



# Edinburgh Merchant Company Order Confirmation 1996

## 1996 CHAPTER xi

An Act to confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act 1936, relating to Edinburgh Merchant Company. [18th December 1996]

WHEREAS the Provisional Order set forth in the Schedule hereunto annexed has been made by the Secretary of State under the provisions of the Private Legislation Procedure (Scotland) Act 1936, and it is requisite that the said Order should be confirmed by Parliament:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 Confirmation of Order in Schedule.**

The Provisional Order contained in the Schedule hereunto annexed is hereby confirmed.

**2 Short title.**

This Act may be cited as the Edinburgh Merchant Company Order Confirmation Act 1996.

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## SCHEDULE

### EDINBURGH MERCHANT COMPANY

*Provisional Order to continue in being the Company of Merchants of the City of Edinburgh and to consolidate with amendments the Acts relating to the Company and to the widows' fund and endowments trust of the Company; to reconstitute and confer powers on the Master's court of the Company and to vest in the Master's court the Alexander Darling Silk Mercer's fund and to make provision as to the management and administration thereof; to make provision for the dissolution of the widows' fund; to make provision as to the vesting in the said endowments trust of the Russell and Foster Endowment and to confer powers on the endowments trust; and for other purposes.*

#### WHEREAS—

- (1) The Company of Merchants of the City of Edinburgh (hereinafter referred to as “the Company”) was incorporated by royal charter in 1681, ratified by an Act of the Parliament of Scotland in 1693 and further provision was made as to the regulation of the affairs of the Company by a royal charter granted in 1777:
- (2) By the Edinburgh Merchant Company Act 1898 (hereinafter referred to as “the Act of 1898”) the Company was reincorporated and the powers of the Company were amended and enlarged and further provision was made for the regulation, management and administration of its affairs and of the widows' fund established by the Company (hereinafter referred to as “the widows' fund”) and of certain charitable endowments administered by the Company:
- (3) By the Edinburgh Merchant Company Endowments Orders 1909 and 1952 further provision was made as to the charitable endowments administered by the Company:
- (4) By the Edinburgh Merchant Company Widows' Fund (Amendment) Order 1947 the provisions of the Act of 1898 relative to the said widows' fund were amended:
- (5) By the Edinburgh Merchant Company Order Confirmation Act 1960 (hereinafter referred to as “the Act of 1960”) the Company was reincorporated as a body corporate under the same name and provisions of the Act of 1898; the said Orders of 1909, 1947 and 1952 were consolidated with certain amendments, modifications and additions; further provisions were made with respect to the constituting of the Master, treasurer and assistants of the Company as the Master's court of the Company and as to the functions of the said Master's court and with respect to the regulation, management and administration of the affairs of the Company and of the widows' fund and charitable endowments and provision was made whereby the benefits of the widows' fund were extended to new classes of beneficiaries including the orphans of contributors to the widows' fund:
- (6) The Alexander Darling Silk Mercer's Fund was vested by the Act of 1960 in the Master's court of the Company and powers contained in the Act of 1960 were conferred on the said Master's court:
- (7) The Merchant Company Charities Board, as incorporated by the said Order of 1909, was reincorporated by the Act of 1960 as a corporate body under the name of “The Merchant Company Endowments Trust” (hereinafter referred to as “the endowments trust”):
- (8) The property known as the Sir William Fraser Homes was by the Act of 1960 transferred to and vested in the endowments trust and is held and administered by

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the endowments trust as part of the endowments trust fund vested in the endowments trust:

- (9) By his will and relative codicil the late Henry Walker Russell bequeathed property to be held and administered by the Merchant Company Charities Board as a separate fund to be known as “The Russell and Foster Endowment” for the purpose of paying annuities or pensions in accordance with the provisions of his said will:
- (10) By the Act of 1960 “The Russell and Foster Endowment” was transferred to the endowments trust:
- (11) It is expedient that the Company continue in being as a body corporate under the same name; that the provisions of the Act of 1960 be re-enacted with certain amendments, modifications and additions; that further provisions with respect to the categories of membership and the regulation, management and administration of the affairs of the Company should be enacted; that provision should be made to close the widows' fund and to dissolve the widows' fund:
- (12) It is expedient to permit a variation of the terms of the Fraser Trust, the endowment trust and the Russell and Foster Endowment by means of a Petition to the Court of Session in Edinburgh:
- (13) It is expedient that the other provisions of this Order shall be enacted:
- (14) The purposes aforesaid cannot be effected without an Order confirmed by Parliament under the provisions of the Private Legislation Procedure (Scotland) Act 1936:

Now, therefore, in pursuance of the powers contained in the said Act of 1936, the Secretary of State orders as follows:—

## PART I

### PRELIMINARY

#### *Short title*

- 1 This Order may be cited as the Edinburgh Merchant Company Order 1996.

#### *Interpretation*

- 2 In this Order, except where the context otherwise requires—
  - “Act of 1960” means the Edinburgh Merchant Company Order Confirmation Act 1960;
  - “actuary” means the person holding the appointment of actuary of the Company for the time being;
  - “annual meeting” means the stated general meeting of the Company to be held annually on the second Thursday of November or such other date as the Company may prescribe pursuant to section 22 (Stated general meetings of Company) of this Order;
  - “annual meeting of the contributors” means the stated general meeting of the contributors to be held annually on the first Tuesday of October or such other date as the contributors may prescribe pursuant to section 43 (Stated general meetings of contributors) of this Order;

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“assistant” means a person elected as an assistant pursuant to section 10 (Election of Master, treasurer and assistants) of this Order and for the time being holding the office of assistant and “senior assistant” means the assistant whose name stands highest in the list of assistants;

“commencement of this Order” means the date of the passing of the Act confirming this Order;

“Company” means the Company of Merchants of the City of Edinburgh;

“contributors” means the contributors to the widows' fund;

“Darling fund” means the fund constituted by the Darling trust disposition and settlement;

“Darling trust disposition and settlement” means the trust disposition and settlement of Alexander Darling LL.D. dated 31st August 1934, together with codicils dated 3rd June and 9th September 1936;

“Darling trustees” means the trustees for the time being of the Darling trust disposition and settlement;

“education board” means the Merchant Company Education Board constituted by the Edinburgh Merchant Company Educational Endowments Scheme 1960;

“endowments trust” means the Merchant Company Endowments Trust;

“endowments trust fund” means the fund vested in the endowments trust;

“existing” means existing immediately before the commencement of this Order;

“existing charters” means the royal charter of 1681 incorporating the Company and ratified by an Act of the Parliament of Scotland in 1693 and the royal charter of 1777;

“general fund” means the accumulated funds of the Company for the time being;

“joint committee” means the Merchant Company Joint Committee;

“Master’s court” means the Master’s court constituted by this Order;

“Master” means the Master of the Company for the time being;

“members” means the members of the Company for the time being and includes honorary members;

“old Master” means the person who last retired from the office of Master;

“registered auditor” means any person authorised by Part II of the Companies Act 1989 (which deals with the eligibility of persons for appointment as company auditors) to act as a company auditor;

“repealed Acts” means the Acts repealed by this Order;

“rules” means rules made by the Company or the contributors pursuant to the provisions of this Order;

“secretary” means the secretary of the Company for the time being;

“treasurer” means the treasurer of the Company for the time being;

“trustees” means the trustees of the widows' fund for the time being and “senior elected trustee” means the trustee whose name stands highest in the list of trustees elected in pursuance of section 53 (Constitution of trustees of widows' fund) of this Order;

“widow” includes widower;

“widows' fund” means the fund referred to in section 41 (Maintenance of widows' fund) of this Order.

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*Confirmation of existing charters and repeal of Acts*

- 3 (1) The existing charters, as amended by the provisions of this Order, are hereby ratified and confirmed.
- (2) The following Acts are hereby repealed:—
- (a) the Edinburgh Merchant Company Order Confirmation Act 1960; and
  - (b) the Edinburgh Merchant Company Order Confirmation Act 1976.

**PART II**

PROVISIONS AS TO MERCHANT COMPANY

*A. Powers of Company*

- 4 The members shall continue in being under the name of “The Company of Merchants of the City of Edinburgh”, as a body corporate with perpetual succession and a common seal; and with power to purchase, acquire, hold, sell, lease and dispose of lands and other property heritable, moveable, real and personal, and to sue and be sued, and with all other rights, powers and privileges of a body corporate.

*B. Election of members of Company*

- 5 (1) Subject to the provisions of this Order, the persons eligible for election as members are the following:—
- (a) merchants, bankers or traders who carry on or who have carried on business on their own account;
  - (b) persons who, as principals or agents, individually or in partnership with others, carry on or have carried on business on their own account in any department or description of commerce, trade, manufacture or handicraft, or as architects, engineers or surveyors;
  - (c) managing directors, managers and principal officers of banks (including managers of branch banks), insurance or other companies having their head office in the United Kingdom;
  - (d) such additional classes of persons as the Company may from time to time approve:

Provided that a person shall not be elected as a member of the Company (other than an honorary member) unless he is a guild brother of the City of Edinburgh and either—

- (i) carries on or has carried on business on his own account or exercises or has exercised his office, within the City of Edinburgh or within 20 miles from Her Majesty’s General Register House, Edinburgh or such other distance therefrom as the Company may from time to time determine; or
- (ii) resides at the time of his election within the said city or within the said distance or such other distance as the Company may from time to time determine.

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- (2) Notice of a proposal to include any additional class of persons who shall be eligible for election as members of the Company shall be given at one of the stated general meetings of the Company and such class of persons shall not be eligible unless the proposal has been sanctioned by a resolution passed by two-thirds of the members present and voting at the immediately following stated general meeting of the Company or at any adjournment thereof.
- 6 Every person desiring to be elected as a member shall lodge with the secretary an application in such form and with such information as may from time to time be required by the Company.
- 7 With respect to applications for election as members—
- (1) Every application shall, in the first instance, be considered by the Master's court, who shall make a report as to the qualification and suitability of the applicant;
- (2) The application along with such report shall thereafter be circulated to every member;
- (3) Any member who wishes to object to an application must do so in writing to the secretary within 21 days of the date on which the said application is circulated;
- (4) The application shall be remitted, within 42 days of the date on which the said application is circulated, to the Master's court;
- (5) After considering any objections lodged as aforesaid, the Master's court may elect the applicant by a ballot in which at least 8 of their number vote for his election;
- (6) If the application is refused by the Master's court, the applicant within 14 days of being notified of such refusal, may notify the secretary in writing that he wishes to appeal; and
- (7) If the applicant does appeal as aforesaid, the application shall be submitted to a general meeting of the Company where the Company may elect the applicant by a ballot in which at least two-thirds of the members present and voting vote for his election.
- 8 The date of election of a member shall be the date of his election by the Master's court or, in case of his election on appeal as provided for by the immediately preceding section of this Order, the date of his election by the Company.
- 9 The Company may elect as honorary members of the Company such persons, wheresoever resident or of whatsoever designation or calling, as may from their public eminence or public or private merits be deemed worthy to be elected.

### *C. Election of office bearers*

- 10 (1) Subject to the provisions of this Order, the Company shall at every annual meeting elect the Master, the treasurer and 12 assistants.
- (2) The Master and the treasurer shall be elected from amongst the members who at the time of election are, or who have been, assistants.

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- (3) The 12 assistants shall be elected from the members.
- (4) The Master, the treasurer and the 12 assistants existing in office shall continue in their respective offices until the first annual meeting to be held after the commencement of this Order and shall, subject to the provisions of this Order, be eligible for election pursuant to the provisions of this Order.
- 11 (1) The Master and the treasurer or either of them may be re-elected by the Company at the annual meeting in any year.
- (2) The assistants may be re-elected by the Company at any annual meeting:
- Provided that four assistants shall not be eligible for re-election as assistants, such four assistants to be determined by the Company in accordance with the rules.
- 12 (1) In the event of any vacancy occurring at any time among the Master, treasurer and assistants, the Company shall fill such vacancy within four months of its occurrence either at a stated general meeting of the Company or at a special general meeting of the Company to be called for that purpose.
- (2) In the case of a vacancy occurring among the assistants, the person elected to fill such vacancy shall be placed at the bottom of the list of assistants.

#### *D. Officials*

- 13 (1) The Company may appoint and employ all such officials (including a secretary) as the Company may deem necessary for the carrying on of its business:
- Provided that—
- (a) all existing officials of the Company shall, until the first annual meeting of the Company to be held after the commencement of this Order, hold their respective offices on their respective existing terms and conditions; and
- (b) no person shall be qualified to be appointed as actuary unless he is either a Fellow of the Faculty of Actuaries in Scotland or a Fellow of the Institute of Actuaries.
- (2) The secretary shall be elected annually at the annual meeting.
- 14 The Company may grant to its officials such pensions and life assurance cover as it may deem appropriate, and may join with any institution connected with the Company, for the purpose of contributing to a superannuation fund for such officials, or make payment to an insurance company for a like purpose.

#### *E. Fees, etc., payable by members*

- 15 Subject to the provisions of this Order, every person shall on his election pay to the Company such sum of entry money and age tax, if any, as may for the time being be fixed by the Company.

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- 16 Subject to the provisions of this Order, the election of any person as a member shall be conditional on his paying to the Company the entry money and other sums due from him under this Order and the rules, and a person who has been elected as a member shall not be deemed to be a member or be entitled to any rights or privileges in virtue of his election until such entry money and other sums due have been paid and if these are not so paid within 12 months of the date of his election, his election and all that has followed thereon shall be null and void.
- 17 The Company may after investigation into the state of the general fund increase or reduce the amount of the entry money and age tax or either of them payable by persons on election as members, provided that such increase or reduction is sanctioned by a resolution passed by a majority of the members present and voting at a stated general meeting of the Company.
- 18 The Company may impose an annual subscription or special levy on members, provided that such imposition and the amount thereof and any variations to them are sanctioned by a resolution passed by a majority of the members present and voting at a stated general meeting of the Company.

#### *F. Funds and property of Company*

- 19 The general fund shall be held by the Company and managed, administered and applied by the Master's court in the following manner:—
- (1) for payment of the expenses of management of the Company (including payments authorised under section 14 (Company may provide pensions, etc., for officials) of this Order);
  - (2) for payment of allowances or annuities to indigent members;
  - (3) for the good and utility of the Company;
  - (4) for any other purpose to which the general fund may be lawfully applied in terms of the existing charters and this Order and the customs and usages of the Company; and
  - (5) for payment of any sums of money to be transferred to the widows' fund pursuant to section 21 (Power to contribute to widows' fund from general fund) of this Order.
- 20 The title to the area of ground on which are erected the buildings including the hall and offices of the Company known as 20 and 22 Hanover Street, Edinburgh together with the officer's house at 18 Hanover Street, Edinburgh shall continue to be vested in and held by the Company, subject to the interests in the said property of the institutions connected with the Company, and the Company may at any time, by the Master's court, sell, burden or let or otherwise dispose of the said property or any part thereof in such manner and at such times as the Company may think fit and direct.
- 21 The Company may, from time to time after an investigation into the state of the general fund and having regard to the state of the widows' fund, transfer from the general fund to the widows' fund such sums of money as the Company may fix to be applied for any of the following purposes:—



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- (1) in meeting any deficiency reported as a result of a periodical actuarial investigation into the state of the widows' fund;
- (2) in providing for an increase of the annuities payable to the beneficiaries of the widows' fund; or
- (3) generally in aiding or benefiting the widows' fund:

Provided that—

- (a) any such transfer shall be sanctioned by a resolution passed by a majority of the members present and voting at a special general meeting of the Company called for that purpose; and
- (b) there shall remain in the general fund after any such transfer such funds as shall, in the opinion of the actuary and of the Company, be sufficient to meet the claims against the Company then existing or that may arise, including the ordinary expenses of the Company.

#### *G. Meetings of Company*

- 22 (1) The Company shall hold stated general meetings each year on—
  - (a) the first Thursday of October; and
  - (b) the second Thursday of November;or such other dates as the Company may prescribe.
- (2) The Company may hold additional general meetings on such dates as the Company may prescribe.
- 23 (1) The Master or in his absence the treasurer may convene a special general meeting of the Company at any time when he deems it necessary.
- (2) If a requisition for a special general meeting of the Company signed by not less than 9 of the members is addressed to the Master he shall upon receiving such requisition convene a special general meeting which shall be held within two weeks of such requisition being received:

Provided that in the absence of the Master the treasurer shall act, or in his absence any of the assistants shall act, in his place for the purposes of this subsection.
- 24 (1) All meetings of the Company shall be called by notice issued by the secretary and posted at least 7 days before the date of the meeting.
- (2) The Company may adjourn any meeting as it sees fit.
- 25 The Master, or in his absence the treasurer, or in his absence the senior assistant present, shall preside as chairman at all meetings of the Company:

Provided that in the absence of the Master, the treasurer and all the assistants a chairman shall be chosen for the meeting from among the members present.
- 26 At all meetings of the Company not less than 30 of the members shall constitute a quorum.

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- 27 (1) When a vote is required to be taken at any meeting of the Company such vote shall, unless otherwise provided in this Order or by any rules, be taken by a show of hands.
- (2) In the event of any such vote being challenged by two or more members present the members present shall thereupon appoint tellers who shall ascertain the vote.
- (3) The chairman of the meeting shall, in all cases of equality of votes, have a casting vote in addition to any other vote he may have.

28 The Company may at any general meeting make rules for the purpose of regulating the procedure to be followed in the nomination and election of the Master, treasurer and assistants:

Provided that such rules are not inconsistent with the provisions of this Order and that the nomination of the persons to be proposed for election to the office of Master, treasurer or assistants shall (subject to the provisions of section 10 (Election of Master, treasurer and assistants) of this Order) take place annually at the stated general meeting of the Company to be held on the first Thursday of October or such other date as the Company may prescribe in every year.

#### *H. Miscellaneous*

29 The Company may at any general meeting make such rules for the regulation of the affairs of the Company as it deems expedient and in particular the Company may make rules and prescribe terms and conditions on which any annual subscription or special levy imposed in pursuance of the provisions of this Order, shall be payable, and may impose penalties (including forfeiture of all interest and benefit in the Company and provision for possible reinstatement following such forfeiture) on members who allow the payment of such subscription or levy to fall into arrear for more than three years:

Provided that such rules, terms, conditions and penalties shall not be inconsistent with the provisions of this Order.

### **PART III**

#### **MASTER'S COURT**

##### *Reconstitution of Master's court*

30 The Master, the treasurer and the assistants shall be and are hereby reconstituted as "The Master's Court of the Company of Merchants of the City of Edinburgh" for the purpose of exercising the powers conferred and carrying out the duties imposed on the Master's court by this Order, and performing the functions prescribed by this Order with respect to the Master's court, and under the said name may exercise the said powers and shall carry out the said duties and perform the said functions accordingly and the provisions of this Order relating to the Master's court shall apply to the Master's court as constituted by this section.

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#### *Meetings of Master's court*

- 31 (1) Meetings of the Master's court shall be held as the Master's court may direct or, in the absence of any direction, as the Master or, in his absence, the treasurer may direct and all such meetings shall be called by notice issued by the secretary and posted at least 7 days before the date of meeting.
- (2) The Master's court may adjourn any meeting as it may see fit.

#### *Chairman of meetings of Master's court*

- 32 (1) The Master, or in his absence the treasurer, or in his absence the senior assistant present, shall preside as chairman at all meetings of the Master's court.
- (2) The chairman of every meeting shall, in all cases of equality of votes, have a casting vote in addition to any other vote he may have.

#### *Quorum of meetings of Master's court*

- 33 At all meetings of the Master's court not less than five members thereof shall constitute a quorum in all matters with the exception of the ballot for the admission of members in which case not less than 8 members of the Master's court shall form a quorum.

#### *Committees of Master's court*

- 34 The Master's court may appoint committees of their number and convenors of such committees and may confer on such committees all such powers and give them such instructions as may appear to the Master's court expedient and shall fix the quorum of each such committee.

#### *Proceedings of Master's court not to be invalidated by vacancies, etc*

- 35 Proceedings of the Master's court or of any committee thereof shall not be invalidated or be illegal in consequence of there being any vacancy in the membership of the Master's court at the time of such proceedings, or in respect of any informality in the election of any member thereof.

#### *Duties of Master's court*

- 36 (1) The Master's court shall manage and administer the general fund which shall be invested by and in the name of the Master's court and applied by them in the manner provided in this Order.
- (2) The Master's court shall also bring before the Company such business as it considers proper, and dispose of or make reports and recommendations as to all business referred to it by the Company, and perform such acts and duties as the existing charters, this Order and the customs and usages of the Company may authorise or as the Company may prescribe.

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*Accounts to be kept by Master's court and audited*

- 37 (1) The Master's court shall keep accounts of the general fund showing the income and expenditure and assets and liabilities thereof, to be made up each year to 1st September.
- (2) The said accounts shall be audited by a registered auditor on behalf of the Company and approved by the Company at a general meeting.
- (3) A copy of the abstract of the accounts of the Company shall be sent each year to each member resident in Great Britain.

*Company officials to act as officials of Master's court*

- 38 The secretary and the other officials of the Company shall, after the commencement of this Order, also hold office in their several capacities as secretary and officials of the Master's court.

## PART IV

### DARLING FUND

*Vesting, etc., of Darling fund in Master's court*

- 39 The Darling fund shall continue to be vested in the Master's court, and shall be held, managed and administered by the Master's court as trustees, in accordance with the provisions of this Part of this Order.

*Payment of pensions out of Darling fund*

- 40 (1) The full income of the Darling fund shall after meeting the expenses of management, be applied by the Master's court in the provision of pensions to be known as "Alexander Darling Silk Mercer's Fund Pensions", of not less than £15 per annum to women qualified as hereinafter provided in this section, who are in the opinion of the Master's court in need.
- (2) The women qualified to receive such pensions shall be women of 55 years of age and over, of good character, preferably unmarried or widowed and being—
- (a)
    - (i) gentlewomen born in the City of Edinburgh; or
    - (ii) gentlewomen who for the greater part of their lives have been resident in the City of Edinburgh; or
    - (iii) gentlewomen who are the widows of men born in the City of Edinburgh; or
    - (iv) gentlewomen who are the widows of men who for the greater part of their lives were resident in the City of Edinburgh:  
 Provided that the Master's court shall be the sole judges of who are to be deemed gentlewomen for the purposes of this subsection; and
  - (b) women who have been employed at any time within the City of Edinburgh in the manufacture or sale of any textile garments for ladies and children or such articles of apparel including, without prejudice to the foregoing generalities, millinery, furs, laces and silks as are usually dealt in by a ladies' silk mercer:

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Provided that women who have been wholly concerned in the manufacture or sale of garments for men's wear shall not be so qualified.

- (3) In so far as is possible, the number of pensions available shall be apportioned one-half to gentlewomen qualified as mentioned in paragraph (a) of subsection (2) of this section and one-half to women qualified as mentioned in paragraph (b) of subsection (2) of this section.
- (4) In the allocation of pensions under this section preference shall be given to women bearing the surname Darling or Millar or Scott or Small and to women born in the town of Lanark:

Provided that all those so named or so born are to be given equal preference and that the order of narrating the qualifications for preference is not in any way indicative of any preference inter se.

- (5) The Master's court shall not pay a pension out of the Darling fund to any woman so qualified who is eligible for any national old age pension or allowance if such payment would cause the reduction of such national old age pension or allowance by an amount equal to or more than the amount of the pension payable out of the Darling fund and accordingly in any such case the amount of the pension payable out of the Darling fund shall from time to time be modified so that there shall be no such reduction of such national old age pension or allowance.

## PART V

### WIDOWS' FUND

#### *A. Maintenance of widows' fund*

- 41 The Company shall, subject to the provisions of this Order, continue and maintain the widows' fund.
- 42 From the commencement of this Order no person shall be admitted as a contributor to the widows' fund.

#### *B. Contributors*

- 43 (1) The contributors shall hold a stated general meeting each year on the first Thursday of October or such other date as the contributors may prescribe.  
(2) The contributors shall also hold a general meeting immediately after any general meeting (other than a special general meeting) of the Company.
- 44 (1) The Master or in his absence the Treasurer may convene a special general meeting of the contributors at any time when he deems it necessary.  
(2) If a requisition for a special general meeting of the contributors, signed by not less than 9 contributors is addressed to the Master he shall upon receiving such requisition

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convene a special general meeting which shall be held within two weeks of such requisition being received:

Provided that in the absence of the Master the treasurer shall act, or in his absence any of the assistants shall act, in his place for the purposes of this subsection.

45 (1) All meetings of the contributors shall be called by notice issued by the secretary and posted at least 7 days before the date of meeting.

(2) The contributors may adjourn any meeting as they see fit.

46 The Master, or in his absence the treasurer, or in his absence the old Master, or in his absence the senior elected trustee present, shall preside as chairman at all meetings of the contributors:

Provided that in the absence of the Master, the treasurer, the old Master and all the elected trustees a chairman shall be chosen from among the contributors present.

47 At all meetings of the contributors 25 contributors entitled to vote shall constitute a quorum provided that the quorum shall be reduced to not less than one-tenth of the contributors entitled to vote in the event of there being fewer than 240 contributors.

48 (1) When a vote is required to be taken at any meeting of the contributors, such vote shall, unless otherwise provided in this Order, be taken by a show of hands.

(2) In the event of any such vote being challenged by two or more contributors present, the contributors present at the meeting shall appoint tellers who shall ascertain the vote.

(3) A contributor whose contributions, or any part thereof, are at the date of the meeting in arrear shall not be entitled to vote.

(4) The chairman of the meeting shall, in all cases of equality of votes, have a casting vote in addition to any other vote he may have.

49 The contributors may appoint and employ all such officials as they may deem necessary for the carrying on of the business of the widows' fund:

Provided that—

(a) all existing officials appointed and employed by the contributors shall, until the first general meeting of the contributors to be held after the commencement of this Order, hold their respective offices on their respective existing terms and conditions; and

(b) the secretary shall also be secretary to the contributors.

50 The contributors may grant to their officials such pensions and life assurance cover as they may deem appropriate, and may join with the Company or any institution connected therewith, for the purpose of contributing to a superannuation fund for such officials, or make payment to an insurance company for a like purpose.

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51 The contributors may at any general meeting make such rules for the regulation of the affairs of the widows' fund as they deem expedient:

Provided that such rules shall not be inconsistent with the provisions of this Order.

*C. Powers of widows' fund*

52 The trustees of the widows' fund shall continue in being under the name of “The Trustees of the Widows' Fund of the Company of Merchants of the City of Edinburgh”, as a body corporate with perpetual succession and a common seal; and with power to purchase, acquire, hold, sell, lease and dispose of lands and other property heritable, moveable, real and personal, and to sue and be sued, and with all other rights, powers and privileges of a body corporate.

53 (1) The trustees shall be 9 in number as follows:—

- (a) the Master for the time being ex-officio;
- (b) the treasurer for the time being ex-officio;
- (c) the old Master for the time being ex-officio; and
- (d) six persons to be elected annually by the contributors from amongst their number at the stated general meeting of the contributors held each year on the first Thursday of October or such other date as the contributors may prescribe.

(2) The existing trustees shall, subject to the provisions of this Order, continue in office until the expiry of their respective periods of office.

54 (1) The trustee whose name at the time stands at the head of the list of the trustees elected by the contributors, shall not be eligible for re-election.

(2) The remaining five elected trustees shall be eligible for re-election.

55 In the event of any vacancy occurring at any time among the elected trustees, the contributors shall fill such vacancy within four months of its occurrence either at a stated general meeting of the contributors or at a special general meeting of the contributors to be called for that purpose and the person elected to fill such vacancy shall be placed at the bottom of the list of elected trustees.

56 (1) The trustees shall hold stated general meetings each year on—

- (a) the fourth Thursday of April; and
- (b) the fourth Thursday of October;

or such other dates as the trustees may prescribe.

(2) The trustees may hold additional general meetings on such dates as they may prescribe.

57 The Master, or in his absence the treasurer, may convene a special general meeting of the trustees at any time when he deems it necessary.

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- 58 (1) All meetings of the trustees shall be called by notice issued by the secretary and posted at least 7 days before the date of meeting.
- (2) The trustees may adjourn any meeting as they see fit.
- 59 (1) The Master or, in his absence the treasurer, or in his absence the old Master, or in his absence the senior elected trustee present, shall preside as chairman at all meetings of the trustees.
- (2) The chairman of the meeting shall, in all cases of equality of votes, have a casting vote in addition to any other vote he may have.
- 60 At all meetings of the trustees not less than three of them shall constitute a quorum in all matters.
- 61 The trustees may appoint committees of their number and convenors of such committees and may confer on such committees all such powers and give them such instructions as may appear to the trustees expedient and shall fix the quorum of each such committee.
- 62 Proceedings of the trustees or of any committee of the trustees shall not be invalidated in consequence of there being any vacancy in their membership at the time of such proceedings or in respect of any informality in the constitution or election of any of them.
- 63 The widows' fund shall be held, managed, administered and applied by the trustees in the following manner:—
- (a) for payment of the expenses of management of the widows' fund (including payments authorised under section 50 (Contributors may provide pensions, etc., for officials) of this Order);
  - (b) for payment of annuities to the widows of contributors;
  - (c) for payment of annuities or benefits to such new class or classes of beneficiaries as may be created in pursuance of section 83 (Power to introduce new classes of beneficiaries) of this Order;
  - (d) for refund of payments in pursuance of section 71 (Contributors may refund payments) of this Order;
  - (e) for refund of payments made by female contributors who, at the commencement of this Order, were married to a contributor; and
  - (f) for the purchase of annuities for existing annuitants.
- 64 The trustees may distribute the remainder of the widows' fund (after deducting outstanding expenses and liabilities of whatever kind) among the contributors for the time being pro rata to the level of their contributions, or in some such other equitable manner as shall be decided at his sole discretion by the actuary:
- Provided that such distribution has been sanctioned by a resolution passed by at least two-thirds of the contributors present and voting at a general meeting or special general meeting of the contributors.



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- 65 (1) The trustees shall keep accounts of the widows' fund showing the income and expenditure and assets and liabilities thereof, to be made up each year to 1st September.
- (2) The said accounts shall be audited by a registered auditor on behalf of the contributors and shall thereafter be examined by the trustees, and shall be laid before the contributors at the general meeting of the contributors held on the second Thursday of November or such other date as the contributors may prescribe.
- (3) A copy of the abstract of the accounts of the widows' fund shall be sent each year to each contributor resident in Great Britain.

*D. Payments, etc., by contributors*

- 66 (1) The annual contributions of all existing contributors shall continue to be payable in accordance with the existing provisions.
- (2) Any contributor may elect to cease to make contributions in which case he, or any widow left by him, shall (without the need for any declarator) forfeit all right, interest and benefit in the widows' fund:

Provided that all the rights, interest and benefit of any widow shall be reinstated if she shall pay up the arrears due by her husband together with all interest thereon at the rate of five per cent over the Bank of Scotland plc's base rate from the time each payment fell due and any costs that may have been incurred in recovering the same.

- 67 The contributors may permit the half-yearly contributions to the widows' fund, and the half-yearly payments of annuities to be paid in such instalments at such times and on such conditions as the actuary may recommend.

- 68 (1) The contributors, after an investigation by the actuary into the state of the widows' fund, may alter the amount of the half-yearly contributions payable to the widows' fund:

Provided that such alteration is sanctioned by a resolution passed by a majority of the contributors present and voting at a special general meeting of the contributors called for the purpose.

- (2) Any alterations made by the contributors under this section may be wholly in respect of the half-yearly contributions or may be in the number of contributions or partly by all or any of such methods and in such proportions as the contributors may deem most expedient.

- 69 Every contributor may at any term of Whitsunday or Martinmas, having given one month's notice in writing to the secretary, redeem in whole or in part the half-yearly contributions payable by him, or such part thereof as may then remain unpaid, by making payment to the widows' fund of such sum as may be fixed by the actuary.

- 70 The half-yearly contributions of a contributor who is married and who dies before having paid all his contributions to the widows' fund, which would, but for the provisions of this section, fall due subsequent to the date of death of such contributor shall not be payable.

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- 71 The contributors may resolve to refund in whole or in part to the representatives of deceased contributors any payments made by such contributors to the widows' fund.
- 72 (1) A contributor who is married may, in the event of his wife predeceasing him, elect to continue to pay his half-yearly contributions, but in the event of his remarriage, he shall pay in respect of such marriage, any marriage tax prescribed by this Order with the half-yearly contribution which falls to be paid at the first term of Whitsunday or Martinmas following upon his remarriage.
- (2) A contributor who is married may, in the event of his wife predeceasing him before he has paid all the half-yearly contributions due by him, suspend the payment of his half-yearly contributions to the widows' fund; but in the event of his remarriage if he wishes to benefit from the widows' fund, he shall—
- (a) pay in respect of such marriage the following:—
- (i) any marriage tax prescribed by this Order; and
- (ii) all accumulated arrears of half-yearly contributions from the date of such suspension, with compound interest at such rate as may be fixed by the actuary; and
- (b) thereafter resume payment of half-yearly contributions in the sum calculated by the actuary as being appropriate to his age at his next birthday until he has made two half-yearly payments for the number of years equal to the difference between his age at his next birthday following the resumption of payment and the age of 65 or such other date as may have been fixed by the contributors prior to the resumption of payment.
- 73 Every contributor who marries or remarries, and whose age exceeds that of his wife by more than five years, shall pay to the widows' fund in respect of each such marriage, the marriage tax appropriate to his age at his next birthday following such marriage calculated by the actuary.
- 74 The marriage tax shall in the case of contributors who marry or remarry be payable at the first term of Whitsunday or Martinmas after their respective marriages.
- 75 No alteration shall be made to the amount of the marriage tax payable to the widows' fund unless such alteration has been prepared by the actuary and approved by the contributors.
- 76 (1) Every contributor who marries shall, within three months after such marriage, provide the secretary with such evidence of marriage and birth as may be satisfactory to the trustees.
- (2) If any contributor dies before having provided the secretary with such evidence of his marriage the widow of such contributor shall have no right or title to any benefit from the widows' fund:
- Provided that the contributors may at any general meeting of the contributors grant to such widow such relief as they shall think fit.
- 77 If any contributor allows any of the half-yearly contributions payable by him to fall into arrear for three years after the same first became due, he or any widow left

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by him shall (without the necessity for any declarator) forfeit all right, interest and benefit in the widows' fund:

Provided that the contributors may at any general meeting of the contributors reinstate any such contributor or his widow subject (in the case of a contributor) to his paying up the arrears due by him together with all interest thereon at the rate of five per cent over the Bank of Scotland plc's base rate from the time each payment falls due and any costs that may have been incurred in recovering the same or (in the case of a widow) to payment of the said arrears and other moneys due in accordance with the provisions of this Order.

78 All payments to the widows' fund and all penalties imposed by this Order (if incurred) shall subject to the provisions of this Order bear interest at the rate of five per cent over the Bank of Scotland plc's base rate from time to time from the respective dates on which they are due until paid.

79 (1) If any contributor dies owing any money to the widows' fund, his widow shall not be entitled to receive an annuity until the sums owing together with interest have been paid:

Provided that the trustees may accept payment by deducting such sums and interest owing from the annuity by such instalments and at such times as they may think fit.

(2) The trustees (or the widow of such contributor who pays the sums owing) may take all competent legal action for recovering the same out of the estate of such contributor.

#### *E. Payment of annuities*

80 (1) There shall be paid out of the widows' fund to every existing widow who is entitled to an annuity, and to the widow of every contributor who, at the time of his death, may have an interest in the widows' fund and be entitled to the benefit thereof for his widow, such annuity as may from time to time be fixed by the contributors in pursuance of the provisions of this Order.

(2) The said annuities shall be paid at the terms of Whitsunday and Martinmas in equal portions.

(3) In the case of any annuity accruing to a widow after the commencement of this Order payment shall be made, at the first term of Whitsunday or Martinmas after her husband's death, of the proportion of the annuity corresponding to the time from the death of the husband to the first date of payment.

(4) The annuity of every widow entitled to an annuity shall continue to be paid during all her life, whether she remains a widow or marries again, and such proportion of the annuity as may be due at her death shall be paid to her legal representatives.

81 If the widow of any contributor marries another contributor and afterwards again becomes a widow she shall be entitled to an annuity in respect of each such marriage subject to the provisions of this Order.

82 The annuities payable in accordance with the provisions of this Order shall be deemed to be alimentary and shall not be assignable by them or liable to be arrested

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or otherwise affected or attached by their creditors but shall be payable to each widow entitled to the same upon her own receipt, notwithstanding any assignation, arrestment or attachment, and such receipt shall sufficiently exonerate the trustees.

83 The contributors may after a report by the actuary following an actuarial investigation, resolve to introduce a new class or classes of beneficiaries consisting of the minor orphan children of contributors or of certain classes of such children and may make such rules regarding such new classes of beneficiaries (including the amount of benefit which such beneficiaries may receive) as they deem necessary and such rules shall, unless and until altered by the contributors, have the same force and effect as if they had been enacted by this Order.

84 In the event of an alteration being made in the rate of the annuity payable under the provisions of this Order, the rate of annuity as so altered shall be and shall continue to be from and after the date of such alteration and until the rate of annuity is again altered (if any such further alteration be deemed necessary or expedient) the rate of payment of all the annuities payable out of the widows' fund.

#### *F. Alteration of amount of annuities*

85 (1) The actuary shall make periodical investigations into the state of the widows' fund and its adequacy for payment of the annuities charged and that may become charged thereon and the circumstances connected therewith.

(2) The first investigation to be made under this Order shall be made at such date as shall be fixed by the contributors not being later than 1st September 1997 notwithstanding the date of the commencement of this Order and such investigations shall thereafter be made at such intervals as shall be fixed by the contributors from time to time but not more than 7 years shall elapse between any two investigations.

86 The contributors may after any investigation into the state of the widows' fund resolve, subject to the provisions of this Order, that the amount of annuity which may be payable should for the time being—

- (a) not be altered; or
- (b) be increased; or
- (c) be reduced;

and the contributors shall fix the amount of any such increase or reduction.

87 Subject to the provisions of this Order, an increase of the amount of annuity shall not be made unless—

- (a) the actuary certifies that the value of the annuities at the increased rate payable to the widows then on the widows' fund, and which may become payable to the widows of the then existing contributors, together with an allowance for expenses and other liabilities, does not exceed the amount of the fund in hand (including any sums transferred or agreed to be transferred to the widows' fund from the general fund under the provisions of this Order) together with the value of the future contributions of the then existing contributors; and

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- (b) the increase is sanctioned by a resolution passed by a majority of the contributors present and voting at a special general meeting of the contributors called for that purpose.

88 Subject to the provisions of this Order, a reduction of the amount of annuity shall not be made unless—

- (a) the actuary reports that the amount of the fund in hand (including any sums transferred or agreed to be transferred to the widows' fund from the general fund under the provisions of this Order) together with the value of the future contributions of the then existing contributors is less than the value of the annuities payable to widows then on the widows' fund, and which may become payable to the widows of the then existing contributors, together with an allowance for expenses and other liabilities; and
- (b) the actuary certifies that the amount of the reduction which is proposed to be made is necessary to place the widows' fund in a state of solvency; and
- (c) the reduction is sanctioned by a resolution passed by a majority of the contributors present at a special general meeting of the contributors called for that purpose.

#### *G. Dissolution of widows' fund*

89 (1) At any time the trustees may, subject to a resolution passed by at least two-thirds of the contributors present and voting at a general meeting or special general meeting of the contributors, (but when there are less than 20 surviving annuitants the trustees shall)—

- (a) purchase annuities for such surviving annuitants as the actuary shall in his sole discretion recommend; and
- (b) out of the widows' fund, purchase from a life assurance company (being a member of the Association of British Insurers) and hold in respect of spouses of existing contributors a deferred annuity so that the income may be paid to the surviving spouse on the death of the contributor.

(2) A deferred annuity purchased in respect of any contributor shall be in such sum as the actuary shall in his sole discretion recommend.

90 (1) After they have fulfilled all their obligations under this Order or otherwise, the trustees may at any time in their absolute discretion invest the residue of the widows' fund or any part thereof (not being moneys forming part of any annuity or deferred annuity purchased by them) or pay the same or any part thereof to the endowments trust or such other charitable trust managed by the Company as the trustees in their absolute discretion shall determine.

(2) Upon the death of the last annuitant, and provided that at that date no person may yet come to be an annuitant, or upon it subsequently appearing that no person may yet come to be an annuitant, the trustees shall transfer the residue of the widows' fund to the endowments trust or such other charitable trust managed by the Company as shall be determined by the Company at a general meeting.

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- 91 (1) Upon completion of the transfer of the residue of the fund in pursuance of section 90 (Application of residue of widows' fund) of this Order the widows' fund shall be dissolved:

Provided that such dissolution has been sanctioned by a resolution passed by a majority of the trustees.

- (2) Notice of the passing of such resolution and of the date therein specified shall, as soon as may be after the passing thereof, be advertised in the Edinburgh Gazette.

## PART VI

### ENDOWMENTS TRUST

#### *A. Incorporation powers, etc., of endowments trust*

- 92 The former Merchant Company Endowments Trust incorporated by the Act of 1960, shall continue in being under the same name, as a body corporate with perpetual succession and a common seal; and with power to purchase, acquire, hold, sell, lease and dispose of lands and other property heritable, moveable, real and personal, to sue and be sued, and with all other rights, powers and privileges of a body corporate.

- 93 The existing endowments trust fund shall, subject to the debts, liabilities, contracts and obligations affecting the same, continue to be vested in the endowments trust and shall be held, used and disposed of by the endowments trust for the purposes of and in accordance with the provisions of this Order.

- 94 (1) The endowments trust shall consist of 24 members as follows:—
- (a) the Master, the treasurer and the 12 assistants of the Company for the time being ex-officio;
  - (b) five members of, and to be elected by, the council for the City of Edinburgh;
  - (c) two ministers of the Edinburgh Presbytery of the Church of Scotland to be elected by the said Presbytery; and
  - (d) three persons to be elected by the Company from among the members.
- (2) The existing members of the endowments trust shall, subject to the provisions of this Order, continue in office until the second Thursday of November first occurring after the commencement of this Order.

- 95 (1) The election of the elected members of the endowments trust shall take place annually at any general meeting of the Company in October or November:

Provided that the election shall not take place after the date of the annual meeting from which date the elected members shall hold office until the following annual meeting.

- (2) Any member of the endowments trust, upon the expiry of his term of office, shall be eligible for re-election if otherwise qualified under this Order.

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- 96 In the event of any vacancy occurring among the elected members of the endowments trust at any time the body which elected the person whose office has become vacant shall elect another person to fill such vacancy at a meeting of such electing body to be held within six weeks of such vacancy occurring and the person so elected shall, subject to the provisions of this Order, hold office during the unexpired portion of the period of office of the person in whose place he has been elected.
- 97 (1) Meetings of the endowments trust shall be held as the endowments trust may direct or, in the absence of any direction, as the Master, or in his absence, the treasurer, may direct and all such meetings shall be called by notice issued by the secretary and posted at least 7 days before the date of meeting.
- (2) The endowments trust may adjourn any meeting as they see fit.
- 98 (1) The Master, or in his absence the treasurer, shall preside as chairman at all meetings of the endowments trust:
- Provided that in the absence of the Master and the treasurer, a chairman shall be chosen from among the members of the endowments trust present.
- (2) The chairman of the meeting shall, in all cases of equality of votes, have a casting vote in addition to any other he may have.
- 99 At all meetings of the endowments trust not less than 10 members thereof shall constitute a quorum.
- 100 The endowments trust may, subject to the provisions of this Order, appoint committees and convenors of such committees and may confer on such committees such powers and give them all such instructions as may appear to the endowments trust expedient and shall fix the quorum of each such committee.
- 101 Proceedings of the endowments trust or any committee thereof shall not be invalidated in consequence of there being any vacancy in their membership at the time of such proceedings or in respect of any informality in the election of any of the elected members thereof.
- 102 (1) The endowments trust may appoint and employ all such officials as they may deem necessary for carrying on of their business:
- Provided that—
- (a) all existing officials appointed and employed by the endowments trust shall continue to hold their respective offices on their respective terms and conditions; and
- (b) the secretary shall also be secretary to the endowments trust.
- (2) All the officials appointed and employed by the endowments trust shall hold their respective offices at the pleasure of the endowments trust.
- 103 The endowments trust may grant to their officials such pensions and life assurance cover as they may deem appropriate, and may join with the Company or any

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institution connected therewith, for the purpose of contributing to a superannuation fund for such officials, or make payment to an insurance company for a like purpose.

- 104 Subject to the provisions of this Order, the free income of the endowments trust fund shall, after meeting the expenses of management (including payments authorised under section 103 (Endowments trust may provide pensions, etc., for officials) of this Order), be applied in the payment of annual pensions or gifts of money, and in providing (by way of gift, loan or on partial or full repayment) lodging, clothing, food, fuel, furnishings or other benefits to persons who are qualified as hereinafter mentioned in this Order to receive such benefits.
- 105 The endowments trust may borrow or expend capital for the purposes of this Part of this Order (to which capital may properly be applied).
- 106 (1) The endowments trust may maintain a reserve fund by setting aside out of the revenue of the endowments trust fund such sums as they think fit.
- (2) The reserve fund shall be applied by the endowments trust in such way and manner as they deem expedient for the benefit of the endowments trust fund and (inter alia) towards meeting—
- (a) the excess of expenditure over revenue of the endowments trust fund occurring at the close of any financial year as ascertained by the registered auditor of the endowments trust for the time being;
  - (b) the losses which may be sustained by the endowments trust fund through the depreciation of securities or insolvency of debtors; and
  - (c) extraordinary expenditure on lands and buildings forming part of the endowments trust fund.
- 107 (1) The endowments trust shall keep accounts of the endowments trust fund showing the income and expenditure and assets and liabilities thereof, to be made up to a date to be fixed by the endowments trust.
- (2) The said accounts shall be audited by a registered auditor on behalf of the endowments trust.
- (3) A copy of the abstract of the accounts of the endowments trust shall be sent each year to each member of the endowments trust resident in Great Britain.

*B. Payments, etc., to beneficiaries*

- 108 The classes of persons qualified to be beneficiaries shall be—
- (a) decent, peaceable and indigent men and women aged at least 55 on 1st July in the year of election (unless they are certified on medical grounds as being unable to earn their living) who are—
    - (i) members not exceeding 10 in number at any one time;
    - (ii) persons who have lived or worked in the City of Edinburgh;
    - (iii) persons who have lived or worked in Midlothian generally (excepting the City of Edinburgh):



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Provided that in classes (ii) and (iii) preference shall be given to persons of the name of Gillespie or Gibb or Heriot and to those who have been connected with the building trade in the City of Edinburgh;

- (b) persons qualified to occupy the Sir William Fraser Homes in accordance with the provisions of this Order.

- 109 Each pension from the endowments trust fund shall be not less than £10 per annum, and shall be payable in advance at such times as the endowments trust may decide to the beneficiary or to such other person as the endowments trust may from time to time determine to be applied for behoof of the beneficiary.
- 110 (1) The endowments trust may build, purchase, lease, alter and maintain and may fit up and furnish, wholly or partly houses, flats or other buildings, for the accommodation of beneficiaries, and may allow such beneficiaries in lieu of or in addition to the payment of their pension to occupy such houses, flats or other buildings during the pleasure of the endowments trust, or may enter into an arrangement with any other organisation having similar objects.
- (2) The endowments trust may employ such persons as the endowments trust may consider necessary to assist and advise the beneficiaries.
- (3) The endowments trust may defray all expenditure incurred by them, in the exercise of the powers conferred on them by this section, out of the endowments trust fund.
- (4) The endowments trust may apply any money borrowed by them in the exercise of their powers, to the building or purchase of houses, flats or other buildings for the accommodation of beneficiaries or for any purpose connected therewith (to which capital may properly be applied).
- 111 (1) The endowments trust shall, annually on a date or dates to be fixed by them, elect the number of beneficiaries for which in the opinion of the endowments trust the free income of the endowments trust fund will provide and shall determine the benefits which each beneficiary may receive during the ensuing year or such shorter period as the endowments trust may determine.
- (2) Beneficiaries shall be designated Gillespie pensioners or Watherston donees or Gibb and Heriot pensioners as the endowments trust may decide when the beneficiary is elected.
- 112 (1) The endowments trust shall, on request, issue to potential applicants for a pension or other benefit, a form of application with a schedule appended containing particulars of the information, certificates and documents required in support of their application.
- (2) Every application shall be made on the form so supplied and shall be lodged with the endowments trust along with the required documents.

*C. Fraser Trust*

- 113 For the purposes of this Head of this Part of this Order—

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- (a) “deed of directions” means the deed of directions executed by Sir William Fraser K.C.B., LL.D., pursuant to the Fraser trust disposition and dated 11th December 1896 and registered in the Books of Council and Session 22nd March 1898;
  - (b) “Fraser trust disposition” means the trust disposition and deed of settlement of the said Sir William Fraser dated 10th December 1896 and registered in the Books of Council and Session 22nd March 1898;
  - (c) “Fraser trustees” means the trustees for the time being of the Fraser trust disposition.
- 114 (1) The endowments trust shall maintain the property known as, and which shall continue to be known as, the Sir William Fraser Homes for occupation by the persons qualified in accordance with the provisions of this Head of this Part of this Order.
- (2) The endowments trust may employ such staff as shall be deemed necessary for the proper maintenance of such homes and for the assistance of the occupants of such homes.
- (3) The endowments trust may defray all expenditure incurred by them, in the exercise of the powers conferred on them by this section, out of the endowments trust fund.
- (4) The endowments trust may apply any money borrowed by them towards the repair and rebuilding of such homes and in payment of any expenditure connected therewith, to which capital may properly be applied.
- 115 The classes of persons qualified to occupy the Sir William Fraser Homes shall be—
- (a) poor persons resident in the City of Edinburgh or Midlothian who, in the opinion of the endowments trust and of the Fraser trustees, are of satisfactory character, preference being given to authors and artists otherwise qualified under this paragraph; and
  - (b) persons qualified to be beneficiaries of the endowments trust in accordance with the provisions of this Part of this Order.
- 116 (1) Vacancies arising in respect of occupants of the Sir William Fraser Homes appointed by the Fraser trustees shall be filled by the Fraser trustees provided that if they fail to fill such vacancy within six months of its arising the vacancy may be filled by the endowments trust. All other vacancies shall be filled by the endowments trust.
- (2) The endowments trust shall before the election of any persons as occupants of the Sir William Fraser Homes consult with the Fraser trustees, and the Fraser trustees shall be entitled to receive due notice of and to attend and vote at any meeting of the endowments trust called for the purpose of electing such occupants.
- 117 (1) The endowments trust may transfer the occupants of any house, whether elected before or after the commencement of this Order to any other house, in conformity with any scheme of division of the houses agreed between the Fraser trustees and the endowments trust:
- Provided that an occupant elected by the Fraser trustees shall not be so transferred without the consent of the Fraser trustees.

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- (2) Occupants shall occupy the houses allocated to them during the pleasure of the endowments trust:
- Provided the right of occupancy of any occupant elected by the Fraser trustees may not be terminated without the consent of the Fraser trustees.
- (3) For the purposes of this section “house” means any house forming part of the Sir William Fraser Homes.
- 118 For the purposes of this Head of this Part of this Order—
- (a) the existing Fraser trustees shall continue to be Fraser trustees;
  - (b) the Lord Lyon King of Arms for the time being or his nominee shall be an ex officio Fraser trustee and the Sir William Fraser Professor of Ancient History and Palaeography for the time being in the University of Edinburgh or his nominee shall be an ex officio Fraser trustee;
  - (c) the Fraser trustees may from time to time appoint not more than one additional trustee to act with them, but so that there shall not at any one time be more than three Fraser trustees.
- 119 The Fraser trustees shall be members of any committee which may be appointed by the endowments trust to deal with the management and administration of the Sir William Fraser Homes. Such committee may, subject to the provisions of section 117 (Rights of occupants of Sir William Fraser Homes) of this Order, allocate the houses to be occupied by persons elected by the Fraser trustees and by the endowments trust respectively.
- 120 The Fraser trustees shall retain the existing assets held by them and shall apply the capital and income thereof in accordance with the deed of directions and the Fraser trust disposition including, without prejudice to the above generality, the decoration and internal improvement of the houses occupied by persons elected by the Fraser trustees.
- 121 The Fraser trustees may at any time resolve to transfer, in whole or in part, to the endowments trust the remaining assets vested in them as the Fraser trustees.

#### *D. Russell and Foster Endowment*

- 122 All the lands, property, estate and securities forming the residue (together with the surplus income accumulated thereto) of the estate of the late Henry Walker Russell, held by and due to the trustees acting under his will dated 30th April 1948 and relative codicil registered in the Books of Council and Session 13th November 1954, shall, on the expiry of the last annuity payable in terms of the said will, continue to be vested in the endowments trust, and shall be held, managed and administered by the endowments trust in accordance with the provisions of this Order as a separate fund to be known as the “Russell and Foster Endowment”.
- 123 Subject to the provisions of this Part of this Order the free income of the Russell and Foster Endowment shall, after meeting the expenses of management thereof,

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be applied by the endowments trust in the payment of annual pensions to persons qualified as hereinafter mentioned in this Order to receive such pensions.

- 124 (1) The persons qualified to be beneficiaries of the Russell and Foster Endowment shall be respectable indigent Protestant men and women aged at least 55 at the date of their election, unless they are certified on medical grounds as being unable to earn their living, and who are resident in any part of Great Britain.
- (2) The endowments trust shall be the sole judges of who are to be deemed respectable for the purposes of this section.
- 125 Each pension to be paid by the endowments trust from the Russell and Foster Endowment shall be not less than £15 per annum, and shall be payable in advance at such times as the endowments trust may decide to the beneficiary or to such other person as the endowments trust may from time to time determine, to be applied for behoof of the beneficiary.
- 126 Beneficiaries under the Russell and Foster Endowment shall be designated Russell and Foster pensioners.

#### *E. Variation of Trusts*

- 127 In the event that the endowments trust or the Fraser trustees wish to vary or revoke all or any of the terms of the Russell and Foster Endowment or the Fraser trust disposition, as the case may be, or enlarge the powers of the trustees of managing or administering any of the property subject to the said trusts, the endowments trust or the Fraser trustees, as the case may be, may apply to the Court of Session by Petition for an Order of the Court for such variation, revocation or enlargement.

### **PART VII**

#### JOINT COMMITTEE

##### *Re-establishment of joint committee*

- 128 (1) The Merchant Company Joint Committee, as established by the Act of 1960, shall be and is hereby re-established under the same name.
- (2) The joint committee shall consist of 9 members constituted and elected as follows:—
- (a) the Master ex-officio;
  - (b) the treasurer ex-officio;
  - (c) one member to be elected by the Master's court from their number on behalf of the Company;
  - (d) one member to be elected by the trustees from their number on behalf of the contributors;
  - (e) three members to be elected by the education board from their number on behalf of the education board;
  - (f) two members to be elected by the endowments trust from their number on behalf of the endowments trust.

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- (3) The existing elected members of the joint committee shall continue in office until the date of the annual meeting first following the commencement of this Order.

*Election and period of office of members of joint committee*

- 129 (1) The election of the elected members of the joint committee shall take place annually before the date of the annual meeting from which date the elected members shall hold office until the following annual meeting.
- (2) Any member of the joint committee shall be eligible for re-election if otherwise qualified under this Order.

*Filling of vacancies in joint committee*

- 130 In the event of any vacancy occurring among the elected members of the joint committee at any time the body which elected the person whose office has become vacant shall fill such vacancy at the next stated meeting of such body or at a special meeting called for the purpose and the person so elected shall, subject to the provisions of this Order, hold office during the unexpired portion of the period of office of the person in whose place he has been elected.

*Meetings of joint committee*

- 131 (1) Meetings of the joint committee shall be held as the joint committee may direct or, in the absence of any direction, as the Master, or in his absence, the treasurer, may direct and all such meetings shall be called by notice issued by the secretary and posted at least 7 days before the date of meeting.
- (2) The joint committee may adjourn any of its meetings as it sees fit.

*Chairman of joint committee*

- 132 (1) The Master or, in his absence the treasurer, shall preside as chairman of the joint committee:
- Provided that in the absence of the Master and the treasurer, a chairman shall be chosen for the time from among the members of the joint committee present.
- (2) The chairman of the meeting shall, in all cases of equality of votes, have a casting vote in addition to any other vote he may have.

*Quorum of meetings of joint committee*

- 133 At all meetings of the joint committee not less than three members thereof shall constitute a quorum.

*Proceedings of joint committee not to be invalidated by vacancies, etc*

- 134 Proceedings of the joint committee shall not be invalidated in consequence of there being any vacancy in its membership at the time of such proceedings or in respect of any informality in the election of any of the elected members thereof.

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*Powers of joint committee*

- 135 (1) The joint committee may act for the purpose of transacting and disposing of any business common to the Company, the widows' fund, the education board and the endowments trust including, without prejudice to the foregoing generality—
- (a) the expenses of management and the allocation of these expenses among the Company, the widows' fund, the education board and the endowments trust;
  - (b) the making of contracts;
  - (c) the apportionment of the accommodation required for the various departments in the office of the Company;
  - (d) the appointment, suspension and dismissal of employees (as opposed to office-holders);
  - (e) the fixing of the terms of appointment of any officials and any alterations thereof;
  - (f) the fixing of the rate of interest to be charged and paid from time to time on loans granted by any one of the Company, the widows' fund, the education board or the endowments trust respectively to any other of the Company, the widows' fund, the education board or the endowments trust respectively or granted from any of the funds under the management of either the education board or the endowments trust to any other of the said funds; and
  - (g) the consideration of reports upon all other matters which may be remitted to the joint committee.
- (2) The joint committee may make such rules and orders for conducting its business as it may deem expedient:

Provided that such rules shall not be inconsistent with the provisions of this Order.

## PART VIII

### MISCELLANEOUS AND GENERAL

*Execution of deeds*

- 136 All deeds and other instruments requiring to be executed by the Company, the Master's court, the trustees, the endowments trust or the joint committee shall be validly executed if subscribed—
- (a) in the case of the Company (either with or without the common seal of the Company being impressed) by any one of the Master, treasurer or assistants and by the secretary;
  - (b) in the case of the Master's court by any one of the Master, treasurer or assistants and by the secretary;
  - (c) in the case of the trustees (either with or without the common seal of the trustees being impressed) by any one of the trustees and by the secretary;
  - (d) in the case of the endowments trust (either with or without the common seal of the endowments trust being impressed) by any one of the members of the endowments trust and by the secretary; and
  - (e) in the case of the joint committee by any one of the members of the joint committee and by the secretary:

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Provided that in the absence of the secretary any such deed or instrument may be signed by any other official appointed for the purpose by the body by which such deed or instrument is to be executed.

*Powers of investment*

- 137 (1) The funds of the Company (which shall include the widows' fund, the funds administered by the Master's court, the endowments trust and the Darling trustees or any other funds subject to the control of the Company) may be invested in the purchase or upon the security of such shares, stock, securities or other investments or property of whatever nature including land, life assurance policies or annuities, and in any part of the world, whether involving liability or not, and whether producing income or not, as the Master's court, the trustees, the endowments trust, the Darling trustees or others as the case may be, shall in their sole discretion think fit in the same unrestricted manner as if they were beneficial owners thereof.
- (2) Subject as hereinafter contained, the Master's court, the trustees, the endowments trust, the Darling trustees or others as the case may be, shall not be bound in any case to act personally but shall be at full liberty to employ an agent, servant, solicitor, accountant, factor, broker, investment manager, adviser or other to transact any business required to be done, and shall be entitled to be paid all charges and expenses so incurred, and shall not be responsible for the defaults of any such agent or others nor for any loss occasioned by their employment:

Provided always that nothing in the provisions of this section shall be construed as conferring on the Master's court, the trustees, the endowments trust, the Darling trustees or others as the case may be, the right to delegate any decision concerning the application or the distribution of the income or the capital of any trust funds pursuant to any charitable objects under their supervision.

- (3) The Master's court, the trustees, the endowments trust, the Darling trustees or others as the case may be, shall have power to permit any moneys, bonds, certificates or other securities for money, or documents of title to property heritable or moveable, to be deposited with any bank, trust company or other like institution in the United Kingdom and permit any investments, securities or other heritable or moveable property which or any share or interest therein to be and remain invested in the name of nominees instead of in the name of the Company itself or of the trustees or the endowments trust or the Darling trustees as the case may be, upon such terms as to remuneration and in all other respects as the Master's court, the trustees, the endowments trust, the Darling trustees or others as the case may be, shall in their sole discretion think proper with power to delegate to such banks, trust companies or other institutions, or to such nominees such of the powers and discretions hereby or by law vested in the Company, the Master's court, the trustees, the endowments trust, the Darling trustees or others as the case may be, may consider expedient so to delegate:

Provided always that any such nominees shall report to the Master's court, the trustees, the endowments trust, the Darling trustees or others as the case may be, in writing fully and promptly in respect of such acts carried out by them on behalf of the Company or the Master's court, the trustees, the endowments trust, the Darling trustees or others as the case may be.

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*Borrowing and lending inter se by Company, widows' fund, endowments trust and education board*

- 138 The Company (by the Master's court), the widows' fund (by the trustees), the Master's court and the endowments trust may lend to each other and to the education board and borrow from each other and the education board or any of the other funds or endowments connected with the Company, the widows' fund, the Master's court and the endowments trust (but excepting the Darling fund).

*Donations, etc., may be received*

- 139 (1) The Company, the Master's court and the endowments trust may respectively receive donations or endowments for any of the purposes of this Order in so far as applicable to them respectively and may also receive donations or endowments for any special objects which shall not be inconsistent with or calculated to impede the due working of the provisions of this Order and may hold, exercise, administer and fulfil any trusts which may be confided to them.
- (2) The endowments trust may enter into agreements with any persons who are the administrators of any charity or benevolent institution within the city of Edinburgh and for the transfer of the administration of such charity or benevolent institution to the endowments trust.

*Notices*

- 140 Any notice required to be given pursuant to the provisions of this Order may be sent by post.

*Discharge of members, contributors, officials and others*

- 141 The members, the contributors, the endowments trust and all officials appointed in pursuance of the repealed Acts and the heirs, executors and representatives of any of them who have predeceased or may predecease the confirming of this Order are hereby exonerated, acquitted and simpliciter discharged of their whole actings, transactions, intromissions and management in any way, and in whatever capacities, in consequence of or arising out of their membership or appointments to their respective offices or otherwise, and of all omissions which can or could be laid to their charge and of all claims and demands whatsoever which may be made against them.

*Saving for town and country planning*

- 142 This Order shall be deemed to be an enactment passed before and in force at the passing of the Town and Country Planning (Scotland) Act 1947 for the purposes of sections 11(4) and 112(1) of that Act or any subsequent re-enactment thereof.

*Costs of Order*

- 143 The costs, charges and expenses of and incident to the preparing, obtaining and confirming of this Order or otherwise in relation thereto shall be paid out of such funds as may be determined by the joint committee.