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STATUTORY INSTRUMENTS

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**1991 No. 1209**

**SUPREME COURT OF ENGLAND AND WALES  
COUNTY COURTS**

**The Common Investment Scheme 1991**

<i>Made</i>	- - - -	<i>17th May 1991</i>
<i>Laid before Parliament</i>		<i>23rd May 1991</i>
<i>Coming into force</i>	- -	<i>13th June 1991</i>

The Lord Chancellor in exercise of the powers conferred on him by section 42(1) of the Administration of Justice Act 1982<sup>(1)</sup>, hereby makes the following Scheme:

1. This Scheme may be cited as the Common Investment Scheme 1991 and shall come into force on 13th June 1991.

2. In this Scheme, unless the context otherwise requires—

“accounting date” and “dividend date” mean the dates respectively specified in Schedule 2 in relation to each fund;

“the Act” means the Administration of Justice Act 1982;

“the Committee” means the Lord Chancellor’s Investment Advisory Committee;

“fund” means a common investment fund;

“Funds Rules” means rules made under section 38(7) of the Act;

“unit” means a share in a fund;

“valuation day” means a day appointed by the investment manager in accordance with paragraph 3(2) of Schedule 1 for the valuation of a fund.

3. There shall continue to be three funds, known respectively as the “Capital Fund”, the “High Yield Fund” and the “Gross Income Fund”, for the purpose of the investment of money to be invested in common investment funds in accordance with Funds Rules.

4. An investment manager appointed by the Lord Chancellor shall manage and control the funds to which this Scheme applies.

5.—(1) The investment manager shall administer the funds referred to in paragraph 4 in accordance with the following objectives—

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(1) 1982 c. 53.

- (a) in the case of the Capital Fund, with a view to securing high long-term capital growth with some growth in annual income but with less emphasis on the level of annual income; and
- (b) in the case of the High Yield and Gross Income Funds, with a view to securing a high annual income with some long-term capital growth;

and the investment manager shall frame an investment strategy (which may be revised as and when the investment manager thinks fit) designed to achieve these objectives.

(2) The investment manager shall consult the Committee and the Accountant General before framing or amending the investment strategy referred to above.

(3) The investment manager shall ensure that the person responsible for the management of the funds or his deputy attends all meetings of the Committee and supplies to the Committee all information it reasonably requires.

**6.** Dividends payable on the Gross Income Fund shall, in so far as arrangements in that behalf made between the investment manager and the Commissioners of Inland Revenue may permit, be paid without deduction of income tax.

**7.** The provisions of Schedule 1 shall apply to each fund.

**8.** Schedule 2 shall have effect in relation to each fund.

**9.** It shall be the duty of the investment manager to manage and control each fund and, without prejudice to the generality of the said duty, the investment manager shall have the powers and be subject to the duties set out in Schedule 3 in respect of each fund.

**10.** The Common Investment Funds Scheme 1965(2) and the Common Investment Funds (Amendment) Scheme 1972(3) are hereby revoked.

Dated 17th May 1991

*Mackay of Clashfern, C.*

## SCHEDULE 1

### PROVISIONS APPLICABLE TO EACH FUND

1.—(1) Each fund shall be treated as being divided into units, each of which shall represent an equal undivided part of the fund.

(2) The number of units into which each fund is to be treated as being divided at the commencement of this scheme shall be the same as the number of units in the fund of the same name established under the Common Investment Funds Scheme 1965<sup>(4)</sup> immediately before its revocation.

(3) If at any time the value of a unit appears to the Accountant General to be too high to admit of monies being conveniently invested in the fund, he may direct that each unit shall be divided in such manner as he may think fit.

2. No document of title shall be issued in respect of any unit.

3.—(1) The following provisions of this paragraph shall have effect for the purpose of regulating the allotment of units to, and their realisation by, the Accountant General.

(2) On such days as the investment manager may appoint, not being fewer than 24 in each calendar year during the whole of which the fund is operating, the fund shall be valued in accordance with the relevant provisions of this Schedule and the value of the fund and the buying and selling prices of units on each of those days shall be determined by the investment manager in accordance with those provisions.

(3) On a valuation day the Accountant General shall—

- (a) in the case of each account kept in pursuance of Funds Rules to the credit of which there stands money falling to be invested in the fund, estimate the number of units that can be purchased with that money and inform the investment manager of the aggregate number; and
- (b) in the case of each such account to the credit of which there stand units which he is under a duty to realise, estimate the number of units to be realised and inform the investment manager of the aggregate number.

(4) If, on a valuation day, the aggregate number of units of which the investment manager is informed in pursuance of sub-paragraph (3)(a) above differs from that of which he is informed in pursuance of sub-paragraph (3)(b), he shall—

- (a) estimate the cost attending the creation or realisation (according to which of those numbers exceeds the other) of units to a number equal to the difference;
- (b) apportion the said cost in such manner as he may think just between the aggregate number of units of which he is informed in pursuance of sub-paragraphs (3)(a) and (3)(b) respectively; and
- (c) inform the Accountant General of the buying and selling prices of units on that day ascertained in accordance with paragraph 5(2) of this Schedule.

(5) The Accountant General shall if necessary revise, in the light of the buying and selling prices of which he is informed in pursuance of sub-paragraph (4)(c) above, the number of units to be purchased and realised respectively and shall notify the investment manager accordingly.

(6) If, on a valuation day—

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(4) S.I. 1965/1467, as amended by S.I. 1972/528.

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- (a) the number of units to be purchased exceeds the number to be realised, the number of units into which the fund is treated as being divided and the number deemed to be allotted to the Accountant General shall thereupon be increased by the difference;
  - (b) the number of units to be realised exceeds the number to be purchased, the number of units into which the fund is treated as being divided and the number deemed to be allotted to the Accountant General shall thereupon be reduced by the difference.
4. For the purpose of valuing the fund—
- (a) the value of any security quoted on a stock exchange shall be ascertained by reference to the published closing price on the previous day or, if there is no such price, by reference to the last published closing price; and the value of a security quoted on more than one stock exchange shall be ascertained by reference to the published closing price on the previous day on the exchange considered by the investment manager to be most appropriate;
  - (b) the value of assets, other than securities quoted on a stock exchange, shall be such as may be determined by the investment manager, who may, for the purpose of making such a determination, obtain and accept a valuation by a professional valuer, accountant, or other person considered by him to be duly qualified in that behalf.
- 5.—(1) The value of a unit on a valuation day shall be an amount equal to the quotient derived by dividing by the number of units into which the fund is treated as being divided on that day the value to the nearest pound of the fund on that day plus—
- (a) any income for the time being withheld by virtue of paragraph 8(2) of this Schedule; and
  - (b) any income accrued since the last accounting date;
- minus any accrued liabilities chargeable against the fund.
- (2) The buying or selling price of a unit on a valuation day shall be the value of the unit on that day increased or reduced, if necessary, by the proportion attributable to the unit in accordance with paragraph 3(4)(b) of this Schedule of the cost attending the creation or realisation of units to the number required by paragraph 3(4)(a) and rounded down to four significant figures.
6. As soon as may be after a valuation day the Accountant General and the investment manager shall strike a balance of the cost of purchase and proceeds of sale of units on that day, and the Accountant General shall pay to the investment manager or, as the case may be, the investment manager shall pay to the Accountant General, the amount found due from him.
7. On each accounting date the investment manager shall determine the amount to be distributed as income expressed in terms of dividend payable on each unit held at that date, and on the dividend date next following shall pay to the Accountant General the amount so determined.
- 8.—(1) The investment manager may determine, without regard to any rule of law applicable to trust funds, whether any special dividend, bonus issue of shares, cash or other property received by him in respect of property comprised in the fund shall be treated as income or as capital or shall be apportioned, and, if so, in what proportions, between income and capital.
- (2) The investment manager may withhold income of the fund from distribution with a view to avoiding fluctuations in the amounts distributed.

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## SCHEDULE 2

### ACCOUNTING AND DIVIDEND DATES

Title of Fund				
Accounting Dates				
First	Subsequent			
Dividend Dates				
First	Subsequent			
Capital Fund	1st October 1991	1st April and 1st October in each year	15th November 1991	15th May and 15th November in each year
High Yield Fund	15th August 1991	15th February and 15th August in each year	1st October 1991	1st April and 1st October in each year
Gross Income Fund	15th June 1991	15th December and 15th June in each year	1st August 1991	1st February and 1st August in each year

## SCHEDULE 3

### POWERS AND DUTIES OF THE INVESTMENT MANAGER IN RESPECT OF EACH FUND

1. The investment manager shall have the following powers—
  - (a) to purchase and sell investments on behalf of the fund;
  - (b) to vary, at such times and in such manner as he may think fit, the way in which the fund is invested;
  - (c) to exercise, in relation to any land comprised in the fund, any powers which he could exercise if he were beneficially entitled to the land in question;
  - (d) to borrow money in any currency and on the security of any property comprised in the fund or otherwise as he thinks fit for the following purposes—
    - (i) to manage or improve any such property;
    - (ii) to pay for any allotment of stock or securities in any company to which he may be entitled in respect of any investment held in the fund;
    - (iii) to discharge any liability that falls properly to be discharged out of any such property; and
    - (iv) to pay any expenses relating to any such property;
  - (e) to determine, without regard to any rule of law applicable to trust funds, whether any fees or expenses required to be paid out of a fund shall be defrayed out of capital or out of income or shall be apportioned, and, if so, in what proportions, between capital and income; and
  - (f) to take such action as he considers appropriate in relation to any situations (such as but not limited to takeover bids, schemes of arrangement, variation of rights, exercising voting rights, bonds and rights issues and underwriting offers) relating to any property or investment comprised in the fund.

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2. The investment manager shall—
  - (a) keep proper books of account with respect to—
    - (i) the income and expenditure of the fund;
    - (ii) the assets and liabilities of the fund;
    - (iii) the expenses sanctioned by the Treasury under Section 42(11) of the Act;
    - (iv) the allotment and realisation of units;
  - (b) prepare and send to the Accountant General at least once in every half year—
    - (i) an income and expenditure account made up to a date not earlier than six weeks before the date on which it is sent;
    - (ii) an account of the forecast income and expenditure for the subsequent half year;
    - (iii) a balance sheet relating to the fund as at the date to which the income and expenditure account is made up;
  - (c) send to the Accountant General by not later than 31st March in every year a Manager's Report made up to 1st January in that year containing such information as the Accountant General may require;
  - (d) prepare consolidated dividend counterfoils for each fund for issue to the Accountant General such counterfoils to be sent to the Accountant General within two weeks of the accounting dates set out in Schedule 2 above;
  - (e) deem such amount as he considers appropriate of the first dividend payable after the purchase of a unit to have accrued in the buying price;
  - (f) attend to the completion of all the sales and purchases on behalf of the fund and arrange for the transfer of all investments acquired on behalf of the fund into the name of the investment manager or such nominee on his behalf as may be agreed between him and the Lord Chancellor;
  - (g) arrange for the collection of all dividends, income and other distributions made in respect of any investments of the fund;
  - (h) manage any cash balances to the best advantage of the fund;
  - (i) supervise all bank accounts and foreign exchange transactions relating to the fund;
  - (j) arrange for the publication of the prices of units in the Financial Times and inform Extel of those prices;
  - (k) prepare and submit to the Inland Revenue within the required time half yearly income tax returns and repayment claims and reclaim overpaid tax from overseas tax authorities; and
  - (l) where he is required to collect fees under section 42(12) of the Act, pay out of the fund that proportion of the fees which the value of the fund determined in accordance with paragraph 4 of Schedule 1 bears to the aggregate value of all the funds.
3. On appointment, the investment manager shall take such steps as are necessary to bring the money, securities and other assets of the fund and any dividends, income and other distributions relating thereto under his management and control.
4. Where the appointment of an investment manager ceases he shall—
  - (a) without delay complete all transactions in progress at that time;
  - (b) without delay surrender to his successor or to such person as the Lord Chancellor may determine all money, securities and other assets of the fund in his care and any dividends, income and other distributions relating thereto; and

- (c) until such completion or surrender has taken place comply with any provision and carry out any duty to which he would have been subject as investment manager.

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## EXPLANATORY NOTE

*(This note is not part of the Scheme)*

This Scheme replaces the Common Investment Funds Scheme 1965. The new Scheme continues the general framework of its predecessor and maintains the existing three common investment funds known as the “Capital”, “High Yield” and “Gross Income” funds. The common investment funds continue as before as a means of providing for the investment of certain funds held in Court. The main change is that the new Scheme provides that, pursuant to section 42(2) of the Administration of Justice Act 1982, these funds will be under the management and control of an investment manager appointed by the Lord Chancellor, and sets out his powers and duties.

Schedule 1 prescribes the methods by which the funds are to be operated, and, in this respect, largely repeats the provisions of the 1965 Scheme. Schedule 2 sets accounting and dividend dates. Schedule 3 sets out the powers and duties of the investment manager.