in a Private Scheme on 1 April 1985
"Pre-78 Pension Benefit"	means, in the case of a Pre 78 Member, £66.25 per annum, subject to Revaluation, for each complete year of employment (or proportion of that for a part year) as a Rating over the age of 18 prior to 6 April 1978 up to a maximum of five years or eight years if on 1 April 1987 he was contributing to the Scheme or was on the Merchant Navy Establishment Register or was in a Private Scheme less any part of that period of employment which is pensionable in any other scheme
"Previous Rules"	means the Rules of the Scheme in force immediately prior to the Closure Date
"Private Scheme"	means a scheme recognised as such since 1978 for the purposes of the Rules and which continues to be so recognised by the Trustees as providing benefits at least as valuable overall as those payable out of the Scheme. The Trustees at their absolute discretion may withdraw their acceptance of a Private Scheme if at any time the Trustees consider that such Private Scheme is no longer providing benefits in respect of pensionable service prior to the Closure Date at least as valuable overall as those payable out of the Scheme whereupon the Private Scheme shall henceforth cease to be such for all purposes of the Rules. A Private Scheme shall not cease to be so recognised by reason only of merger or consolidation with or replacement by another scheme or fund in circumstances where the Trustees are satisfied that this is in the best interests of its members
"Qualifying Benefit"	has the meaning given to it by section 31(3) of the 1999 Act
"Rating"	means a seafarer who is employed by a Participating Employer in a capacity other than a Master or Officer
<a href="#"><u>"Recovery Period"</u></a>	<a href="#"><u>means the period set out in a Recovery Plan by the end of which the Statutory Funding Objective is to be achieved.</u></a>
<a href="#"><u>"Recovery Plan"</u></a>	<a href="#"><u>means the same as in Section 226 of the Pensions Act 2004 (recovery plan)</u></a>
"Registration"	in relation to the Scheme means registration by Her Majesty's Revenue & Customs as a registered pension scheme under section 153 of the Finance Act
"Revaluation"	for an Employee Member means, on or before the Closure Date, Full Revaluation and, after the Closure Date, 7% Revaluation (for an Employee Member to whom Rule 4.3 applies) or Full Revaluation (in any other case)
"Full Revaluation"	means revaluation by reference to the order made under section 148 of the Social Security Administration Act 1992 in the Pension Year in which



	Employee Membership terminates
"7% Revaluation"	means revaluation for the period of Employee Membership after the Closure Date in accordance with the final salary method specified in Schedule 3 to the 1993 Act as if the maximum rate was 7% not 5%
"Rules"	means and includes these Rules as varied modified or replaced from time to time
"Salary"	<p>means the cash emoluments paid to a Member for his Service during a Pension Year, or for the purpose of assessing contributions, the cash emoluments paid over the period in respect of which the contributions are assessed excluding bonuses and similar payments other than for work or conditions of work; and shall include payments falling within following list 'A' but exclude payments falling within following list 'B' or otherwise as agreed by the Trustees:</p> <p><u>LIST A (included)</u>  Antarctic Allowance  Basic Pay  Bonds Commission  Cargo Handling  Casual/Stand By Pay  Cook's Meal Bonus (for preparation of extra meals)  Crossing International Date Line  Dover Straits Allowance  Falklands Compensatory Payments  Far East Bonus  Higher Qualifications Allowance  Lack of fresh water/air conditioning  Leave Pay (i.e. when leave is taken or employee leaves company or dies)  Limitation of Hours  Location Allowance re Loss of Amenities  Loss of Sleep  Nights on Board  Overtime  Pilotage  Prolonged Service Abroad  Run Money  Shipwreck Unemployment Indemnity  Short Hand pay  Sick Pay – Occupational  Sick Pay – Statutory  Signing Crew Agreements at Weekend (Casual or Stand By Pay is only paid for Mon-Fri)  Special Vessel Bonus  St Lawrence Seaway and Welland Canal Bonus  Study Leave  Tanker Bonus  Termination Payment when vessel is sold abroad (Section 15 of the Merchant Shipping Act 1970)  Towing Bonus<sup>2</sup>  Travelling Wages (paid whilst travelling to meet ship)  Two Watch Allowance</p>

	<p>War Risk Bonus Weekend Work in Port</p> <p><u>LIST B (excluded)</u> Australian Leave Allowance Private Health Insurance Company Car Allowance Examination and Course Fees Examination Success Bonus Leave Food Allowance (non consolidated) Liquidated Leave Pay, Extra Days (i.e. continues to work during Leave Period and therefore received pay in lieu) Lodging Allowance Maintenance Allowance for USA/Canada Maternity Benefit North and Central American Coastal Trade Bonus Pay in Lieu of Notice (not Leave Pay) Redundancy Payments Salvage Awards Long Service Award Severance Payment by Company Severance Payment due to ill health Subsistence Allowance Terminal Payments Travelling Expenses Uniform Allowances Wives Air Fare</p>
"Schedule of Contributions"	means the schedule decided from time to time by the Trustees after taking advice from the Actuary and consulting the <del>Current Employers, setting out the rates of contributions required to be paid by the Current Employers</del> <u>Participating Employers, containing the information described in Rule 5.2(ii) and Rule 5.2(iii)</u>
"Scheme Debt"	<u>means the amount calculated as described in Rule 5.5A.</u>
"Service"	means all periods in respect of which contributions are paid to the Scheme on or before the Closure Date
"Scheme Debt Calculation Date"	<u>means the date, decided by the Trustees, as at which the Scheme Debt will be calculated.</u>
"Scheme Debt Due Date"	<u>means the date, decided by the Trustees, on which the Scheme Debt becomes immediately due and payable to the Trustees. The Scheme Debt Due Date cannot be earlier than the Scheme Debt Calculation Date.</u>
"Statutory Funding Objective"	<u>means the same as in Section 222(1) of the Pensions Act 2004 (the statutory funding objective)</u>
"The Trust Deed"	means the Trust Deed as varied from time to time
"The Trustees"	means the Trustees for the time being of the Fund

"Unauthorised Payment"	has the same meaning as in section 160(5) of the Finance Act
"1988 Act"	means the Income and Corporation Taxes Act 1988
"1993 Act"	means the Pension Schemes Act 1993
"1995 Act"	means the Pensions Act 1995
"1999 Act"	means the Welfare Reform and Pensions Act 1999
"1998 Revalued Pensionable Salary"	means the total of each payment of 1998 Pensionable Salary on or before the Closure Date as increased by Revaluation divided by the period of Service on or after 1 February 1998 and on or before the Closure Date
"1998 Pensionable Salary"	means Salary in respect of the period of Service on or after 1 February 1998 less a sum equivalent to the Lower Earnings Limit at the time of payment of Salary

## Membership

4.1 No person may become a Member on or after the Closure Date

4.2 A Member shall be an Employee Member on the Closure Date if he is either:

- (i) employed as a Rating by a Current Employer; or
- (ii) treated as not having left Service under Previous Rule 12.1; or
- (iii) treated as continuing in Service under Previous Rule 12.2; or
- (iv) paying contributions with the consent of the Trustees under Previous Rule 5.5.

4.3

(i) An ~~Active Employee~~ Member who ~~becomes~~~~became~~ a member of MNRPP (or a defined contribution retirement benefits scheme of a Current Employer which the Trustees after consulting the Actuary ~~consider~~~~considered~~ to be overall as good as MNRPP) on 1 June 2001 ~~shall have~~~~had~~ the option, exercisable before such date as the Trustees ~~shall decide~~~~decided~~, to elect that 7% Revaluation should apply to him instead of Full Revaluation during his Active Membership (as determined under Rule 4.4) after the Closure Date.

(ii) If a Member who has exercised this option shall, whilst remaining an Employee Member, transfer to the employment of a different ~~Current~~~~Participating~~ Employer with the result that the Member is no longer an active member of ~~the~~ MNRPP ~~Successor Scheme~~ or of a defined contribution retirement benefits scheme of a ~~Current~~~~Participating~~ Employer which the Trustees after consulting the Actuary have decided to be overall as good as ~~the~~ MNRPP ~~Successor Scheme~~, this Rule 4.3 shall cease to apply to that Employee Member and Full Revaluation instead of 7% Revaluation shall

thereafter apply to him during his Employee Membership (as determined under Rule 4.4).

- 4.4 Employee Membership shall, subject to Rule 4.5, continue whilst the Member falls within any of the following categories:
- (i) he is in seagoing employment with a Current Employer, whether that employment started before, on or after the Closure Date, or
  - (ii) he is in seagoing employment with a Participating Employer who is not a Current Employer being an employment which started after the Closure Date, or
  - (iii) where Previous Rule 12.1(iii) applied to the Member on the Closure Date, he shall be in this category during the balance of the 12 months or the 3 years (as appropriate) referred to in that Rule if during that balance period he is unemployed or in seagoing employment with an employer which is not a Participating Employer, or
  - (iv) where Previous Rule 12.2 applied to the Member on the Closure Date, he shall be in this category so long as he shall remain a contributing member of the Private Scheme concerned or of the MNOFF, or
  - (v) where Previous Rule 5.5 applied to the Member on the Closure Date, he shall be in this category until the third anniversary of the date on which he ceased paying contributions under Previous Rule 5.1.
- 4.5 An Employee Member shall cease to be an Employee Member on the earliest of the following dates:
- (i) the first date on which he is in none of the categories set out in Rule 4.4, or
  - (ii) unless Rule 4.4(iv) applies to him, the date he enters non-seagoing employment, or
  - (iii) the date he becomes a Pensioner, or
  - (iv) the date of his death.

## **Contributions**

- 5.1 After the Closure Date, Members will not contribute to the Scheme.
- 5.2 With effect from ~~the Closure Date, the Current Employers shall contribute such amounts as are necessary to give effect to the Schedule of Contributions for the time being in force. Each Current Employer shall pay that Current Employer's Percentage of those contributions (disregarding contributions payable under Rule 5.3).~~[\[●\]](#):
- (i) The Trustees will from time to time, and having taken actuarial advice, decide the amounts to be payable by the Participating Employers to fund the Scheme.

- (ii) The Trustees will prepare, maintain, and from time to time (having taken advice from the Actuary) revise the Schedule of Contributions, which will set out the total sum payable by the Participating Employers and the date by which this sum must be paid.
- (iii) The Trustees will ensure that the Schedule of Contributions (and any other documentation required by Part 3 of the Pensions Act 2004 (scheme funding)) comply with the requirements of that Act.
- (iv) The Trustees will then decide the contributions payable by each Participating Employer in the following manner:

  - (a) The Trustees will maintain a register setting out as at 31 March 2014 the percentage of the liabilities of the Scheme (as decided by the Trustees having first taken advice from the Actuary) attributable to each Participating Employer by reference to Members who were employed by it (the "Participating Employer's Percentage").
  - (b) The Trustees may from time to time, at any time, and as at a date of their choosing, recalculate the Participating Employer's Percentage (having first taken advice from the Actuary).
  - (c) The Trustees may adjust the Participating Employer's Percentage as provided for by Rule 5.6 and 30.8. The Trustees may also from time to time make other adjustments to the Participating Employer's Percentage.
  - (d) Each Participating Employer will pay contributions to the Scheme calculated by the Trustees by reference to the adjusted Participating Employer's Percentage then in force for that Participating Employer. But, if and to the extent that the Trustees decide, contributions will be further adjusted upwards or downwards by the adjustments described in (e) and (f) below.
  - (e) The adjustments described in this sub-Rule are:

    - (I) those which reflect any amount which had become due from that Participating Employer under Section 75 or 75A of the Pensions Act 1995 before [●], which that Participating Employer has paid (together with interest);
    - (II) those which reflect any other contributions and payments which had become due on or after the Closure Date but before [●], which that Participating Employer had paid (together with interest), other than contributions payable under Rule 5.3; and
    - (III) those required to reflect any contributions and payments paid by other Participating Employers (together with interest) which the Trustees determine (having first taken advice from the

Actuary) to be relevant to the contribution calculation for that Participating Employer.

- (f) The adjustments described in this sub-Rule are such further adjustments upwards or downwards to each Participating Employer's contributions to reflect such factors as the Trustees in their absolute discretion decide. The Trustees will take advice from the Actuary before making adjustments under this sub-Rule (f). Without limiting the Trustees' discretion to adjust the contributions to the Scheme, the factors which the Trustees may take into account when adjusting the contributions under this sub-Rule (f) include:
- (I) the risk that an Insolvency Event may occur in relation to that Participating Employer (or that the Participating Employer may enter a solvent winding up in any jurisdiction in circumstances in which any of the amounts which it would owe to the Scheme are irrecoverable without incurring disproportionate cost or within a reasonable time);
  - (II) the risk that an Insolvency Event may occur in relation to one or more of the other Participating Employers (or that another Participating Employer may enter a solvent winding up in any jurisdiction in circumstances in which any of the amounts which it would owe to the Scheme are irrecoverable without incurring disproportionate cost or within a reasonable time);
  - (III) the application of a factor to the contributions otherwise due from that Participating Employer to take account of the estimated non-recovery of contributions from the Participating Employers as a whole;
  - (IV) the allocation of a share of the Orphan Liabilities to that Participating Employer;
  - (V) any contributions paid by another Participating Employer which the Trustees agree should count towards contributions payable by that Participating Employer; and
  - (VI) any contributions referable to amounts owed by another Participating Employer which the Trustees do not believe are recoverable without incurring disproportionate cost or within a reasonable time.
- (v) The Trustees will prepare an Individual Payment Plan for each Participating Employer which will set out the sum payable by that Participating Employer and its due date, or, where the Trustees have agreed to this sum being paid by instalments, the due date and amount of each instalment. The Individual Payment Plan will contain such terms and conditions as the Trustees decide. The Participating Employer must pay to the Trustees the contributions and

other amounts due under the Individual Payment Plan, in accordance with the Individual Payment Plan.

- (vi) The Trustees may increase or reduce the amount due from a Participating Employer under its Individual Payment Plan, and/or adjust the timing and amount of each payment due under it;
- (vii) The Trustees may increase the amount due from a Participating Employer under its Individual Payment Plan by an amount representing the costs and expenses which the Trustees have incurred in putting in place, and/or amending, that Participating Employer's Individual Payment Plan.
- (viii) The Trustees may, if they so determine, make two or more Participating Employers jointly and severally liable for some or all of each others' contributions to the Scheme, as long as:
  - (a) the Participating Employers are or were “connected” to each other (within the meaning of s249 of the Insolvency Act 1986 (connected persons)) or “associates” of each other (within the meaning of s435 of the Insolvency Act 1986 (meaning of “associate”)); or
  - (b) one of the Participating Employers is or was supplying staff to another of the Participating Employers.
- (ix) The Trustees may charge interest on any amount due but not yet paid (whether under an Individual Payment Plan or otherwise), at a rate of five per cent (5%) per annum compound above the base rate for lending from time to time of the National Westminster Bank for the period of such delay or at such other rate as the Trustees may from time to time determine.

- 5.3 ~~Each~~In addition to contributions payable under Rule 5.2, each Participating Employer shall contribute 2% of the aggregate MNRPP Pensionable Salaries of the Employee Members in its employment (other than Members to whom Rule 4.3 applies).

#### **Payment of Contributions due**

- 5.4 The Participating Employer shall account to the Trustees for the Participating Employer's contributions under Rule 5.3 on a monthly basis. Such contributions shall be paid to the Trustees on or before the 19th day of the month next following the calendar month during which MNRPP Pensionable Salary on which the contributions is assessed was earned. The Trustees shall have power to determine from time to time in any particular circumstances other intervals of payment. If any Participating Employer shall delay payment beyond the due date, it shall pay in addition interest on such delayed payment at a rate of five per cent (5%) per annum compound above the base rate for lending from time to time of the National Westminster Bank ~~PLC~~ for the period of such delay or at such other rate as the Trustees may from time to time determine.

## ~~Section 75 or 75A of the 1995 Act~~

### Participating Employers treated as "Insolvent Employers"

- 5.5 ~~Where section 75 or 75A of the 1995 Act applies to a Current Employer (including where the section applies to all Current Employers on termination of the Scheme under Rule 31), the Current Employer shall be liable under section 75 or 75A only for that Current Employer's Percentage of the total liabilities of the employers (if section 75 or 75A had applied to all employers) and that Current Employer's Percentage shall be re-allocated amongst the remaining Current Employers in proportion to their Current Employer's Percentages immediately before section 75 or 75A started to apply to that Current Employer. If a Participating Employer suffers an Insolvency Event, the Participating Employer will become an "Insolvent Employer".~~

If a Participating Employer enters into a solvent winding up in any jurisdiction, the Participating Employer will become an "Insolvent Employer".

If a Participating Employer becomes an Insolvent Employer:

- (i) the Trustees will designate a Scheme Debt Calculation Date and a Scheme Debt Due Date;
- (ii) the Scheme Debt will become immediately due and payable by the Insolvent Employer to the Trustees on the Scheme Debt Due Date; and
- (iii) on and from the Scheme Debt Due Date, the Trustees may charge interest on the amount of the Scheme Debt from time to time outstanding, at the rate of five per cent (5%) per annum compound above the base rate of the National Westminster Bank, or at such other rate as the Trustees may from time to time determine.
- (iv) the Trustees may if they so determine make one or more Participating Employers jointly and severally liable with the Insolvent Employer for some or all of the Scheme Debt, by notice to that other Participating Employer or Participating Employers, as long as:
  - (a) the Participating Employers are or were "connected" to each other (within the meaning of s249 of the Insolvency Act 1986 (connected persons)) or "associates" of each other (within the meaning of s435 of the Insolvency Act 1986 (meaning of "associate")); or
  - (b) one of the Participating Employers is or was supplying staff to another of the Participating Employers.

5.5A The Scheme Debt will be calculated as follows:

- (i) the Actuary will calculate the "Buy-out Deficit" as at the Scheme Debt Calculation Date. The Buy-out Deficit will be calculated as follows:



(a) the Actuary will calculate the value of the Scheme's assets as at the Scheme Debt Calculation Date. This will be the value of the Scheme's assets as shown in the asset statement (either audited or unaudited) for the quarter end nearest to the Scheme Debt Calculation Date (or such other date as the Actuary decides) for which an asset statement is available, adjusted determined by the Actuary to approximate for investment returns and Scheme cashflows over the intervening period. No allowance would be made for any receipt of any debts under Section 75 or 75A of the 1995 Act triggered against the Participating Employer (whether or not collected).

(b) the Actuary will calculate the value of the Scheme's liabilities as at the Scheme Debt Calculation Date. This will be the Actuary's estimate of the Scheme's "**Buy-out Liabilities**", plus an estimate of the expenses of winding up the Scheme. The Scheme's "**Buy-out Liabilities**" is the value placed by the Actuary on the Scheme's liabilities, calculated by the Actuary in a manner consistent with Regulations 5(11), 5(12) and 5(13) of the Employer Debt Regulations, or in such other manner as the Actuary decides.

(c) the Buy-out Deficit is the value placed on the Scheme's liabilities, calculated as described in paragraph (b) above, less the value placed on the Scheme's assets, calculated as described in paragraph (a) above.

(d) the Actuary will then calculate the "**Net Buy-out Deficit**". The Net Buy-out Deficit is

$$\underline{[X-Y]}$$

Where:

X is the Buy-out Deficit; and

Y is the value, as at the Scheme Debt Calculation Date, of future contributions due from the Participating Employers within the Recovery Period of the Recovery Plan as at the Scheme Debt Calculation Date.

In calculating the Net Buy-out Deficit, the Actuary may discount the value of these future contributions at such rate as he or she thinks is appropriate.

(e) The Actuary will then calculate the Insolvent Employer's "**Buy-out Percentage**". This is the Insolvent Employer's percentage share of the Net Buy-out Deficit as at the Scheme Debt Calculation Date, calculated according to the following formula:

$$\underline{[A\% / (1 - B\%)] / (1 - C\%)}$$

Where:

A is K/L;

B is the Orphan Liabilities; and

C is a percentage decided by the Actuary, after considering the effect of any factors calculated pursuant to Rule 5.2(iv)(f)(III) which at the date of the calculation of the Buy-out Percentage are being used to decide contributions under Rule 5.2;

K is the amount of the Scheme's liabilities which would be attributable to the Insolvent Employer, were all Participating Employers as at the Scheme Debt Calculation Date "Employers" within the meaning of the Employer Debt Regulations. "K" will be calculated using the assumptions and methodology set out in Regulation 6(4) of the Employer Debt Regulations (or such other assumptions and methodology as the Actuary decides);

L is the amount of the Scheme's liabilities as at the Scheme Debt Calculation Date calculated in accordance with Rule 5.5A(i)(b) excluding the estimate of the expenses of winding up the Scheme (or calculated by such other assumptions and methodology as the Actuary decides).

(ii) The Actuary will then calculate the Scheme Debt, which will be the sum of the following amounts:

(a) the Buy-out Percentage multiplied by the Net Buy-out Deficit (to the extent that the Net Buy-out Deficit is more than zero); plus

(b) the value as at the Scheme Debt Calculation Date of contributions which would have become due from the Insolvent Employer under its Individual Payment Plan, and of those contributions which have become due but which the Insolvent Employer has not paid. In calculating the value of these contributions as at the Scheme Debt Calculation Date, the Actuary may apply such discount rate as he or she thinks is appropriate; plus

(c) the Trustees' estimate of expenses incurred in calculating and invoicing the Scheme Debt.

(iii) It may be that, as at the Scheme Debt Calculation Date, the Insolvent Employer owes an amount to the Scheme by operation of Sections 75 or 75A of the 1995 Act, or the Trustees decide that it is likely that the Insolvent Employer will owe such an amount, arising from the same set of circumstances as resulted in the Participating Employer becoming an Insolvent Employer. If so:

(a) the Scheme Debt will be calculated as above, but on the assumption that no debt would become due from the Insolvent Employer under Section 75 or 75A of the 1995 Act; and

(b) the Scheme Debt will be reduced by the amount of debt due from the Insolvent Employer under Section 75 or 75A of the 1995 Act. However, the reduction will not reduce the Scheme Debt to a negative amount.

**Current Participating Employer's Percentage contributions unlikely to be recoverable**

- 5.6 If the Trustees (with the approval of a majority of the full number of the Participating Employers' representatives and also a majority of the full number of the Members' representatives serving as Trustees or as Directors on the Board of any Corporate Trustee) are satisfied that any future amounts likely to fall due under the Schedule of Contributions from a ~~Current~~Participating Employer are unlikely to be recoverable without incurring disproportionate cost or within a reasonable time, the Trustees may re-allocate part or all of that ~~Current~~Participating Employer's Percentage amongst the remaining ~~Current~~Participating Employers in proportion to their ~~Current~~Participating Employers' Percentages as in force immediately before the reallocation (or in such other proportions as the Trustees decide).

### **Pension at Normal Pension Age**

- 6.1 An Employee Member shall on retirement at Normal Pension Age be entitled to a pension of annual amount of the aggregate of:
- (i) 1/60th of the Member's Average Revalued Pensionable Salary for each year (proportionately for part of a year) of his Service prior to 1 February 1998; and
  - (ii) 1/80th of his 1998 Revalued Pensionable Salary for each year (proportionately for part of a year) of his Service on or after 1 February 1998 and on or before the Closure Date; and
  - (iii) in the case of a Pre 78 Member, his Pre 78 Pension Benefit.

### **Postponed Retirement**

- 6.2 An Employee Member or Deferred Pensioner shall be entitled to postpone his retirement beyond Normal Pension Age provided he is still in employment. In such event, provided he joined the Scheme before 1 June 1989, his pension shall be actuarially increased as advised by the Actuary according to the period of its postponement.

### **Ill-health Pension**

- 6.3.1 While any Member who retired under Previous Rule 6.3 is under Normal Pension Age, the Trustees may at any time require him to furnish such evidence from a registered medical practitioner as they deem necessary of his continued permanent medical unfitness and, if he shall not furnish such evidence or if the Trustees are of the opinion that he is no longer medically unfit, the Trustees may suspend his pension.

Should any Member who retired under Previous Rule 6.3 recover to the extent that he is able to take up employment with a Participating Employer, employment with another shipping company or employment as a seafarer, his pension will be suspended with effect from the time such employment is taken.

### **Pension at Normal Pension Age in the event of suspension**

- 6.3.2 If a Pension has been suspended under this Rule, the Member shall be entitled to payment of a pension at Normal Pension Age of not less than the Deferred Pension to which he would have been entitled had the reason for his leaving Service been other than due to permanent medical unfitness, adjusted to take account of the value of benefits previously paid under Previous Rule 6.3.

### **Early retirement**

- 6.4.1 The Trustees shall have power at the request of an Employee Member to permit early retirement over the age of 50 years (55 years, if after 5 April 2010). In that event the Member shall be entitled to an immediate pension calculated in accordance with Rule 6.1 but reduced as the Actuary may certify to be reasonable having regard to the period of early retirement and so as to ensure that from age 65 years (females 60 years) the pension will not be less than the Guaranteed Minimum Pension. Such early retirement shall be restricted so as to ensure payment of the Guaranteed Minimum Pension.

### **Incapacity**

- 6.4.2 The Trustees shall have power at the request of an Employee Member or Deferred Pensioner to provide an immediate pension at any age where medical evidence is received which satisfies the Trustees that the Employee Member or Deferred Pensioner is permanently unfit due to ill-health or incapacity for any form of remunerative employment or self-employment.

The pension provided will be the deferred pension as at the date the pension is to come into payment, reduced as the Actuary may certify to be reasonable having regard to the period of early payment and so as to ensure that from age 65 years (female 60 years) the pension will not be less than the Guaranteed Minimum Pension. Where this Rule 6.4.2 applies to an Employee Member, the deferred pension for this purpose shall be calculated as if his Employee Membership had terminated on the day before the pension is to come into payment. Rule 6.7 and Rule 8 shall apply on the death of a Pensioner after starting to receive pension under this Rule 6.4.2.

- 6.4.3 The first paragraph of Rule 6.3.1 and all of Rule 6.3.2 shall apply to any pension payable under Rule 6.4.2.

### **Adjustment of Pension to take account of Social Security Pension at age 65 years**

- 6.5 A male Member on retirement at Normal Pension Age or older shall be entitled to apply within three months following retirement in writing to the Trustees for an increased pension payable until attainment of age 65 years. Such increased pension shall be secured by surrender of such part of his pension payable after attainment of age 65 years as the Actuary shall certify to be appropriate. The difference between the two pensions shall be the amount of the basic component of the Social Security Pension to which the Member will become entitled on attainment of age 65 years pursuant to legislation and circumstances prevailing at the date of his retirement or such lesser difference as the Member may select. No such adjustment shall be

permitted to the extent that it would result in the pension payable after attainment of age 65 years being less than the Guaranteed Minimum Pension.

### **Surrender for additional survivor's pensions**

- 6.6 The Trustees at their discretion may arrange with a Member who so applied in writing to the Trustees within three months of becoming entitled to pension under these Rules for the surrender by him of part of his pension (but so as not to reduce his pension below his Guaranteed Minimum Pension) in order to provide for an additional pension to his widow or widower or civil partner. Such arrangement shall not allow the total of the widow's or widower's or civil partner's pension payable under these Rules to exceed the pension taken by the Member. Such an arrangement once made shall be irrevocable under all circumstances including the death of the spouse or civil partner prior to the Member who shall continue entitled only to his reduced pension. The Trustees shall have power to allow the arrangement to be revoked in exceptional circumstances such as divorce. In the event that the Member shall have surrendered part of his pension to provide an additional pension for his spouse or civil partner, under Rule 6.7 the period of 60 months shall relate to their joint lives and the balance of pension be that applicable to the last survivor of them.

### **Pension guaranteed for 60 months**

- 6.7 If on the death of a Pensioner the total pension paid following retirement shall be less than 60 monthly payments, the balance of such monthly payments at the rate applicable at the date of death shall be paid as a lump sum out of the Fund in accordance with Rule 24. For this purpose, any exercise by the Trustees of their power to suspend the Member's pension under Rule 6.3.1 shall be treated as if it had not taken place. For the purpose of the Finance Act, this lump sum shall be treated as a defined benefits lump sum death benefit unless the Member has, before his death, elected that it should be treated as a pension protection lump sum death benefit.

### **Pre-Closure Date Pensioners and Deferred Pensioners**

- 6.8 Where a Member was a Pensioner or Deferred Pensioner on the Closure Date, the Member shall remain entitled to the pension or deferred pension to which the Member was entitled under the Previous Rules but these present Rules (and particularly Rules 6 and 8) shall apply to the Member in relation to that pension or deferred pension. A person who after becoming a Member left Service and then subsequently re-entered Service may have separate entitlements under the Rules in respect of the different periods of Service.<sup>426</sup>.

### **Additional Voluntary Contributions**

7. The Trustees may grant in respect of any Additional Voluntary Contributions paid by a Member under the Previous Rules such additional benefits as shall be determined on the advice of the Actuary. Such benefits shall either be paid out of the Fund or provided by purchasing an annuity from an Insurance Company selected by the Member (or, if the Member does not select an Insurance Company, by the Trustees).

## **Death of a Pensioner**

8. Upon the death of a Pensioner leaving a widow or widower or civil partner, there shall be paid to the widow or widower or civil partner a pension equal to one-half of the pension that would have been payable had the Pensioner survived but ignoring any commutation surrender or reduction in pension on early retirement or to take account of the basic component of the Social Security Pension at age 65. The pension shall be payable during the remainder of the life of the widow or widower or civil partner but subject to:
- (i) if the widow or widower or civil partner is more than ten years younger than the Pensioner, the Trustees may reduce the pension by 2.5% for each year (and proportionately for each completed month of part of a year) of the age disparity in excess of ten years to a maximum of 50% but, so that the pension shall not be reduced below the Guaranteed Minimum Pension payable to the widow or widower or civil partner; and
  - (ii) if the marriage or civil partnership shall have taken place after retirement and within six months of death, that part of the pension in excess of the Guaranteed Minimum Pension payable to the widow or widower or civil partner shall be payable only to the extent that the Trustees in their discretion may decide.

## **Death of an Employee Member**

9. In the event of the death of an Employee Member:

### **Pension to Survivor**

- 9.1 If the Member shall leave a widow or widower or civil partner, there shall be paid to the widow or widower or civil partner for life a pension of one-half the aggregate of:
- (i) 1/60th of the Member's Average Revalued Pensionable Salary for each year (proportionately for part of a year) of his Service prior to 1 February 1998; and
  - (ii) 1/80th of his 1998 Revalued Pensionable Salary for each year (proportionately for part of a year) of his Service on or after 1 February 1998 and on or before the Closure Date; and
  - (iii) in the case of a Pre-78 Member, his Pre-78 Pension Benefit.

If the surviving widow or widower or civil partner is more than ten years younger than the Member, the Trustees may reduce the pension by 2.5% for each year (and proportionately for each completed month of part of a year) of the age disparity in excess of ten years to a maximum of 50% but so that the pension shall not be reduced below the Guaranteed Minimum Pension payable to the widow or widower or civil partner.

- 9.2 If the actuarial value of the benefits payable under Rule 9.1 shall be less than the sum of the Member's Accumulated Contributions, the difference shall be paid as a lump sum in accordance with Rule 24. Accumulated Contributions for this purpose shall exclude a return of contributions earlier made or taken into account in calculating a reduction under Rule 33.8.

### **Death during postponement of pension**

- 9.3 A Member who dies during postponement of his retirement shall be treated for all the purposes of these Rules as if he had retired on the day immediately preceding his death.

### **Benefit on ceasing Employee Membership**

- 10.1 A Member who ceases to be an Employee Member after the Closure Date but before attaining Normal Pension Age shall be entitled to receive out of the Fund the benefits stated in this Rule.

### **Deferred Pension**

- 10.2 A deferred pension to commence on attainment of Normal Pension Age of annual amount of the aggregate of:
- (i) 1/60th of the Member's Average Revalued Pensionable Salary for each year (proportionately for part of a year) of his Service prior to 1 February 1998; and
  - (ii) 1/80th of his 1998 Revalued Pensionable Salary for each year (proportionately for part of a year) of his Service on or after 1 February 1998 and on or before the Closure Date; and
  - (iii) in the case of a Pre-78 Member, his Pre-78 Pension Benefit;

The part of the Deferred Pension which is in excess of the Guaranteed Minimum Pension shall be increased as required by sections 83-86 of the 1993 Act using the final salary method specified in Schedule 3 to the 1993 Act.

or

### **Refund of Contributions**

- 10.3 A Member who has not completed two years' Service at the Closure Date (to include the number of years of actual service in respect of which a transfer payment is received pursuant to Rule 28) shall be entitled at his option in lieu of any other benefits out of the Fund to a refund of the Member's Accumulated Contributions;

or



## **Transfer out to another Scheme**

10.4 A Deferred Pensioner, at his request, shall be entitled to a transfer payment, as calculated on the advice of the Actuary, to another registered pension scheme (as defined in the Finance Act), which for the purposes of this rule shall be called the "New Scheme".

In relation to such transfer payment:

- (i) the Trustees shall certify to the trustees of the New Scheme the amount which represents the Member's contributions;
- (ii) the Trustees shall comply with the contracting-out requirements and cash equivalent transfer requirements of the 1993 Act; and
- (iii) a transfer payment may be made exclusive of the Guaranteed Minimum Pension and/or the benefits attributable to Service on or after 1 April 1997 in which event the liability for those benefits shall be retained in the Scheme;

or

## **Buy-Out Policy**

10.5 In respect of a Member entitled to a cash equivalent under the 1993 Act who validly exercises his option and requests the Trustees so to do, the Trustees shall purchase in substitution for the Member's accrued benefits under the Scheme one or more policies of insurance or annuity contracts (hereinafter together called "the Policy") in the name of the Member (hereinafter called "the Policyholder") issued by an Insurance Company which may not (save as provided hereafter) be assigned or surrendered.

Provided that:

- (i) the terms of the policy shall not be such as to prejudice the Registration of the Scheme;
- (ii) the Policy shall be endorsed with a provision that it may only be assigned or surrendered on conditions that satisfy such requirements as may be prescribed under the 1993 Act;
- (iii) the Policyholder may elect that the benefits payable under the Policy shall differ from the benefits otherwise payable under the Rules to the extent that such benefits exceed the entitlement to a Guaranteed Minimum Pension and in any such case the Trustees shall determine the amount of the premium to be paid to purchase the Policy in accordance with the advice of the Actuary having regard to the benefits to which the Policyholder is entitled under the Scheme.

Provided that such an election shall be exercisable notwithstanding that one or more persons shall thereupon cease to be entitled whether contingently or

otherwise to any benefit under the Scheme although entitlement to any such benefit may thereby be altered and no such person or persons shall have any right whatsoever to resort to the Scheme in respect of any such benefit which may cease to be payable or be otherwise affected in consequence of such election.

- 10.6 The Trustees shall have power at the request of a Deferred Pensioner to permit him to draw an immediate pension at or after attaining the age of 50 (55, if after 5 April 2010) or, in the event of incapacity, in accordance with Rule 6.4.2. The immediate pension shall be calculated by the Actuary as being equal in value to the deferred pension as calculated under Rule 10.1 but so as to ensure that, from age 60 for females or 65 for males, the pension will not be less than the Guaranteed Minimum Pension.

Where the Deferred Pensioner is female and elects to take the Guaranteed Minimum Pension from age 60, this Rule 10.6 shall apply to the whole of her deferred pension with effect from her 60th birthday.

Rules 6.7 and 8 shall apply on the death of a Pensioner after starting to receive a pension under this Rule 10.6.

#### **Death prior to commencement of Deferred Pension**

- 11.1 In the event of the death of a person entitled to a deferred pension before the Pension becomes payable leaving a widow or widower or civil partner, there shall be paid to such widow or widower or civil partner a pension for life equal to one-half of the deferred pension.
- 11.2 If the widow or widower or civil partner is more than ten years younger than the Deferred Pensioner, the Trustees may reduce the pension by 2.5% for each year (and proportionately for each completed month of part of a year) of the age disparity in excess of ten years to a maximum of 50% but so that the pension shall not be reduced below the Guaranteed Minimum Pension payable to the widow or widower or civil partner.

#### **Minimum Benefits**

- 11.3 If the actuarial value of the benefits payable under this Rule shall be less than the sum of the Member's Accumulated Contributions, the difference shall be paid as a lump sum in accordance with Rule 24. Accumulated Contributions for the purpose of this Rule shall exclude a return of contributions earlier made or taken into account in calculating a reduction under Rule 33.8.

12. [deleted]

13. [deleted]

#### **Commutation**

- 14.1 A Member may elect on retirement to receive a capital sum by way of commutation of part of his pension in excess of his Guaranteed Minimum Pension, which capital sum shall be calculated as advised by the Actuary and shall be consistent with being a pension commencement lump sum under paragraph 1 – 4, Schedule 29 and paragraphs 31 – 34, Schedule 36 to the Finance Act.

#### **Commutation by reason of serious ill health**

- 14.2 A pension which would otherwise be payable from the Scheme may be entirely commuted if the lump sum commutation payment would be a "serious ill-health lump sum" as defined in paragraph 4, Schedule 29 to the Finance Act. The lump sum shall be calculated as advised by the Actuary to be equivalent in value to the pension commuted.

#### **Commutation of Trivial Pension**

- 14.3 A pension (and any attaching death benefits) which would otherwise be payable from the Scheme may be entirely commuted if the lump sum commutation payment would be a "trivial commutation lump sum" as defined in paragraph 7, Schedule 29 to the Finance Act and/or a "trivial commutation lump sum death benefit" as defined in paragraph 20, Schedule 29 to the Finance Act. The lump sum payable shall be calculated as advised by the Actuary to be equivalent in value to the benefits commuted.

#### **Unauthorised Payments**

15. Notwithstanding anything to the contrary in the Trust Deed or the Rules, the Trustees shall not be required to make any payment from the Scheme which they believe to be an Unauthorised Payment.
16. [deleted]

#### **How Pensions and other benefits and Scheme expenses are to be paid**

17. All pensions and other benefits, salaries, remuneration and other expenses shall be paid out of the Fund by way of cheque, credit transfer or by any other method which in the particular circumstances the Trustees may consider appropriate. No Member or other beneficiary entitled to any pension or other benefit, and no officer or other employee appointed or engaged under the provisions of the Trust Deed and entitled to any salary or other remuneration, shall have any claim to the payment of any pension or other benefit, salary or other remuneration except out of the Fund. He shall not in any case have any claim to the payment thereof against the Trustees or the Directors of any Corporate Trustee or any of them personally. In like manner, no such officer or other employee as aforesaid shall be entitled to any claim for damages for alleged wrongful dismissal or on any other ground against the Trustees or the Directors of any Corporate Trustee or any of them personally.

#### **Accrual and Payment of Pension**

- 18.1 The first instalment of pension shall be paid so soon as practicable after the date of retirement and subsequently 1/12 of the annual amount of pension shall be paid in arrears on the 15th day of each month; or such other amount at such other intervals as the Trustees may from time to time determine and advise to the Pensioner.

### **Pension increases**

- 18.2 Any pension in payment from the Fund which is attributable to Service of a Member on or after 1 April 1997 shall be increased on 1 April each year by the lesser of:
- (i) 5%, and
  - (ii) the percentage increase in the Index of Retail Prices over the twelve months ending with the September preceding that 1 April

This will apply to all pensions which have been in payment for at least a year but, where the pension has been in payment for less than a year, a proportionate increase will be made based on the number of complete months for which the pension has been in payment. Where the pension is payable to the widow or widower or civil partner of a Pensioner, the period for which the Pensioner's pension was in payment shall be added to the period for which the widow or widower or civil partner has been receiving a pension in determining the period for which the widow's or widower's or civil partner's pension has been in payment.

### **Scheme Booklets and Benefit Statements**

- 19.1 Every Member shall be provided with an explanatory booklet setting out the required basic information relating to the Scheme and with an annual benefit statement as far as is practicable.
- 19.2 Every Member and beneficiary shall be provided with all such information as they may be entitled to under section 113 of the 1993 Act.

### **Supply of Copies**

- 19.3 Every Member and person having any rights in the Scheme and every Participating Employer shall be entitled, on demand made by him, to receive one copy of the Trust Deed and Rules, of all amendments thereto, of the Trustees' annual Report and Statement of Accounts of the Scheme, and the Auditor's Report thereon and of the Actuary's Actuarial Report. Additional copies shall be made available on such terms as the Trustees decide.

### **Trustees' right to material information**

20. Every Member or other person for the time being entitled to any benefit under the Rules shall from time to time give to the Trustees such information as they may require for the purposes of the administration of the Scheme or for the exercise of any powers and duties thereunder. Such information shall include his or her postal address and, where necessary, the production of birth, marriage or death certificates and, in the case of a Pensioner or other beneficiary, evidence of continued survival. Personal

representatives making claims on the Scheme shall in addition produce Probate or Letters of Administration whenever required.

### **Prohibition of Assignment etc.**

21. Every pension and other benefit under this Scheme shall be strictly personal, and shall not be assigned, charged or alienated in any way. No Member or other beneficiary entitled to any benefit from the Scheme should assign, charge or alienate his pension or any part thereof or any sum payable to him under these Rules. If any act not hereby authorised shall have been done or any event shall have happened whereby any such pension or sum if belonging to the Member or other beneficiary absolutely would have become vested in or charged in favour of some other person or persons, such pension or sum shall be forfeited. In such event, the Trustees may in their absolute discretion pay or apply the same to or for the benefit of such one or more exclusively of the others or other of the following persons, namely the Member or other beneficiary or his or her wife or husband, children and other dependants in such manner, and if more than one, in such proportions as the Trustees shall from time to time decide. However, the Trustees shall not cause any payment to be made to any person to whom the Member or other beneficiary had purported to assign, charge or alienate his pension, allowance or other benefit.

Provided that:

- (i) the Guaranteed Minimum Pension shall not be so forfeited but shall continue to be payable only to the person entitled to the same pursuant to these Rules and without regard to any such assignment, charge or alienation which shall be null and void for all the purposes of these Rules; and
- (ii) nothing in these Rules shall be deemed to stop any Member or other beneficiary from bequeathing by Will any monies in which he may have a transmissible interest.

### **Persons of unsound mind**

22. If any Member or other beneficiary shall be of unsound mind or in the opinion of the Trustees otherwise incapable of managing his own affairs, the Trustees shall at their absolute discretion be entitled to apply any sum which otherwise would have been payable to him or her for his or her benefit or for that of his or her wife or husband, children or other dependants in such manner and if more than one in such proportions as the Trustees shall from time to time decide.

### **Power of Employer or of Member to determine employment**

23. Membership of the Fund shall not restrict the right of any Participating Employer to determine the employment by him of any Member in his employ or the right of any Member to terminate his employment with any Participating Employer.

### **Payment of Lump Sum Death Benefits**

24.1 The benefits payable on the death of a Member or other person (in this Rule referred to as "the deceased") under Rules 6.7, 9.2, 11.3 or 24.6 shall be payable to or for the benefit of such one or more to the exclusion of the other or others of his or her Dependants in such amounts at such times and generally in such manner or upon such trusts whether discretionary or otherwise as the Trustees in their absolute discretion shall from time to time decide.

### **Definition of "Dependants"**

24.2 "Dependants" means for the purposes of this Rule any one or more of the following:

- (a) a widow or widower or civil partner;
- (b) the following relatives of the deceased (whether by birth or adoption) living at the date of death of the deceased namely child, step-child, parent, brother or sister or the wife, husband or child of any such person;
- (c) any other person who was at any time prior to the date of death of the deceased in the sole opinion of the Trustees wholly or partly dependent upon the deceased for the provision of all or any of the ordinary necessities of life;
- (d) any individual or individuals or charity or charities registered with the Charity Commissioners nominated for this purpose by the Member by written notice addressed to and received by the Trustees during his lifetime but without binding the Trustees in any way; or
- (e) the deceased's personal representatives.

### **Minor**

24.3 If any Dependant shall be a minor, the Trustees may at their discretion pay any sums under this Rule to such minor personally or to his parent or guardian and the receipt of such minor notwithstanding his minority, or of such parent or guardian shall be a complete discharge and the Trustees shall not be under any liability to see to the application of the sum paid.

### **Bona Vacantia**

24.4 If at any time either the Crown, the Duchy of Lancaster or the Duchy of Cornwall shall be or become entitled by way of bona vacantia to the deceased's estate, no further sum shall be payable out of the Fund in respect of the deceased except to the extent that the Trustees may in their absolute discretion otherwise decide. Any sums otherwise payable in respect of the deceased shall be forfeited and revert to the Fund.

24.5 Subject to Rule 24.4, if any part of a lump sum shall remain unpaid or unapplied at the expiration of two years from the date of death of the deceased, it shall be paid to the deceased's personal representatives.

### **Benefits to be not less than contributions**

- 24.6 If, in the case of the death of any Member including a person entitled to a deferred pension there shall have been paid in respect of him out of the Fund in total benefits during his lifetime and on his death (including the actuarial value of any widow's or widower's pension) less than the Accumulated Contributions then the difference shall be paid as an additional lump sum benefit under this Rule. There shall be ignored in calculating both total benefits and Accumulated Contributions any return of contributions earlier made or taken into account in calculating a reduction under Rule 33.8 and the benefits that would have been secured thereby.

### **Unclaimed Pension or other Benefits**

25. The Trustees shall be entitled to treat as unclaimed and to forfeit and use for the general purposes of the Scheme any monies standing to the credit in the books of the Scheme of any Member whose whereabouts is unknown to the Trustees in circumstances where no claim is made thereto by such Member or his personal representatives or other person or persons claiming on behalf of or through him within six years after the date upon which according to such records the same became due and payable. The Trustees may, at their discretion, in any case where in their opinion special circumstances exist to justify the exercise of such discretion, meet, in whole or in part, a claim notwithstanding that forfeiture has taken place. The Trustees may at like discretion and in the absence of knowledge of the whereabouts of the Member use such monies for the benefit of any one or more of the Dependants to whom they would have been entitled to make payment on death pursuant to Rule 24.

### **Deduction for Tax purposes**

26. In every case where the Trustees are liable to account for income or other tax on any payments made out of the Fund to any Member, Pensioner or other beneficiary, there shall be deducted from such payment a sum equivalent to the amount for which the Trustees are so liable to account.

### **Management Account**

27. All expenses incurred in the administration of the Scheme including expenses of the Trustees are payable out of the Fund. A special Management Account shall be established for the purpose of meeting such expenses to which account there shall be paid such proportion of contributions as the Trustees shall from time to time decide is appropriate for the purpose.

### **Transfers from other Schemes**

28. The Trustees may arrange, in the case of any Member who was a member of another registered pension scheme (as defined in the Finance Act), for any amount standing to his credit in that other scheme to be transferred to the Scheme. In such event, there shall be such adjustment of pension or other benefits in the Scheme as the Actuary certifies to be appropriate to the circumstances. There shall be treated as contributions by the Member for the purposes of the Rules such part of the sum

transferred as may be certified by the administrator of the other scheme as having been paid by such Member himself under the provisions of that other scheme and no more. The Trustees shall comply with the contracting-out requirements of the 1993 Act in relation to any such transfer.

### **Triennial Valuation**

- 29.1 On 31 March 2002 and every three years thereafter, or at such lesser period as the Trustees may determine, the financial position of the Scheme shall be investigated by the Actuary. All necessary accounts and information shall be furnished to the Actuary who shall report to the Trustees in writing upon the financial position of the Scheme together with such recommendations as he may think fit.

### **Deficiency**

- 29.2 If, as a result of the Actuary's report, made on or after 31 March 2006, it shall appear that there is a deficiency or anticipated deficiency in the Scheme's resources, the Trustees shall consider what if any action, having regard to any recommendations made by the Actuary in his report, should be taken either by way of increasing contributions or decreasing benefits to render the Scheme solvent. If necessary, the Trustees shall take such steps as are hereinafter laid down for amendment of this Deed and the Rules, or if the deficiency or anticipated deficiency cannot be made good, for the winding up of the Scheme.

### **Surplus**

- 29.3 If the report shows a surplus, all or part of that surplus may be applied by the Trustees, having regard to any recommendations made by the Actuary, to do any one or more of the following:
- (i) to create a reserve fund;
  - (ii) to decrease contributions;
  - (iii) to increase or extend benefits; or
  - (iv) to lower the pensionable age.

The Trustees' approval to such application as aforesaid shall be signified in like manner as is laid down under the Trust Deed for an alteration of the Rules except that a Deed executed under the seal of the Trustees shall not be required to give effect to such application.

### **Withdrawal of a ~~Current~~Participating Employer**

30. This Rule sets out the only circumstances in which a ~~Current~~Participating Employer can cease to be a ~~Current~~Participating Employer:

### **Substitution of new ~~Current~~Participating Employer**



- 30.1 A ~~Current~~Participating Employer may, with the consent of the Trustees, arrange for one or more other companies to assume ~~the responsibilities~~some or all of the obligations of that ~~Current Employer under the Scheme (including its obligations to pay contributions under Rule 5)~~Participating Employer to the Trustees. The Trustees shall have an absolute discretion as to whether or not they agree to such a request, and if they agree to such a request, may impose such conditions as they see fit. If the company or companies are not already Participating Employers, they must become Participating Employers in accordance with Clause 6 of the Trust Deed.
- 30.2 ~~Where a Current Employer is permitted to withdraw from the Scheme under Rule 30.1, it shall cease to have any liabilities under the Scheme apart from any liabilities which arise under section 75 or 75A of the 1995 Act as a result of its withdrawal. If only one company is substituted for the Current Employer, that Current Employer's Percentage shall thereafter be the responsibility of that company. If more than one company is substituted, that Current Employer's Percentage shall be divided between those companies in a manner agreed between those companies and the Trustees. The liability of that company or companies to contribute to the Scheme under Rule 5.2 shall be reduced so as to allow for any payments made to the Scheme under section 75 or 75A of the 1995 Act by the withdrawing Current Employer. The obligations referred to in Rule 30.1 may only include obligations which have arisen or may in future arise under Section 75 or 75A of the 1995 Act in the circumstances permitted by law, and on the execution of such documentation as is required by law.~~

#### **Withdrawal with transfer-out**

- 30.3 A ~~Current~~Participating Employer (the "Withdrawing Employer") may withdraw from the Scheme subject to the following conditions:
- (i) The ~~Current~~Participating Employer must give notice in writing to the Trustees of its desire to withdraw from the Scheme. Withdrawal may only take place after close of business on 31 March at the end of a Pension Year and the ~~Current~~Participating Employer's notice must be given no later than the 14 December in that Pension Year. ~~No notice may be given by a Current Employer on or after 13 December 2012.~~
  - (ii) Where a ~~Current~~Participating Employer gives notice under (i) the Trustees will, no later than the 14 January following that notice, notify all other ~~Current~~Participating Employers that such notice has been given and that they may also give notice of withdrawal under (iii) below.
  - (iii) On receipt of the notification referred to in (ii) above, any ~~Current~~Participating Employer wishing to withdraw from the Scheme at the end of that Pension Year shall give the Trustees notice of its desire to withdraw by no later than 14 February in that Pension Year. That ~~Current~~Participating Employer will then (subject to fulfilment of the other conditions in this Rule 30.3) become a Withdrawing Employer and withdraw from the Scheme at close of business on 31 March at the end of that Pension Year.

- (iv) The Withdrawing Employer must have paid in full all contributions due from it to the Scheme prior to the date of the transfer payment under Rules 30.5 - 30.7 being paid, including any interest due on late contributions and any debt arising on its withdrawal under section 75 or 75A of the 1995 Act.
- (v) The Withdrawing Employer must also have paid to the Trustees the premium (if any) required of it by the Trustees under Rule 30.4.
- (vi) The Withdrawing Employer must have nominated a defined benefit occupational pension scheme in which the Withdrawing Employer participates ("the Receiving Scheme"), the trustees of which are able and willing to accept a transfer payment from the Scheme under Rules 30.5 - 30.7 and in relation to which the Actuary is prepared to give a certificate in accordance with Regulation 12 of the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 in respect of all the liabilities to be transferred from the Scheme under Rule 30.6.
- (vii) The Trustees are satisfied that the transfer payment to the Receiving Scheme under Rules 30.5 - 30.7 can be made consistently with the best interests both of the beneficiaries to be transferred and of the beneficiaries who would remain beneficiaries of the Scheme. If the Trustees are not so satisfied, they will give the ~~Current~~Participating Employer concerned a full written explanation of the reasons why they do not consider the proposed transfer payment to be in the interests of those beneficiaries and no withdrawal by that ~~Current~~Participating Employer will take place.
- (viii) The Trustees have agreed with the trustees of the Receiving Scheme such terms of transfer as they consider necessary or desirable in order to protect the interests of the beneficiaries being transferred and the composition of the transfer payment to be made to the Receiving Scheme in accordance with Rule 30.7.
- (ix) The Trustees are satisfied that all the requirements of Rule 30.5 are met in relation to the proposed transfer.
- (x) The Trustees have approved in advance all communications in relation to the proposed transfer to be issued by the Withdrawing Employer to the beneficiaries who are to be transferred to the Receiving Scheme.

30.4 The Trustees shall determine the amount of the premium (if any) to be paid by the Withdrawing Employer under Rule 30.3(v) in their absolute discretion after receiving the advice of the Actuary. The purpose of the premium will be:

- (i) to protect the interests of beneficiaries of the Scheme remaining after the withdrawal of the Withdrawing Employer and, in particular, the security of the benefits of those remaining beneficiaries, and
- (ii) to protect the interests of the remaining ~~Current~~Participating Employers having regard to the reduction in the number of ~~Current~~Participating Employers due to the withdrawal of the Withdrawing Employer, and

- (iii) to reflect the increased proportion of the costs of administering the Scheme which would be borne by each of the remaining ~~Current~~Participating Employers.
- 30.5 The intention of the transfer to the Receiving Scheme is that there should be transferred to the Receiving Scheme liabilities with a value (determined by the Actuary) equal to the ~~Current~~Participating Employer's Percentage of the Withdrawing Employer (the "Withdrawing Employer's Percentage") of the total liabilities of the Scheme at the date of withdrawal and that the Receiving Scheme should therefore receive a transfer payment which, subject to Rule 30.7, is equal to the Withdrawing Employer's Percentage of the total assets of the Scheme as at the date of withdrawal. The Trustees shall comply with the requirements of Rule 10.4 in relation to the transfer.
- 30.6 With a view to achieving the objective set out in Rule 30.5, the specific liabilities to be transferred to the Receiving Scheme will be determined by the Actuary in the following order:
- (i) Liabilities in respect of Employee Members employed by the Withdrawing Employer at the date of withdrawal;
  - (ii) Liabilities in respect of Deferred Pensioners or Pensioners who accrued more than 50% of their pension benefit under the Scheme whilst in the employment of the Withdrawing Employer, ranked as to the amount of their pension benefit which accrued whilst in the employment of the Withdrawing Employer (starting with the highest amount);
  - (iii) Liabilities in respect of Deferred Pensioners or Pensioners who accrued some, but not more than 50% of their pension benefit under the Scheme whilst in the employment of the Withdrawing Employer, ranked as to the amount of their pension benefit which accrued whilst in the employment of the Withdrawing Employer (starting with the highest amount);
  - (iv) Liabilities in respect of other Members selected by the Trustees who have no period of employment with the Withdrawing Employer.

The transfer to the Receiving Scheme will cover the liabilities in (i) and sufficient other liabilities, taking (ii) before (iii) and (iii) before (iv), so that the transfer comprises liabilities of a value equal to the Withdrawing Employer's Percentage of the total liabilities of the Scheme as at the date of withdrawal. The Trustees may determine that any Employee Member (apart from an Employee Member employed by the Withdrawing Employer) shall not be one of the Members in respect of whom liabilities are transferred under (ii) or (iii).

- 30.7 The amount of the transfer payment to be made to the Receiving Scheme will be equal in value to the Withdrawing Employer's Percentage of the assets of the Scheme as at the date of withdrawal (or the amount of the cash equivalents under the 1993 Act of the Members referred to in Rule 30.6 (i), if greater). For this purpose, the assets of the Scheme as at the date of withdrawal will exclude any debt due from the

Withdrawing Employer under section 75 or 75A of the 1995 Act and any premium required from the Withdrawing Employer under Rule 30.4 but the amount of the employer debt paid by the Withdrawing Employer shall be added to the transfer payment. The Trustees will determine the assets of the Scheme which are to be included in the transfer payment in consultation with the Withdrawing Employer and the trustees of the Receiving Scheme. The Trustees will transfer a proportionate part of each of the Scheme's assets, unless to do so would, in the opinion of the Trustees, be impracticable or likely to have an adverse effect on the value of the asset concerned. Where cash is paid to the Receiving Scheme by the Trustees in lieu of the transfer of any non-cash assets, the amount of the cash paid will be equal to the net proceeds of the assets which would have been realised following a sale of the assets concerned, after deducting the costs of converting those assets into cash.

- 30.8 Where a [CurrentParticipating](#) Employer has been permitted to withdraw from the Scheme under Rule 30.3, the Withdrawing Employer's Percentage shall be re-allocated amongst the remaining [CurrentParticipating](#) Employers in proportion to their [CurrentParticipating](#) Employer's Percentages immediately before the withdrawal of that Withdrawing Employer.

## Winding up

- 31.1 The trusts hereby constituted shall continue unless and until
- (i) determined by a resolution to determine the Scheme passed by the Trustees in accordance with the Trust Deed, or
  - (ii) determined by written notice to the Trustees given either by (1) all the [CurrentParticipating](#) Employers or (2) not less than five [CurrentParticipating](#) Employers, between them representing not less than five separate corporate groups, which together contain [CurrentParticipating](#) Employers whose [CurrentParticipating](#) Employer's Percentages total at least 30% ~~Provided that the effective date of such a notice may not be before the date on which the aggregate annual contributions required from Current Employers under the Schedule of Contributions exceeds £16 million (increased in line with the increase in the Index of Retail Prices since 31 March 2000). The £16 million figure will be adjusted in the event of any Current Employer withdrawing under Rule 30.3.~~

For this purpose, a corporate group means a company ("the parent") and any other company or firm which is either a group undertaking (as defined in section 259(5) of the Companies Act 1985) or an associated undertaking (as described in paragraph 20 of Schedule 4A of that Act) in relation to the parent. Where a Current Employer would otherwise fall within more than one corporate group, it shall be treated as being within the corporate group with whose parent it is more closely connected in the opinion of the Trustees.

Where a Member's Additional Voluntary Contributions are being used to provide benefits on a money purchase basis and where there are separately identifiable assets attributable to those Additional Voluntary Contributions, Rule 31.1 - 31.3 shall apply

in relation to those separately identifiable assets as if they were a separate Fund of the Scheme.

- 31.2 Subject to section 73 of the 1995 Act and to Rule 31.5, upon the determination of the trusts, the Scheme shall be wound-up, and the Fund shall be converted into money and, subject to payment of all costs, charges and expenses then owing, including any amount due to HM Revenue & Customs, the proceeds of such conversion shall be applied:
- (i) in providing for any liability for pensions or other benefits to the extent that the amount of the liability does not exceed the corresponding PPF liability (as defined in section 270 of the Pensions Act 2004).
  - (ii) in providing for any liability for pensions or other benefits which, in the opinion of the Trustees, are derived from the payment by any Member of voluntary contributions, other than a liability within (i) above.
  - (iii) in providing for any other liability in respect of pensions or other benefits.
  - (iv) the Trustees may apply all or any part of any surplus then remaining at their discretion in increasing any benefit provided under (i), (ii) or (iii) above.
  - (v) any surplus then remaining shall be paid to the Participating Employers in such manner as the Trustees may determine to be just and equitable.
- 31.3 Any annuities to be purchased under Rule 31.2 shall be purchased under the direction of the Trustees and in consultation with the Actuary. Immediate annuities shall be in amount equal and in character and terms (so far as practicable) similar to the respective pensions then being paid to the Members concerned. Deferred annuities shall be non-assignable and, save as permitted under the Rules, non-commutable. In any particular case or cases, the Trustees may, instead of purchasing an annuity, make a transfer payment in accordance with Rule 31.4 to another registered pension scheme.
- 31.4 The Trustees may transfer the whole or part of the Fund to another registered pension scheme (as defined in the Finance Act) but the transfer may only be made if:
- (i) the transfer payment satisfies the contracting-out requirements of the 1993 Act, and
  - (ii) in the case of a transfer to an occupational pension scheme, no more than the amount included in the transfer payment attributable to a Member's contributions to the Scheme may be treated as having been contributed by him or her to the other pension scheme.
- 31.5 Upon the determination of the trusts under Rule 31.1, the Trustees shall have power to postpone the conversion of the Fund into money for as long as they think fit. During such postponement, any benefits which would otherwise have had to be secured by the purchase of immediate annuities under Rule 31.3 shall be paid out of the Fund.

31.6 On the determination of the Scheme under Rule 31.1:

- (i) the Trustees will designate an Exit Amount Calculation Date and an Exit Amount Due Date for each person who is a Participating Employer as at the date of determination;
- (ii) the Actuary will calculate each Participating Employer's Exit Amount at the Exit Amount Calculation Date, which will become due and payable at the Exit Amount Due Date;
- (iii) once the Trustees have recovered such of the Exit Amounts as they believe to be recoverable without incurring disproportionate cost and within a reasonable time; the Trustees may, in respect of some or any or all of the Participating Employers, designate further Exit Amounts, Exit Amount Calculation Dates and Exit Amount Due Dates. These further Exit Amounts will then become due and payable by these Participating Employers on these further Exit Amount Due Dates; and
- (iv) the Trustees may repeat the process described in sub-rules (i)-(iii) until they are advised by the Actuary that the amount of any further Exit Amount would be zero.

31.6A The Exit Amount in respect of each Participating Employer is calculated as follows:

- (i) the Actuary will calculate the "Buy-out Deficit" as at the Exit Amount Calculation Date. The Buy-out Deficit will be calculated as follows:
  - (a) the Actuary will calculate the value of the Scheme's assets as at the Exit Amount Calculation Date. This will be the value of the Scheme's assets as shown in the asset statement (either audited or unaudited) for the quarter end nearest to the Exit Amount Calculation Date (or such other date as the Actuary decides) for which an asset statement is available, adjusted as determined by the Actuary to approximate for investment returns and Scheme cashflows over the intervening period. No allowance would be made for any receipt of any debts under Section 75 or 75A of the 1995 Act triggered against the Participating Employer (whether or not collected).
  - (b) the Actuary will calculate the value of the Scheme's liabilities as at the Exit Amount Calculation Date. This will be the Actuary's estimate of the Scheme's "Buy-out Liabilities", plus an estimate of the expenses of winding up the Scheme. The Scheme's "Buy-out Liabilities" is the value placed by the Actuary on the Scheme's liabilities, calculated by the Actuary in a manner consistent with Regulations 5(11), 5(12) and 5(13) of the Employer Debt Regulations, or in such other manner as the Actuary decides.

(c) the Buy-out Deficit is the value placed on the Scheme's liabilities, calculated as described in paragraph (b) above, less the value placed on the Scheme's assets, calculated as described in paragraph (a) above.

(d) the Actuary will then calculate the "Net Buy-out Deficit". The Net Buy-out Deficit is:

$$\underline{[X - Y]}$$

Where:

X is the Buy-out Deficit; and

Y is the value, as at the Exit Amount Calculation Date, of future contributions due from the Participating Employers within the Recovery Period of the Recovery Plan in force as at the Scheme Debt Calculation Date; and

In calculating the Net Buy-out Deficit, the Actuary may discount the value of these future contributions at such rate as he or she thinks is appropriate.

(e) The Actuary will then, for each Participating Employer, calculate that Participating Employer's "Buy-out Percentage". This is the Participating Employer's percentage share of the Net Buy-out Deficit as at the Exit Amount Calculation Date, calculated according to the following formula:

$$\underline{[A\% / (1 - B\%)] / (1 - C\%)}$$

Where:

A is K/L;

B is the Orphan Liabilities;

C is the percentage of the total Exit Amounts which the Trustees' covenant advisers estimate will not be recovered from the Participating Employers;

K is the amount of the Scheme's liabilities which would be attributable to that Participating Employer, were all Participating Employers as at the Exit Amount Calculation Date "Employers" within the meaning of the Employer Debt Regulations. "K" will be calculated using the assumptions and methodology set out in Regulation 6(4) of the Employer Debt Regulations (or such other assumptions and methodology as the Actuary decides);

L is the amount of the Scheme's liabilities as at the Exit Amount Calculation Date calculated in accordance with Rule 31.6A(i)(b) excluding the estimate of the expenses of winding up the Scheme (or calculated by such other assumptions and methodology as the Actuary decides).

(ii) The Actuary will then calculate each Participating Employer's Exit Amount. The Exit Amount for each Participating Employer, will be the sum of the following amounts:

(a) that Participating Employer's Buy-out Percentage multiplied by the Net Buy-out Deficit (to the extent that the Net Buy-out Deficit is more than zero); plus

(b) the value as at the Exit Amount Calculation Date of contributions which would have become due from that Participating Employer under its Individual Payment Plan, and of those contributions (if any) which have become due but which that Participating Employer has not paid. In calculating the value of these contributions as at the Exit Amount Calculation Date, the Actuary may apply such discount rate as he or she thinks is appropriate; plus

(c) that Participating Employer's share of the Trustees' estimate of the Trustees' expenses incurred in calculating and invoicing the Exit Amounts for all Participating Employers.

31.7 On and from an Exit Amount Due Date described in Rule 31.6 above, the Trustees may charge interest on the amount of the Exit Amount from time to time outstanding, at the rate of five per cent (5%) per annum compound above the base rate of the National Westminster Bank, or at such other rate as the Trustees may from time to time determine.

### **Alteration of Rules**

32. These Rules may be varied or added to in accordance with Clause 30 of the Trust Deed.

### **Guaranteed Minimum Pension**

33.1 This Rule applies in relation to Contracted-Out Employment by reference to the Scheme before 6 April 1997 and it shall then override any other provisions of these Rules which are inconsistent with it other than Rule 14.3

33.2 The words and expressions used in this Rule shall have the same meaning as in the 1993 Act and in particular Pensionable Age means 65 for a man and 60 for a woman.

33.3 If a Member is entitled to a Guaranteed Minimum Pension the weekly rate of pension from Pensionable Age shall not be less than the Guaranteed Minimum Pension; and



- 33.4 If the Member is a man and dies at any time leaving a widow the weekly rate of the pension provided for her under the Scheme shall not be less than half of that Member's guaranteed minimum; and
- 33.5 If the Member is a woman and dies on or after 6 April 1989 leaving a widower or a Member of either sex is survived by a civil partner, the weekly rate of the pension provided for the widower or civil partner under the Scheme shall not be less than half of that part of the Member's guaranteed minimum which is attributable to earnings for the year 1988/89 and subsequent years.

Provided always that in respect of a Member who shall leave the Service on or after 1 January 1985 the said weekly rates of pension referred to in Rules 33.3 and 33.4 shall not be less than the aggregate amounts calculated respectively in accordance with section 88(1) of the 1993 Act.

Provided further that the Guaranteed Minimum Pensions referred to in Rules 33.3, 33.4 and 33.5 shall in so far as they are attributable to earnings in the tax years from and including 1988/89 be increased in accordance with the requirements of section 109 of the 1993 Act.

- 33.6 If the commencement of any Member's Guaranteed Minimum Pension is postponed for any period his Guaranteed Minimum Pension shall be increased to the extent if any specified in section 15 of the 1993 Act.
- 33.7 In the event of any Member leaving Contracted-Out Employment before Pensionable Age the Guaranteed Minimum Pension to which he will be entitled at Pensionable Age will be calculated on the basis that the Guaranteed Minimum Pension which has accrued up to termination will be increased by the appropriate percentage prescribed by regulations made under section 16(3) of the 1993 Act, for each tax year after that in which service terminated, up to and including the last complete tax year before Pensionable Age.
- 33.8 Where a Member leaves Contracted-Out Employment before or after 6 April 1997 and the Scheme retains a liability for a Guaranteed Minimum Pension or pays a contributions equivalent premium in respect of the Member, the amount of any refund or transfer payment shall be reduced by the amount which can be deducted under section 61 of the 1993 Act.
- 33.9 The Scheme shall be operated so as to entitle Service to rank as Contracted-Out Employment for the purposes of the 1993 Act.

#### **Payment of Additional Benefits**

34. Subject to such payment into the Fund as the Actuary may advise to be necessary to meet the additional liability thereby imposed upon the Scheme, the Trustees shall have power to augment any pension or other benefit payable under the Rules or to pay a pension or other benefit otherwise than in accordance with the Rules providing that in so doing the Trustees shall not make any Unauthorised Payment and shall comply with the preservation requirements of the 1993 Act.

## **Pension Sharing**

### **35.1** *Assignment*

Notwithstanding Rule 21, benefits for a Member under the Scheme may be reduced to the extent necessary to comply with a Pension Sharing Order.

### **35.2** *The Pension Debit*

If a Member's benefits under the Scheme are subject to a Pension Debit, the benefits will be reduced by the Pension Debit. The amount of the Pension Debit will be deducted from each of the Member's Qualifying Benefits within the implementation period as defined in section 34 of the 1999 Act.

### *The Pensions Credit*

**35.3** If a Member's benefits under the Scheme are subject to a Pension Debit, the Trustees may, with the consent of the former spouse or civil partner, discharge their liability for the corresponding Pension Credit by paying the amount of the Pension Credit to a qualifying arrangement in accordance with paragraph 1(3) of Schedule 5 to the 1999 Act.

**35.4** Alternatively, the Trustees may discharge their liability for the Pension Credit by providing benefits under the Scheme for the former spouse or civil partner in accordance with Rule 35.5 – 35.12. Such benefits will be treated as being provided separately from any other benefits under the Scheme for the same person. The total value of all benefits payable to the former spouse or civil partner arising from the Pension Credit will, at the time the Trustees discharge their liability for the Pension Credit, be equal to the value of the Pension Credit.

**35.5** The former spouse or civil partner will be entitled to draw the pension arising from the Pension Credit from Normal Benefit Age.

**35.6** The Trustees shall have power at the request of the former spouse or civil partner to permit early payment of his or her pension over the age of 50 years (55 years, after 5 April 2010) or at any age in the case of ill-health (where the former spouse or civil partner is a Member and is also retiring from Service and drawing an immediate ill-health retirement pension under Rule 6). In that event the former spouse or civil partner shall be entitled to an immediate pension equal to the pension under Rule 35.5 reduced as the Actuary may certify to be reasonable having regard to the period of early payment.

**35.7** The former spouse or civil partner shall be entitled to postpone payment of his or her pension beyond Normal Benefit Age provided the former spouse is still in employment. In such event, the pension shall be actuarially increased as advised by the Actuary according to the period of its postponement.

**35.8** A former spouse or civil partner may elect when his or her pension would otherwise come into payment to receive a capital sum by way of commutation of part of the pension, which capital sum shall be calculated as advised by the Actuary.

- 35.9 Rules 14.2 and 14.3 apply to a former spouse's or civil partner's pension as if he or she was a Member.
- 35.10 During deferment, a former spouse's or civil partner's pension shall be increased as required by sections 83-86 of the 1993 Act using the final salary method specified in Schedule 3 to the 1993 Act. When in payment, a former spouse's or civil partner's pension shall be increased under Rule 18.2 as if it was a Member's pension attributable to Service after 1 April 1997.
- Rule 18.1 applies to the payment of a former spouse's or civil partner's pension.
- 35.11 No benefit shall be payable arising from the Pension Credit after the death of the former spouse or civil partner.
- 35.12 The former spouse or civil partner may ask the Trustees to arrange a transfer of his or her Pension Credit Rights to another registered pension scheme (as defined in the Finance Act) if he or she is already a member of that scheme or already has Pension Credit Rights in that scheme. The Trustees must confirm to the receiving scheme that the transfer value consists wholly or partly of Pension Credit Rights for the former spouse or civil partner.
- 35.13 The Trustees may make reasonable charges for the administration involved in providing information for the purposes of matrimonial proceedings involving a Member or implementing a Pension Sharing Order. Any charge may be deducted from the benefits payable to either the Member or the Member's former spouse or civil partner subject to any relevant terms of the 1999 Act or any Pension Sharing Order. The Trustees may require either party to pay all or part of any such charge before providing the information or before implementing a Pension Sharing Order, where this is allowed by the 1999 Act.

## **APPENDIX**

### **The Current Employers**

[\(The names listed below are the names of the Current Employers as at the Closure Date.\)](#)

Bibby International Services (Cayman Islands) Limited

Caernarfon Harbour Trust

Caledonian MacBrayne Limited

Celtic Pacific Ship Management (Overseas) Limited

Denholm Management Services (HK) Limited

DSND Subsea Limited

Eidesvik Shipping Limited

Esso Petroleum Company, Limited

Everard (Guernsey) Limited

Guernsey Ship Management Limited

Isles of Scilly Steamship Company Limited

Lothian Shipping Services (London) Limited

Maersk Offshore (Singapore) Pte Ltd  
Manx Sea Transport Guernsey Limited  
Marine Manning Services Limited  
Meridian Shipping Services Pte Limited  
Mobil Shipping Company Limited  
Natural Environment Research Council  
Norse Irish Ferries Limited  
Orkney Ferries Limited  
P&O Cruises (Bermuda) Limited  
P&O European Ferries (Bermuda) Limited  
P&O European Ferries Irish Sea (Bermuda) Limited  
P&O Nedlloyd (Bermuda) Limited  
P&O North Sea (Bermuda) Limited  
P&O Scottish Ferries (Bermuda) Limited  
P&O Stena Line (Bermuda) Limited  
Pacific Nuclear Transport Limited  
Pentmarine (1982) Limited  
Royal Fleet Auxiliary Service  
Seacat Scotland Guernsey Limited  
Seahorse Maritime Limited  
Sealife Crewing Services Limited  
Shell International Shipping Services (Pte) Limited  
Smit International (Scotland) Limited  
Stena Drilling Pte Limited  
Stena Line Limited  
Stena Line Pte Limited  
United Marine Dredging Limited  
VT Services Limited