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## **THE SCHEDULE**

### **PENSION TRUST OF THE RAILWAYS PENSION SCHEME**

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## Appendix 1

### Clause 1

## PART I

### RULES OF THE 1994 PENSIONERS “A” SECTION

#### MEANING OF WORDS USED

**1. This Rule sets out the meaning of words used in these Rules.**

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<b>“Basic Pension”</b>	means the annual pension which would be payable to a Member if the following Rules did not apply: Rule 8 (Other Choices for Early Leavers), Rule 10A (General), Rule 12B (GMP Increase), Rule 12C (State Graduated Retirement Benefits) and Appendix 9 to the BR Rules.
<b>“Basic State Pension”</b>	means an amount equal to the yearly rate of the basic state pension for a single person in force during the year in question.
<b>“BR Pension Scheme”</b>	means the BR Pension Scheme established by a trust deed dated 25th November 1985.
<b>“BR Rules”</b>	means the rules as at the commencement date of the Protection Order which govern the BR Pension Scheme.
<b>“Contracted-out Pension”</b>	means, on a specified date in relation to a person who is about to retire: (A) (a) the amount determined under (i) or (ii) of rule 13(2) of the BR Rules; multiplied by (b) whichever is the lesser of (i) the number of years of Contributory Membership after 5th April 1978 together with any additional period of membership granted as a result of a transfer and (ii) 40; plus (B) any pension entitlement by reference to rule 13(5) of the BR Rules; multiplied by the Normal Pension on whichever is the earlier of (a) the specified date and (b) the date of attaining State Pension Age; and divided by the Basic Pension.
<b>“Contributory Membership”</b>	means the aggregate of: (a) in the case of a Member who has at no time been a Part-time Employee the period during which the Member has contributed to the BR Pension Scheme under rule 11 of the BR Rules or, in

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the case of a Member who is or has at any time been a Part-time Employee, the sum of the periods during which the Member has contributed to the BR Pension Scheme under rule 11 of the BR Rules but with each period multiplied by the proportion which the number of hours per week that the Member was contracted to work in that period bears to the number of hours per week that the Member would have been contracted to work in that period had he been employed full-time; plus

- (b) in the case of a Member who was a member of the British Railways (Wages Grades) Pension Fund the period during which contributions were paid to the British Railways (Wages Grades) Pension Fund under rule 11 of that Fund or any predecessor to that rule; or
- (c) in the case of a BR Member who immediately before 1st April 1987 was a member of the New Section the period during which contributions were paid to the New Section under rule 11 of that Fund, or any predecessor to that rule.

**“Earnings Cap”**

means the amount specified for the purposes of section 590C of the Taxes Act(1).

**“Eligible Child”**

means:

- (a) any person who has not reached 18 years of age and who is the Member’s child by marriage or has been legally adopted by the Member; or
- (b) if the Trustee at its sole discretion so agrees in a specific case any other person who has not reached 18 years of age and who does not fall within (a) above who is the child of the Member or the Member’s spouse, or of a living or deceased relative of the Member and at the time of the Member’s death was dependent wholly or in a large part on the Member for support and the maintenance of his or her accustomed standard of living, or, if the child was born after the Member’s death, would be likely to have become so dependent; or
- (c) if the Trustee at its sole discretion in any individual case so agrees a person over the age of 18 years who would otherwise

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(1) 1988 c. 1.

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fall within (a) or (b) above and who was in full-time education on his or her 18th birthday, so long as he or she so remains or is so handicapped physically or mentally as to be unable to earn a living.

**“Eligible Dependant or Dependants”**

means any person (up to a maximum of 3) other than an Eligible Child or Eligible Spouse who in the opinion of the Trustee was wholly or in a large part dependent on the Member for 2 years immediately prior to the Member’s death. Any pension paid to an Eligible Dependant is payable at the discretion of the Trustee on such terms as the Trustee decides.

**“Eligible Spouse”**

means the spouse to whom a Member is legally married and living with at the date of death. If more than one spouse is an Eligible Spouse the Trustee shall in its discretion determine one to be the Eligible Spouse to the exclusion of the others.

**“Final Average Basic State Pension”**

means the average of the Basic State Pension during the year ending on the date the Member left service with the Participating Employer or reached age 65, if earlier. If the Member was not in service with the Participating Employer for the whole of the last 12 months then the Basic State Pension at the date he left service shall be deemed to continue for the balance of the year.

**“Final Average Pay”**

means the greater of the average of the Member’s Pay and the Member’s Pensionable Pay during the 12 months ending on the date the Member left employment with the Participating Employer. If the Member was not in employment with the Participating Employer for the whole of the last 12 months, his Pay and Pensionable Pay shall be deemed to continue for the balance of the year for the purpose of calculating his Final Average Pay.

**“Forecast GMP”**

means (on any specified date):

- 1 (a) in relation to a Member who left employment with the Participating Employer, or reaches age 65 on the specified date, and where the specified date lies between 1st January and 30th June inclusive:
  - (i) the GMP at the end of the year ending on 5th April (“the said Fiscal Year”) in the previous but one calendar

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year, updated in accordance with any order made under section 148 of the Social Security Administration Act 1992 and coming into operation before the end of the calendar year in which the end of the said Fiscal Year falls

plus

- (ii) the amount of GMP which would have accrued to the Member during the interval between the end of the said Fiscal Year and the specified date if the remuneration between the upper earnings limit and lower earnings limit for National Insurance purposes received from the Participating Employer in each period of 7 days starting as a Monday (“the Relevant Earnings”) of the said period were equal to times the total of the Relevant Earnings in the said Fiscal Year and any orders made under section 148 of the Social Security Administration Act 1992<sup>(2)</sup> were ignored;
- (b) in relation to a Member who left employment with the Participating Employer, dies or reaches age 65 on the specified date, and where the specified date lies between 1st July and 31st December inclusive, an amount calculated as in (a) but with “the said Fiscal Year” meaning the year ending on 5th April in the calendar year prior to that in which the specified date lies;
- (c) in relation to a Member who has left employment with the Participating Employer, an amount calculated as in (a), if the specified date lies between 1st January and 30th June inclusive, or (b), if the specified date lies between 1st July and 31st December inclusive, but with subparagraph (a)(ii) being ignored if the Member left service with

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(2) 1992 c. 5.

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the Participating Employer on or before the last day of the said Fiscal Year; and the interval in subparagraph (a)(ii) being replaced by the interval between the end of the said Fiscal Year and the date the Member left service with the Participating Employer

plus

- 2 (a) if the specified date lies between 1st January and 5th April inclusive or between 1st July and 31st December inclusive, 7%; or
  - (b) if the specified date lies between 6th April and 30th June inclusive, 14.5%; or
  - (c) such other percentage as may be determined by the Trustee on the advice of the Actuary
- of the amount ascertained in (1)(a), (1)(b) or (1)(c), as appropriate

plus

- 3 2% (or such other percentage as may be determined by the Trustee on the advice of the Actuary) of the aggregate of (1) and (2) multiplied by the number of years between the specified date and the date the Member attains State Pension Age.

**“GMP”**

means a guaranteed minimum pension (or accrued right to one) under the Pensions Act. But if during a period of Contributory Membership after 5th April 1978 (a) a Member did not pay Class 1 National Insurance contributions, or (b) no contracting-out certificate was in force in respect of a Member’s employment, then the GMP shall be calculated (except where the Member requests a transfer under Rule 7 (Right to Transfer or “Buy-Out”)) as if Class 1 National Insurance contributions had been paid at the contracted-out rate specified by the Contracting-out Laws throughout the said period. If during a period of Contributory Membership after 5th April 1978, a female Member paid Class 1 National Insurance contributions at a reduced rate, her GMP shall be calculated (except where the Member requests a transfer under Rule 7) as if she had paid such contributions at the contracted-out rate specified by the Contracting-out Laws apart from section 41(3) Pensions Act.

<b>“Guaranteed Level of Benefits”</b>	means the Members' benefits as at 30th September 1994 under the BR Pension Scheme including Appendix 9 (whether vested or contingent), taking no account of any increases in subsequent periods other than increases made to those benefits in line with and in the same proportion as pensions subject to the Pensions (Increase) Act 1971 <sup>(3)</sup> .
<b>“Joint Annuitant”</b>	means the person for whose benefit a Member has elected to surrender part of his pension under Rule 8D (Joint Annuitant's Pension) or the corresponding rule of the BR Pension Scheme or any predecessor scheme.
<b>“Legal Spouse”</b>	means the spouse to whom a Member is legally married at the date of death. If more than one spouse is a Legal Spouse the Trustee shall in its discretion determine one to be the Legal Spouse to the exclusion of the others.
<b>“Member”</b>	means a person who falls within Rule 2 (Membership of the Section).
<b>“Minimum Pension Age”</b>	means the Member's 60th birthday or such other date as applied to the Member under the British Rail Pension Scheme on 30th September 1991.
<b>“New Section”</b>	means the New Section of the British Railways Super-annuation Fund established by a trust deed executed by the British Railways Board on 21st August 1970 <sup>(4)</sup> .
<b>“Normal Pension”</b>	means the annual pension which would be payable to a Member if the following did not apply: Rule 8 (Other Choices for Early Leavers), the second paragraph of Rule 10A (General), Rule 12B (GMP Increase), Rule 12C (State Graduated Retirement Benefits) and Appendix 9 of the BR Rules.
<b>“Participating Employer”</b>	means the employer with whom the Member was last employed whilst an active member of the BR Pension Scheme or any predecessor scheme.
<b>“Part-time Employee”</b>	means a Member whose employment with the Participating Employer did not qualify as full-time employment.
<b>“Pay”</b>	means (a) in the case of a Member who was remunerated at a fixed rate of pay per week, the Member's annual equivalent rate of pay and (b)

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(3) 1971 c. 56.

(4) Copies of the British Railways Superannuation Fund can be obtained from Railway Pensions Management Limited, Stooperdale Offices, Brinkburn Road, Darlington DL3 6EH.

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	<p>in the case of a Member who was remunerated at a fixed rate of pay per annum, that rate of pay, together in each case with such other remuneration as the trustee to the BR Pension Scheme may have decided (with the consent of the British Railways Board). For a Member who was a Part-time Employee it means the equivalent full-time annual rate of pay.</p>
<b>“Pensions Committee”</b>	<p>means a pensions committee set up as described in the Schedule.</p>
<b>“Pension Trust”</b>	<p>means the pension trust which governs the Scheme.</p>
<b>“Pensionable Pay”</b>	<p>means the Member’s Pay calculated at 1st April prior to the Section Year in question or, if later, the date of joining the BR Pension Scheme. Any retrospective change in a Member’s Pay shall be ignored for the purposes of calculating his Pensionable Pay. Subject to Rule 9A (Members who joined the BR Pension Scheme before 1st June 1989), Pensionable Pay cannot, however, exceed the Earnings Cap for the year in question. If a Member’s Pensionable Pay in any Section Year is less than the Member’s Pensionable Pay was in the preceding Section Year (and for this purpose only taking account of any retrospective change in the Member’s Pay) then the Member’s Pensionable Pay shall be the higher amount until such time as that amount is exceeded in a subsequent Section Year.</p>
<b>“Section”</b>	<p>means the 1994 Pensioners “A” Section.</p>
<b>“Section Year”</b>	<p>means a period of 12 months ending on 30th June.</p>
<b>“State Graduated Retirement Benefit”</b>	<p>means the aggregate of the equivalent pension benefits earned by a Member under the former state graduated pension scheme:</p> <ul style="list-style-type: none"><li>(a) during Contributory Membership;</li><li>(b) in the case of a Member whose equivalent pension benefit was transferred to the New Section, the British Railways (Wages Grades) Pension Fund or the BR Pension Scheme under rule 6 of the respective scheme, during former membership of the other pension scheme mentioned in that rule; and</li><li>(c) in the case of a Member to whom rule 5 or rule 5A of the BR Rules applies, during any former membership of any one of the following schemes: the GWR, LMSR, LNER (New), LNER (Old), RCS</li></ul>



or SR Sections of the British Railways Superannuation Fund, the London Transport (Administrative and Supervisory) Staff Superannuation Fund, the National Freight Salaried Staff Pension Fund or their predecessors and the British Railways (Wages Grades) Pension Fund in respect of which no payment in lieu has been made and which have not been otherwise preserved.

**“State Pension Age”**

means age 60 (for a woman) and age 65 (for a man) or such other dates on which state benefits first become payable.

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NOTE:For the purposes of these Rules:

(1) in calculating a number of years, fractions of a year shall count proportionately. There shall be deemed to be 52.17 weeks in a year;

(2) in calculating the length of a period of membership or employment, such part of the period (counting the period of membership forward) as does not amount to a number of complete years (“the said period”) shall be counted as a fraction of a year in which:

(a) the denominator shall be 365; and

(b) the numerator shall be:

(i) the number of completed days comprised in the said period if it does not include a 29th February; or

(ii) one less than the number of completed days comprised in the said period if it does include a 29th February.

(3) Copies of the BR Pension Scheme and the British Railways (Wages Grades) Pension Fund can be obtained from Railways Pensions Management Limited, Stoooperdale Offices, Brinkburn Road, Darlington DL3 6EH.

**MEMBERSHIP OF THE SECTION**

2. Members are persons who on or before 31st March 1994 became entitled to benefits in payment or in deferment under the BR Pension Scheme, and their beneficiaries.

With the consent of the Secretary of State, the Trustee may admit to membership of the Section a person who receives a pension from or retains rights under an occupational pension scheme other than the BR Pension Scheme.

**CONTRIBUTIONS BY MEMBERS**

3. Members do not contribute.

**BENEFITS**

4. A Member shall receive a benefit at least equal to the Guaranteed Level of Benefits.

A Member who does not fall within Rule 2 above shall receive a benefit on a basis notified to him by the Trustee.

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## **5 DEATH AFTER RETIREMENT**

### **5**

#### **Lump Sum and Pension**

**5A** When a Member dies after retirement a lump sum shall be payable to the Member's personal representatives (unless the Member chooses otherwise under Rule 11B (Discretionary Death Benefit Trusts)) and pensions shall be paid to the 2 youngest Eligible Children (if any) and to the Eligible Spouse or Eligible Dependents.

#### **Lump Sum**

**5B** The lump sum shall be:

(1) the lesser of (a) 4 times Final Average Pay and (b) 5 times each of the following but ignoring any increases paid under Rule 10A (General) and any lump sum payable from the policy proceeds under Appendix 9 of the BR Rules:

(i) the aggregate of the Basic Pension and any pension payable under Rule 8B (Additional Pension);

and

(ii) where the pension is in payment, any extra pension secured by any funds transferred to the Section under Appendix 9 of the BR Rules

multiplied by the Normal Pension (excluding any amount payable under Rules 10B, 10C or 10D) on the date of death divided by the Basic Pension;

less

(2) the aggregate of all lump sums and pension payments (if any) made to the Member.

For a Member receiving benefits under rule 16 of the BR Rules who has not yet attained Minimum Pension Age the lump sum shall be equal to (1) 4 times Final Average Pay multiplied by (2) the Normal Pension on the date of death divided by (3) the Basic Pension less (4) the aggregate of all lump sums and pension payments made to the Member since retirement.

If the Member was a Part-time Employee at the date of retirement, then the sum equal to 4 times Final Average Pay shall be multiplied by the proportion which the number of hours per week that the Member was contracted on the date of retirement to work bears to the number of hours per week that the Member would have been contracted on the date of retirement to work had he or she been employed full-time.

If however a lump sum is payable from this or another Section of the Scheme or from some other pension scheme, including a scheme to which a Member belonged before joining the Scheme, the lump sum payable under this Rule shall not when (where appropriate) aggregated with such lump sum exceed the maximum amount allowed by the Inland Revenue.

#### **Pensions for Eligible Spouse and Eligible Children**

**5C** The annual amount of the Eligible Spouse's and Eligible Children's pensions shall be:

(i) the Member's Normal Pension multiplied by

(ii) the fractions shown in the table in rule 22(6) of the BR Rules;

or such lesser amount as was provided under the BR Pension Scheme or any predecessor scheme but subject to the provisions of Rule 9.

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The pensions payable to the Eligible Spouse and Eligible Children shall be payable from the day following the Member's death. The Eligible Spouse's pension shall cease on the death of the Eligible Spouse.

On the death of the Eligible Spouse or the last surviving Eligible Dependant, any pension payable to the Member's Eligible Children shall be increased from the day after the death to the amount of pension which would have been payable if there had been no Eligible Spouse or Eligible Dependant at the time of the Member's death.

If the Eligible Spouse is more than 10 years younger than the Member and had not been married to the Member for 5 more years the Eligible Spouse's pension shall be reduced by 2.5% for each year by which the age difference exceeds 10 years or by such lesser amount as the Trustee may decide with the agreement of the Actuary.

### **Pensions for Legal Spouse and Eligible Dependants**

**5D** If 4 weeks after the Member's death there is no Eligible Spouse then a pension shall be paid to the Member's Legal Spouse (if any) and to the Member's Eligible Dependants (if any).

The amount of the Legal Spouse's pension shall be half the annual equivalent of the Member's GMP. It shall be payable from the day following the Member's death and shall cease on the death of the Legal Spouse.

The total amount of pension payable to the Eligible Dependants (ignoring the next paragraph) and the Legal Spouse shall not exceed the pension which would have been payable to an Eligible Spouse (ignoring any age reduction). The Trustee at its discretion shall divide any pension remaining among the Eligible Dependants.

If an Eligible Dependant was more than 10 years younger than the Member then the Eligible Dependant's pension shall be reduced by 2.5% for each year by which the age difference exceeds 10 years or by such lesser amount as the Trustee may decide with the agreement of the Actuary.

The pension payable to an Eligible Dependant shall be payable from the date following the Member's death and shall be payable for 10 years or until the earlier death of the Eligible Dependant. Thereafter the pension may be continued at the discretion of the Trustee and on such terms as the Trustee shall determine.

## **6 EARLY LEAVERS**

### **6**

#### **Deferred Benefits**

**6A** A Member entitled to deferred benefits who falls within Rule 2(a) shall receive benefits (as set out in Rule 4) from Minimum Pension Age.

#### **Increases**

**6B** The deferred pension, calculated as at the date the Member ceased to be an active member of the BR Pension Scheme shall be increased before payment with effect from the date the Member left service with the Participating Employer until the date the pension becomes payable, by the same percentage increase as a pension subject to the Pensions (Increase) Act 1971(5) would increase during that period if it had become payable on the date the Member left service with the Participating Employer (or, if greater, by the percentage required by the anti-franking requirements of the Contracting-out Laws).

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(5) 1971 c. 56.

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The deferred lump sum shall be increased by multiplying by the Normal Pension and dividing by the Basic Pension.

### **Benefits on the death of an Early Leaver**

**6C** If a Member with deferred benefits dies before Minimum Pension Age then Rule 5 (Death after Retirement) shall apply as if the Member had retired immediately before death with a Normal Pension.

## **7 RIGHT TO TRANSFER OR “BUY-OUT”**

7

### **Member’s Right to Transfer or “Buy-Out”**

**7A** A Member who left the BR Pension Scheme and remains entitled to deferred benefits under rule 25 of the BR Rules can require the Trustee by application in writing to use the cash equivalent of the deferred benefits in whichever of the following ways (or combination of them) the Member chooses:

- (a) to buy one or more Buy-out Policies (see Rule 7B (Requirements for “Buy-Out” Policies)) from one or more Insurance Companies chosen by the Member;
- (b) to acquire rights under another occupational pension scheme or under a personal pension scheme or under another Section of the Scheme (see Rule 7C (Requirements for Transfers)).

The cash equivalent shall be calculated by the Trustee on the basis of advice from the Actuary which complies with the Transfer Value Laws.

The Trustee may allow a Member who does not have a right to a cash equivalent to choose a transfer or a “buy-out” as described in this Rule. The Trustee may impose such conditions on the exercise of this choice as it thinks fit.

The Member can exercise his right by application in writing to the Trustee at any time up to a year before Minimum Pension Age (or, if later, 6 months after leaving employment with the Participating Employer).

### **Requirements for “Buy-Out” Policies**

**7B** A Buy-out Policy must satisfy the Transfer Value Laws and the requirements of the Inland Revenue. In particular, the policy must provide that the annuities payable to or for the benefit of the Member and the Member’s spouse shall be at least equal to their GMP under the Section, including revaluation in accordance with the Contracting-out Laws.

### **Requirements for Transfers**

**7C** The receiving scheme must be (a) an occupational pension scheme with Revenue Approval or which otherwise satisfies the Inland Revenue’s requirements, or (b) a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act, or (c) a “statutory scheme” as defined in section 612(1) of that Act.

If the Member’s cash equivalent includes accrued rights to GMP, the transfer must also satisfy the requirements of the Contracting-out Laws.

## **8 OTHER CHOICES FOR EARLY LEAVERS**

### **8**

#### **Early Benefits**

**8A** A Member entitled to deferred benefits may elect to receive his benefits on a date earlier than Minimum Pension Age (but not earlier than age 50). If the Member did not make this choice immediately on leaving employment with his Participating Employer, the agreement of the Trustee is required.

The benefits shall be reduced by the percentages set out in Appendix 4 to the BR Rules, but the percentages may be amended by the Trustee on the advice of the Actuary.

If an election under this Rule would result in the pension payable to the Member being less than the aggregate of:

- (i) the State Graduated Retirement Benefit; and
- (ii) whichever is the lesser on the date the pension would become payable of the Contracted-out Pension and the Forecast GMP;

the election shall not be permitted.

The Trustee must be reasonably satisfied that the reduced benefits are at least equal in value to the deferred benefits (including future increases) that would otherwise have been provided.

#### **Additional Pension**

**8B** A Member who is about to become a pensioner may, by notice in writing to the Trustee, elect to convert part or all of his lump sum into an additional pension for life payable from the date the lump sum becomes payable. Conversion shall be on the basis that £1 per annum of pension is equivalent to a lump sum of £12.

An election under this Rule shall not affect the pension payable after death to a Member's spouse, dependants or children.

A Member cannot make an election under this Rule 8B (Additional Pension) if he has made an election under Rule 8C (Additional Lump Sum).

#### **Additional Lump Sum**

**8C** A Member who is about to become a pensioner may, by notice in writing to the Trustee, elect to commute a proportion of his pension for an additional lump sum but may not commute so much of his pension as would make the pension remaining but for Rule 12B (GMP Increase) and Rule 12C (State Graduated Retirement Benefits) less than 75% of the Normal Pension.

Commutation shall be on the basis that £1 per annum of pension is equivalent to a lump sum of £12.

An election under this Rule 8C (Additional Lump Sum) shall not affect the pension payable after death to a Member's spouse, dependants or children.

A person may not commute so much pension as would provide an additional lump sum which, when added to the lump sum payable on retirement under rule 14 of the BR Rules, produces a total which exceeds:

- (i) 3/80ths of Pay on the earlier of the date the Member left employment with the Participating Employer and the date the Member attained age 65

multiplied by

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- (ii) the number of years of the Member's employment with the Participating Employer (excluding any years after the attainment of State Pension Age and subject to a maximum of 40)

multiplied by

- (iii) the Normal Pension on the date the pension becomes payable

and divided by

- (iv) the Basic Pension

or such greater sum as is agreed with the Inland Revenue.

A person may not commute so much pension as would make the pension remaining but for Rule 12B (GMP Increase) and Rule 12C (State Graduated Retirement Benefits) less than the aggregate of:

- (i) the State Graduated Retirement Benefit; and
- (ii) whichever is the lesser on the date the pension becomes payable of the Contracted-out Pension and the Forecast GMP.

A Member cannot make an election under this Rule 8C (Additional Lump Sum) if he has made an election under Rule 8B (Additional Pension).

### **Joint Annuitant's Pension**

**8D.**—(1) A Member about to become a pensioner may, by notice in writing to the Trustee, elect to surrender part of his pension in order to provide a pension payable to another person (referred to in this Rule as a "Joint Annuitant"). The Joint Annuitant must be named in the election and may be either the Member's spouse or someone dependent on the Member.

(2) The pension payable to a Joint Annuitant shall be payable from the day following the Member's death and shall cease on the Joint Annuitant's death.

(3) Subject to paragraphs (5) and (9), the pension payable to the Joint Annuitant shall be 15% of the Member's Normal Pension at the date of death.

(4) Unless paragraph (9) applies, the basis on which the election may be made is as set out in Appendix 2 to the BR Rules.

(5) The maximum pension which may be surrendered under this Rule is that pension which would result in the pension to the Joint Annuitant being equal to the pension remaining payable to the Member but for Rules 8B (Additional Pension), 8C (Additional Lump Sum) and 8E (Early Retirement Level Pension Option), Rule 12B (GMP Increase) and Rule 12C (State Graduated Retirement Benefits).

(6) If any election under paragraphs (1) to (5) would result in the pension payable but for Rule 12B (GMP Increase) and Rule 12C (State Graduated Retirement Benefits) being less than the aggregate of:

- (i) the State Graduated Retirement Benefit; and
- (ii) whichever is the lesser on the date the pension becomes payable of the Contracted-out Pension and the Forecast GMP;

the election shall not be permitted.

(7) Any election under Rule 8A (Early Benefits), 8B (Additional Pension) or 8C (Additional Lump Sum) must be made before an election is made under this Rule.

(8) An election under this Rule shall be revoked if the Member or the Joint Annuitant dies before the Member's pension becomes payable.

(9) Rule 19(9) of and Appendix 8 to the BR Rules applies to a Member who was a member of the British Railways (Wages Grades) Pension Fund prior to July 1974 and who before that date elected for and was granted a joint pension in accordance with rule 21 of the rules of that Fund as they stood on 30th June 1974.

### **Early Retirement Level Pension Option**

**8E** A Member who is about to become a pensioner and whose pension starts on or after age 50 but not less than one year before State Pension Age may elect, by notice in writing to the Trustee, to have the pension increased before that age and reduced after it, so that:

- (i) the pension from the Section before State Pension Age is greater than the pension but for this Rule; and
- (ii) at State Pension Age the pension but for Rule 12B (GMP Increase) and Rule 12C (State Graduated Retirement Benefits) reduces by:
  - (a) (subject to the following paragraph) th of Final Average Basic State Pension multiplied by the number of years of the Member's Pensionable Service
    - multiplied by
  - (b) the Normal Pension at State Pension Age
    - and divided by
  - (c) the Basic Pension.

The pension calculated under (a) above shall be reduced as necessary to ensure that the pension receivable after State Pension Age but for Rule 12B (GMP Increase) and Rule 12C (State Graduated Retirement Benefits) and ignoring any application of Rule 10A (General) after the election is made, is not less than whichever is the greater:

- (1) half the pension but for this Rule, Rule 12B (GMP Increase) and Rule 12C (State Graduated Retirement Benefits); and
- (2) the aggregate of (i) the State Graduated Retirement Benefit and (ii) whichever is the lesser on the date the pension becomes payable of the Contracted-out Pension and the Forecast GMP.

The basis on which the election may be made is set out in Appendix 3 to the BR Rules.

An election under this Rule does not affect the pension payable after death to a Member's spouse, dependants or children.

Any election under Rule 8A (Early Benefits), 8B (Additional Pension), 8C (Additional Lump Sum) or 8D (Joint Annuitant's Pension) must be made before an election is made under this Rule.

## **9 SPECIAL PROVISIONS FOR CERTAIN MEMBERS**

### **9**

#### **Member who joined the BR Pension Scheme before 1st June 1989**

**9A** In the case of a Member who joined or is treated as having joined the BR Pension Scheme before 1st June 1989, the references to the Earnings Cap do not apply.

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**Pension for spouse of a Member who ceased to contribute to the BR Pension Scheme before 1st July 1986 and dies on or after 1st July 1988**

**9B** On the death on or after 1st July 1988 of a Member who ceased to contribute to the BR Pension Scheme before 1st July 1986 and who is either;

- (a) a female Member; or
- (b) a male Member who was not married at the date he ceased to contribute to the BR Pension Scheme to his wife at the time of his death;

a pension shall be payable to the Member's spouse for life.

The pension payable shall be one half of the Member's pension at the date of his death but ignoring the exercise of any option under Rule 8E (Early Retirement Level Pension Option) or rule 20 of the BR Rules.

If the Member's spouse was more than 10 years younger than the Member and had not been married to the Member for 5 or more years then the spouse's pension payable under this Rule shall be reduced by 2.5% for each year by which the age difference exceeds 10 years or by such lesser amount as the Trustee may decide with the agreement of the Actuary.

**Pension for widow of a Member who ceased to contribute to the BR Pension Scheme before 1st July 1986 and dies on or after 16th September 1991**

**9C** On the death after 16th September 1991 of a Member who ceased to contribute to the BR Pension Scheme before 1st July 1986 and who is a male Member who was married on the date he died and where the couple were married at the date the Member ceased to contribute then if the pension payable to the widow but for this Rule is less than one half of the Member's pension payable at the date of his death ignoring the exercise of any option under Rule 8E (Early Retirement Level Pension Option) or rule 20 of the BR Rules then the said widow's pension (herein referred to as half pension) shall be increased under this Rule to an amount equal to the said half pension.

**Member who ceased to contribute to the BR Pension Scheme between 1st July 1986 and 30th June 1988 and dies after 16th September 1991**

**9D** If on the death after 16th September 1991 of a Member who ceased to contribute to the BR Pension Scheme between 1st July 1986 and 30th July 1988 the pension payable to an Eligible Spouse or an Eligible Dependant but for this Rule is less than the pension set out in the following paragraph then the pension payable to the adult dependant shall be increased to the amount set out below.

The level of Eligible Spouse's or Eligible Dependant's pension referred to above is one half of the Member's pension at the time of death or, if the Member had exercised the option under Rule 8E (Early Retirement Level Pension Option) or rule 20 of the BR Rules and died before attaining State Pension Age, one half of the pension payable from that age under rule 20(1)(ii) of the BR Rules subject to any increases granted under Rule 10 (Pension Increases).

If the pension is payable to an Eligible Spouse, where the marriage took place less than 5 years before the Member died, or to an Eligible Dependant, then the pension in the above paragraph shall be reduced by 2.5% for each year by which the Eligible Spouse or Eligible Dependant was more than 10 years younger than the Member or such lesser amount as the Trustee may decide with the agreement of the Actuary.

**Special Lump Sum for Members who left the BR Pension Scheme with preserved benefits between 1st July 1988 and 30th June 1992**

**9E** Members who left the BR Pension Scheme with preserved benefits between 1st July 1988 and 30th June 1992 and who at the date of leaving the BR Pension Scheme had attained the age of 50



and completed 5 years' Beneficial Membership (as defined in the BR Rules) shall receive a special lump sum in accordance with rule 14A of the BR Rules.

This Rule does not apply to a Member who attained State Pension Age before 6th April 1988 unless that Member made an election under rule 15(1)(a)(A) of the BR Rules.

## **10 PENSION INCREASES**

### **10**

#### **General**

**10A** Every time official pensions referred to in the Pensions (Increase) Act 1971<sup>(6)</sup> are increased under that Act each pension in payment shall increase by the same proportion as an official pension which began for the purposes of section 8(2) of the Pensions (Increase) Act 1971 on whichever was the earlier of the date the Member left service with the Participating Employer or the date the Member attained age 65.

The pension increase for a Member who has attained 65 years of age shall be calculated as if the pension had been reduced by the annual equivalent of the GMP since the date of attaining 65 years of age.

The pension increase for an Eligible Spouse or for an Eligible Dependant or Eligible Dependents shall be calculated as if the pension (or total pensions if there are more than one Eligible Dependant) had been reduced by half the annual equivalent of the Member's GMP at whichever was the earlier of (a) the date the Member died and (b) the date the Member attained State Pension Age.

Where GMP is payable (whether to a Member, an Eligible Spouse, Eligible Dependant or Legal Spouse), the part of the GMP that is attributable to earnings for the tax year 1988—89 and subsequent tax years shall be increased in each year by the percentage specified in any order made by the Secretary of State under section 109 of the Pension Schemes Act 1993 (which is approximately equal to the percentage rise in the cost of living in each year, with a maximum of 3% per year compound).

#### **Members who left Employment or reach Minimum Pension Age before 1st July 1986**

**10B** Pensions for Members who were members of the New Section or the British Railways (Wages Grades) Pension Fund and who left employment with the Participating Employer or reached State Pension Age before 1st July 1986 shall continue to receive the increases granted under rule 27A of the rules of the New Section and the British Railways (Wages Grades) Pension Fund.

#### **BR Pension Scheme increases on 1st July 1988**

**10C** All pensions in payment from the BR Pension Scheme on 1st July 1988 and all preserved pensions for Members who left the BR Pension Scheme before 1st July 1988 with a preserved benefit under rule 25(3) of the BR Rules and pensions in respect of Members who were active members of the BR Pension Scheme on 1st July 1988 and who attained State Pension Age before 6th April 1988 and who made no election under rule 15(1)(A)(a) of the BR Rules shall be calculated on the basis that they shall be increased by the greater of (a) £4 per week and (b) 15% with effect from 1st July 1988.

No increase shall be paid, however, to or in respect of a Member whose period of Contributory Membership commenced on or after 1st April 1987.

No increase shall be made to the pension payable to a Joint Annuitant under paragraph (9) of Rule 8D (Joint Annuitant's Pension).

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(6) 1971 c. 56.

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For a Member who ceased to contribute to the BR Pension Scheme before 1st July 1988, any spouse's or adult dependant's pensions contingently payable under the BR Rules as they stood at the date the Member ceased to contribute to the BR Pension Scheme shall be increased by the greater of (a) £4 per week and (b) 15% with effect from 1st July 1988.

### **BR Pension Scheme increases on 16th September 1991**

**10D** For a Member who ceased to contribute to the BR Pension Scheme before 16th September 1991 and whose pensions were in payment on that date any spouse's or adult dependant's pensions contingently payable under the BR Rules, following the death of the Member under the BR Rules as they stood at the date the Member ceased to contribute to the BR Pension Scheme, shall be calculated on the basis that they shall be increased by the greater of (a) £2 per week and (b) 8.5%, with effect from 16th September 1991.

For a Member who ceased to contribute to the BR Pension Scheme before 16th September 1991 and whose pension was not in payment on that date any spouse's or adult dependant's pensions contingently payable under the BR Rules as they stood at the date the Member ceased to contribute to the BR Pension Scheme, shall be increased by 8.5% with effect from 16th September 1991.

## **11 GENERAL RULES ABOUT BENEFITS**

### **11**

#### **Off-Set for Crime or Fraud**

**11A** If a Member was dismissed from employment with the Participating Employer because he had incurred a monetary obligation to or caused a financial loss to the Participating Employer arising out of a criminal or fraudulent act or omission or, if the Member resigned to avoid such dismissal, the Participating Employer may require that the benefits in respect of the Member (other than GMPs and benefits arising out of a transfer payment) shall be reduced by an amount that the Trustee determines on actuarial advice to be equivalent to the obligation. If the obligation is greater than the value of the benefits which may be reduced, the benefits shall cease to be payable. If the Participating Employer requests, the Trustee shall pay to the Participating Employer the amount of the obligation or, if less, the value of the reduction in benefits. The Member shall be given a certificate specifying the amount of the obligation and of the reduction in benefits. If the amount of the obligation is disputed, no reduction in benefits shall be made until the obligation has become enforceable under the order of a court or arbitrator appointed (failing agreement between the Member and the Participating Employer) by the President of the Law Society or, in Scotland, by the Sheriff.

#### **Discretionary Death Benefit Trusts**

**11B** The lump sum death benefit shall be paid to the Member's personal representatives unless the Member notifies the Trustee in writing that he wants the lump sum to be applied as set out in the following paragraph.

If the Member so notifies the Trustee, the lump sum death benefit shall be paid to one or more of the Beneficiaries (as defined below) or used for their benefit in such shares as the Trustee decides. But if the benefit is not paid within 2 years of the Member's death, it shall be paid to the Member's personal representatives, unless there is no will of the Member under which it shall pass and the successor on the Member's intestacy is the Crown or the Duchy of Lancaster or Cornwall, in which case no benefit shall be payable. Interest shall only be added if the Trustee so decides and Inland Revenue limits are not exceeded.

The "Beneficiaries" are the Member's widow or widower, the Member's grandparents and their descendants, his spouse's grandparents and their descendants and the spouses, widows or widowers

of those decendants, the Member's Dependants, any person (except the Crown or the Duchy of Lancaster or Cornwall) with an interest in the Member's estate and any person nominated by the Member in writing to the Trustee.

So long as no-one other than Beneficiaries can become entitled, the Trustee may:

- (a) direct that all or part of the lump sum be held by itself or other trustees on such trusts (including discretionary trusts) and with such powers and provisions (including powers of selection and variation) as the Trustee sees fit; or
- (b) direct payment of all or part of the lump sum to the trustee of any other existing trust.

A Member who made an election under rule 41 of the BR Rules shall be treated as having notified the Trustee under this Rule.

### **Members with no Personal Representatives**

**11C** If a sum not exceeding £5,000 or such limit as may be determined by Regulations made by the Treasury which further amend regulation 1 of the Superannuation (Various Service) Regulations 1938(7) is payable to a Member's personal representatives and the Member has for the time being no personal representatives, the Trustee may pay the amount due to such person at such times and in such manner as it thinks fit in order that the sum may be applied as part of the Member's estate or for the benefit of the spouse, relatives or dependants as the Trustee may determine. The Section shall not be liable to make any further payment in respect of the Member.

If a Member dies intestate in circumstances where but for this paragraph the residuary estate would fall to be treated as bona vacantia, nothing shall be payable to the Member's estate.

## **12 CONTRACTING-OUT AND STATE GRADUATED RETIREMENT BENEFITS**

### **12**

#### **Override**

**12A** If a Member's employment with his Participating Employer was Contracted-out under the Pensions Act, either by reference to the BR Pension Scheme or by reference to rights under such other schemes in relation to which the Member was admitted to the Section under Rule 2 (Membership of the Section), then Clause 9 of the Pension Trust (Contracting-Out) shall apply except where this Rule provides contracted-out benefits additional to those set out in Clause 9.

#### **GMP Increase**

**12B** From whichever is the later, State Pension Age or the date the pension becomes payable, the pension which apart from this Rule is payable to a Member who has retired shall be increased by the excess (if any) of the annual equivalent of the GMP over the Contracted-out Pension.

The pension which apart from this Rule is payable to the Eligible Spouse of a Member shall be increased by the excess (if any) of half the annual equivalent of the Member's GMP over the aggregate of (1) half of the amount determined in rule 13(2) of the BR Rules multiplied by whichever is the lesser of the number of years of contracted-out membership or 40 and (2) any pension increases under Rule 10A (Pension Increases—General) in respect of (1), but excluding any such increases after the Member attained State Pension Age.

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(7) S.I.1938/304 amended by the Administration of Estates (Small Payments) Act 1965 c. 32; section 1(1)(c).

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## State Graduated Retirement Benefits

**12C** In this Rule 12C the expression “non-participating employment” has the same meaning as in the National Insurance Act 1965(8).

A Member shall be absolutely and indefeasibly entitled to State Graduated Retirement Benefits if the Member has been in non-participating employment in relation to any other scheme for the provision of relevant benefits (as defined in Chapter I of Part XIV of the Taxes Act) and which is seeking Revenue Approval from which the liability for the payment to the Member of State Graduated Retirement Benefits and any other pension benefits to which he is entitled under the Scheme apart from a GMP shall be mutually inclusive.

A Member’s State Graduated Retirement Benefits shall not be capable of surrender and any option in respect of a Member’s pension shall be restricted in order to ensure that this requirement is satisfied.

If a Member who is prospectively entitled to State Graduated Retirement Benefits under the Section becomes entitled to a refund of the whole or part of any contributions paid by him during any period of non-participating employment, the Trustee shall be entitled to deduct from such refund such sum as it shall consider appropriate within the limits permissible in terms of the National Insurance Act 1965.

If a person to whom this Rule applies dies leaving a spouse, the spouse’s weekly pension shall be subject to a minimum of half the guaranteed minimum.

## SURPLUS ASSETS

**13.** If an actuarial valuation of the Section by the Actuary shows that the Section Assets (excluding the assets retained in the Special Reserve Fund described below and excluding any guarantee payments due after the date of the valuation) are likely to be more than sufficient to provide the benefits for Members as at the date of that valuation, then the Trustee, having considered actuarial advice and subject to the approval of the Secretary of State, shall use the surplus assets in the following order, unless the Trustee with the consent of the Secretary of State and the Pensions Committee otherwise determines within six months of the date of delivery of the valuation:

(1) If, prior to the date 6 months after the date of the valuation, payments have been made either in cash or in some other form, under the terms and conditions of the Secretary of State’s Guarantee, an amount equal in value to the accumulated value of the payments so made or if less the surplus assets, shall be retained in a “special reserve fund” established within this Section (the “Special Reserve Fund”). The Trustee shall invest the Special Reserve Fund at the direction of the Secretary of State subject to the terms and conditions of the Secretary of State’s Guarantee and Clause 5F.

(2) Up to 40% of the surplus assets remaining may then be used to provide additional benefits above the Guaranteed Level of Benefits. An amount equal to one and a half times the value of any benefit increases granted shall be retained in the Special Reserve Fund.

For the purposes of this Rule the actuarial valuation shall be the 3 yearly valuation under Clause 6B of the Pensions Trust (unless the Secretary of State and the Trustee agree otherwise).

## SHORTFALL

**14.** If and whenever an actuarial valuation by the Actuary of the Section shows that the value of its liabilities relating to Members as at the date of that valuation (which liabilities for the purposes of the valuation shall include additional benefits granted following the existence of a surplus under Rule 13 (Surplus Assets) exceeds the value of the assets of that Section (excluding any assets retained in the Special Reserve Fund (as described in Rule 13)) then together:

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(8) 1965 c. 51.

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- (i) (a) the assets of the Special Reserve Fund having a net present value of up to 60% of the shortfall shall be transferred out of the Special Reserve Fund to meet this shortfall; and
  - (b) Members' benefits in payment or deferment shall not be increased until either (i) the completion of such period as is necessary to provide an amount equal in value to 40% of the shortfall or (ii) the Guaranteed Level of Benefits equals or exceeds the Members' benefits in payment or in deferment, whichever occurs first,
- until such time as either:
- (aa) no shortfall remains; or
  - (bb) all the assets of the Special Reserve Fund have been applied fully; or
  - (cc) Members' benefits have been reduced in value by not increasing benefits in payment or in deferment until such time as they become equal to or less than the Guaranteed Level of Benefits,
- whichever occurs first.
- (ii) If (cc) occurs first under (i)(b) above, and there still remains a shortfall, then further assets of the Special Reserve Fund shall be applied by the Trustee having a net present value up to the remaining shortfall until either no shortfall remains or all the assets of the Special Reserve Fund have been so applied, whichever occurs first. If however all the assets of the Special Reserve Fund have been applied under (i)(a) above first, and there still remains a shortfall, then the Trustee shall reduce the value of Members' benefits further by not increasing benefits in payment or in deferment until such time as they become equal to or less than the Guaranteed Level of Benefits or no shortfall remains, whichever is first.
  - (iii) If there remains a shortfall after Members' benefits have been reduced in value by not increasing benefits in payment or in deferment until such time as they become equal to or less than the Guaranteed Level of Benefits and all the assets of the Special Reserve Fund have been fully applied the terms of the Secretary of State's Guarantee shall apply.
  - (iv) For the purposes of this Rule the actuarial valuation shall be the 3 yearly valuation under Clause 6B of the Pension Trust (unless the Secretary of State and the Trustee agree otherwise).

Following the date of a subsequent actuarial valuation the net present value of the existing shortfall and the application of assets and reduction of benefits (if any) described above will be reviewed and new or different terms may be agreed between the Secretary of State and the Trustee.

#### **APPLICATION OF ASSETS**

**15.** The Trustee shall determine at all times the strategic investment policy of the Section with the consent of the Secretary of State and the Pensions Committee and shall exercise the Trustee's powers under Clause 5F of the Pension Trust (Application of Assets) in accordance with the terms and conditions necessary to allow it to provide annually the Trustee's full certificate in accordance with the Secretary of State's Guarantee.

As soon as reasonably practicable and not later than three months after the Trustee has obtained (pursuant to Clause 6B of the Pension Trust (Actuarial Valuations)) an actuarial valuation for the Section, the Trustee shall, after consulting the Actuary, obtain the consent of the Secretary of State and the Pensions Committee for the continuance or variation of the investment policy for the Section in accordance with the terms and conditions of the Secretary of State's Guarantee.

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## 16 WINDING-UP THE SECTION

### 16

#### Time of Termination

**16A** The Secretary of State may if he so decides obtain a further actuarial valuation from the Actuary and may at any time on or before 31st December 2012 with the agreement of the Trustee or after 31st December 2012 having consulted the Trustee and the Pensions Committee, direct the Trustee by notice in writing to wind-up the Section. The Section shall be wound-up as set out in Clauses 11B to 11H (Winding-up a Section where all Participating Employers cease to Participate) of the Pension Trust except that the Secretary of State shall exercise all powers, duties and discretions of the Trustee under those Clauses in place of the Trustee. The Trustee shall have no power to defer the winding-up (as described in Clause 11A of the Pension Trust).

#### Use of Assets on Termination

**16B** If any assets remain (excluding the assets retained in the “Special Reserve Fund” (as described in Rule 13 (Surplus Assets))) an amount equal to (or if less, up to) the accumulated value of the payments (if any) made under the Secretary of State’s Guarantee, but not previously transferred to the Special Reserve Fund under Rule 13, shall be transferred to that Special Reserve Fund. If any assets of the Section remain after this transfer, 40% of those assets shall be used by the Trustee (having considered actuarial advice) to provide additional benefits above the Guaranteed Level of Benefits for all or any of the beneficiaries on a basis agreed with the Pensions Committee and consistent with Revenue Approval. An amount equal to one and a half times the value of these additional benefits shall be transferred to the Special Reserve Fund.

On winding-up the Section under Clause 11 of the Pension Trust (Winding-up a Section where all Participating Employers Cease to Participate) when the assets of the Section (excluding the Special Reserve Fund) are not sufficient to provide benefits equal in value to the entitlements under the Section of the Members and other beneficiaries concerned, then together:

- (i) (a) the assets of the Special Reserve Fund having a net present value of up to 60% of the shortfall shall be applied to meet this shortfall; and
  - (b) Members' benefits in payment or in deferment shall not be increased until either (i) the completion of such period as is necessary to provide an amount equal in value to 40% of the shortfall or (ii) the Guaranteed Level of Benefits equals or exceeds Members' benefits in payment or in deferment, whichever occurs first,

until such time as either:

- (aa) no shortfall remains; or
- (bb) all the assets of the Special Reserve Fund have been applied fully; or
- (cc) Members' benefits have been reduced in value by not increasing benefits in payment or deferment until such time as they become equal to or less than the Guaranteed Level of Benefits,

whichever occurs first.

- (ii) If (cc) above occurs first under (i)(b) and there still remains a shortfall, then further assets of the Special Reserve Fund shall be applied having a net present value up to the remaining shortfall until either no shortfall remains or all the assets of the Special Reserve Fund have been so applied, whichever occurs first. If however all the assets of the Special Reserve Fund have been applied under (i)(a) above first, and there still remains a shortfall, then the value of Members' benefits shall be

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further reduced by not increasing benefits in payment or in deferment until such time as they become equal to or less than the Guaranteed Level of Benefits or no shortfall remains, whichever is first.

If any assets of the Special Reserve Fund remain following winding-up under Rule 16, they shall be applied at the discretion of the Secretary of State;

- (iii) if there still remains a shortfall after Members' benefits have been reduced in value by not increasing benefits in payment or in deferment until such time as they become equal to or less than the Guaranteed Level of Benefits and all the assets of the Special Reserve Fund have been fully applied, the terms of the Secretary of State's Guarantee shall apply.

## **GUARANTEE**

**17.** In accordance with the Secretary of State's Guarantee the Secretary of State may in the circumstances specified in that Guarantee provide that the powers, duties or discretions conferred on the Trustee in relation to this Section shall be exercisable by such other person and for such period as the Secretary of State determines.

## **CHANGING THE RULES**

**18.** The Rules of the Section may be changed as set out in Clause 13 (Changing the Pension Trust and Rules) and in accordance with the terms of the Secretary of State's Guarantee.