

ANNEX

**Definitive Deed and Rules of the Smith & Nephew UK Pension Fund with effect from
the date of this Deed**

MAYER | BROWN

LONDON

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DEFINITIVE DEED

1. DEFINITIONS AND INTERPRETATION

- 1.1 The various attached Schedules all form part of the Deed.
- 1.2 Unless the context requires otherwise, words and expressions used in this Deed have the meaning assigned to them in Schedule 3.
- 1.3 Unless the context otherwise requires any reference to a clause, rule or schedule is to the relevant provision of this Deed.
- 1.4 The headings and index to this Deed have been inserted for ease of reference only. They are not to affect its construction or interpretation.
- 1.5 Words in the singular include the plural and vice versa.
- 1.6 Words in the masculine gender include the feminine and vice versa unless the context requires otherwise.
- 1.7 Any reference to a statute, statutory instrument or other legislative provision includes any amendment or re-enactment of it for the time being in force and any regulations made under it unless the context requires otherwise.
- 1.8 Any reference to a particular Section or part of a statute or statutory instrument will be read to include reference to any other relevant Section or part of the statute or statutory instruments.
- 1.9 Where the following terms are used in the Rules in relation to an Ex-Spouse the reference to a Member or former Member in relation to those terms will be construed as references to the Ex-Spouse:
 - (a) Dependant;
 - (b) Nominated Dependant;
 - (c) Nominee
- 1.10 The parties to this Deed confirm this Deed is not intended to confer on any third party any right to enforce any provision of the Deed under the Contracts (Rights of Third Parties) Act 1999 and any such right is excluded. This does not affect any right or remedy of a third party which exists or is available as a matter of trust law or apart from that Act.

2. ESTABLISHMENT

- 2.1 The Fund was established with effect from the Commencement Date.
- 2.2 Subject to clause 2.5, the provisions of this Deed will take immediate effect in respect of Members, Deferred Pensioners and Pensioners.

- 2.3 The main object of the Fund is the provision of relevant benefits as defined in the 1988 Act as it applied immediately before 6 April 2006 for and in respect of Members and former Members.
- 2.4 Nothing in this Deed invalidates any prior act, omission or exercise of any power, discretion or right pursuant to the Preceding Documents.
- 2.5 For the avoidance of doubt, subject to the application of rule 25 and Schedule 6 (*Registered Schemes Schedule*), the benefits for or in respect of any individual who is a Deferred Pensioner or Pensioner at the date of this Deed will be calculated and paid in accordance with the relevant provisions of the Preceding Documents to the extent necessary to ensure that the provisions of this Deed do not alter the form or amount of the benefits provided for or in respect of him.
- 2.6 Any amendment to the Fund made by or under the Deed will be subject to Section 67 of the 1995 Act.
- 2.7 The Fund will be wound-up in accordance with the Rules no later than eighty years after the Commencement Date unless it can be lawfully continued.

3. **APPOINTMENT AND REMOVAL OF ADVISERS**

- 3.1 The Trustees will (if so required by Section 47 of the 1995 Act) appoint the following:
- (a) an Actuary;
 - (b) an Auditor;
 - (c) one or more Fund Managers;
 - (d) one or more Custodians;
 - (e) their legal adviser.
- 3.2 Any person or firm appointed under clause 3.1 will be appointed to carry out any functions prescribed for them by the 1995 Act and the Pensions Act 2004. In addition the Trustees may instruct them to carry out such further work in connection with the Fund as they consider appropriate.
- 3.3 In addition to any appointments they are required to make under clause 3.1, the Trustees may appoint such persons or firms to assist them (including actuaries, auditors, administrators, solicitors, brokers, medical practitioners and investment managers) as they think appropriate.
- 3.4 Any appointment made pursuant to clause 3.1 will be on such terms (including remuneration) as the Trustees determine and will comply with Section 47 of the 1995 Act.
- 3.5 The Principal Employer will be notified by the Trustees prior to the appointment or removal of any adviser under clauses 3.1 and 3.2.

3.6 Any other adviser to the Fund will be appointed by the Trustees with the consent of the Principal Employer.

3.7 The Trustees may remove any adviser appointed under clause 3, subject to compliance, where necessary, with the 1995 Act.

4. **APPOINTMENT AND REMOVAL OF TRUSTEES**

4.1 There will be no fewer than two Trustees unless a corporate body is acting as the sole trustee. In such circumstances there will be no minimum number.

4.2 The Trustees will normally comprise:

(a) 3 Company Trustees;

(b) 2 Member Trustees;

(c) 1 Independent Trustee.

4.3 A corporate body may act as a sole Trustee whether or not it is a Trust Corporation or has been preceded in office by more than one Trustee.

4.4 Where a corporate body is appointed to act as Trustee its powers, duties, authorities and discretions will be exercisable by its board of directors in accordance with its Articles of Association which will reflect in general terms the provisions of this Deed and the existing member nominated trustee arrangements will continue to apply albeit to the member nominated directors.

4.5 All Trustees will be appointed to office by deed executed by the Principal Employer and the Trustees.

4.6 The Company Trustees will be selected by the Principal Employer. They will be removed on seven days' written notice served by the Principal Employer. In the occurrence of a Control Event the power to appoint Trustees will vest in the Trustees for 12 months immediately following.

4.7 The Independent Trustee will be selected by the Principal Employer. He will be removed from office on three months' written notice served by the Principal Employer.

4.8 Member Trustees are nominated and selected in accordance with arrangements under ss241 and 243 Pensions Act 2004. They shall cease to hold office in accordance with these arrangements. In the event that these provisions are repealed without replacement, Member Trustees may be selected and removed by the Principal Employer.

4.9 A Trustee may retire immediately by giving written notice to the Principal Employer. On service of the notice the Trustee will cease to hold office and will be discharged even if this would result in the number of remaining Trustees being less than the minimum stated in clause 4.1. If the retiring Trustee is an Independent Trustee the Principal Employer will appoint a replacement within three months. If this appointment is not made the Trustees will immediately appoint an Independent Trustee.

- 4.10 A departing Trustee will execute such documents and take such further action as may reasonably be required by the Principal Employer and the other Trustees to implement his retirement or removal.
- 4.11 Should he fail to do so the Principal Employer may execute such documents and act on his behalf as his attorney. Each of the Trustees irrevocably authorises and appoints the Principal Employer as such for this purpose.

5. TRUSTEES' MEETINGS

- 5.1 If a corporate body is acting as sole trustee of the Fund, the meetings of the Trustees will be conducted in accordance with its Articles of Association and clauses 5.3 to 5.14 will not apply.
- 5.2 Reasonable notice is to be given to all Trustees of any forthcoming meeting. In this respect due regard is to be given to the urgency or otherwise of any business to be discussed.
- 5.3 Whenever practicable:
- (a) the notice should specify, unless the Trustees agree otherwise or it is not required by the 1995 Act, the date, the time and place of the meeting and the matters to be discussed;
 - (b) the meetings should be held at a time and venue reasonably convenient to all the Trustees;
 - (c) unless the Trustees agree otherwise or it is not required by the 1995 Act, the notice should be sent to the last known address of each Trustee no later than 10 days before the meeting.
- 5.4 The Trustees will meet together at least once a year and review all or some of their responsibilities under the 1995 Act. This review may include the following requirements:
- (a) to have a statement of investment principles pursuant to Section 35 of the 1995 Act;
 - (b) to have a schedule of contributions pursuant to Section 227 of the Pensions Act 2004;
 - (c) to appoint member nominated trustees pursuant to Section 241 of the Pensions Act 2004;
 - (d) to provide documents pursuant to Section 41 of the 1995 Act;
 - (e) to keep receipts and records pursuant to Section 49 of the 1995 Act.

The Trustees may also review any other requirements of the 1995 Act or the Pensions Act 2004 which might apply to them as they so decide.

- 5.5 As soon as reasonably possible after a meeting, minutes of the matters discussed and decisions made will be circulated to all the Trustees (including those who did not attend). The records are to comply with the requirements of Sections 49 of the 1995 Act as to their form and content.
- 5.6 The Trustees and the Principal Employer may appoint a Secretary (who may be from among their number) who is to have primary responsibility for co-ordinating the matters referred to in clauses 5.3 and 5.4. This will not prevent a meeting being convened by any Trustee in accordance with the above procedures should he consider this appropriate.
- 5.7 The Trustees will also appoint from among their number a Chairman (who for the avoidance of doubt may also be the Secretary). If they are equally divided on the appointment of a Chairman he will be chosen by lot. If for any reason the Chairman is unable to attend a validly convened meeting then the Trustees may appoint another of their number to act in his place at that meeting only.
- 5.8 Subject to clause 5.7 the Chairman and the Secretary will each hold office until the earlier of the date upon which:
- (a) he resigns such office;
 - (b) the Trustees resolve otherwise.
- 5.9 The quorum for a meeting of the Trustees will be three, one of which will be a Company Trustee and one of which will be a Member Trustee.
- 5.10 The Trustees may act on a majority vote at their meetings. If they are divided equally on any issue the Chairman will have a casting vote subject to any contrary provision in the Pensions Act 2004.
- 5.11 The Trustees may also act by resolution signed:
- (a) at a Trustees' meeting by a majority of the Trustees present; or
 - (b) outside the ambit of a Trustees' meeting, by three Trustees or a majority of the Trustees voting on the resolution, whichever is the greater. In either case one of the Trustees voting for this purpose must be a Company Trustee and one a Member Trustee.
- 5.12 The provisions of clauses 5.10 and 5.11 will only apply if they satisfy the conditions set out in clause 6.
- 5.13 Any resolution signed in accordance with clause 5.11(b) will be binding and effective as if it had been passed at a Trustees' meeting only if each Trustee has been given fourteen days' written notice of the resolution. The resolution may be passed by the signature of copies whether or not of the same date.
- 5.14 Provided all other procedural requirements prescribed by this clause are satisfied the Trustees may hold meetings by telephone or such other means of communication as they deem appropriate.

5.15 The exercise of any power or discretion by any of the Trustees (or an officer or employee of a corporate Trustee) will not be invalidated or questioned on the grounds that any of the Trustees had a direct or indirect interest in the result of the exercise of such power or discretion.

5.16 A Trustee (or an officer or employee of a corporate Trustee) may retain for his own account any benefit entitlement he may have in the Fund.

6. **INDEPENDENT TRUSTEE**

6.1 Notwithstanding the provisions of clause 5, no exercise of any power or discretion of the Trustees in the following matters will be valid unless it is done with the agreement of the Independent Trustee:

- (a) power to allow a company to participate in the Fund in accordance with clause 12;
- (b) power to apply any surplus on the occurrence of a Control Event in accordance with clause 25 ;
- (c) power to make any alteration to the Fund in accordance with clause 24 which will affect:
 - (i) the appointment of the Independent Trustee;
 - (ii) the replacement of the Independent Trustee;
 - (iii) the augmentation of any benefits in the Fund;
 - (iv) the granting of new or additional benefits in the Fund;
 - (v) the full or partial termination of the Fund;
- (d) power to wind-up the Fund in accordance with clauses 19 and 20;
- (e) power to apply any surplus in accordance with clauses 15 and 18;
- (f) power to augment benefits in accordance with rule 24;
- (g) power to transfer assets out of the Fund on a bulk basis in accordance with rule 27;
- (h) power to accept a transfer of assets into the Fund on a bulk basis in accordance with rule 28 and 29;

6.2 This clause will override the above provisions of the Fund.

7. **TRUSTEES' DUTIES**

7.1 In addition to any other duties which may exist at law the Trustees will:

- (a) manage the Fund and (subject to clause 7.2) act as its Administrator ;

- (b) pay out of the Fund the relevant benefits;
- (c) keep proper records and accounts for the Fund including Membership details and submit these (together with a supporting balance sheet) to the Auditor following the end of each scheme year;
- (d) prepare and sign a report on the Fund accounts which together with the Auditor's report will be open for inspection by the Beneficiaries;
- (e) provide any advisers with such information as the Trustees are required to provide under the 1995 Act and take all reasonable steps to enable the Actuary and the Auditor and other advisers to comply with their respective duties under the 1995 Act or the Pensions Act 2004;
- (f) provide such information and make such statements, documents and reports available as necessary to comply with the 1995 Act or the Pensions Act 2004.

7.2 The Trustees may appoint an individual or corporate body to act as Administrator in which event the provisions of clause 3 will apply.

8. TRUSTEES' POWERS

8.1 Subject to Section 34 of the 1995 Act and to clause 3 the Trustees with the consent of the Principal Employer where required by clause 3.6 may delegate (and authorise the sub-delegation of) any of their duties, powers and discretions as they see fit. They may revoke any delegations and/or sub-delegations) at their absolute discretion.

8.2 Such delegation (and/or sub-delegation) may be made to:

- (a) a committee consisting of two or more persons (any of whom may be a Trustee);
- (b) such other person or corporate body (including any one or more of the Participating Employers) as the Trustees determine;
- (c) a Fund Manager in relation to the Trustees' powers of investment.

8.3 The Trustees may appoint any one or more agents to transact any business of the Fund in which event the provisions of clause 3 will apply.

8.4 Agents may include any employees or officers of the Trustees and/or of the Participating Employers.

8.5 Anyone dealing in good faith with the Trustees will be under no duty to enquire into the application of any money or asset paid or transferred by him to the Trustees. Any receipt given to an agent or delegate of the Trustees will be a valid discharge to the Trustees.

8.6 The Trustees will have the power to insure any or all of the assets of the Fund against risks and for such amounts as they determine appropriate. Subject to Section 256 of the Pensions Act 2004 they may also effect insurance against any personal liability relating to their office or any liability of the Fund for such amounts as they determine appropriate. The terms of insurance will be agreed with the Principal Employer.

- 8.7 The Trustees will hold any proceeds of insurance on trust with power to apply part or all, to repair, replace or maintain the asset in question or (subject to the provision of Section 256 of the Pensions Act 2004) to indemnify the Trustees or the Fund against any claims. They may exercise this power as if they were the absolute owner of the Fund.
- 8.8 Subject to Section 256 of the Pensions Act 2004, the cost of effecting insurance will be paid in accordance with clause 14.1. The Trustees will not have power to meet the cost of effecting insurance against their own liability to pay fines or penalties imposed under the 1995 Act from the Fund.
- 8.9 The Trustees may open any one or more accounts with a bank, building society, finance company or other financial institution. They may make such arrangements as they see fit from time to time regarding the operation of any such account.
- 8.10 Where any time limit is prescribed by this Deed or otherwise, the Trustees may in their discretion waive the limit to any extent which they think fit. This power will not apply to any statutory duty or to the period of two years specified in rule 19.4.
- 8.11 The Trustees will have power to ratify any administrative action or omission in relation to the Fund even though such act or omission was not expressly authorised by the other terms of this Deed. The Trustees may exercise this power where they consider the action or omission has not:
- (a) had serious adverse effect on any benefit;
 - (b) prejudiced Registration;
 - (c) contravened any statutory provision.

9. PROTECTION OF TRUSTEES

- 9.1 Insofar as legislation allows, no Trustee will incur liability for:
- (a) acting as a Trustee;
 - (b) the exercise or failure to exercise any power or discretion;
 - (c) the performance or non performance of his duties as a trustee of the Fund;
 - (d) the acts and omissions either of co-Trustees, the Secretary, agents, delegates or other advisers to the Fund.
- 9.1A The Principal Employer will provide such insurance cover as is necessary to protect any director of a corporate body acting as a Trustee against every liability for which he is not protected by virtue of clause 10.1(c).
- 9.2 To the extent that the liability is not covered by insurance, the Fund will indemnify each and all of the Trustees against any costs, claims, demands, expenses, proceedings and liabilities arising from any matter referred to in clause 9.1 (unless it is prohibited under Section 256 of the Pensions Act 2004).

- 9.3 Should the Fund be inadequate or unable under legislation to indemnify them the Trustees will be indemnified by the Principal Employer.
- 9.4 The Trustees will be entitled to rely upon any advice or recommendations given by the advisers to the Fund and will incur no personal liability in doing so.
- 9.5 The Trustees will not be obliged to bring, pursue or defend any legal proceedings in relation to the Fund.
- 9.6 The Trustees will not be accountable for any payment they may make under this Deed to:
- (a) a person who they believe to be entitled to a payment from the Fund even if it subsequently transpires that they are not so entitled; or
 - (b) a minor direct, or to his parent or guardian or other person with whom he is living; or
 - (c) any person who the Trustees believe to be a Spouse, even if it subsequently transpires the person is not a Spouse; or
 - (d) any institution or individual who the Trustees believe to be responsible for the care of a Beneficiary.
- 9.7 The Trustees will not be liable for any decisions, acts or omissions which are based on an incorrect understanding of the facts and circumstances relevant to the matter in question.
- 9.8 The provisions of this clause apply in addition to any further protection afforded to the Trustees by statute, common law or otherwise but are subject to the limitations set out in clause 10.1.

10. **LIMITATION AND EXTENSION OF PROTECTION**

- 10.1 The provisions of clause 9:
- (a) will not protect a Trustee in relation to any breach of trust caused by the wilful default of the Trustee; and
 - (b) are subject to Section 33 of the 1995 Act which may restrict or prevent the exclusion of personal liability on the part of the Trustee; and
 - (c) will not protect any director of a corporate body acting as a Trustee in relation to regulatory fines, civil penalties and the costs of unsuccessfully defending a criminal charge (all within the meaning of Sections 232-235 Companies Act 2006).
- 10.2 If the inclusion of any words in clause 9 and this clause 10 would at law render ineffective the protection of any Trustee then the clause is to be read with such words omitted.

10.3 If the protection of any Trustee under clauses 9 and 10 is to be held at law to be ineffective, the Trustees will be entitled to rely on any protection in force pursuant to the provisions of the Preceding Documents prior to the execution of this Deed.

10.4 The provisions of this clause and clause 9 will apply also to:-

- (a) any officer or employee of a corporate Trustee engaged in carrying out the business of the Fund
- (b) Trustees of the Fund who no longer hold office.

10.5 The provision of clauses 9 and 10 are in addition to and will not limit any other provision on this Deed restricting liability of the Trustees.

11. **TRUSTEES' REMUNERATION**

11.1 Any Trustee engaged in a profession or business will be entitled to be paid all proper expenses, charges and commissions for work carried out in connection with the Fund by him or any firm/company to which he belongs or by which he is employed.

11.2 Any Trustee not engaged in a profession or business may be paid such expenses and remuneration as may be agreed by the Principal Employer.

11.3 The provisions of this clause apply similarly to any officer or employee of a corporate Trustee engaged in carrying out the business of the Fund.

11.4 All sums due pursuant to this clause are to be paid in accordance with the provisions of clause 14.

11.5 This clause will not apply to any individual who is currently remunerated by a Participating Employer.

12. **PARTICIPATING EMPLOYERS**

[NB. Please see clause 6]

12.1 The Principal Employer with the consent of the Trustees may allow an Associated Employer to participate in the Fund. Participation will take effect from the date of the deed of adherence or from any effective date stated in the deed of adherence. For the avoidance of doubt, the effective date may be retrospective.

12.2 No company will be allowed to become or continue as a Participating Employer if it ceases to be a subsidiary or holding company of the Principal Employer or its holding company or ceases to be otherwise associated in business with the Principal Employer to an extent that the Principal Employer and the Trustees consider to be acceptable. **"Holding company"** and **"subsidiary"** have the meaning given by Section 736 of the Companies Act 1985. In such circumstances the Participating Employer will automatically cease to participate.

12.3 Any new Participating Employer will covenant with the Principal Employer and the Trustees to observe and perform the relevant provisions of this Deed on such terms as the Trustees may prescribe.

- 12.4 The Participating Employers will supply to the Trustees and the Trustees' advisers such information as they are required to provide pursuant to the 1995 Act. In addition, the Participating Employers will supply to the Trustees such information as they may reasonably require for the administration of the Fund or as they are required to supply under the 1995 Act.
- 12.5 The Trustees will have the right on request:
- (a) to have reasonable access to any records relevant to such administration which are in the custody or control of the Participating Employers;
 - (b) to take copies of those records free of charge.
- 12.6 The Principal Employer may give one month's written notice to the Trustees (or such shorter period of notice as the Trustees may agree to accept) that the participation of the Participating Employer will cease when such notice expires. The Principal Employer may give such notice whether or not the Participating Employer wishes to cease participation.

13. SUBSTITUTION OF PRINCIPAL EMPLOYER

- 13.1 Any company may agree with the Trustees to take the place of the Principal Employer for all the purposes of the Fund. The consent of the former Principal Employer will be necessary unless it has gone into Liquidation.
- 13.2 The new Principal Employer is to enter into a deed of novation with the Trustees. This will contain a covenant on its part to observe and perform the relevant provisions of this Deed and is to be in such form as the Trustees may prescribe.
- 13.3 If the Principal Employer has gone into Liquidation without the substitution of another Principal Employer under this clause 13, any requirement in this Deed for the Principal Employer to:
- (a) execute any legal document;
 - (b) give its opinion, consent or approval;
 - (c) be consulted;
 - (d) take any other action;

will not apply and the Trustees may act alone in such situations.

14. COSTS AND EXPENSES

- 14.1 The costs and expenses of managing and administering the Fund will be borne by the Fund or by the Principal Employer as the Principal Employer determines.
- 14.2 Each Participating Employer will pay such proportion of those costs and expenses as determined by the Principal Employer.

14.3 For the avoidance of doubt the costs and expenses will include any incurred by the Trustees pursuant to clauses 3, 7, 8, 11, 15 and 16 or otherwise in performance of their duties or the exercise of their powers and discretions.

15. **CONTROL OF THE FUND**

[NB. Please see clause 6]

15.1 The Fund will be vested in the Trustees and held by them upon irrevocable trusts in accordance with the terms of this Deed.

15.2 All monies and assets received by the Trustees for the purposes of the Fund will be paid or transferred into the Fund. They may be retained in the Fund or sold if and when the Trustees decide appropriate.

15.3 The Trustees will apply the capital and/or income of the Fund in the following order of priority:

- (a) in discharging all expenses pursuant to clause 14;
- (b) in providing benefits in accordance with the Rules of the Fund;
- (c) in augmenting any benefit entitlement in accordance with their powers under rule 24.

15.4 All benefits due under the provisions of the Fund will be paid out of the Fund or secured in any way the Trustees see fit. The Trustees will have power to sell or realise any Fund assets for this purpose.

15.5 The Trustees may place any documents of title relating to the fund in safe custody with any Custodian appointed pursuant to clause 8.1 (whether within or outside the United Kingdom) as the Trustees think fit. Where documents of title are so placed in safe custody:

- (a) such documents will be held to the order of the Trustees;
- (b) the Trustees will not be liable for the loss or destruction of those documents.

16. **INVESTMENT OF THE FUND**

16.1 The Trustees may make such investments in respect of the Fund as they may from time to time determine.

16.2 Any investments made by the Trustees may from time to time be realised and the proceeds reinvested in such manner as the Trustees may determine.

16.3 Investments may be made within or outside the United Kingdom whether or not:

- (a) involving liability;
- (b) producing income;
- (c) authorised by law for the investment of trust monies;

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

- 16.4 Without prejudice to clauses 16.1 and 16.3 the Trustees may invest the Fund in or upon the security of any:
- (a) annuity contract or assurance policy (whether with profits or not) issued by a United Kingdom office or branch of an Insurance Company;
 - (b) scheme of deposit administration;
 - (c) unit trust, managed fund or mutual fund;
 - (d) deposit with a local authority, bank, building society, finance company or other financial institution (or any other company or undertaking);
 - (e) bonds, stocks, shares, debentures and debenture stocks whether by purchase, subscription, underwriting, sub-underwriting or otherwise (including for the avoidance of doubt investments relating to open ended investment companies);
 - (f) gilts, government securities and other interest bearing investments whether at a fixed or variable rate;
 - (g) traded options (as defined in Section 144(8)(b) of the Taxation of Chargeable Gains Act 1992);
 - (h) transactions and financial futures on the London International Financial Futures Exchange;
 - (i) foreign currencies;
 - (j) gold bullion or any other commodity or commodity futures;
 - (k) interest in land or property (either in their own right or jointly with any other party);
 - (l) loans on commercial terms with or without security;
 - (m) contract, guarantee, option or other agreement in connection with any of the above and, for the avoidance of doubt, stock lending.
- 16.5 The Trustees may borrow or raise money upon such terms as they see fit for the purpose of acquiring any investment or meeting any liability of the Fund (including the provision of benefits for Beneficiaries).
- 16.6 The Trustees may charge any investment of the Fund as security for borrowing or raising money as though they were absolutely and beneficially entitled to the Fund. They will have power to give any indemnity in connection with their powers under this clause.

- 16.7 As regards any real property held as an investment of the Fund the Trustees after obtaining professional advice may enter into any lease, licence, option, development or other contract in relation to it.
- 16.8 The Trustees may join with the trustees of any other exempt approved scheme in any of the investment activities described in this clause. In such circumstances the Trustees may hold or be entitled to such share of the mixed investments as they agree with the trustees of the other scheme.
- 16.9 The Trustees will from time to time consult with the Principal Employer regarding the investment policy under the Fund.
- 16.10 The Trustees may in relation to any transaction entered into with another party in connection with this clause 16 enter into or give any agreement, indemnity, warranty or undertaking which the Trustees consider necessary.
- 16.11 The Trustees will if so required by Section 35 of the 1995 Act prepare and maintain a statement of principles governing the investment of the Fund. The statement will comply with Section 35 of the 1995 Act.
- 16.12 The Trustees may receive donations or bequests from any person or body to be applied for the purposes of the Fund. Such donations or bequests will form part of the Fund.
- 16.13 For the avoidance of doubt the Trustees may consult Members and Deferred Pensioners in relation to investments in the Members' Accounts.
- 16.14 The various powers set out in this clause are all subject to the restrictions set out in clause 17.

17. **RESTRICTIONS ON INVESTMENT**

- 17.1 In no circumstances are the Trustees to engage in any activity that they consider to be trading.
- 17.2 Any exercise of the powers set out in clause 16 must be subject to the provisions of the 1995 Act.
- 17.3 The Trustees will not directly invest the assets of the Fund in:
- (a) shares, stocks or debentures of Smith & Nephew plc or any of its associated companies;
 - (b) any freehold or leasehold property occupied by Smith & Nephew plc or any of its associated companies;
 - (c) any loan to Smith & Nephew plc or any of its associated companies.

For the purpose of this clause 17.3, associated companies will be as defined in Section 416 of the 1988 Act. The restrictions set out in this clause 17.3 will also apply to any other company carrying on the business of Smith & Nephew plc or any of its associated companies as a result of amalgamation or reconstruction.

17.4 If any breach of clause 17.3 occurs by reason of a change in control of any associated companies the Trustees will take reasonable actions to remedy the situation.

18. VALUATIONS

[NB. Please see clause 6]

18.1 The Trustees must obtain an Actuarial valuation of the Fund from the Actuary in such manner and at such intervals as may be required under Section 224 of the Pensions Act 2004. Such a valuation will comply with the Pensions Act 2004. It will not relate to assets in respect of AVCs or Members' Accounts.

18.2 In addition the Trustees may obtain an actuarial valuation for such purposes and at such other times as they decide.

18.3 If the Actuary identifies a Fund surplus on the basis prescribed for the purposes of Section 37 of the 1995 Act that surplus may be utilised by augmenting benefits or suspending or reducing contributions.

18.4 The utilisation of a surplus identified on the basis prescribed for the purposes of Section 37 of the 1995 Act is to be in accordance with the directions of the Trustees (with the consent of the Principal Employer). No such surplus may be utilised in a way which would contravene the provisions of the 1995 Act.

19. PARTIAL WIND-UP

[NB. Please see clause 6]

19.1 This clause applies where a Participating Employer (other than the Principal Employer):

- (a) ceases to carry on business;
- (b) goes into Liquidation;
- (c) has an administrator or administrative receiver appointed over any of its property assets or undertaking;
- (d) ceases to be an Associated Employer;
- (e) gives notice (other than contemporaneously with the Principal Employer) pursuant to rule 9 severing its obligations to pay future contributions;
- (f) fails to pay any sum due to the Trustees or to perform or observe any other of its obligations within one month after receiving from them a formal written demand;
- (g) receives notice from the Principal Employer pursuant to clause 12.6 that its participation will cease

and in the case of the events listed in clauses (a) to (d) inclusive no company is appointed in succession.

- 19.2 In such circumstances the Trustees may at their discretion resolve to secure accrued benefits relating to all or some of the Members employed by the Participating Employer or former Members previously employed by the Participating Employer at the date the relevant event occurs unless the Members become employees of another Participating Employer.
- 19.3 This may be done (at the Trustees' discretion) by one or more of the following means, namely:
- (a) preserving the benefits in the Fund;
 - (b) setting apart such part of the Fund as the Actuary may advise and applying it in a partial wind-up in accordance with clauses 21 and 22 (provided that if there is a surplus after such application of the relevant assets it may either be retained in the Fund or applied in accordance with rule 23.3);
 - (c) provided they comply fully with either rules 26 or 27, effecting a transfer out in accordance with such rules.

20. **FULL WIND-UP**

[NB. Please see clause 6]

- 20.1 Subject to clause 23.1 the Trustees may resolve to wind-up the Fund if any of the events listed in clause 19 has occurred in relation to the Principal Employer and (in the case of the events listed in clauses 19.1(a) to 19.1(d) inclusive) no substitute has been appointed pursuant to clause 13 or, if the Trustees so decide, they do not consider there is a reasonable expectation of a substitute being appointed.
- 20.2 Any such resolution is to be recorded in writing. The wind-up will take effect from the date specified in the resolution which may be:
- (a) prior to the passing of the resolution but after the occurrence of the relevant event specified in clause 20.1;
 - (b) at any time in the future.

21. **DISSOLUTION**

- 21.1 If the Fund is wound-up in part or full, the Trustees will give written notice to all relevant Beneficiaries.
- 21.2 The Trustees will then realise the appropriate part of the Fund (as determined by the Actuary) at such time and upon such terms as they think fit. No further benefits will accrue in respect of the relevant Beneficiaries once the wind-up has commenced.
- 21.3 All costs, charges and expenses which cannot be recovered from the Participating Employers will be met from the Fund. The net proceeds of realisation are then to be used to secure benefits as set out in the remainder of this clause.
- 21.4 Members' Accounts and any assets which the Trustees determine are assets derived from AVCs which have been paid to provide money purchase benefits (as defined in

the 1993 Act) will be used to secure benefits for relevant Members and Deferred Pensioners in accordance with clause 22.

- 21.5 In respect of the balance of the Fund the net proceeds of realisation will be used to secure benefits in the following descending order of priority, namely:
- (a) 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 73 of the 1995 Act);
 - (b) 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 for benefits within clause 21.4, clause 21.13 and (a) of this clause;
 - (c) any other liability in respect of pensions or other benefits.
- 21.6 If the Fund is insufficient to secure in full the benefits set out in one of the categories listed in clause 21.5 then such benefits will abate within that category on a pro-rata basis. There will then be no entitlement to any benefit which falls in a lower category.
- 21.7 The order of priority contained in clause 21.5 above reflects the priority given to benefits under the 1995 Act. To the extent the 1995 Act requires the Trustees to apply a different order of priority clause 21.5 will stand amended accordingly.
- 21.8 If Section 73 of the 1995 Act does not apply or if all or any benefits due from the Fund have not been secured after the application of clause 21.5 such unsecured benefits will be secured by applying the remaining assets in accordance with the winding-up provisions of the Preceding Documents.
- 21.9 If the Trustees, having taken actuarial advice, are of the opinion there is a deficiency in the Fund they will require the relevant Participating Employer to make good the deficiency.
- 21.10 If the Fund is insufficient to secure in full the benefits under clause 21.8 those benefits will abate in such manner as the Trustees consider equitable and in accordance with the Preceding Documents.
- 21.11 Subject to Section 76 of the 1995 Act if any surplus remains it will be returned to the Principal Employer or (if it no longer exists) to the Participating Employers in proportions determined by the Actuary.
- 21.12 For the avoidance of doubt, benefits secured under clause 21.8:
- (a) will be categorised and calculated by reference to their status on the date the wind-up commences unless the 1995 Act requires they are categorised by reference to an earlier date;
 - (b) will include relevant increases in Pension to date of retirement as appropriate;
 - (c) will include any benefits which may subsequently become payable on the death of the relevant Beneficiary.

- 21.13 For the avoidance of doubt the net proceeds of realisation to be used to secure benefits pursuant to clause 21.5 will not include any contract of insurance which is required to secure benefits as a first priority under Section 73 of the 1995 Act. Such benefits will be secured before the application of the net proceeds of realisation.
- 21.14 Until all assets of the Fund have been fully disposed of the trusts of the Fund will remain in force. In particular, the provisions of clause 24 will continue.
- 21.15 The trusts of the Fund will be dissolved and all current and previous parties will be discharged from their duties and liabilities under this Deed (to the extent they have not previously been discharged) in the event of the complete dissolution of the Fund under this clause 21.

22. SECURING BENEFITS ON WINDING-UP

- 22.1 Except as provided for below benefits are to be secured by the purchase of an appropriate annuity in respect of each Beneficiary or such other investment as may be permitted by law.
- 22.2 In exceptional circumstances of serious ill-health or where the requirements for payment of a winding-up lump sum or a winding-up lump sum death benefit or a trivial commutation lump sum or a trivial commutation lump sum death benefit under the Finance Act 2004 are met a lump sum may be paid on retirement instead to the former Member.
- 22.3 At the request of a Beneficiary the Trustees may effect a transfer out under rule 26 upon such terms as they consider appropriate.
- 22.4 The Trustees may arrange for any Beneficiary to participate in a Receiving Scheme in accordance with rule 27.
- 22.5 The Trustees may at their discretion secure benefits for the various categories referred to in clause 21.5 by different means. They may also secure benefits by different means for individuals who are in the same category.
- 22.6 The exercise of any of the powers stated in this clause will discharge the Trustees of their obligations to the Beneficiaries. They will be under no liability to review the application of the assets transferred or assigned.
- 22.7 The Trustees may (to the extent permitted by any relevant legislation) pay sums on account of benefits or effect partial transfers-out. These may be adjusted subsequently at the discretion of the Trustees in such manner as they may determine.
- 22.8 The Principal Employer will retain any powers and/or discretions vested in it pursuant to rules 26 and 27 unless an insolvency practitioner or official receiver (as defined in the Insolvency Act 1986) acts in relation to the Principal Employer when such powers and/or discretions will vest in the Trustees.
- 22.9 For the avoidance of doubt, the powers contained in clauses 22.1 to 22.8 will only apply in the event of a partial or full wind-up of the Fund as set out in clauses 19 to 21 (inclusive) of this Deed.

23. SPECIAL POWERS ON WINDING-UP

- 23.1 If any of the circumstances referred to in clause 20.1 occurs the Trustees may (at their discretion and regardless as to whether or not they have resolved to wind-up the Fund) elect to continue the Fund as a closed arrangement.
- 23.2 If an election is made under clause 23.1 no further benefits will be deemed to accrue and no future contributions will be payable after the date of the relevant event. Any benefits accrued prior to that date will be calculated in such manner as the Trustees decide. For the avoidance of doubt if such an election is made the trusts of the Fund will remain in force and in particular the provisions of clause 24 will continue.
- 23.3 The election will continue in force until the Trustees determine otherwise. The Fund is then to be wound-up in accordance with clauses 21 and 22.

24. AMENDMENT

[NB. Please see clause 6]

- 24.1 The Trustees and the Principal Employer may at any time amend, extend, revoke or replace all or any of the provisions of this Deed.
- 24.2 Subject to clause 24.1 being satisfied, any such changes may be made:
- (a) by deed executed by the Principal Employer and the Trustees;
 - (b) by resolution passed during a meeting of the Trustees and signed by the Chairman presiding at that meeting;
 - (c) by resolution passed in accordance with clause 5.
- 24.3 The changes will take effect from the date specified in the deed or resolution and may be introduced:
- (a) on a retrospective basis;
 - (b) at any time in the future;
 - (c) subject to the prior satisfaction of any conditions specified in such deed.
- 24.4 The powers contained in this clause will survive notwithstanding a partial or full wind-up of the Fund. They may be exercised at any time up to the date upon which the trusts of the Fund are discharged in full.
- 24.5 If however any of the events listed in clauses 19.1(b) or 19.1(c) should occur in relation to the Principal Employer then the powers contained in this clause will be exercised without the consent of the Principal Employer unless and until a new Principal Employer is appointed at which time the provisions of clause 24.1 will be re-instated.
- 24.6 Notwithstanding the above no changes are to be made which:
- (a) alter the main purpose of the Fund;

- (b) operate to substantially prejudice the interests of Members, Deferred Pensioners or Pensioners (except with the consent of the majority of those individuals so affected as determined by the Actuary);
- (c) result in the payment or transfer of any monies or other benefits of the Fund to any Participating Employer (except in the event of a termination under clause 21);
- (d) contravene clause 6.1(c) of this Deed;
- (e) contravene any of the provisions of the 1995 Act.

24.7 Any amendment to the Fund will be void only to the extent that it breaches this clause.

25. SURPLUS ON TAKEOVER

[NB. Please see clause 6]

25.1 If a Control Event occurs the Trustees may apply any surplus in the Fund to augment the benefits of Members and Pensioners (other than the benefits relating to Members' Accounts) in accordance with clause 25.3.

25.2 The surplus will be determined on the discontinuation basis used in the latest actuarial valuation and adjusted to date by the Actuary using assumptions set out in valuation estimates issued during the intervening period prior to the Control Event.

25.3 The surplus will be applied to augment benefits in the following priority:

- (a) to provide benefits for Members at the date the Control Event occurred calculated on Pensionable Salary projected to Normal Pension Date using the maximum increases in Salary assumed by the Actuary in the latest actuarial valuation;
- (b) to increase Pensions payable on the date the Control Event occurred by such uniform percentage as the remaining surplus will allow.

25.4 The above augmentations will be applied in accordance with the Rules of the Fund.

25.5 Where a Member has already received a lump sum benefit, the augmented benefit will be in the form of additional Pension.

26. NOTICES

26.1 Any notice required under this Deed may be served by delivering or sending it, in the case of:

- (a) any of the Participating Employers, the Principal Employer or a corporate Trustee, to its registered office;
- (b) an individual Trustee, to his normal place of work or last known private address;

(c) a Member or Beneficiary, to his normal place of work or last known private address.

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

26.3 Notices served by post will be sent by first class post.

27. **DETERMINATION OF QUESTIONS AND RESOLUTION OF DISPUTES**

27.1 Except as provided for expressly in this Deed the Trustees will have full power to determine conclusively any questions or matters of doubt concerning the Fund or the construction of this Deed.

27.2 Such determination will be binding on all interested parties.

27.3 The Trustees will put in place and operate a procedure for the resolution of disputes if so required by Section 50 of the 1995 Act.

28. **GOVERNING LAW**

28.1 This Deed will be governed in all respects by and construed in accordance with the laws of England.

28.2 The parties agree to submit to the jurisdiction of the English courts.

**SCHEDULE 1
PRECEDING DOCUMENTS**

**SMITH & NEPHEW UK PENSION FUND
INDEX OF DOCUMENTS**

DATE	DOCUMENT
14.12.2016	DEED OF AMENDMENT
18.12.2014	DEED OF AMENDMENT
18.12.2014	DEED OF INDEMNITY
28.08.2013	DEED OF INDEMNITY
24.04.2013	DEED ADOPTING A NEW DEFINITIVE DEED AND RULES
30.06.2010	DEED OF RETIREMENT AND APPOINTMENT
30.06.2010	DEED OF VARIATION
30.06.2010	DEED OF INDEMNITY
30.06.2010	GUARANTEE
30.06.2010	DEED OF TERMINATION
18.12.2009	DEED OF VARIATION
03.03.2009	GUARANTEE
03.03.2009	DEED OF TERMINATION
20.03.2007	DEED ADOPTING A NEW DEFINITIVE DEED AND RULES
03.07.2006	DEED OF VARIATION
16.06.2006	DEED ADOPTING A NEW DEFINITIVE DEED AND RULES
25.04.2006	DEED OF RELEASE
06.04.2006	DEFINITIVE DEED
23.01.2006	DEED OF NOVATION AND GUARANTEE
29.11.2005	DEED OF VARIATION
09.05.2005	DEED OF VARIATION
09.12.2003	DEED OF VARIATION

DATE	DOCUMENT
14.03.2003	DEED OF AMENDMENT
18.12.2002	DEED OF AMENDMENT
05.09.2001	SIXTH DEFINITIVE DEED AND RULES
18.05.2001	DEED OF ADHERENCE
13.12.2000	DEED OF REMOVAL AND APPOINTMENT
05.09.2000	DEED OF PARTICIPATION
12.04.2000	DEED OF REMOVAL AND APPOINTMENT OF TRUSTEES
15.12.99	DEED OF REMOVAL AND APPOINTMENT OF TRUSTEES
06.09.99	DEED OF PARTICIPATION
10.12.98	FIFTH DEFINITIVE DEED AND RULES
10.12.97	SUPPLEMENTAL DEED
22.07.97	DEED OF APPOINTMENT
03.06.97	FOURTH DEFINITIVE DEED
14.05.96	DEED OF AMENDMENT
12.02.96	DEED OF AMENDMENT
12.12.95	DEED OF AMENDMENT
11.05.95	DEED OF AMENDMENT
01.04.95	DEED OF APPOINTMENT
21.02.95	SUPPLEMENTAL TRUST DEED
21.02.95	DEED OF AMENDMENT
16.12.94	DEED OF APPOINTMENT
20.06.94	THIRD DEFINITIVE TRUST DEED AND RULES
12.01.94	DEED OF AMENDMENT
02.02.93	DEED OF AMENDMENT
02.02.93	DEED OF AMENDMENT

DATE	DOCUMENT
02.02.93	DEED OF AMENDMENT
10.12.92	DEED OF AMENDMENT
30.07.92	DEED OF AMENDMENT
23.01.92	DEED OF AMENDMENT
26.10.90	DEED OF AMENDMENT
11.12.89	DEED OF AMENDMENT
21.08.89	DEED OF AMENDMENT
09.06.89	DEED OF AMENDMENT
20.02.89	DEED OF AMENDMENT
24.10.88	DEED OF AMENDMENT
30.09.88	DEED OF AMENDMENT
15.03.88	DEED OF AMENDMENT
05.11.87	DEED OF AMENDMENT
16.06.87	DEED OF AMENDMENT
28.07.86	DEED OF AMENDMENT
17.04.86	DEED OF AMENDMENT
02.09.85	DEED OF AMENDMENT
29.07.85	DEED OF AMENDMENT
12.07.85	DEED OF AMENDMENT
04.03.85	DEED OF AMENDMENT
05.03.85	DEED OF AMENDMENT
12.10.84	DEED OF AMENDMENT
14.06.84	DEED OF AMENDMENT
18.06.84	DEED OF AMENDMENT
22.12.83	DEED OF AMENDMENT

DATE	DOCUMENT
03.05.83	DEED OF AMENDMENT
07.02.83	DEED OF AMENDMENT
14.06.82	DEED OF AMENDMENT
1981	DEED
24.04.81	DEED OF AMENDMENT
19.08.80	DEED OF INDEMNITY
30.06.80	DEED
28.09.79	DEED
29.09.78	DEED
13.12.77	DEED
23.09.76	DEED
14.10.75	DEED
01.10.73	DEED
30.05.69	DEED
02.02.68	DEED
21.03.67	DEED
04.08.65	DEED
29.09.61	TRUST DEED AND RULES

**SCHEDULE 2
THE RULES**

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THE RULES

Closure to future accrual

The Fund was closed to all future accrual with effect from 1 January 2017. Any Member in Pensionable Service on 31 December 2016 became a Deferred Pensioner on 1 January 2017 and for the avoidance of doubt, no further Pensionable Service has accrued to any Member with effect from this date.

Each Member in Pensionable Service on 31 December 2016 is entitled to benefits under Rule 15.1 (Withdrawal) on the basis that he or she ceased to be a Member on that date. The deferred Pensions of such members will be calculated by reference to Final Pensionable Salary as at 31 December 2016 and Pensionable Service to that date, except that each such member will also be credited with an additional period of pensionable service of three months as stated in the definition of Pensionable Service.

Note also Rule 12.7 (special early retirement terms).

1. ELIGIBILITY

1.1 An Employee:

- (a) as at 31 December 2002; or
- (b) who commences employment after 31 December 2002 and who received an offer of employment in writing from a Participating Employer before 11 December 2002 which states that he will be eligible for Membership

will be a Life Assurance Member from the later of the date he becomes an Employee or the date he attains the age of 18 until the date he first becomes eligible for Membership.

1.2 An Employee in employment with a Participating Employer as at 31 December 2002 will be eligible for Membership when he:

- (a) has completed twelve weeks' service with one or more of the Participating Employers;
- (b) has attained age 18; and
- (c) has not attained age 65;

provided that:

- (d) he does not receive a company contribution into the Smith & Nephew Stakeholder Pension Plan.

1.3 An Employee who commences employment with a Participating Employer after 31 December 2002 who received an offer of employment in writing from a Participating Employer before 11 December 2002 which states that he will be eligible for Membership, will be eligible for Membership when he:

- (a) has completed twelve weeks' service with one or more of the Participating Employers;
- (b) has attained age 18; and
- (c) has not attained age 65

provided that:

- (d) he does not contribute to a Personal Pension Scheme other than one as permitted by legislation; and
- (e) he does not receive a company contribution into the Smith & Nephew Stakeholder Pension Plan.

1.4 A person whose duties are performed abroad for an overseas employer and who is eligible for membership in accordance with the above provisions of this rule will be eligible for membership.

1.5 A Member will be eligible to join the 1980 Section of the Fund on the invitation of a Participating Employer. Before a Participating Employer issues such an invitation it must first obtain the consent of the Principal Employer.

1.6 If an individual would otherwise cease to be a Member by virtue of his duties being wholly performed abroad for an overseas employer, the Principal Employer may notify the Trustees that the individual will not cease to be a Member.

2. **ADMISSION TO MEMBERSHIP**

2.1 An Employee will be admitted to Membership the day he becomes eligible in accordance with rule 1 unless he notifies the Trustees in writing that he does not wish to be so admitted.

2.2 Anyone eligible for Membership who wishes to join the Fund must if so requested by the Trustees supply to them:

- (a) a copy of his birth certificate or other evidence of age satisfactory to the Trustees;
- (b) a written application in the form prescribed by the Trustees duly completed and signed;
- (c) such other information as the Trustees may require.

2.3 If for any reason the information supplied pursuant to rule 2.2 transpires to be incorrect or incomplete the Trustees may:

- (a) withdraw, reclaim, suspend or vary any benefits relating to the individual's Membership;
- (b) vary his Member Contributions; and/or

- (c) adjust the terms of his Membership;

in such manner as they consider appropriate. Such changes may be made retrospectively.

2.4 Any Employee as at 31 December 2002 who is eligible for Membership under rule 1.2 and who has failed to become a Member when first eligible or who has withdrawn from the Fund on or before 31 December 2002 may only be admitted or re-admitted:

- (a) at the discretion of the Principal Employer;
- (b) after the expiry of four weeks' written notice (expiring no later than 6 April 2003) to the Principal Employer of his / her wish to join;
- (c) on 6 April 2003.

An individual who has withdrawn from the Fund on or before 31 December 2002 may apply to rejoin only once.

No Further re-admissions will be permitted after 6 April 2003 and no further admissions will be permitted after 6 April 2003, except in respect of an Employee who is admitted under rule 2.1 when he first becomes eligible under rule 1.2 or rule 1.3.

An individual who has withdrawn from the Fund may apply to rejoin only once.

2.5 Subject to the provisions of rule 2.6, all Members in Service will automatically be Salary Sacrifice Members.

2.6 A Member in Service will be a Member making Member Contributions if:

- (a) the Member has notified the Principal Employer or any of the Participating Employers on or before 14 January 2013 that he will not participate in the relevant salary sacrifice arrangement;
- (b) the Principal Employer determines that the Member will be a Member making Member Contributions; or
- (c) in accordance with the terms of the salary sacrifice arrangement, a Member never becomes a Salary Sacrifice Member or a Member's status changes from a Salary Sacrifice Member to a Member making Member Contributions.

The Principal Employer may determine that a Member to whom (b) or (c) applies may become a Salary Sacrifice Member or become a Salary Sacrifice Member again unless the Member requests otherwise.

2.7 A Member making Member Contributions who has opted out of the salary sacrifice arrangement under rule 2.6(a) above may become a Salary Sacrifice Member on any subsequent annual renewal date subject to the terms of the salary sacrifice arrangement.

3. **CESSATION OF MEMBERSHIP**

3.1 An individual's Membership will cease if he:

- (a) is no longer eligible to remain in Membership (unless the Principal Employer determines otherwise pursuant to rule 1.6);
 - (b) exercises any statutory right to transfer or opt out of the Fund;
 - (c) exercises a right under the remainder of this rule;
 - (d) retires from the Fund.
- 3.2 Membership of the Fund is voluntary. An Employee may give four weeks' written notice to the Trustees to withdraw from Membership of the Fund.
- 3.3 A Participating Employer will give written notice to the Trustees if any Member ceases to be eligible to remain in the Fund.
4. **TEMPORARY ABSENCE**
- 4.1 If a Member is temporarily absent from work in circumstances other than those specified in rule 5 the Participating Employer with the consent of the Trustees may direct that he should remain in Membership:
- (a) for any period where absence is due to injury or illness;
 - (b) for any period of secondment overseas;
 - (c) for any period of absence with the consent of the Participating Employer for family reasons;
 - (d) for any period up to three years if absence is due to any other cause.
- 4.2 During the period of absence:
- (a) Pensionable Service will continue for so long as Member Contributions or Salary Sacrifice Contributions in respect of a Salary Sacrifice Member are paid to the Fund or for the entire period of any temporary absence under rule 4.1(b);
 - (b) Member Contributions will be based on the statutory or contractual pay received by the Member and Salary Sacrifice Contributions will be payable based only on the contractual pay received by a Salary Sacrifice Member;
 - (c) the Member's Pension will be calculated using:
 - (i) the salary payable on the basis of employment immediately prior to absence;
 - (ii) the salary received by a Member who is on temporary absence under rule 4.1(c) or, where the Member is absent on Paid Adoption Leave, the salary likely to have been paid to the Member if he had been working normally. If the Participating Employer certifies the amount of that salary in respect of a Member who is absent on Paid Adoption Leave, the Trustees will rely on that figure; or

- (iii) the salary agreed by the Principal Employer and the Trustees in the case of a Member on temporary absence under rule 4.1(b).
- 4.3 If the Member is not in receipt of any statutory or contractual pay the Principal Employer may direct that Member Contributions and Salary Sacrifice Contributions paid in respect of a Salary Sacrifice Member will be suspended or reduced.
- 4.4 If this occurs, the Pension and death benefits accruing in respect of the Member during that period of absence may be reduced by such amount as the Trustees and the Principal Employer determine and notify to the Member.
- 4.5 If the Member returns to work he may pay into the Fund any outstanding Member Contributions.
- 4.6 Membership will be terminated in accordance with rule 3:
 - (a) if the Member does not return to work after the relevant period set out in rule 4.1
 - (b) if the Member becomes a Member of another retirement benefits scheme during the absence (unless the Trustees and Principal Employer agree otherwise).

5. **MATERNITY LEAVE**

- 5.1 The provisions of this rule will apply to any Member who is temporarily absent from work on Ordinary Maternity Leave or Additional Maternity Leave.
- 5.2 If a Member is absent on Ordinary Maternity Leave:
 - (a) the Member's Pensionable Service will continue during the period of absence;
 - (b) Member Contributions will be payable to the Fund based on the statutory or contractual pay received by the Member and Salary Sacrifice Contributions will be payable based only on the contractual pay received by a Salary Sacrifice Member;
 - (c) benefits will be calculated using the salary likely to have been paid to the Member if she had been working normally. If the Participating Employer certifies the amount of that salary to the Trustees, the Trustees will rely on that figure.
- 5.3 If the Member is absent on Additional Maternity Leave:
 - (a) the Member's Pensionable Service will continue during the period of absence;
 - (b) Member Contributions will be payable to the Fund based on the statutory or contractual pay received by the Member (if any) and Salary Sacrifice Contributions will be payable based only on the contractual pay received by a Salary Sacrifice Member;
 - (c) benefits will be calculated using the salary likely to have been paid to the Member if she had been working normally. If the Participating Employer

certifies the amount of that salary to the Trustees, the Trustees will rely on that figure.

- 5.4 If the Member resumes employment at the end of the relevant maternity leave Pensionable Service will be granted for the entire period of absence and Pensionable Service which has accrued before, during and after the maternity leave will be aggregated.
- 5.5 If an Employee becomes eligible to join the Fund in accordance with rule 1 whilst on maternity leave she may become a Member of the Fund.

6. **EMPLOYMENT WITH AN OVERSEAS EMPLOYER**

- 6.1 This rule will apply solely to employees of Participating Employers which are not resident in the United Kingdom and will override any other provisions of the Fund which are inconsistent with it. The application of this rule will apply subject to rules 1 to 5.
- 6.2 Membership of the Fund will remain open to employees of Participating Employers that are not resident in the United Kingdom and were Members prior to 6 April 2006.
- 6.3 Such Members will cease to be eligible if the period of Service abroad exceeds 10 years, unless the Principal Employer determines otherwise. If there has been a previous period or periods of Service abroad continuation of Fund Membership is limited to an aggregate of 10 years, unless the Principal Employer determines otherwise.

For the purposes of the aggregation calculation:

- (i) any period or periods of Service abroad separated from a subsequent period of Service abroad by at least one year's employment in the United Kingdom can be ignored; and
 - (ii) any period of Service that arises from employees performing their duties abroad for a United Kingdom resident employer who are provided with benefits under an approved scheme (regardless of whether they are effectively chargeable) can be ignored.
- 6.4 Benefits for any employees of the said Participating Employers will be provided in relation only to their periods of Service with and remuneration from the Participating Employer whilst they satisfy the eligibility conditions in rule 6.3.
- 6.5 In the event of an employee of one of the said Participating Employers ceasing to satisfy the eligibility conditions in rule 6.3 his benefits will be held subject to the Rules until he leaves Service or retires or his/her benefits are transferred out of the Fund.

6A **ENHANCED PROTECTION**

- 6A.1 A Member on 6 April 2006 may give notice to the Trustees and to HM Revenue & Customs that he wishes to rely on "**enhanced protection**" within the meaning of paragraph 12 of Schedule 36 of the Finance Act 2004. Provided the notice is received by the Trustees no later than one month after 6 April 2006 (or such later date as the Trustees shall decide) the Member will with effect on and from 6 April 2006 cease to

be a Member and become an "**Enhanced Protection Member**" for the purpose of the Rules.

6A.2 If the Enhanced Protection Member remains in employment with a Participating Employer:

- (a) he will not accrue further Pensionable Service on or after 6 April 2006 for any purpose except that Rule 20.1(a) (survivor's pension on death while a Member) will apply as if he were a Member;
- (b) benefits will be calculated by reference to his Final Pensionable Salary and contractual salary or earnings at withdrawal, retirement or death;
- (c) he may not pay Member Contributions or have Salary Sacrifice Contributions paid in respect of him to the Fund;
- (d) benefits payable to or in respect of the Enhanced Protection Member shall not exceed the "**appropriate limit**" (as referred to in paragraph 13 of Schedule 36 of the Finance Act 2004);
- (e) in other respects he will be eligible for benefits under the Rules as if he remained a Member.

6A.3 The Trustees may further restrict the benefits payable to the Enhanced Protection Member if his enhanced protection would otherwise be prejudiced.

7. MEMBERS' NORMAL CONTRIBUTIONS

7.1 Member Contributions and Salary Sacrifice Contributions will be as follows:

- (a) A Member making Member Contributions to the Fund will pay ordinary contributions to the Fund equal to 3.5% of Pensionable Salary plus 1.5% of Pensionable Salary in excess of the Upper Earnings Limit or as otherwise determined by the Principal Employer.
- (b) Members are not required to contribute to the Fund while they are Salary Sacrifice Members. The Principal Employer or, if different, the Participating Employer in relation to the Member will pay Salary Sacrifice Contributions for a Salary Sacrifice Member. Those contributions will be equal to the ordinary contributions each Member would have paid if the Member had been a Member making Member Contributions. The rest of this rule 7 is subject to this.

7.2 A Member who is temporarily absent from the Fund in accordance with rule 4.1(b) will not be required to pay Member Contributions to the Fund and if the Member is a Salary Sacrifice Member, Salary Sacrifice Contributions will not be required to be paid in respect of the Member.

7.3 Member Contributions (or Salary Sacrifice Contributions) will cease with effect from Normal Pension Date (although AVCs may continue in accordance with rule 8) unless the Member exercises the option under rule 11.2(b).

- 7.4 The relevant Participating Employer will deduct the Member's Contributions (together with any AVCs made pursuant to rule 8) from his pay and remit them along with Salary Sacrifice Contributions in respect of Salary Sacrifice Members, to the Trustees within 19 days of the end of the month in which they are deducted or at such intervals as the Trustees may require (provided Section 49 of the 1995 Act is satisfied).
8. **MEMBER AVCS**
- 8.1 Subject as noted below a Member may pay AVCs either on a regular or an ad hoc basis until his Membership ceases or (in the case of regular amounts) he elects to stop paying them.
- 8.2 Before commencing ceasing or varying payment of AVCs the Member will give the Trustees such prior written notice (not exceeding 12 months) as they may from time to time require. This obligation will not apply where AVCs stop because Membership has ceased.
- 8.3 Subject as noted below a Member's AVC Account is to be used by the Trustees to increase the benefits payable in respect of his Membership. The benefits provided by AVCs must be of a value which the Trustees consider reasonable, having regard to:
- (a) the amount of the AVCs; and
 - (b) except in relation to benefits provided on a money purchase basis, the value of the other benefits under the Fund
- 8.4 In doing so the Trustees are (where appropriate) to obtain advice from the Actuary and (where possible) consult with the Member or former Member.
- 8.5 For the avoidance of doubt the Trustees will not be obliged to increase:
- (a) all or any specific benefit payable in respect of the Member or former Member;
 - (b) all benefits by the same proportion.
- 8.6 The Trustees may provide benefits from the Member's or former Member's AVC Account in a different format to those prescribed by the Fund.
- 8.7 Without limiting their powers under the rest of rule 8, the Trustees may make a transfer payment in respect of the assets in the Member's or former Member's AVC Account or purchase an annuity policy or a contract with an Insurance Company for the Member with or, where this is permissible under the 1993 Act, without his consent. Alternatively the Trustees may use the AVC Account to purchase such a policy or contract in their own name in order to provide benefits for the Member.
- 8.8 The Trustees will hold the AVC Accounts (including AVCs collected but not yet paid in) separate from the other assets of the Fund upon trust to provide benefits for the relevant individuals. Accordingly, on a total or partial wind-up the AVC Accounts are not to be used for the general purposes of the Fund except as required by Section 73 of the 1995 Act.

9. PARTICIPATING EMPLOYERS' CONTRIBUTIONS

- 9.1 Each of the Participating Employers will pay such contributions as are determined pursuant to rule 9.2 to be necessary (when added to the Member Contributions, the Salary Sacrifice Contributions and the assets of the Fund) to provide the benefits due under the Fund except the 1980 Section. For this purpose AVCs, Members' Accounts, AVC Accounts are to be ignored.
- 9.2 Subject to the provisions of the Pensions Act 2004, the contribution rate for each Participating Employer is to be determined jointly by the Trustees and the Principal Employer after having consulted with and obtained the recommendation of the Actuary.
- 9.3 The Principal Employer or, if different, the Participating Employer in relation to the Member will pay Salary Sacrifice Contributions for a Salary Sacrifice Member in accordance with Rule 7.1(b).
- 9.4 The contributions (including Salary Sacrifice Contributions) due from the Participating Employers will be paid to the Trustees or as they may otherwise direct. Subject to rule 7.4 above, payment will be made at such intervals as the Trustees and the Participating Employers may from time to time determine.
- 9.5 Each Participating Employer has the power to sever its obligation to make future contributions by giving six months' written notice to the Trustees. Upon receipt of such notice the Trustees will notify all relevant Members and upon expiry of the notice all future contributions due to the Fund will cease. In such circumstances the provisions of clauses 19 and 21 (as appropriate) will apply.
- 9.6 A Participating Employer may with the consent of the Principal Employer at any time pay further contributions to the Trustees. Such contributions may be made either for the general purposes of the Fund or for one or more of the specific purposes as specified by the Participating Employer. The Trustees may accept and apply the special contributions in accordance with rule 24.
- 9.7 If so required by Section 227 of the Pensions Act 2004, the Trustees will ensure that a schedule of contributions to the Fund is put in place. The schedule of contributions will be prepared, maintained and reviewed as necessary to comply with Section 227 of the Pensions Act 2004.
- 9.8 Each of the Participating Employers will pay such contributions in respect of Members of the 1980 Section as each Participating Employer from time to time determines.

10. NORMAL RETIREMENT

- 10.1 Subject to rule 11 a Member who reaches Normal Pension Date will retire and be paid a Pension.
- 10.2 The Pension will be equal on an annual basis to the following:
- (a) in respect of Pensionable Service prior to 1 January 1961, 1/120th of the Member's Final Pensionable Salary for each year of Pensionable Service;

- (b) in respect of Pensionable Service between 1 January 1961 and 31 March 1978 inclusive 1/80th of the Member's Final Pensionable Salary for each year of Pensionable Service (taken to the higher month);
- (c) in respect of Pensionable Service between 1 April 1978 and 30 April 1992 inclusive the sum of:
 - (i) 1/100th of the Member's Final Pensionable Salary up to the Upper Level; plus
 - (ii) 1/60th of the Member's Final Pensionable Salary (if any) in excess of the Upper Level;

both amounts to be multiplied by the relevant number of years of Pensionable Service;

- (d) for each year of Pensionable Service in respect of Pensionable Service from 1 May 1992 the difference between:
 - (i) 1/60th of the Member's Final Pensionable Salary; and
 - (ii) 1/240th of the Member's Final Band Earnings;

both amounts to be multiplied by the relevant number of years of Pensionable Service.

10.3 The Pension may be supplemented or varied in accordance with the Rules by:

- (a) the application of AVCs;
- (b) transfer payments;
- (c) the allocation of profits arising from share options granted by the Principal Employer pursuant to rule 23;
- (d) any other increases and augmentations;
- (e) the application of Members' Accounts; and
- (f) any deduction made relating to a paid up pension in respect of which a Participating Employer contributed up to date of entry in the Fund.

10.4 The Pension and other benefits provided for or on behalf of the Member or Deferred Pensioner will to the reasonable satisfaction of the Trustees be at least equal in value to the Member's Contributions and/or Salary Sacrifice Contributions paid in respect of a Salary Sacrifice Member (as at the date they were paid to the Fund).

11. LATE RETIREMENT

11.1 A Member's retirement may be deferred past Normal Pension Date with the written consent of the Participating Employer.

11.2 If such consent is given the Member will be entitled to choose either:-

- (a) a Pension calculated at Normal Pension Date in accordance with rule 10 and increased in accordance with rule 11.3; or
- (b) to continue paying Member Contributions or having Salary Sacrifice Contributions paid in respect of a Salary Sacrifice Member to the Fund and accruing benefits as if he had not reached Normal Pension Date. The Member will be entitled to receive a pension on his actual retirement date.

The Member must make his selection under this rule 11.2 at least 14 days before Normal Pension Date.

- 11.3 The Pension will be increased by such amount as the Actuary recommends and the Trustees and the Principal Employer agree from time to time to reflect the period of deferment.
- 11.4 A Member to whom rule 11.1 applies may, if the Trustees and Principal Employer agree, elect to receive a Pension calculated in accordance with rule 11.2(a) and paid from Normal Pension Date.
- 11.5 If a Member chooses a Pension in accordance with rule 11.2(a) on death in Service lump sum death benefits will be payable in accordance with rule 18.8. If a Member chooses a Pension in accordance with rule 11.2(b) on death in Service lump sum death benefits will be payable in accordance with rule 18.1.
- 11.6 A Deferred Pensioner's retirement may be deferred past Normal Pension Date with the written consent of the Participating Employer. If such consent is given the Deferred Pensioner will be entitled to a Pension calculated in accordance with rule 11.2(a).

12. **EARLY RETIREMENT**

- 12.1 A Member may retire early:
 - (a) after the age of 50 with the consent of or at the request of the Participating Employer and the Principal Employer;
 - (b) after the age of 50 in any other case (other than Incapacity);
 - (c) at any age on the grounds of Incapacity by election in writing to the Trustees.

With effect from 6 April 2010, the minimum age for retirement under rule 12.1(a) will be age 55.

- 12.2 On retirement the Member will receive a Pension calculated in accordance with rule 10 and adjusted (in relation to the Pension calculated under rule 10.2):
 - (a) in the case of retirement under rule 12.1(a) by the percentage reduction set out in the Table 1 of Schedule 4;
 - (b) in the case of retirement under rule 12.1(b) by a reduction determined by the Actuary and agreed by the Trustees to take account of early payment.

- (c) in the case of retirement under rule 12.1(c) by increasing the relevant Pensionable Service by one half of the period between the Member's date of retirement and Normal Pension Date.
- 12.3 A Deferred Pensioner may retire and elect in writing to the Trustees to receive an immediate Pension.
- (a) on any grounds after the age of 50;
 - (b) at any age by election in writing to the Trustees on account of physical or mental deterioration which in the opinion of the Trustees (having received evidence from a registered medical practitioner) is sufficiently serious that the Deferred Pensioner is and will continue to be prevented from following his normal employment and where the Deferred Pensioner has in fact ceased to follow that employment.
- 12.4 On retiring early the Deferred Pensioner will receive a Pension calculated in accordance with rule 15.2 and rule 16 and reduced in accordance with rule 12.2(b).
- 12.5 No reduction will apply under rule 12.1(b) or rule 12.3 in the case of a Member or Deferred Pensioner employed by a Participating Employer at 6 November 1987 retiring on or after his 60 birthday:
- (a) in respect of Pensionable Service prior to 1 June 1995 in the case of a female Member;
 - (b) in respect of Pensionable Service after 16 May 1990 and prior to 1 June 1995 in respect of a male Member.
- 12.6 The Trustees may from time to time request the Member or Deferred Pensioner to provide evidence of Incapacity until they attain Normal Pension Date. If no evidence is produced or if it indicates there has been a material improvement in health they may reduce suspend or withdraw the Pension. They will have power to restore the Pension in accordance with the Preservation Requirements. A pension may not be reduced if this would result in an unauthorised payment for the purposes of Section 160(5) of the Finance Act 2004.
- 12.7 Before 1 January 2022, a Deferred Pensioner who:
- (a) ceased to be a Member on 31 December 2016 on closure of the Fund to future accrual;
 - (b) has attained age 50; and
 - (c) remains in employment with a company in the Smith & Nephew plc group of companies;

may, on ceasing such employment, retire and elect in writing to receive before Normal Pension Date an immediate Pension calculated in accordance with rule 15.2. Subject to Rule 12.5, the Pension will be reduced by a percentage reduction calculated on the basis of the following:

- (i) 25% of the level of percentage reduction that would be applied to such member in accordance with Table 1 of Schedule 4; and
- (ii) 75% of the level of percentage reduction that would be applied to such member in accordance with the standard early retirement factors in place from time to time as determined by the Actuary and agreed by the Trustee.

13. LUMP SUM BENEFITS

13.1 A Member or Deferred Pensioner may elect to commute part of his Pension to a cash lump sum. This will be of an amount certified by the Actuary as equivalent to the Pension surrendered. The lump sum must meet the requirements for a "**pension commencement lump sum**" under the Finance Act 2004.

13.2 Such election must be made by giving written notice to the Trustees before payment of the Pension commences unless in the opinion of the Trustees the individual is unable to give such consent due to serious ill health. In such circumstances the Trustees may at their discretion effect a commutation without the individual having made an election.

13.3 The lump sum will be due at the same time as the first payment of Pension.

13.4 At the Trustees' discretion a lump sum may also be paid in lieu of Pension to:

- (a) a Member or former Member in lieu of all benefits payable (including those payable on his death) where the lump sum meets the requirements for a trivial commutation lump sum under the Finance Act 2004;
- (b) a Nominee, in lieu of his benefits where the lump sum meets the requirements for a trivial commutation lump sum death benefit under the Finance Act 2004;
- (c) a Member or former Member in lieu of his Pension where the requirements for a serious ill health lump sum under the Finance Act 2004 are met;
- (d) a Pension Credit Member where the requirements for a serious ill health lump sum under the Finance Act 2004 are met;
- (e) a Member or former Member where the requirements for a "**lifetime allowance excess lump sum**" for the purposes of the Finance Act 2004 are met;
- (f) a Member or former Member where a lump sum may be paid in accordance with Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (small commutation payments).

13.5 If the Trustees exercise their discretion pursuant to rule 13.4 they will deduct from the lump sum any tax for which they may be liable.

14. CONVERSION

14.1 With the Trustees' consent a Member or Deferred Pensioner may elect to surrender part of his benefits to provide a Nominee's Pension. The amount will be certified by the Actuary as equivalent to the Pension surrendered.

- 14.2 Such election may be made by giving written notice to the Trustees not more than six months prior to the date of retirement. With the Trustees' consent more than one Nominee may be elected.
- 14.3 No election may be made to the extent it would reduce the Pension below that of the Nominee's Pension.
- 14.4 The election will be void if before the Member or Deferred Pensioner retires:-
- (a) the Nominee dies,
 - (b) where the Nominee is his Spouse the marriage is dissolved or a decree of judicial separation is granted unless written confirmation to the contrary is given by the Member or Deferred Pensioner or a court of law so directs;
 - (c) where the Nominee is a child, he no longer satisfies that definition;
 - (d) the Member makes a new election in accordance with rule 14.2 or withdraws his election.
- 14.5 If at the retirement of a Member or Deferred Pensioner a valid election subsists, he will be paid reduced benefits in accordance with rule 14.1 and a Pension will be paid on his death to the Nominee.

15. **WITHDRAWAL**

- 15.1 Subject to rules 26 and 27 and Rule 15.7 anyone ceasing to be a Member who does not receive an immediate Pension will instead be granted a deferred Pension provided either:-
- (a) he has completed two years of Qualifying Service; or
 - (b) the Trustees have received a transfer in respect of him from a Personal Pension Scheme.
- 15.2 The deferred Pension will be payable for life and will be calculated in accordance with rule 10 and will (subject to rules 11 and 12) commence from Normal Pension Date.
- 15.3 If the Deferred Pensioner dies he will be entitled to benefits set out in rule 18.
- 15.4 The benefits of a Deferred Pensioner who has less than five years' Pensionable Service may be secured (at the Trustees' discretion) by a transaction to which Sections 19 and 81 of the 1993 Act apply. In securing such benefits the Trustees will act in accordance with the provisions of the Preservation Requirements. Once secured in accordance with this rule 15.4 the Deferred Pensioner and all others claiming under him will have no further interest in the Fund in respect of such benefits.
- 15.5 A Deferred Pensioner who does not have two years' Qualifying Service will be given a refund of Member Contributions with Interest. From this refund the Trustees will deduct any tax for which they are liable.

15.6 Anyone who receives such a refund (and anyone who may derive any entitlement through his Membership) will have no further interest under the Fund.

15.7 A Member who withdraws from the Fund under Rule 3 but remains an employee of a Participating Employer, may, if the Trustees and the Principal Employer agree, elect to receive before Normal Pension Date an immediate Pension calculated in accordance with rule 15.2 and rule 16 and reduced by an amount determined by the Trustees after consulting the Actuary and obtaining the consent of the Principal Employer but subject to rule 12.5. The minimum age at which an immediate pension may be paid is 50 before 6 April 2010 and 55 on or after 6 April 2010.

16. REVALUATION

16.1 Subject to rule 16.2 the Pension entitlements in rule 15 will increase from the date the Member left Pensionable Service to Normal Pension Date by the lesser of:

- (a) 5% per annum compound; or
- (b) such other amount as may be specified by the Secretary of State in accordance with the 1993 Act.

16.2 In relation to a Member employed by a Participating Employer at 6 November 1987 who retires early after his 60th birthday rule 16.1 will apply only until the Member attains 60:

- (a) in respect of Pensionable Service prior to 1 June 1995 in the case of a female Member;
- (b) in respect of Pensionable Service after 16 May 1990 and prior to 1 June 1995 in the case of a male Member;

16.3 The Pension calculated in rule 16.2 will be augmented by such amount as is recommended by the Actuary and agreed by the Trustees and the Principal Employer.

17. EVIDENCE OF DEATH

17.1 The Trustees may obtain such evidence as they consider reasonable to confirm the death of an individual.

17.2 When a sum is to be paid to a deceased's personal representative the Trustees may first require a copy of the grant of representation. However, they will not be obliged to do so.

17.3 When a sum is to be paid to the deceased's personal representative but no grant has been taken out the Trustees may at their discretion pay the relevant sums to the deceased's personal representatives, Spouse, next-of-kin or such other person as they may consider appropriate. Payment to the relevant individual will be a valid discharge to the Trustees.

18. LUMP SUM DEATH BENEFITS

Death in Service

- 18.1 If a Member or Life Assurance Member dies in Service a sum will be paid which is equal to the greater of the benefit set out in rules 18.2 to 18.5 plus the benefit set out in rule 18.6.
- 18.2 The benefit referred to is an amount equal to either:
- (a) (for salaried staff) 4 times the Member's contractual salary or, if greater, Notional Salary at date of death; or
 - (b) (for non-salaried staff) 208 times the Member's contractual minimum weekly earnings (or, if greater, the amount which would have been the Member's contractual minimum weekly earnings had he not sacrificed earnings under a recognised salary sacrifice arrangement) at date of death.
- 18.3 The benefit referred to is an amount equal to the death benefit the Member would have received had he died on 30 September 1983.
- 18.4 The benefit referred to is an amount equal to four times the highest Pensionable Salary in any one of the three complete fiscal years immediately prior to death.
- 18.5 The benefit referred to is an amount equal to four times the Member's Pensionable Salary for the twelve months immediately prior to death.
- 18.6 The benefit referred to is an amount equal to the Member's Contributions (and Salary Sacrifice Contributions paid into the Fund in respect of a Salary Sacrifice Member by any of the Participating Employers) together with Interest plus the value of the Member's Account.
- 18.7 The lump sum death benefit referred to in rule 18.1 will not be less than the transfer payment to which the Member would have been entitled at date of death. It may be adjusted in respect of Members to whom rule 1.4 or rule 28 apply in respect of whom a different benefit has been agreed.

Death in Service after Normal Pension Date

- 18.8 If a Member dies in Service after Normal Pension Date having exercised the option under rule 11.2(a) a lump sum will be paid which is equal to:
- (a) the maximum lump sum the Member could have elected to take under rule 13 had he retired immediately prior to date of death; and
 - (b) the lump sum set out in rule 18.9.

Death after Retirement

- 18.9 If a Pensioner dies within five years of his date of retirement a lump sum will be paid which is equal to the balance of the Pension he would have received had he survived to the fifth anniversary of retirement (excluding future increases in Pension).

Death of Deferred Pensioner

- 18.10 If a Deferred Pensioner dies a lump sum will be payable to his personal representatives which is equal to his Member Contributions and Salary Sacrifice Contributions paid to the Fund in respect of him by any of the Participating Employers, together with Interest plus the value of the Member's Account.
- 18.11 The lump sum death benefit payable under this rule will be subject to any special conditions or restrictions from time to time agreed between the Trustees and the Principal Employer.

19. **DISCRETIONARY TRUST**

- 19.1 All lump sum benefits arising under rule 18 (other than any sum due under rule 18.10) will be held by the Trustees separately from the assets of the Fund.
- 19.2 Subject to rule 19.5, the Trustees will pay the benefit within two years of the date of death of the Member or Beneficiary.
- 19.3 The Trustees will distribute the sum as they think fit to or for the benefit of:
- (a) one or more of the deceased's Dependants;
 - (b) any beneficiary who is named in the will of the deceased;
 - (c) any other person, trust or corporate body.

In making such distribution the Trustees will consider any nomination of the deceased and any recommendations of the Principal Employer but will not be obliged to act on them.

- 19.4 If the sum is not distributed within two years of the date of death it will be paid to the personal representatives of the deceased.
- 19.5 If the deceased's estate passes as bona vacantia, no payment will be made and the sum will be retained in the Fund for the general purposes of the Fund.
- 19.6 The Trustees may establish a trust, on such terms as they may think appropriate, for the benefit of one or more of the persons to whom benefits may be paid under rule 19.3 and may pay to it any sum arising under rule 18. Any costs and expenses incurred in establishing the trust or making the payment to it may be deducted from the payment if the Trustees so decide.
- 19.7 The Trustees may use all or part of any lump sum payable pursuant to this rule 19 to reimburse any person who has paid the funeral expenses of a deceased Member or former Member.

20. **SPOUSES' AND NOMINATED DEPENDANT'S PENSION**

- 20.1 If a Member or Pensioner dies a Pension will be payable to a Spouse or Nominated Dependant which is equal to the following:
- (a) in respect of a Member to which rule 18.1 applies one quarter of the Pension to which the Member would have been entitled at Normal Pension Date (or date

of death if the Member has deferred retirement after Normal Pension Date in accordance with rule 11) based on his Final Pensionable Salary at date of death

- (b) in respect of a Pensioner, one half of the Pension at date of death calculated as if no commutation or election had been made under rules 13 or 14.

20.2 The Pension will be paid in the following order of priority;

- (a) to any Spouse of the Member;
- (b) if no Spouse exists to the Nominated Dependant of the Member if the Trustees so decide.

20.3 The Trustees may withhold or reduce payment of the Pension in the following circumstances:

- (a) where the deceased has married after ceasing to be in Pensionable Service and dies within twelve months of that marriage;
- (b) where the Trustees determine that the Nominated Dependant no longer satisfies that definition;
- (c) where the existence of a Spouse is discovered and a Pension was previously paid to a Nominated Dependant;
- (d) where the Spouse or Nominated Dependant is more than nine years and one day younger than the deceased (the reduction being 2.5% for each year in excess of the nine years);

provided this does not result in an unauthorised payment for the purposes of Section 160(5) of the Finance Act 2004.

20.4 In circumstances where there is more than one Spouse the Trustees will determine to whom the Spouse's Pension will be paid. In reaching their decision the Trustees may take account of any prior representation made to them in writing by the deceased.

20.5 No Pension will be payable under this rule unless the Trustees have received such evidence to support the claim as they may require.

21. **PAYMENT OF PENSIONS**

21.1 Subject to rule 21.6 every Pension will be payable by equal monthly instalments.

21.2 A child will receive a Pension for so long as he remains a Dependant of the Member.

21.3 Payment of each instalment will be made on such day of the month as the Trustees may from time to time decide.

21.4 For instalments which cover periods greater or less than a month the payment will be adjusted on a pro rata basis.

- 21.5 Should the final instalment be overpaid the Trustees may call for repayment of the relevant amount. However, they will not be obliged to do so.
- 21.6 If at any time the Trustees consider it would be unduly costly or inconvenient to make monthly payments they may instead pay the Pension at such intervals as they deem appropriate.
- 21.7 Benefits will be paid by such method as the Trustees may from time to time determine including payment:
- (a) at the headquarters of the Principal Employer, subject to the requirements of the 1995 Act;
 - (b) by cheque, money order or other negotiable instrument sent to the last known address of the Beneficiary;
 - (c) by transfer or credit to a bank, building society or other account nominated by the Beneficiary;
 - (d) by an insurance company or agent appointed by the Trustees.
- 21.8 All benefits will be sent at the risk of the Beneficiary and the Trustees will not be liable should they go astray. The Trustees will not be obliged to obtain a formal receipt or acknowledgement of payment.
- 21.9 If the Beneficiary is a child or if in the opinion of the Trustees a Beneficiary has become incapable of managing his own affairs they may:
- (a) pay any benefits due to anyone they consider is a proper person to receive the same on his behalf; or
 - (b) pay or apply any benefit to which the Beneficiary is entitled under the Fund for the maintenance of the Beneficiary or any Nominee; or
 - (c) hold any benefit until the Beneficiary is able to act, or for the Beneficiary's estate; or
 - (d) pay any benefit to trustees to hold on any trusts for the principal benefit of the Beneficiary and any benefit subject to any powers or provisions (including provisions as to costs), as the Trustees may direct.
- 21.10 In such circumstances the Trustees will not be obliged to ensure how or for whose benefit the payment is applied. The payment itself will be sufficient discharge to the Trustees for the relevant benefits.
- 21.11 A Pension payable to a Spouse or Nominated Dependant may be commuted in circumstances set out in rule 13.4.
- 21.12 If any Beneficiary is detained in legal custody, or otherwise against his will, the Trustees may pay or apply the Beneficiary's benefit under the Fund for the maintenance of any Nominee.

22. PENSION INCREASES

22.1 Pensions will increase in payment on each 1 October in line with the Index (published in the immediately preceding month of August) to a maximum of 5%.

22.2 The Principal Employer or Smith & Nephew PLC (as appropriate, the "**Offeror**") and either:

(a) a Pensioner (the "**Accepting Pensioner**") (and where relevant a Spouse or Nominated Dependant of the Pensioner (the "**Accepting Contingent Beneficiary**")); or

(b) a Spouse or Nominated Dependant of a deceased Member or Pensioner, who is in receipt of a pension under Rule 20 (*Spouses' and Nominated Dependents' Pension*) (the "**Accepting Beneficiary in Payment**"),

may agree before 31 December 2015, on such terms as are decided by the Offeror, that the Accepting Pensioner or Accepting Beneficiary in Payment (as appropriate) shall be entitled to exchange the increases otherwise payable to and in respect of such Accepting Pensioner or Accepting Beneficiary in Payment (as appropriate), relating to such benefits in respect of Pensionable Service prior to 6 April 1997 as the Offeror determines, for a higher Pension that does not increase in payment of such amount as the Offeror shall determine having consulted with the Trustees.

The amount of any benefit payable on the death of an Accepting Pensioner shall be calculated on the basis of the higher Pension agreed between the Offeror and the Accepting Pensioner (and where relevant the Accepting Contingent Beneficiary).

Where the Accepting Pensioner (and where relevant the Accepting Contingent Beneficiary) have agreed that no increases shall be payable in respect of a proportion of the Accepting Pensioner's Pension, no increases shall be payable in respect of the equivalent proportion (as determined by the Trustees) of any Pension payable to the Spouse or Nominated Dependant of the Accepting Pensioner.

23. ALLOCATION OF SHARE OPTIONS

23.1 The benefits set out in rules 10 to 20 will be increased from time to time by any credit notionally allocated to a Member, Deferred Pensioner or Pensioner in accordance with rules 19 and 20 and Appendix 2 to the Third Definitive Deed in respect of the share option arrangement identified in that Deed.

24. AUGMENTATION

[NB. Please see clause 6]

24.1 A Participating Employer may with the consent of the Principal Employer request the Trustees to enhance the entitlements relating to any Beneficiary in such manner as it may prescribe including the following:

(a) increasing benefits;

(b) accelerating the payment of benefits;

- (c) granting additional and/or new benefits;
 - (d) enhancing Pensionable Service;
 - (e) reducing, suspending or disapplying the requirement to pay Member Contributions and Salary Sacrifice Contributions.
- 24.2 The Trustees may implement the request provided the relevant Participating Employer pays such further contributions (if any) as the Actuary may recommend.
- 24.3 The Trustees may with the consent of the Principal Employer enhance the entitlements of any Beneficiary as set out in rule 24.1 in the circumstances set out in clause 15.
- 24.4 The amount of any augmentation under rule 24.1 will be added to the relevant Pension payable in respect of the Member. If the Member leaves the Fund prior to Normal Pension Date the augmented benefits may be reduced to comply with the Preservation Requirements.
- 25. PENSION SHARING ON DIVORCE**
- 25.1 The Trustees will give effect to any Pension Sharing Order which applies to the Fund in accordance with this rule, the Welfare Reform Act and Part 5 to Schedule 6.
- 25.2 The Trustees will discharge their liability for Pension Credits for and in respect of an Ex-Spouse using:
- (a) the External Transfer Option, or where the consent of the Ex-Spouse is not obtained;
 - (b) subject to rule 25.4, the Default Option
- 25.3 Once such payment has been made pursuant to rule 25.2 above, the Trustees will be discharged from any further liability to and in respect of the Ex –Spouse in relation to his Pension Credit.
- 25.4 The Trustees may from time to time determine that liability for Pension Credits is to be discharged using the Internal Transfer Option. In such circumstances the Trustees may make such arrangements as they consider fit to give effect to an Internal Transfer Option in accordance with the Welfare Reform Act. For this purpose:
- (a) the Trustees will have any powers and discretions; and
 - (b) the Rules will be deemed to be amended to include any rules;
- that the Trustees consider are appropriate.
- 25.5 In making any arrangements for an Internal Transfer Option the Trustees will comply with:
- (a) the requirements of Part IVA of the 1993 Act (requirements relating to Pension Credit Benefit);

- (b) any requirements of the 1993 Act with regard to rights arising from contracting-out of the state earnings related pensions scheme.
- 25.6 If an Internal Transfer Option is put in place safeguarded rights will have the meaning given in Section 68A(2) of the 1993 Act and no other Pension Credit Rights will be treated as safeguarded rights unless the Trustees specifically resolve otherwise. The Trustees will keep such records as will enable the safeguarded rights determined in accordance with this paragraph to be identified at any time.
- 25.7 No person with a Pension Credit or Pension Credit Rights will have any right or interest under the Fund except under and to the extent specified in this rule 25 or required by law. For the avoidance of doubt such person is excluded from the ambit of any rule which provides for:
- (a) the augmentation of benefits or improvement of the terms on which benefits are payable; or
 - (b) discretionary pension increases; or
 - (c) granting new or additional benefits;
- whether the Fund is continuing or winding up.
- 25.8 The provisions of rule 25.7 above will not operate in respect of any other capacity in which the person may have rights or interests under the Fund whether as a Member, or former Member, Dependant, Nominated Dependant or Nominee.
- 25.9 If the Ex-Spouse dies after a Pension Sharing Order has been made but before the Trustees have discharged their liability in respect of the Pension Credit the Trustees may at their discretion but in accordance with the requirements of the 1993 Act discharge their liability in respect of the Pension Credit (or such part of the Pension Credit as they see fit) by applying the Pension Credit in any one or more of the following ways as the Trustees determine:
- (a) by paying one or more lump sum death benefits at the discretion of the Trustees in accordance with rule 19; and/or
 - (b) by paying one or more Pensions to one or more of the Nominees Nominated Dependants or Dependants as decided by the Trustees;
 - (c) by purchasing an annuity policy or contract for the benefit of any one or more Nominees Nominated Dependants or Dependants as decided by the Trustees;
 - (d) by retaining the Pension Credit (or balance of the Pension Credit not applied above) for the general purposes of the Fund.
- Rule 13.4 will apply to any Pension paid under rule 25.9(b)
- 25.10 Once the Trustees have applied the Pension Credit pursuant to rule 25.9 the Trustees will be discharged of their liability in respect of the Pension Credit (except their liability to a Nominee Nominated Dependant or Dependant in respect of a Pension put in payment for them pursuant to rule 25.9).

25.11 The Trustees may subject to complying with any relevant regulations pursuant to the Welfare Reform Act impose such charges as they think fit in relation to a Pension Sharing Order and will have all such powers as are available to them under the Welfare Reform Act.

25.12 To the extent this rule does not reflect the statutory requirements in relation to Pension Debits, Pension Credits and Pension Credit Rights it will stand amended accordingly.

26. **INDIVIDUAL TRANSFERS OUT**

26.1 A Deferred Pensioner may request that his entitlements under the Fund be transferred if he:

- (a) sets up a Personal Pension Scheme; or
- (b) becomes a member of another retirement benefits scheme or arrangement approved (where necessary) by the Board to take a transfer.

26.2 If such a request is made the Trustees may with the agreement of the Principal Employer and the Deferred Pensioner pay the Cash Equivalent for the Deferred Pensioner. The transfer is to be made in accordance with any relevant requirements of the 1993 Act (save that any requirement that the Deferred Pensioner may only request the transfer more than 12 months prior to Normal Pension Date shall not apply).

26.3 The Trustees are to provide a certificate to the trustees of the Receiving Scheme showing how much of the transfer value:

- (a) represents Member Contributions and Salary Sacrifice Contributions paid to the Fund in respect of the Member;
- (b) can be paid by way of a refund of contributions.

26.4 A Deferred Pensioner may request the Trustees to purchase for him an annuity policy or contract with an Insurance Company. The purchase price of the policy or contract is to be equal to the Cash Equivalent referred to in rule 26.2.

26.5 Once a transfer has been effected or an annuity policy or contract has been purchased all rights under the Fund relating to or derived from the Deferred Pensioner will be extinguished and the Deferred Pensioner and all others claiming under him will have no further interest in the Fund.

26.6 Where a Deferred Pensioner elects in writing before 31 December 2015 to take a transfer payment in response to an offer from the Principal Employer or Smith & Nephew PLC, the Principal Employer may direct the Trustees to make that transfer payment and may direct the amount of that transfer payment, provided that the transfer payment is not less than the Deferred Pensioner's Cash Equivalent.

A transfer payment under this sub-rule will extinguish all rights to the benefits for and in respect of the Deferred Pensioner which are represented by the transfer payment. This sub-clause applies notwithstanding any other transfer out provisions in the Trust Deed or the Rules.

- 26.7 (a) The provisions of this Rule 26 will not apply where a Deferred Pensioner requests a partial transfer of some of his entitlements under the Fund.
- (b) Where such a request is made, the Trustees may, with the agreement of the Principal Employer, transfer an amount determined by them after consulting the Actuary in respect of such entitlements of the Deferred Pensioner as they determine.
- (c) The transfer may be made to:
- (i) a Personal Pension Scheme; or
 - (ii) another retirement benefits scheme or arrangement; or
 - (iii) an Insurance Company in order to purchase an annuity policy or other contract;
- provided that it is a "recognised transfer" for the purposes of s169 of the Finance Act 2004.
- (d) Such partial transfer will be subject to such conditions as the Trustees may determine.
- (e) A partial transfer made under this sub-rule will extinguish all rights to the entitlements for and in respect of the Deferred Pensioner which the Trustees determine are represented by the partial transfer and will discharge the liability of the Trustees in respect of those entitlements.

27. **BULK TRANSFERS OUT**

[NB. Please see clause 6]

- 27.1 At the request or with the consent of the Principal Employer the Trustees may arrange for any or all of the Beneficiaries (whether immediate deferred or contingent) to participate in a Receiving Scheme.
- 27.2 Subject to rule 27.6 such arrangements may be made without obtaining the consent of any of the persons concerned but only after informing the Members concerned.
- 27.3 Participation may be effected by transferring to the Receiving Scheme all or any part of the Fund assets and monies upon terms agreed between the Trustees and the trustees or administrator of the Receiving Scheme.
- 27.4 For the avoidance of doubt the transfer may include all or any part of an unallocated surplus within the Fund.
- 27.5 At the direction of the Principal Employer the Trustees may effect a transfer under rule 27.3 for the purpose of amalgamating the Fund with another arrangement. The rights of transferring Members in the Receiving Scheme will be at least equal in value to the rights transferred in these circumstances.
- 27.6 No transfer may be made if it would:

- (a) offend against the law of perpetuities;
- (b) breach the provisions of the Preservation Requirements.

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

28. **TRANSFERS IN**

[NB. Please see clause 6]

28.1 If an individual previously participated in another retirement benefits scheme or Personal Pension Scheme the Trustees (with the consent of the Principal Employer) may receive a transfer payment in respect of such participation.

28.2 Such transfers may be accepted on an individual or bulk basis and may include all or any part of an unallocated surplus within the transferring scheme. The transfer may be made at the direction of the Principal Employer in order to amalgamate the Fund with another arrangement.

28.3 Upon receipt of the transfer payment the individual will be credited with such additional rights as the Trustees may determine (after prior consultation with the Principal Employer and the Actuary) provided this is in accordance with statutory requirements regarding the receipt of a transfer payment.

28.4 Where a transfer payment is accepted the Member's Contributions will be deemed to be those which would be payable on withdrawal from the transferring scheme. For this purpose any deduction which would have been made in respect of tax is to be ignored.

28.5 If the transferring scheme has no provision for withdrawal payments the Member Contributions will be those which it actually credits to the Member.

29. **BULK TRANSFERS IN**

[NB Please see Clause 6]

29.1 At the request of the Principal Employer the Trustees may accept a transfer of all or part of the assets of another retirement benefit scheme on the basis that the Trustees will discharge all or part of the liabilities of the transferring scheme.

29.2 Such a transfer will be on such terms as may be agreed between the Trustees (after taking the advice of the Actuary) and the trustees or administrator of the transferring scheme and approved by the Principal Employer.

29.3 For the avoidance of doubt the transfer may include all or any part of an unallocated surplus from the transferring scheme.

30. ALTERNATIVE TO SHORT SERVICE BENEFIT

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

30.2 For this purpose the Trustees are to consult with the Actuary.

31. DISCLOSURE OF INFORMATION

31.1 The Trustees may ask any Beneficiary to supply such evidence of age, identity, status or other information as they may from time to time require.

31.2 If such information is not supplied or is incorrect the Trustees may make such adjustments to the benefit payable to or in respect of the Beneficiary as they think fit. These adjustments may be made on a retrospective basis and the Trustees may reclaim any benefit which has been over-paid previously.

32. BAR ON ASSIGNMENT

32.1 Except to the extent allowed by Section 95 of the 1995 Act or in relation to benefits in respect of which a Pension Sharing Order applies no benefit payable under the Fund is capable of being charged or assigned nor can a lien or set-off be exercised in respect of such a benefit.

32.2 No attempt by or on behalf of a Beneficiary to effect a transaction in respect of a benefit which is not permitted under rule 32.1 will be binding upon the Trustees. Should such an attempt be made the relevant part of the benefit will cease to be payable.

32.3 In such circumstances the Trustees may at their discretion instead apply the relevant part of the benefit for the support and maintenance of any one or more of the Member's Beneficiaries, Spouse or Dependants.

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

33. TAX LIABILITY AND OVER-PAYMENTS

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

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

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

33.4 If for any reason there is any over-payment of benefit it will be at the Trustees' discretion as to whether any steps are taken to recover the same.

34. **DETERMINATION OF EMPLOYMENT**

34.1 No provision of the Fund will in any way restrict the right of any of the Participating Employers to end the employment of a Member.

34.2 No damages will be recoverable by a Member from the Fund or the Trustees as a consequence of his employment coming to an end.

35. **FAILURE TO CLAIM BENEFITS**

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

- (a) his failure to claim it; or
- (b) the Trustees' lack of knowledge of his existence or whereabouts or of any fact giving him the right to it.

35.2 Subject to rule 35.2 any such sums are to be forfeited and used for the general purposes of the Fund.

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

36. **FORFEITURE**

36.1 This rule applies where:

- (a) a Member or Deferred Pensioner owes a monetary debt to a Participating Employer which arises from a criminal negligent or fraudulent act; or
- (b) a Trustee owes a monetary debt to the Fund arising out of a breach of trust by him; or
- (c) a Beneficiary is bankrupt.

36.2 Where the debt is due to a Participating Employer, the Participating Employer may give the Trustees a certificate stating the loss suffered from the criminal negligent or fraudulent act.

36.3 Upon receipt of the certificate the Trustees are to consult with the Actuary and determine an appropriate reduction in benefits to reflect the certified loss.

36.4 The Trustees are then to deliver a copy of the certificate to the Member or Deferred Pensioner and notify him of the proposed reduction. They may in their discretion modify the reduction in light of any representations made by the individual involved but their ultimate decision will be binding upon him.

36.5 Where the debt is due to a Participating Employer, without prejudice to any other remedy it may have the Participating Employer will be entitled to reimbursement of the loss from the Fund (less any tax which may be chargeable).

36.6 Where the debt or loss is due to the Fund:

- (a) the Trustees may consult with the Actuary and may determine an appropriate reduction in benefits to reflect the debt or loss;
- (b) the Trustees will then deliver a certificate to the Beneficiary notifying him of the debt or loss and the appropriate reduction in benefit to reflect the debt or loss. They may at their discretion modify the reduction in light of any representations made by the Beneficiary but their ultimate decision will be binding upon him.

36.7 Notwithstanding the above the Trustees may not make any reduction or reimbursement:

- (a) unless the claim set out in the certificate delivered to the Beneficiary is either not disputed or the obligation has become enforceable by an order of a competent court;
- (b) in respect of any benefits transferred into the Fund under rule 28 (except in relation to any monetary obligation due to the Fund from a Trustee who is a Member or Deferred Pensioner);
- (c) if it contravenes the preservation requirements of the 1993 Act
- (d) if there is a dispute as to its amount unless the debt has become enforceable under a competent court
- (e) which is more than the monetary loss to the Fund (in respect of a debt which is due from a Trustee to the Fund)
- (f) which is more than the value of the Members or Deferred Pensioners entitlement or accrued right under the Fund.

36.8 In rules 36.9 and 36.10 below:

- (a) "**pension**" includes any benefit under the Fund and any part of a pension and any payment by way of pension; and
- (b) "**dependant**" and "**member**" have the same meanings as they have in Section 92(3) of the 1995 Act.

36.9 The rights to a pension under the Fund shall not be absolute but shall be forfeited upon the bankruptcy of the person entitled to the pension or whose right to it has accrued.

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

- (a) the member to or in respect of whom the pension was, or would have become, payable;
- (b) the Spouse, widow or widower of the member;

- (c) any dependant of the member; and
- (d) any other person to whom, under the Rules of the Fund, the pension was or could have been paid.

36.11 Any part of the benefit not paid pursuant to rule 36.10 is to be used for the general purposes of the Fund.

37. **PART-TIME MEMBERS**

The calculation of benefits of Part-Time Members is set out in Schedule 5.

38. **REGISTERED SCHEMES SCHEDULE**

The Rules of the Fund are subject to Schedule 6 and where there is any inconsistency with the Rules the provisions of Schedule 6 will prevail.

SCHEDULE 3 DEFINITIONS

"the Actuary" A Fellow of the Institute of Actuaries or the Faculty of Actuaries who is permitted to act as the Actuary by the 1995 Act and who is appointed pursuant to clause 3.1.

"Additional Maternity Leave" The absence of a female Member from the Fund pursuant to her rights in respect of a Member whose expected week of childbirth begins before 30 April 2000 under Section 79 of the Employment Rights Act 1996 or in respect of a Member whose expected week of childbirth begins on or after 30 April 2000, under Section 73 of the Employment Rights Act 1996 as substituted by the Employment Relations Act 1999.

"Administrator" The scheme administrator for the purposes of Section 270 of the Finance Act 2004.

"Associated Employer" A company firm or person which is a subsidiary or holding company of the Principal Employer or its holding company or which is otherwise associated in business with the Principal Employer to an extent that the Principal Employer and the Trustees consider to be acceptable. **"Holding company"** and **"subsidiary"** have the meaning given by Section 736 of the Companies Act 1985.

"Auditor" A person or firm permitted to act as the auditor by the 1995 Act and who is appointed pursuant to clause 3.1.

"AVCs" Additional voluntary contributions paid by a Member under rule 8 together with any transfer value paid to the Trustees in respect of him which is certified by the transferring scheme to represent AVCs.

"AVC Account" The total value of the Member's AVC Arrangement together with any investment yield or bonuses earned on them, less, unless the Principal Employer determines otherwise, any investment expenses.

"AVC Arrangement" Any one or more arrangement which the Trustees make available to accept the Member's AVCs within which the Member may have a range of investment options for his AVCs. For the avoidance of doubt the Member will be responsible for selecting any investment option applicable to his AVCs and the Trustees will have no responsibility or liability for his choice.

"Beneficiary" A person entitled or prospectively entitled to a benefit under the Fund. For the avoidance of doubt this term will include the Principal Employer.

"Board" The Board of Inland Revenue.

"Cash Equivalent" The cash equivalent (as defined in the 1993 Act) of the benefits payable to and in respect of a Member or Deferred Pensioner under the Fund scaled down if necessary to comply with the requirements of the Occupational Pension Schemes (Transfer Values) Regulations 1996 or increased as determined by the Trustees and the Principal Employer after consulting the Actuary.

"Chairman" The Trustee appointed from time to time to act as chairman pursuant to clause 5.7.

"Civil Partner" This expression has the same meaning as in the Civil Partnership Act 2004.

"Childcare Vouchers" Nursery childcare vouchers paid to the Member as part of the emoluments due to the Member under his contract of employment with the Participating Employer which are assessable to income tax under the 1988 Act.

"Control Event" An event through which a person or persons acting in concert obtain control of the Principal Employer or Smith & Nephew plc within the meaning of either Sections 450 or 1124 of the Corporation Tax Act 2010.

"Commencement Date" 9 October 1961 the date upon which the Fund was established.

"Company Trustee" A Trustee of the Fund elected under clause 4.6.

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

"Default Option" The payment of a Pension Credit to a Qualifying Arrangement without the consent of the Ex-Spouse.

"Deferred Pensioner" A former Member who is entitled to a deferred Pension under the Fund but who has not yet become a Pensioner or otherwise retired with benefits becoming payable.

"Dependant" In respect of a Member, Deferred Pensioner or Pensioner any person who, in the opinion of the Trustees is at the appropriate time:

- a Spouse of the relevant individual;
- a child of the relevant individual (including a legally adopted child or a stepchild) who is under the age of 18 (or 23 if in full-time education);
- a person who in the opinion of the Trustees is financially dependent upon the individual for all or any of the ordinary necessities of life.

"Employee" Prior to 1 October 2001, a person who is permanently employed with any of the Participating Employers who is eligible for Membership in accordance with rule 1.

On or after 1 October 2001, a person who is employed with any of the Participating Employers who is eligible for Membership in accordance with rule 1.

"Exempt Approval" Exempt Approval in accordance with Chapter 1 of Part XIV of the 1988 Act

"Ex-Spouse" An individual to whom a Pension Credit has been or is to be allocated following a Pension Sharing Order, agreement or equivalent provision

"Ex-Spouse Participant" An Ex-Spouse who participates in the Fund. For this purpose the Ex-Spouse Participant must participate in the Fund either:

- solely for the provision of a Pension Credit Benefit; or

- for the wholly separate provision of a Pension Credit Benefit, where benefits accrue or have accrued to that individual under the Fund for any reason.

"External Transfer Option" The payment of a Pension Credit to a Qualifying Arrangement with the consent of the Ex-Spouse.

"Final Band Earnings" The annual average of that part of a Member's Pensionable Salary falling between the Lower Earnings Limit and the Upper Earnings Limit in the last three years of Pensionable Service.

"Final Pensionable Salary" The greater of

- the annual average Pensionable Salary in the last three years of Pensionable Service; or
- the annual average of the Member's highest three consecutive fiscal years' Pensionable Salaries in the last ten years of Pensionable Service

Final Pensionable Salary will not exceed the Permitted Maximum for a Member who last joined the Fund on or after 1 June 1989 or who is treated as having joined after that date.

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

"Full-Time Service" Service with a Participating Employer other than Part-Time Service

"Fund" The Smith & Nephew UK Pension Fund, this expression to include the monies, assets, property and investments which from time to time constitute the Fund.

"Fund Manager" An individual or firm who falls or is treated as falling within any paragraphs of (a) to (c) of Section 191(2) of the Financial Services Act 1986 and who is appointed pursuant to clause 3 to manage all or part of the investments of the Fund.

"Incapacity" Physical or mental deterioration from which, in the opinion of the Trustees based on advice from a registered medical practitioner, the Member is unlikely to recover to any substantial extent within the foreseeable future and which is bad enough to prevent the individual from following his normal employment.

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

"Independent Trustee" A person or corporate body appointed to office who satisfies the definition of independence set out in Section 23(3) of the 1995 Act.

"Index" The annual percentage rate of increase (calculated to the nearest one decimal place) in the Index of Retail Prices (all items index) published by the Central Statistical Office of the Government.

"Insurance Company" An insurer as defined in Section 180A of the 1993 Act.

"Interest" Interest per annum compound as determined by the Trustees.

"Internal Transfer Option" The option which allows the Trustees to deal with a Pension Credit by granting benefits in the Fund in accordance with rule 25.4.

"Life Assurance Member" An Employee admitted to Life Assurance Membership in accordance with rule 1.1 who is entitled to the benefits set out in rule 18.1.

"Liquidation" This expression means voluntary or compulsory liquidation.

"Lower Earnings Limit" and **"Upper Earnings Limit"** The limits stipulated in the 1975 Act or as otherwise determined by the Trustees and the Principal Employer.

"Member" A person (other than a Pension Credit Member) who has been admitted to the Fund but who has not become a Deferred Pensioner or Pensioner or otherwise ceased to participate in it.

"Members' Accounts" In respect of a Member or Deferred Pensioner with benefits in the 1980 Section that part of the Fund which the Trustees determine (on the advice of the Actuary) is attributable to the total contributions made by and in respect of that Member or Deferred Pensioner to the 1980 Section of the Fund.

The value of the Members' Accounts will be calculated net of any investment cost.

For the avoidance of doubt, a Member or Deferred Pensioner will not have any right to assets comprising a Member's Account.

"Member Contributions" The contributions paid by a Member to the Fund together with any transfer value paid to the Trustees in respect of him which is certified by the transferring scheme to represent Member Contributions.

"Member making Member Contributions" a Member to whom rule 2.6(a),(b) or (c) applies.

"Member Trustee" a Trustee of the Fund elected under clause 4.8.

"Membership" Participation in the Fund as a Member.

"Nominated Dependant" A dependant nominated in writing by the Member or Deferred Pensioner for the purposes of rule 20 and who is:

- a child of the individual (including a legally adopted child or a stepchild) under the age of 18 or over the age of 18 if dependent on the Member or Deferred Pensioner because of disability, or who is continuing to receive full-time educational or vocational training; or
- financially dependent on the individual (either in whole or in part) at the time of the individual's death and is either:

a descendant of the grandparents of the individual or the individual's Spouse; or

a person who has been dependent on the individual for a period of at least two years up to and including his date of death

The Trustees may determine who is to be the Nominated Dependant within the above categories in the absence of a written nomination.

"Nominee" A person selected by the Member or Deferred Pensioner under rule 14 who in the opinion of the Trustees is a Dependant of the relevant individual.

"Nominee's Pension" The Pension payable after the death of a Pensioner to a Nominee selected by the Pensioner and approved by the Trustees.

"Normal Pension Date" In relation to the Members any of the following dates:

- the 62nd birthday in the case of an executive member of the board or a member of the group executive committee of the Principal Employer; or
- the 65th birthday in the case of all other Members; or
- such other date as may be advised in writing to the Member or former Member by the Trustees.

"Notional Salary" means in respect of a Salary Sacrifice Member the salary, pay or earnings which a Salary Sacrifice Member would have received if he had not sacrificed salary under a recognised salary sacrifice arrangement in return for the Principal Employer or any of the Participating Employers agreeing that he will be a Salary Sacrifice Member and to pay Salary Sacrifice Contributions for him.

"Ordinary Maternity Leave" The absence of a female Member from the Fund pursuant to her rights in respect of a Member whose expected week of childbirth begins before 30 April 2000 under Section 73 of the Employment Rights Act 1996, or in respect of a Member whose expected week of childbirth is on or after 30 April 2000 under Section 71 of the Employment Rights Act 1996 as substituted by the Employment Relations Act 1999.

"Paid Adoption Leave" means a period of adoption leave during which the Member is in receipt of either contractual pay or statutory adoption pay as defined under s171ZL of the Social Security Contributions and Benefits Act 1992.

"Participating Employers" The Principal Employer together with any company, firm or person which participates from time to time in accordance with clause 12. In relation to any Member it is the Participating Employer which currently employs the Member or is treated as employing the Member for the purposes of Her Majesty's Revenue and Customs.

"Part-Time Member" A Member who is or was employed by a Participating Employer for fewer than thirty hours per week or such other period of time determined by the Trustees.

"Part-Time Service" Employment with a Participating Employer which does not require the Employee to work 30 hours or more in a normal working week or such other period as is determined by the Trustees.

"Pension" A Pension payable from the Fund.

"Pension Credit" A credit under Section 29(1)(b) of the Welfare Reform Act.

"Pension Credit Benefit" The benefits payable under the Fund to or in respect of a person by virtue of rights under the Fund attributable (directly or indirectly) to a Pension Credit.

"Pension Credit Member" An individual admitted to the Fund in accordance with rule 25.4 whose benefits and entitlements under the Fund are determined pursuant to rule 25.

"Pension Credit Rights" Rights to future benefits under the Fund which are attributable (directly or indirectly) to a Pension Credit.

"Pension Sharing Order" Any order or provision as is mentioned in Section 28(a) of the Welfare Reform Act or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999.

"Pensionable Salary" Gross earnings in each pay period (or, if greater, the amount which would have been the Member's gross earnings if he had not sacrificed salary under a recognised salary sacrifice arrangement in return for the Principal Employer or any of the Participating Employers agreeing that he will be a Salary Sacrifice Member and to pay Salary Sacrifice Contributions for him) in respect of service with a Participating Employer excluding:

- emoluments in kind which are assessable to income tax other than Childcare Vouchers which are paid to Members who are authorised by the Participating Employers to receive those vouchers and have consented to the inclusion of such vouchers in Pensionable Salary;
- bonus payments from the Smith & Nephew Group Bonus Scheme (and any successive scheme);
- gains arising on the exercise of any options under a share incentive scheme or profit share scheme of the Participating Employer;
- special payments agreed by the Principal Employer and notified in advance to the Member in writing as being non-pensionable

In any case of doubt the Pensionable Salary will be determined by the Principal Employer.

If the relevant amounts have been reduced during the last ten years of service by reason of ill health that reduction may, if the Trustees wish, be ignored or partly ignored for the purposes of calculating the salary.

If the last ten years of Pensionable Service includes periods of both Full-time Service and Part-time Service or a change in the contractual hours of Part-time Service, Pensionable Salary will be calculated in accordance with Schedule 5. For the purposes of rule 7 Pensionable Salary will not exceed the appropriate portion of the Permitted Maximum in each pay period for a Member who last joined the Fund on or after 1 June 1989 or who is treated as having joined after that date.

"Pensionable Service" In relation to a Member or Deferred Pensioner:

- Member's Service with a Participating Employer calculated in years and completed months;
- excluding the periods of Service set out in Table 2 of Schedule 4; and
- including the periods of Service set out in Table 3 of Schedule 4 and such other period as may be notified to the Trustees by the Principal Employer;

All persons who ceased to be Members on 31 December 2016 in connection with closure of the Fund to future accrual were credited with an additional period of pensionable service of three months. This pensionable service credit shall be treated as equivalent to Full-time Service or Part-time Service as appropriate according to the Service arrangements of the relevant person with the relevant Participating Employer as at 31 December 2016.

If service includes periods of both Full-time Service and Part-time Service or a change in the contractual hours of Part-time Service, Pensionable Service will be calculated in accordance with Schedule 5.

For the avoidance of doubt, no Service with a Participating Employer on or after 1 January 2017 shall be Pensionable Service.

"Pensioner" A former Member or Deferred Pensioner who receives a Pension under the Fund.

"Permitted Maximum" In any Tax Year this is the figure which would have been the permitted maximum under Section 590C of the 1988 Act for that Tax Year on the assumptions that that Section had continued in force after 5 April 2006 and the Treasury had made the orders required by that Section (as it had effect on 5 April 2006) in respect of each Tax Year after that date.

"Personal Pension Scheme" Has the meaning in Section 1 Pension Schemes Act 1993.

"Preceding Documents" All previous documents relating to the Fund including those listed in Schedule 1.

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

"the Principal Employer" Smith & Nephew UK Limited or any company substituted for it pursuant to clause 13.

"Qualifying Arrangement" A qualifying arrangement which is defined in paragraph 6 of Schedule 5 of the Welfare Reform Act and is not disqualified pursuant to paragraph 7 of that Schedule.

"Qualifying Service" In relation to a Member or Deferred Pensioner the aggregate of the following periods:

- pensionable membership of the Fund;
- years of service in another scheme in respect of which a transfer has been paid to the Fund;
- any additional periods of service which the Trustees determine to be Qualifying Service.

Qualifying Service will be calculated in years and completed months.

"Registration" Means treatment of the Fund as a registered scheme for the purposes of Part 4 of the Finance Act 2004.

"Receiving Scheme" A retirement benefits scheme or a Personal Pension Scheme to which a transfer is to be made pursuant to rule 26.

"Rules" The rules of the Fund set out in Schedule 3 as amended from time to time.

"Salary Sacrifice Contributions" means the contributions to the Fund paid for each Salary Sacrifice Member by the Principal Employer or any of the Participating Employers in accordance with rule 7.1(b).

"Salary Sacrifice Member" means a Member who is for the time being a Salary Sacrifice Member in accordance with the terms of a recognised salary sacrifice arrangement and rule 2.

"Same Sex Spouse" means a spouse of a marriage of a same sex couple.

"Secretary" The individual for the time being appointed to act as the secretary pursuant to clause 5.6.

"Serious Ill Health" Ill health which is such as to give rise to a life expectancy of less than one year from the date on which commutation of the Pension Credit Benefit is applied for.

"Service" Any period during which an individual was a Member of the Fund or was in employment which qualified him for benefits under the Fund.

"Sixth Definitive Deed and Rules" The definitive deed dated 5 September 2001.

"Spouse" The wife, husband (including a Same Sex Spouse) or Civil Partner of the Member (or if the context requires of a Deferred Pensioner or Pensioner). In the case of polygamous marriages the Spouse will be such wife, husband or Civil Partner as the Trustees may decide. Where the context requires wife, husband (including a Same Sex Spouse) or Civil Partner will mean widow, widower, or a person who was the Civil Partner of the Member at his death.

"Tax Year" A year beginning on a 6 April and ending on the next 5 April.

"Third Definitive Deed and Rules" The Definitive Deed and Rules dated 20 June 1994.

"Trust Corporation" A trust corporation as defined in the Trustee Act 1925.

"Trustees" The trustees for the time being of the Fund, such term to include Company Trustees, Member Trustees and Independent Trustees.

"Upper Level" An amount equal to seven times the annual state basic pension for a single person.

"Welfare Reform Act" The Welfare Reform and Pensions Act 1999.

"1975 Act" The Social Security Pensions Act 1975.

"1988 Act" The Income and Corporation Taxes Act 1988.

"1993 Act" The Pension Schemes Act 1993.

"1995 Act" The Pensions Act 1995.

"1980 Section" The money purchase section of the Fund which relates to Members' Accounts.

**SCHEDULE 4
TABLES**

**TABLE 1
EARLY RETIREMENT REDUCTION**

AGE AT DATE OF RETIREMENT	% REDUCTION OF PENSION
65	0
64	0
63	0
62	0
61	0
60	0
59	2.5
58	5.0
57	7.5
56	10
55	12.5
54	17.5
53	22.5
52	27.5
51	32.5
50	37.5

TABLE 2
PERIODS EXCLUDED FROM PENSIONABLE SERVICE

EXCLUSION	APPLICATION
1. Service before age 25	1. Member of Fund at 5 April 1988 2. Employee at 5 April 1988 who became a Member at the first opportunity in accordance with the Preceding Documents 3. Employee over age 25 at 5 April 1988 who joined the Fund at the first opportunity in accordance with the Preceding Documents
2. Service before age 21	Employee who after 5 April 1988, and prior to 1 October 2001, becomes a Member at the first opportunity in accordance with the Preceding Documents or rule 2.1, as the case may be
3. Service before the later of age 18, or 1 October 2001	Employee who, on or after 1 October 2001, becomes a Member in accordance with rule 2.1 at the first opportunity
4. Service before age 21 and any service which falls before 6 April 1988	Employee under age 25 at 5 April 1988 who becomes a Member at the first opportunity in accordance with the Preceding Documents
5. Service after ceasing to be in contributory Membership	Member ceasing to be in contributory Membership (including Membership prior to 1 May 1992 when contributions may have ceased due to level of Pensionable Salary). For the purposes of this provision a Member will be deemed to be in contributory Membership while he is a Salary Sacrifice Member and a Salary Sacrifice Member will be deemed to cease to be in contributory Membership in the same circumstances as a Member making Member Contributions (e.g. where rule 3 (Cessation of Membership) applies)
6. Service prior to participation of the Participating Employer	Applies in relation to all Participating Employers (other than Southalls (Birmingham) Limited and other Participating Employers who were parties to the Preceding Document dated 25 February 1963)
7. Service prior to admission to Membership	Any Employee who does not join at first opportunity

TABLE 3
CREDIT APPLIED TO PENSIONABLE SERVICE

CONDITIONS	CREDIT
<ol style="list-style-type: none"> 1. Appointed executive member of the board of the Principal Employer or 2. member of the group executive committee 3. on or before 11 December 1990 	<ol style="list-style-type: none"> 1. Three years' Pensionable Service 2. Accrued in full on date of appointment
<ol style="list-style-type: none"> 1. Appointed executive member of the board of the Principal Employer or 2. member of the group executive committee 3. after 11 December 1990 	<ol style="list-style-type: none"> 1. Three years' Pensionable Service 2. Accrued at a uniform rate from the date of appointment to Normal Pension Date

**SCHEDULE 5
PART TIME MEMBERS
PART-TIME MEMBERS**

1. INTERPRETATION

The terms set out in the Table below will have the corresponding meanings for the purposes of this Schedule.

TERMS	DEFINITIONS
Full-Time Salary Ratio	No. of contractual weekly hours in Full-Time Service
	No. of contractual weekly hours in Part-Time Service
Full Time Service Ratio	No. of contractual weekly hours in Part-Time Service
	No. of contractual weekly hours in Full-Time Service
Part-Time Salary Ratio	No. of contractual weekly hours in Part-Time Service
	No. of contractual weekly hours in Full-Time Service
Part-Time Service Ratio	No. of contractual weekly hours in Full-Time Service
	No. of contractual weekly hours in Part-Time Service

2. PENSIONABLE SALARY AND PENSIONABLE SERVICE

2.1 If the last ten years of Pensionable Service includes one or more periods of both Part-Time Service and Full-Time Service the annual Pensionable Salary of the Member or Deferred Pensioner will be calculated as follows:

Service at date of retirement or leaving Membership	Pensionable Salary
Part-Time Service	Part-time service emoluments plus Full-time service emoluments x Part-time Salary Ratio
Full-Time Service	Full-time service emoluments plus Part-time service emoluments x Full-time Salary Ratio

- 2.2 If Pensionable Service includes one or more periods of both Part-Time Service and Full-Time Service the Pensionable Service of the Member or Deferred Pensioner will be calculated as follows:

Service at date of retirement or leaving Membership	Pensionable Service
Part-Time Service	Part-Time Service + Full-Time Service x Part-Time Service Ratio
Full-Time Service	Full-Time Service + Part-Time Service x Full-Time Service Ratio

3. **ALTERATION OF PART-TIME HOURS**

If the contractual weekly hours of Part-Time Service have been altered:

- 3.1 The periods of Part-Time Service will be treated separately.
- 3.2 Pensionable Salary and Pensionable Service will be calculated in relation to each period as if the Member or Deferred Pensioner was in Full-Time Service.
- 3.3 If the Member or Deferred Pensioner is in Part-Time Service at date of retirement (or date of leaving service if earlier) Pensionable Salary and Pensionable Service will then be calculated as set out in the relevant sections of paragraphs 2.1 and 2.2 above.

SCHEDULE 6
REGISTERED SCHEMES SCHEDULE

1. This Schedule has been adopted because the Fund is a registered pension scheme for the purposes of the Finance Act 2004 and to confirm the continuation of pre-6 April 2006 HM Revenue and Customs limits for certain purposes and to make certain other general provisions as to benefits. It applies to all Members, Deferred Pensioners and Pensioners including those who retired, left service, died or opted-out of the Fund before 6 April 2006.
2. Notwithstanding anything to the contrary in this Deed or the Rules, the Trustees shall not be required to make any payment from the Fund which they believe to be an **"unauthorised payment"** as defined in section 160(5) of the Finance Act 2004.
3. The Trustees shall have the powers to recover tax in respect of the lifetime allowance charge under the Finance Act 2004 set out in Regulation 8 of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 without limit of time.
4. Any measure of remuneration used to calculate benefits from and Member contributions to the Fund after 5 April 2006 for a Member, Deferred Pensioner or Pensioner who joined the Fund on or after 1 June 1989 or who was treated as doing so shall be restricted so as not to exceed the **"permitted maximum"** as defined in Section 590C of the 1988 Act had that Section not been repealed and the Treasury continued to make the orders required by that section, as it had effect immediately before its repeal, in respect of each Tax Year after 5 April 2006.
5. Where a Deferred Pensioner or Pensioner retired, left Service, died or opted-out of the Fund before 6 April 2006, this Deed and the Rules as amended from time to time will apply to him but the terms and the amount of his benefit entitlements will continue to be governed by the Preceding Documents which applied at the date he retired, left Service, died or opted-out except that:
 - (a) the limits on lump sum retirement benefits set out in rule 13 and clause 22.2 shall apply to the extent that the Trustees determine in respect of any Deferred Pensioner whose pension comes into payment after 5 April 2006;
 - (b) the Trustees may allow any Deferred Pensioner whose pension comes into payment after 5 April 2006 to use voluntary contributions to provide lump sum retirement benefits;
 - (c) the Trustees may disregard any restrictions of HM Revenue and Customs on the rate at which an amount of pension may be exchanged for a lump sum;
 - (d) for the avoidance of doubt, the augmentation power in Rule 24 as amended from time to time shall apply;
 - (e) the Trustees may treat any reference to a spouse as including a Civil Partner where a Deferred Pensioner or Pensioner dies after 5 December 2005 or a Same Sex Spouse where a Deferred Pensioner or Pensioner dies on or after 13 March 2014;

(f) the terms of this Schedule override.

This is subject to 6. below.

6. Where a Deferred Pensioner or Pensioner retired, left Service, died or opted-out of the Fund before 6 April 2006, the limits on benefits set out in Schedule 6 of the Sixth Definitive Deed (Inland Revenue Requirements) and any other restrictions which applied to the Fund and the Deferred Pensioner or Pensioner at any time before 6 April 2006 in order to maintain Exempt Approval will continue to apply notwithstanding the coming into force of the Finance Act 2004 except as stated in 5(a), (b), (c) and (d) above.
7. No pension for a Member as at 6 April 2006 may exceed 2/3rds of the Member's final remuneration as defined in the publication IR 12 (2001) (known as the Occupational Pension Scheme Practice Notes) published by the former Inland Revenue Pension Schemes Office on 23 March 2001 as that publication stood immediately before 6 April 2006.