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## SCHEDULE 1

### The New Provisions

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## APPENDIX 3—RULES OF THE NATS SECTION

### PART 2:

## BENEFITS AND THE ADMINISTRATION OF BENEFITS

### 21.

#### **JOINING THE NATS SECTION**

**21.1** With effect on and from the Effective Date and subject to the following provisions of this Rule 21, males and females who are aged not less than 16 years but are aged less than 60 years and who are full-time or part-time Employees who are employed by an Employer in the NATS Section in a category of employment which is expressed in their contract of employment to be pensionable are eligible to join the NATS Section.

**21.2** Persons who become eligible to join the NATS Section on or after the Effective Date shall be admitted to membership on the day on which they become eligible and shall make application for membership in such form as the Trustees may require, such persons may alternatively notify the Trustees of their decision not to be admitted to membership.

Persons who become eligible to join the NATS Section but do not apply for membership of the NATS Section as soon as they become eligible to join shall be admitted to membership of the NATS Section on such conditions and on such dates as the Trustees shall decide.

Discretionary entry

**21.3** In special circumstances, a person who has not otherwise become eligible to join the NATS Section may, by permission of his Employer and the Trustees, be admitted to membership of the NATS Section on such conditions and on such terms as to benefits and otherwise and with effect from such date as may be agreed with his Employer and the Trustees, provided that the approval of the Scheme under the Taxes Act is not prejudiced by it.

Restrictions on Membership

**21.4** A person shall not be eligible to join the NATS Section if he is and remains a current member of a Personal Pension Scheme in respect of the source of income to which the NATS Section relates.

**21.5** Notwithstanding Rules 21.1 to 21.4 above, for as long as any of the Employers other than the Sponsoring Section Employer is neither an Associated Company nor a Subsidiary Company, no person shall be eligible for membership of the NATS Section who is currently accruing benefits under or who becomes a member of another Section of the Scheme or another retirement benefits scheme of the Employer, except in circumstances where such person's membership of the NATS Section is acceptable to the Board of Inland Revenue.

**21.6** Following the admission of a Controlling Director to membership of the NATS Section, the Administrator shall notify the Board of Inland Revenue within such time as is prescribed in accordance with the Taxes Act.

### 22.

#### **FURNISHING OF PARTICULARS AND EVIDENCE**

- (a) (a) A Member shall furnish evidence of health at such times and in such form as the Trustees require for the purposes of the NATS Section. If such evidence is not furnished, or is not acceptable to the Trustees for the purposes of the NATS Section, the Trustees may, until the Member produces evidence acceptable to the Trustees for the purposes of

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the NATS Section and except as otherwise specifically provided in these NATS Rules, withhold the benefits which would otherwise be payable on his death or incapacity or modify them in such manner as they consider appropriate.

- (b) Any medical examination or other medical opinion required for the purposes of the NATS Section shall if practicable be conducted or given by a Medical Adviser (or, if this is not practicable, by a medical practitioner instructed by such Medical Adviser) and such person's report shall be available to the Member's doctor. If the Member's doctor informs the Trustees that he is dissatisfied with such report an examination shall be conducted by a duly qualified medical practitioner nominated for the purpose by the Trustees after consultation with the Member's doctor and the Medical Adviser. The report of such nominated medical practitioner shall be regarded as conclusive for the purposes of the NATS Section.
- (c) The charges and expenses of the examination and report or opinion of any medical practitioner instructed by the Medical Adviser or nominated by the Trustees in accordance with this Rule shall be borne by the Member unless either the Employers or the Trustees in their discretion agree to pay such charges and expenses.

**22.2** A Member and any other person (or the parent or guardian in the case of a minor) who is or may be entitled to benefit from the NATS Section deriving from such Member's membership of the NATS Section shall furnish such particulars, including proof of date of birth and where appropriate of marriage, and complete such forms at such times as shall be required by the Trustees for the purposes of the NATS Section. If these particulars are not furnished or are later found to be incorrect, the Trustees may withhold the benefits in respect of the Member or modify them in such manner as they consider appropriate.

**22.3** Payment of any benefit under the NATS Section to any person shall be subject to the production by or in respect of that person of evidence of identity and entitlement to benefit and such other evidence and information as the Trustees may require.

**22.4** Any notice required to be given under the NATS Section (whether by a Member, the Trustees, an Employer or otherwise) shall be in writing and may be given personally or by sending it through the post to the person for whom it is intended at his registered or last known address whether in the United Kingdom or elsewhere and any notice so sent shall in the absence of evidence that it was received by such person at an earlier date be deemed to have been received on the fourth day after posting.

## 23.

### ***CONTRIBUTIONS TO THE NATS SECTION***

#### **Member's ordinary contributions**

**23.1** On and after the Effective Date each Current Member shall, subject to Rules 23.7 and 23.8 and except as provided in Rule 36.3, pay contributions to the NATS Section at the rate of 6% of his Earnings or 4.5% in the case of Members who were contributing at the rate of 6% immediately prior to 1 April 1997, provided always that in respect of Class A Members and Class B Members who became Current Members on or after 1 June 1989 (other than Continued Rights Members) any part of a Member's Earnings to which a percentage would be applied under this Rule 23.1 and which exceeds the Permitted Maximum shall be disregarded.

The contributions of a Member under this Rule 23.1 shall be made by way of deductions by the Employer from the payments of such Member's remuneration as they are made.

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### **Employer's contributions**

**23.2** Each Employer shall, subject to the provisions of Rule 44 and to Rule 23.7, contribute the balance of the cost of providing the benefits of the NATS Section for its own employees under the NATS Section and for the spouses, children and dependants of its own employees.

The Employers shall forward the total of the Employers' and the Members' contributions to the Trustee on such dates as the Trustees shall require in accordance with Rule 11.

### **Members' voluntary contributions**

**23.** A Current Member may, subject as hereinafter provided, make voluntary contributions to the NATS Section in order to provide benefits under the NATS Section which shall be additional to those otherwise specified in these NATS Rules (or, in the case of Family Benefit Contributions, to provide the appropriate benefits payable from the NATS Section upon the death of the Member), provided that the provisions relating to voluntary contributions and to the benefit thereby provided shall not be such as to prejudice approval of the Scheme under Chapter I of Part XIV of the Taxes Act<sup>(1)</sup> and, in particular, voluntary contributions made under arrangements first entered into by the Member on or after 8 April 1987 shall not be used to provide a cash sum in accordance with Rule 29.

The voluntary contributions of a Member under this Rule 23.3 shall be made either by way of deductions by the Employer from the payments of such Member's remuneration as they are made or as otherwise agreed between the Member and the Trustees.

Subject as aforesaid, the types of benefit under the NATS Section to be provided in return for a Member's voluntary contributions shall be such and, except as provided below, on such terms and conditions as may be arranged by the Member with the Trustees acting on the advice of the Actuary and may take the form, inter alia, of additional years to be included within Pensionable Service in the NATS Section or of additional benefit under the NATS Section to be payable upon the death of the Member or of additional pension benefits determined on a money purchase basis; provided always that the amount of benefit to be provided in return for a Member's voluntary contributions shall be the equivalent of those contributions as determined by the Trustees acting on the advice of the Actuary and provided further that in respect of additional pension benefits determined on a money purchase basis:

- (a) the additional pension benefits shall be equivalent on a money purchase basis to the voluntary contributions paid; and
- (b) the benefits shall be limited to those which are capable of being provided by the Rules; and
- (c) if the Trustees so determine, the assets and liabilities relating to such voluntary contributions to the NATS Section shall be identifiable and retained separately from other assets and liabilities of the NATS Section.

The benefits provided from such voluntary contributions shall not become payable earlier than the other Scheme benefits nor later than age 75

Notwithstanding the above provisions and the provisions of Rule 22, a Member who starts paying voluntary contributions on a date within three months of first becoming eligible to become a Current Member shall not be required to produce evidence of health.

### **Limit on Member's contributions**

**23.4** No Current Member shall, during any year of assessment to tax under Schedule E, pay to the NATS Section contributions of such amounts that the aggregate of such contributions and of any contributions paid by him in respect of his Service during that year to any other retirement benefits

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(1) 1988 c. 1.

schemes in respect of that Member which are approved or seeking approval under Chapter I of Part XIV of the Taxes Act would exceed 15% (or such higher percentage as the Board of Inland Revenue may in a particular case prescribe) of his total remuneration from the Employers in that year which is assessable to tax under Schedule E, provided always that for the purposes of this Rule:

- (a) there shall be excluded from total remuneration anything in respect of which tax is chargeable under Schedule E and which arises from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares, or anything in respect of which tax is chargeable by virtue of section 148 of the Taxes Act<sup>(2)</sup>; and
- (b) in respect of Class A Members and Class B Members who became Current Members on or after 1 June 1989 (other than Continued Rights Members),
  - (i) the reference above in this paragraph to “other retirement benefits schemes” shall be taken to include any Associated Scheme or any other Section of the Scheme and the references to “total remuneration” shall be taken to include emoluments in respect of Associated Employment or any Connected Scheme; and
  - (ii) remuneration in excess of the Permitted Maximum shall be disregarded.

#### **Cessation of Member’s contributions**

**23.5** A Member shall stop paying contributions to the NATS Section on ceasing to be a Current Member of the NATS Section or, if earlier, upon completion of the shortest period of Pensionable Service for which the pension payable from Normal Pension Date calculated in respect of the Member under Rule 24.1 would be equal to 2/3rds of the Member’s Final Pensionable Earnings, except that a current Member may continue to pay voluntary contributions to the NATS Section prior to the payment to him of any retirement benefit from the NATS Section for so long as he remains in Service in the NATS Section after Normal Pension Date if the Trustees so agree, subject always to the other provisions of this Rule and provided that the approval of the Scheme under Chapter I of Part XIV of the Taxes Act shall not be prejudiced by it.

#### **Return of surplus voluntary contributions**

- (a) (a) The provisions of the NATS Section permitting a Member to make voluntary contributions to the NATS Section shall be subject to the provisions of Part III of Schedule 6 to the Finance Act 1989<sup>(3)</sup> relating to the return of surplus funds.
- (b) The Administrator shall comply with the requirements of Regulation 5 of The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993<sup>(4)</sup> and where the NATS Section is the leading scheme in relation to a Member, with the requirements of Regulation 6 of those Regulations so far as they concern main schemes. If those Regulations are amended or replaced by any other Regulations then this paragraph will have effect as if it had been amended or replaced accordingly.

The terms **leading scheme** and the **main scheme** shall have the same meaning as is given to them in those Regulations.

#### **Suspending or reducing contributions**

**23.7** If a report from the Actuary discloses a surplus in the NATS Section at any date sufficient to permit the suspension or reduction of contributions, the Sponsoring Section Employer may, as an arrangement to be made in accordance with the provisions of Rule 10.3 and subject always

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(2) Section 148 was substituted by the Finance Act 1998 (c. 36), section 58(1) and (4).

(3) 1989 c. 26.

(4) S.I.1993/3016.

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to the provisions of the Pensions Act 1995, authorise the suspension or reduction of payment of contributions to the NATS Section under Rule 23.2 and/or under Rule 23.1 above for a period not exceeding forty years from the date at which the surplus arose. Any suspension of contributions in accordance with this paragraph shall not be regarded as a termination of liability to contribute to the NATS Section as described in Rule 44.

A suspension or reduction of contributions payable to the NATS Section under Rule 23.1 by one or more Members specified by the Sponsoring Section Employer may be authorised by the Sponsoring Section Employer upon the basis that there shall be a corresponding increase in the contributions payable to the NATS Section by the Employer for such period as the Actuary shall advise. The contributions of a Member which have been suspended or reduced in accordance with this paragraph may be increased as determined by the Sponsoring Section Employer but not to a level greater than the level of Member's ordinary contributions applicable under Rule 23.1

### **Members' Contribution Options**

- (a) (a) With effect from 1 April 1995 a Member whose contributions under Rule 23.1 were at the rate of 7.5% of Earnings and who satisfied the conditions notified to Members by the Trustees could elect by notice in writing to the Trustees before 30 September 1995 that his ordinary contributions to the Scheme under Rule 23.1 should be at the reduced rate of 6% of Earnings with effect from 17 May 1990. Such reduced rate is reduced further to 4.5% with effect from 1 April 1997.

The additional 1.5% of Earnings paid by such a Member under Rule 23.1 from 17 May 1990 up to the date of such election shall be treated as voluntary contributions paid by the Member and applied under Rule 23.3 to purchase additional Pensionable Service or, at the discretion of the Trustees having regard to the requirements of the Board of Inland Revenue, shall be regarded as Family Benefit Contributions and dealt with as described in Rule 47.2.

- (b) A Member whose contributions under Rule 23.1 were at the rate of 6% of Earnings could before 30 September 1995 elect by notice in writing to the Trustees to pay contributions to the Scheme at the rate of 7.5% of Earnings. Any such election made after 1 April 1995 would be in respect of Earnings from 17 May 1990. Any arrears of contributions for the period from 17 May 1990 up to the date of such election should be paid either in the form of a lump sum equal to the amount of the contribution arrears accumulated with compound interest at the rate of 3% per annum or in instalments as agreed with the Trustees having regard to the requirements of the Board of Inland Revenue.

With effect from 1 April 1997 the rate of 7.5% referred to above in this paragraph is replaced by 6%.

## **24.**

### ***AMOUNT OF MEMBERS' PENSIONS AT NORMAL PENSION DATE***

#### **Current Members**

**24.1** A pension payable from the NATS Section under Rule 27.1 to a Member who ceases to be a Current Member of the NATS Section at Normal Pension Date shall, subject to Appendix 4 and to any other provisions of the NATS Section which may apply in respect of a particular Member, be a yearly amount equal to 1/59th of Final Pensionable Earnings for each complete year of Pensionable Service (with the addition of a proportionate amount for each completed day where such Pensionable Service is not an integral number of years) subject to a maximum of 2/3rds of Final Pensionable Earnings.

### **Members who have ceased to be Current Members**

**24.2** A pension payable at Normal Pension Date to a Member who has ceased to be a Current Member in the NATS Section before Normal Pension Date (referred to as a deferred pension) shall, subject to Rule 32 and Appendix 4 and to any other provisions of the NATS Section which may apply in respect of a particular Member, for the purposes of Rule 32.2 be calculated in accordance with Rule 24.1 above but with reference to Final Pensionable Earnings and Pensionable Service at the date of such cessation and increased as described below.

### **Increases in deferred pensions**

**24.3** The said pensions payable under the NATS Section shall be increased in each year on 1 April by the percentage increase in the cost of living over the past year as shown in the Index for the month of February prior to the relevant 1 April or, in the case of a pension to which a Member became entitled within the year to 31 March by a proportional amount calculated on a basis determined by the Trustees with the advice of the Actuary; provided always that if there is a percentage decrease in the cost of living as shown in the Index references in this Rule 24.3 to increases and increasing a Member's pension shall be taken to be references to decreases and decreasing a Member's pension but such decreases shall be such as the Trustees with the consent of the Employers may determine and shall not apply:

- (a) to pensions of a Member who became entitled to a deferred pension hereunder upon ceasing to be a Current Member more than 365 days before Normal Pension Date or;
- (b) so as to reduce a Member's pension from the Scheme below the level of such pension at the date on which the Member ceased to be a Current Member.

## **25.**

### ***AMOUNT OF DEATH BENEFITS***

#### **Lump sum**

**25.1** A lump sum death benefit payable from the NATS Section under Rule 26.1 in respect of a Current Member shall, subject to Appendix 4 and to any other provisions of the NATS Section which may apply in respect of a particular Member be of an amount equal to four times the Member's Final Pensionable Earnings at the date of his death.

#### **Pension**

**25.2** A pension under the NATS Section payable to a Spouse or to or in respect of Qualifying Children under Rule 26 or Rule 28 on the death of a Member of the NATS Section shall, subject to Appendix 4 and to any other provisions of the NATS Section which may apply in respect of a particular Member, be of a yearly amount, with a minimum of £104, equal to the proportion of the Member's Relevant Pension (as defined in Rule 25.4 below) applicable in accordance with the relevant provision of the NATS Rules; provided always that:

- (i) if the Trustees exercise their discretion under Rule 25.3 below the amount or amounts of pension payable under the NATS Section to a Member's Spouse or other beneficiary shall be as described in that paragraph; and
- (ii) notwithstanding proviso (i) above or any other provision of the NATS Rules, that part of the pension payable from the NATS Section to a Member's widow or widower which relates to the Member's Service prior to 6 April 1997 shall not be less than the amount described in paragraphs 2.3(a)(ii) or 2.3(a)(iii) of Section B of Appendix 5 in respect of the Member; and

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- (iii) in respect of a Member who was a Lower Rate Contributor for part or all of his Service as a Current Member the pension payable from the NATS Section under Rule 26 or Rule 28 on the Member's death in relation to such Service on or after 6 April 1997 shall not be less than the amount payable in respect of the Member under paragraph 1.3 of Section A of Appendix 5 on the assumption that the benefits of all such Members are equal to those which would be provided by a reference scheme as described in section 12B of the Pension Schemes Act 1993(5); and
- (iv) in respect of a Member who has received a refund of Family Benefit Contributions in accordance with Rule 47 or an additional amount of pension under that Rule and who subsequently remarries and who does not repay the amounts due under Rule 47.2(c), the pension payable under Rule 26 or Rule 28 on the Member's death in relation to Service on or after 6 April 1997 shall not be less than the amount (if any) payable in respect of the Member under paragraph 1.3 of Section A of Appendix 5 on the assumption that the benefits of all such Members are equal to those which would be provided by a reference scheme as described in section 12B of the Pension Schemes Act 1993.

**25.3** The Trustees shall have power at their absolute discretion to determine that the pension payable from the NATS Section to the Spouse of a Member of the NATS Section other than a Special Member shall not exceed the amount (if any) in respect of him under paragraphs 2.3(a)(ii) or 2.3(a)(iii) of Section B of Appendix 5. The balance (or the whole, as appropriate) of the pension which would, but for the application of this paragraph, have become payable under the NATS Section to that Member's Spouse shall be paid subject to such terms and conditions as the Trustees shall determine in their absolute discretion and in such shares as they shall think fit to such one or more of the following persons, viz:

- (a) any former spouse of the Member who has been financially dependent upon him since the dissolution of the marriage with him; and
- (b) any person to whom the Member has not been married who has been financially dependent upon him and who has lived with him as his spouse;

provided that if a Special Member has so requested the Trustees may, at their absolute discretion, apply the provisions of this Rule 25.3 in respect of the pension which would become payable to such Special Member's Spouse.

**25.4** For the purposes of this Rule Relevant Pension means:

- (a) in the case of a Member who dies while he is a Current Member of the NATS Section and before Normal Pension Date, the annual amount of pension which would have been paid to him from the NATS Section if he had retired on his Normal Pension Date in accordance with Rule 27.1(a) based on his Final Pensionable Earnings at the date of his death; or
- (b) in the case of a Member who dies after leaving Service but before commencement of pension from the NATS Section in respect of him, the pension to which he became entitled under Rule 32 including the increases to such pension in accordance with Rule 24.3 added up to the date of the Member's death; or
- (c) in the case of a Member who dies on or after the date on which a pension commenced to be payable to him from the NATS Section the annual rate of pension to which he was entitled from the NATS Section at the date of his death; or
- (d) in the case of a Member who dies on or after Normal Pension Date but before any pension has become payable to him from the NATS Section, the pension which would have been payable to him at its commencement under the NATS Rules if he had commenced to

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(5) 1993 c. 48; section 12B was amended by S.I. 1997/819, regulation 2.

receive his pension under the NATS Section on the day preceding the date of his death (or on Normal Pension Date if that was the date of his death),

provided always that for the purposes of this Rule 25.4 a Member's pension shall not, unless previously arranged otherwise between the Trustees and the Member, include any pension provided by voluntary contributions paid by him to the NATS Section, but shall be deemed to include any pension commuted under Rules 29.2 or 29.3 or surrendered under Rule 30 or any adjustment arising from the application of Rule 38.5(b).

## 26.

### **DEATH BEFORE PAYMENT OF RETIREMENT BENEFIT**

#### **Lump sum**

**26.1** If a Current Member of the NATS Section dies while in Service before any retirement benefit has become payable to him from the NATS Section a lump sum death benefit calculated in accordance with Rule 25.1 shall be payable in accordance with Rule 37.

**26.2** If a Member who has ceased to be a Current Member of the NATS Section and is not a Current Member of the NATS Section in respect of any subsequent period of membership of the NATS Section dies before any retirement benefit has become payable to him from the NATS Section, the Trustees shall pay in accordance with Rule 37 an amount equal to whichever is the greater of:

- (a) his Final Pensionable Earnings at the date on which he ceased to be a Current Member increased on the basis described in Rule 24.3 but in respect of the period from the date on which he ceased to be a Current Member up to the date of his death; and
- (b) the total of the contributions paid by him to the NATS Section under Rule 23.1 (and under the Previous Scheme Provisions) together with such of his voluntary contributions as the Trustees shall determine and his Transferred Contributions (if any), with the addition of 3% per annum compound interest on it up to the date of the Member's death calculated by the Trustees with the guidance of the Actuary;

provided always that if such a Member dies on or after Normal Pension Date before any retirement benefit has become payable to him from the NATS Section the amount described above in this rule 26.2 shall not be payable but the Member shall be treated for the purposes of the NATS Section as if he had retired on the day before his death and the benefits payable from the NATS Section shall be as if the Member had elected to receive the maximum cash sum permissible under Rule 29.2, any such cash sum to be not less than the amount described in paragraph (a) above and to be payable in accordance with Rule 37.

**26.3** If a Member who has paid voluntary contributions to the NATS Section dies before any retirement benefit has become payable to him from the NATS Section, and if the benefit basis previously arranged with the Trustees includes provision for a payment on death the Trustees shall make payment in accordance with Rule 37 of the amount they determine to be appropriate in accordance with that provision.

#### **Spouse's pension**

**26.4** If a Member of the NATS Section dies before any benefit has become payable to him from the NATS Section in respect of the current period of Pensionable Service and is survived by a Spouse (or other beneficiary to whom a pension is payable in accordance with Rule 25.3), the pension described in Rule 25.2 and equal to:

- (i) 2/3rds of the Relevant Pension of a Member who dies while he is a Current Member of the NATS Section; and

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(ii) 60% of the Relevant Pension of any other Member to whom this paragraph applies, shall, subject to Rule 25.3 and Appendix 4, become payable to the Spouse (or other beneficiary as aforesaid) from the date of the Member's death, provided that in respect of a Member who dies while he is a Current Member of the NATS Section, an additional amount shall be paid for a period of three months commencing on the date of his death such that the total payable in respect of the Member under this Rule 26.4 shall, for each such month, be equal to 1/12th of the Member's Earnings as at the date of his death, disregarding in respect of a Class A Member and a Class B Member who became a Current Member on or after 1 June 1989 (other than a Continued Rights Member) any part of such Earnings which exceeds the Permitted Maximum at that date.

### **Children's pensions**

**26.5** If a Member of the NATS Section dies before any benefit has become payable to him from the NATS Section and is survived by a Spouse (or other beneficiary to whom a pension is payable in accordance with Rule 25.3) and by one or more Qualifying Children the pension described in Rule 25.2 shall become payable from the date of the Member's death (or, if the Member was a Current Member of the NATS Section at the date of his death, from the end of the period of three months mentioned in Rule 26.4 above) and shall be paid or applied by the Trustees as hereinafter described.

The amount of pension under this Rule 26.5 in respect of each Qualifying Child (up to a maximum of two) shall be 1/6th of the Relevant Pension of a Member who dies while he is a Current Member of the NATS Section and 1/4 of the Relevant Pension of any other Member to whom this Rule 26.5 applies, provided always that:

- (a) if the Member's Spouse (or other beneficiary as aforesaid) dies during the period of three months referred to above or while a pension under this paragraph is in course of payment; or
- (b) if, for exceptional reasons, the Trustees in their discretion so direct,

the pension under this Rule 26.5 shall thereupon commence or, as appropriate, continue to be payable in the amount described in Rule 26.6 below, and provided further that the maximum under this Rule 26.5 where there are two or more Qualifying Children of a Member who is not a Current Member of the NATS Section at the date of his death shall be 40% of the Member's Relevant Pension.

**26.6** If a Member of the NATS Section dies before any benefit has become payable to him from the NATS Section and is survived by one or more Qualifying Children but not by a Spouse (or other beneficiary to whom a pension is payable in accordance with Rule 25.3) the pension described in Rule 25.2 and equal to 1/3rd of the Member's Relevant Pension in respect of each Qualifying Child (up to a maximum of two) shall become payable out of the NATS Section from the date of the Member's death and shall be paid or applied by the Trustees as hereinafter described; provided always that:

- (a) if the Trustees so direct the amount of pension payable under this Rule 26.6 shall be as described in Rule 26.5 above; and
- (b) the Trustees may in their discretion augment any pension payable under this Rule 26.6 by such amount as they determine but not so that the aggregate of any augmentation in respect of the Member under this paragraph (b) and of any pensions payable to Dependents under Rule 26.9 below would exceed the pension which would have been payable under Rule 26.4 above if the Member had been survived by a Spouse.

**26.7** Any pension payable under Rules 26.5 or 26.6 above shall be paid from the NATS Section by the Trustees to or for the benefit of the Qualifying Child and if and so long as there are two or more Qualifying Children to or for their benefit in equal shares subject to Rule 42.

**26.8** Notwithstanding the previous provisions of this Rule, the Trustees may at their discretion pay or continue to pay for such period as they think fit a pension of an amount determined by the

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Trustees to a child of a deceased Member of the NATS Section whether such child is not or has ceased to be a Qualifying Child if in the opinion of a Medical Adviser such child is incapable of earning his own living by reason of bodily or mental infirmity.

### **Dependants' pensions**

**26.9** If a Member of the NATS Section dies before any benefit has become payable to him from the NATS Section and is survived by one or more Dependants but not by a Spouse (or other beneficiary to whom a pension is payable in accordance with Rule 25.3) the Trustees may in their discretion decide whether a pension such that the aggregate of it and of any augmentation of pension payable under Rule 26.6 above in respect of the Member's Qualifying Children would not exceed the pension which would have been payable under Rule 26.4 above if the Member had been survived by a Spouse shall become payable from the date of the Member's death (or from the cessation of any pension payable under Rule 26.6 in respect of the Member's Qualifying Children) and, if so, such pension shall be paid or applied by the Trustees to or for the benefit of such one or more of the Member's Dependants at such rate and in such shares as the Trustees shall from time to time decide.

## **27.**

### **COMMENCEMENT OF MEMBER'S PENSION**

#### **At Normal Pension Date**

- (a) (a) A Current Member of the NATS Section who ceases to be in Service at Normal Pension Date shall be entitled to receive a pension from the NATS Section at Normal Pension Date calculated in accordance with Rule 24.1.
- (b) A Member of the NATS Section who has become entitled before Normal Pension Date to a pension described in Rule 32 other than a Member whose benefit from the NATS Section has become payable before Normal Pension Date shall be entitled to receive from the NATS Section at Normal Pension Date a pension calculated in accordance with Rule 24.2 or, in the case of a Member in respect of whom the Cash Value of a part of his benefits has been applied in accordance with Rule 33 or Rule 34, the appropriate part of such pension.

#### **Before Normal Pension Date**

- (a) (a) A Member of the NATS Section who on leaving Service or retiring before Normal Pension Date becomes entitled to a pension under Rule 32 may with the consent of the Trustees commence to receive such pension at any time on or after his 50th birthday, or earlier if he is retiring because of incapacity.

Such pension shall include the increases described in Rule 24.3 calculated up to the date on which the pension is to commence, the total pension for that Member being, subject always to Appendix 4, reduced to such extent (if any) as the Trustees shall, on the advice of the Actuary, consider to be reasonable and determine to be appropriate having regard to, among other things, the period between the date of its commencement and Normal Pension Date but so that the reduced pension shall be not less than the actuarial equivalent of the pension which would have been payable under Rule 32 from the Member's Normal Pension Date, provided always that in special circumstances specifically approved by the Sponsoring Section Employer the pension payable under the preceding provisions of this Rule 27.2 shall not, if the Sponsoring Section Employer so determines and subject as hereinafter provided, be reduced as described above in this Rule and the provision of such unreduced pension shall be regarded as augmentation of benefit in accordance with Rule 12 and shall

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be subject to payment by the Employer of the appropriate additional contribution to the NATS Section.

### **Incapacity**

- (b) On ceasing to be a Current Member of the NATS Section on the grounds of ill-health before attaining Normal Pension Date in consequence of incapacity (which is expected to be permanent) to perform his duties resulting from accident or mental or physical infirmity not resulting from his own misconduct a Member may commence to receive his pension immediately upon his retirement, provided that a Member may not make a claim to receive a pension under this paragraph (b) later than 90 days after the date on which he ceased to be a Current Member of the NATS Section. Such pension shall be calculated as described in Rule 24.1 except that the Member's Pensionable Service shall be increased by an addition equal to 50% of the amount of his Pensionable Service immediately before such addition (exclusive of any part of it provided in return for a Member's voluntary contributions under Rule 23.3) or 100% of it, if the Trustees so determine, upon his retirement or at any other date prior to Normal Pension Date that the medical advice referred to in (c) below indicates that the Member is incapable of gainful employment (except to an extent acceptable to the Trustees) or such greater amount as the Trustees at their absolute discretion shall in exceptional circumstances decide, provided always that no such addition shall cause the Member's total pension from the NATS Section to exceed 2/3rds of Final Pensionable Earnings or, if less, a pension equal to that fraction of Final Pensionable Earnings which the Member would have received at Normal Pension Date if he had remained a Current Member of the NATS Section until that date.

The Administrator shall give prior notice to the Board of Inland Revenue in accordance with the Taxes Act before commencing to pay a pension from the NATS Section on the retirement prior to Normal Pension Date on account of incapacity of a Member of the NATS Section who is a Controlling Director.

### **Payment of pensions under Rule 27.2**

- (c) Payment of a pension described in paragraph (b) above shall be subject to the Member submitting himself for medical examination by a Medical Adviser whenever the Trustees require him to do so. The Trustees may withhold payment of such pension for such period as the Member refuses or fails to submit himself to any such examination or in any way obstructs the same.

The 100% addition of Pensionable Service as described in (b) above shall be subject to the Member providing such confirmation in such manner as the Trustees may reasonably require that he has not been in receipt of remuneration from any other employment (or alternatively that he has been in receipt only of remuneration which the Trustees have decided may be ignored) and the Trustees may withhold payment of a pension in respect of any period during which the Member refuses or fails to provide such confirmation or in any way obstructs the obtaining of such confirmation and if at any time the Trustees are of the opinion that as from a certain date the Member no longer qualifies for the 100% addition in accordance with (b) above the pension from that date shall be calculated as if the Member qualifies for the 50% addition in accordance with (b) above but without prejudice to the power of the Trustees to reverse that decision at a later date.

- (d) Where as a result of evidence supplied in respect of a Member in accordance with paragraph (c) above the Trustees are of the opinion that the Member would be able before Normal Pension Date to resume employment with his Employer or to take up

employment with any other Employer, the Trustees shall inform the Employers and if an Employer offers such Member employment in which he would become eligible for membership of the NATS Section, the pension payable from the NATS Section in accordance with this Rule 27.2 shall cease to be payable upon his commencing such employment or, if earlier, at the end of three months (or such further period as the Trustees in their discretion shall allow) from the date of the said offer of employment, provided always that if a Member's remuneration (taken for this purpose as remuneration other than Non-Pensionable Earnings) at the date on which his pension would cease to be payable as described above in this paragraph (d) is less than his corresponding former remuneration at the date on which the Member ceased to be a Current Member of the NATS Section, a proportion of his pension payable under this Rule 27.2 shall continue to be payable, such proportion being the proportion of that pension which the reduction in the Member's remuneration bears to his former remuneration, and provided further that upon the subsequent cessation of membership of such a Member the pension payable from the NATS Section to the Member shall not be less than the pension previously payable to him under this Rule 27.2.

- (e) If a Member in receipt of a pension under Rule 27.2 other than a pension to which paragraph (d) above applies but being a pension not subject to a reduction as described above in this Rule is offered employment with any of the Employers in which he becomes eligible for membership of the NATS Section, payment of such pension shall cease upon his commencing such employment or, if earlier, at the end of three months (or such further period as the Trustees in their discretion shall allow) from the date of the said offer of employment.
- (f) The payment of a pension in respect of a Member to whom this Rule 27.2 applies shall be subject otherwise to the provisions of Rule 38.
- (g) If a Member of the NATS Section who is offered employment with an Employer in accordance with paragraph (d) or (e) above in this Rule returns to such employment within the period described in those paragraphs, he may recommence membership of the NATS Section as a Current Member on such terms as the Trustees on the advice of the Actuary shall determine. Such a Member who does not recommence membership as a Current Member and such a Member who does not return to the employment within the period described shall become entitled to such deferred or reduced pension as the Trustees on the advice of the Actuary shall determine provided that such determination does not prejudice approval of the Scheme as an exempt approved scheme for the purposes of Part I of Chapter XIV of the Taxes Act(6).

### **After Normal Pension Date**

#### **Service after Normal Pension Date**

- (a) (a) The pension of a Member who is a Current Member of the NATS Section immediately before Normal Pension Date and whose Service continues beyond that date shall be postponed until the date of cessation of his Service (or, in the case of a Class A Member, his 75th birthday if earlier) provided that such a member who is a Class B Member may by notice in writing to the Trustees elect to receive a cash sum in accordance with Rule 29.2 or to commence receiving his pension or the balance of it as appropriate at any date on or after Normal Pension Date but not later than the date of his actual retirement from Service. The amount of pension of a Member to whom this paragraph applies shall, subject to Appendix 4 and except as provided below in this Rule, be calculated in

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(6) 1988 c. 1.

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accordance with Rule 24.1 as at the date of its commencement or, if greater, but only in the case of a Member whose pension so calculated would have been 2/3rds of Final Pensionable Earnings, an amount of 2/3rds of Final Pensionable Earnings as at the later of the Member's Normal Pension Date and the date of completion of the shortest period of Pensionable Service for which the pension calculated in respect of the Member under Rule 24.1 would be equal to 2/3rds of the Member's Final Pensionable Earnings, with the addition of an amount determined by the Trustees with the advice of the Actuary having regard to the date of commencement of the pension and/or such other factors (if any) as the Actuary shall consider to be relevant. The amount of pension calculated in accordance with Rule 24.1 as aforesaid shall be reduced by the value, determined by the Trustees with the advice of the Actuary, of any benefit paid to the Member in accordance with the proviso above in this paragraph.

### **Postponement of deferred pensions**

- (b) Payment of a pension to which a Member of the NATS Section becomes entitled under Rule 32 may at his request be postponed beyond Normal Pension Date until such date not later than his 75th birthday as shall be agreed between the Trustees and the Member; provided always that:
- (i) in the case of a Class A Member who has ceased to be a Current Member of the NATS Section while remaining in Service in accordance with Rule 31, the Member's pension from the NATS Section may not commence to be paid before he ceases to be in Service; and
  - (ii) in the case of a Class B Member, the Member's pension from the NATS Section may be postponed only for so long as his retirement from all employment is postponed.

The amount of pension of a Member to whom this paragraph (b) applies shall, subject to Appendix 4, be calculated in accordance with Rule 24.2 as at Normal Pension Date increased by such amount as the Trustees with the advice of the Actuary shall determine having regard to the period for which payment of the pension has been postponed.

## **28.**

### ***DEATH AFTER PENSION STARTS***

#### **Lump sum**

**28.1** When a Class B Member, of the NATS Section, in respect of whom no pension will become payable in accordance with any other paragraph of this Rule dies after commencement of his pension from the NATS Section, the Trustees shall pay in accordance with Rule 37 a sum equal to the amount (if any) by which:

- (a) the total of the contributions (other than voluntary contributions) paid by him to the NATS Section (and under the Previous Scheme Provisions) together with such of his voluntary contributions to the NATS Section (and under the Previous Scheme Provisions) as the Trustees shall determine and his Transferred Contributions (if any) with the addition of 3% per annum compound interest thereon up to the date on which the Member left Service or, if earlier, the date of commencement of his pension hereunder,  
exceeds
- (b) the aggregate of:
  - (i) the total of the instalments of the Member's pension from the NATS Section paid before his death; and

- (ii) any cash sum paid to the Member under Rule 29 and under any other provision of the NATS Rules.

**28.2** If a Member of the NATS Section who opted under Rule 27.3 to receive a pension from the NATS Section while remaining in Service after Normal Pension Date and to defer receiving a cash sum under Rule 29.2 dies before receiving such cash sum he shall be treated for the purposes of this Rule as having retired on the day before he died and the Trustees shall pay in accordance with Rule 37 a lump sum equal to the said cash sum with the addition of interest up to the day before the Member's death at a rate which the Trustees with the advice of the Actuary consider to be reasonable.

### **Spouse's pension**

**28.3** If a Member of the NATS Section dies after a pension has become payable to him from the NATS Section or after receiving a cash sum under Rule 29.2 while remaining in Service on or after Normal Pension Date and is survived by a Spouse (or other beneficiary to whom a pension is payable in accordance with Rule 25.3) the pension described in Rule 25.2 shall, subject to Rule 25.3, become payable to the Spouse (or other beneficiary as aforesaid) from the first day of the month following the Member's death. Such pension shall:

- (a) for a period of three months from its commencement or, if longer, for the balance of the period of five years beginning at the commencement of payment of the Member's pension from the NATS Section, be equal to 1/12th of the Member's Relevant Pension for each month in the said period; and
- (b) thereafter, be equal to 60% of the Member's Relevant Pension.

### **Children's pension**

**28.4** If a Member of the NATS Section dies after a pension has become payable to him under these Rules or after receiving a cash sum under Rule 29.2 while remaining in Service on or after Normal Pension Date and is survived by a Spouse (or other beneficiary to whom a pension is payable in accordance with Rule 25.3) and by one or more Qualifying Children, the pension described in Rule 25.2 and equal to 1/4 of the Member's Relevant Pension if there is one Qualifying Child and equal to 40% of the Member's Relevant pension if there are two or more Qualifying Children shall become payable from the date on which the pension at the rate described in Rule 28.3(b) commences to be payable and shall be paid or applied by the Trustees as hereinafter described; provided always that:

- (a) if the Member's Spouse (or other beneficiary as aforesaid) dies while a pension is payable under Rule 28.3; or
- (b) if, for exceptional reasons, the Trustees so direct the pension under this Rule 28.4 shall commence or, as appropriate, continue to be payable in the amount described in Rule 28.5.

**28.5** If a Member of the NATS Section dies after a pension has become payable to him under these NATS Rules or after receiving a cash sum under Rule 29.2 while remaining in Service on or after Normal Pension Date and is survived by one or more Qualifying Children but not by a Spouse (or other beneficiary to whom a pension is payable in accordance with Rule 25.3) the pension described in Rule 25.2 and equal to 1/3rd of the Member's Relevant Pension in respect of each Qualifying Child (up to a maximum of two) shall become payable from the date of the Member's death and shall be paid or applied by the Trustees as hereinafter described; provided always that:

- (a) if the Trustees so direct the amount of pension payable under this Rule 28.5 shall be as described in Rule 28.4; and
- (b) the Trustees may in their discretion augment any pension payable under this Rule 28.5 by such amount as they determine but not so that the aggregate of any augmentation in respect of the Member under this paragraph (b) and of any pensions payable to Dependents under

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Rule 28.8 below would exceed the pension which would have been payable under Rule 28.3 if the Member had been survived by a Spouse.

**28.6** Any pension payable under Rules 28.4 or 28.5 shall be paid by the Trustees to or for the benefit of the Qualifying Child and if and so long as there are two or more Qualifying Children to or for their benefit in equal shares subject always to the provisions of Rule 42.

**28.7** Notwithstanding the previous provisions of this Rule the Trustees may at their discretion pay or continue to pay for such period as they think fit a pension of an amount determined by the Trustees to a child of a deceased Member of the NATS Section whether such child is not or has ceased to be a Qualifying Child if in the opinion of a Medical Adviser such child is incapable of earning his own living by reason of bodily or mental infirmity.

### **Dependants' Pension**

**28.8** If a Member of the NATS Section dies after any pension has become payable to him from the NATS Section and is survived by one or more Dependants but not by a Spouse (or other beneficiary to whom a pension is payable in accordance with Rule 25.3) the Trustees may in their discretion decide whether a pension such that the aggregate of it and of any augmentation of pension payable under Rule 28.5 in respect of the Member's Qualifying Children would not exceed the pension which would have been payable under Rule 28.3 if the Member had been survived by a Spouse, shall become payable from the date of the Member's death (or from the cessation of any pension payable under Rule 28.5 in respect of the Member's Qualifying Children) and, if so, such pension shall be paid or applied by the Trustees to or for the benefit of such one or more of the Member's Dependants at such rate and in such shares as the Trustees shall from time to time decide.

## **29.**

### ***CASH SUM IN LIEU OF PENSION***

#### **Commutation of trivial pensions**

**29.1** If at the date when a pension becomes payable from the NATS Section to or for the benefit of any person such pension together with the annuity equivalent of all other retirement benefits to which such person is entitled from the Employers' Schemes or other Sections of the Scheme does not exceed £260 per annum (or such higher amount as may have been prescribed by regulations made under section 91 of the Pensions Act 1995<sup>(7)</sup> and is acceptable to the Board of Inland Revenue), the Trustees may commute that pension for a cash sum payable to or for the benefit of such person. If the Trustees commute a Member's pension as described above and if there is a pension contingently payable from the NATS Section on such Member's death which could (if the Member had died on the date his pension became payable) have been commuted in accordance with this Rule 29.1, then the Trustees will forthwith commute such pension for a cash sum payable to the Member, provided always that in the case of a Member whose pension from the NATS Section becomes payable before Normal Pension Date:

- (a) if such Member is a member of more than one retirement benefits scheme relating to the same employment (including any other Section of the Scheme), commutation under this Rule 29.1 shall be permissible only if he is treated by all such schemes as having retired and if provisions corresponding to this Rule 29.1 apply under such other schemes; and
- (b) in determining the amount of the Member's pension for the purposes of this paragraph the Trustees shall with the advice of the Actuary take due account of:

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(7) 1995 c. 26; section 91 was amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 84(1) and Schedule 12, Part I, paragraphs 43 and 57.

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- (i) increases in the Member's Guaranteed Minimum Pension (if any) required to be made up to State Pensionable Age in such a way as to satisfy the provisions of section 21 of the Pension Schemes Act 1993<sup>(8)</sup> and any regulations made for the purposes of that section; and
- (ii) increases to that part of the Member's pension hereunder which exceeds the Member's Guaranteed Minimum Pension (if any) which would, in the opinion of the Trustees, be made to the Member's pension hereunder up to Normal Pension Date in accordance with Schedule 3 to the Pension Schemes Act 1993 if such pension had become payable at Normal Pension Date.

### **Tax free cash sum**

**29.2** Subject to Appendix 4, a Member of the NATS Section may by giving notice in writing to the Trustees before any pension becomes payable to him from the NATS Section elect to commute for a cash sum at the date his pension becomes payable or, in the case of a Class B Member, on or after his Normal Pension Date if earlier, the whole or a proportion of that part of such pension which exceeds the Guaranteed Minimum Pension in respect of him or, where such date is before the Member's State Pensionable Age, which exceeds the amount which the Trustees with the advice of the Actuary estimate will be the Member's Guaranteed Minimum Pension at his State Pensionable Age.

### **Serious ill-health**

**29.3** If at the date when any pension becomes payable to a Member under the NATS Section the Trustees are satisfied by such evidence as they may require that the Member is in exceptional circumstances of serious ill-health, the Trustees may at their discretion pay a cash sum to the Member in commutation of the whole of that part of his pension which exceeds the Guaranteed Minimum Pension or if the Member has elected the option under Rule 29.2 above in commutation of the balance (if any) of such pension.

The Administrator shall give prior notice to the Board of Inland Revenue in accordance with the Taxes Act before making a payment under this Rule 29.3 to a Member of the NATS Section who is a Controlling Director.

### **General**

**29.4** The amount of any cash sum payable under this Rule in lieu of any amount of pension shall be determined from time to time by the Trustees after consultation with the Actuary and shall be either as certified as reasonable by the Actuary or in accordance with commutation factors acceptable to the Board of Inland Revenue as suitable for the NATS Section.

**29.5** A cash sum payable in respect of any person under this Rule other than any which could be payable in respect of such person under Rule 29.2 above shall be reduced by the amount of tax (if any) for which the Trustees are liable in respect thereof.

## **30.**

### ***OPTIONAL SPOUSE'S OR DEPENDANT'S PENSION***

**30.1** Subject to the following provisions of this Rule, a Member of the NATS Section may elect not less than 28 days before the date when any pension becomes payable to him from the NATS Section to surrender the whole or a proportion of his pension from the NATS Section which exceeds the Guaranteed Minimum Pension in respect of him in order to provide a non-commutable and non-

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(8) 1993 c. 48.

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assignable pension payable after his death which in the opinion of the Trustees on the advice of the Actuary is equal in value to the pension so surrendered.

**30.2** Exercise of this option shall be by notice given in writing to the Trustees and shall be in respect of the person to whom the Member is married at the date on which the notice is given or in accordance with Rule 30.6. In the event of:

- (a) the Member or the said person dying before Normal Pension Date and before the commencement of the Member's pension under these Rules; or
- (b) the said person dying at or after Normal Pension Date while the Member's pension is postponed in accordance with these Rules; or
- (c) the commutation of the whole of the Member's pension for a cash sum,

the exercise of the option shall be cancelled.

In the event, where applicable, of the marriage of the Member and the said person being terminated by divorce or annulment, or the Member and the said person being judicially separated, before the commencement of his pension under these Rules the exercise of the option shall be cancelled if the Member requests the Trustees by notice in writing to that effect.

**30.3** Except as above mentioned, the exercise of the option may not be cancelled except with the special consent of the Trustees and then only before commencement of the Member's pension. If an exercise of the option is cancelled, the benefits will be as if the Member had not exercised the option. If after the Member has commenced to receive a pension from the NATS Section the person in respect of whom the option has been exercised predeceases the Member or, where applicable, their marriage is terminated by divorce or annulment, or they become judicially separated, the unsurrendered portion of the Member's pension and no more will continue to be paid to the Member.

**30.4** The amount of pension surrendered by a Member under this Rule must not be so great that the pension described in Rule 30.1 above would be greater than the pension remaining payable to the Member (before any surrender of part of his pension for a cash sum).

**30.5** The pension described in Rule 30.1 above shall, unless the option has been cancelled as described above, be payable to the person in respect of whom the option has been exercised and shall commence to be payable one month after the final instalment of the pension payable from the NATS Section to the Member. Where the said person is the person to whom the Member was married at the date on which the notice was given the pension shall cease with the last instalment falling due before that person's death.

**30.6** The option described in Rule 30.1 above may be exercised by a Member of the NATS Section in favour of any one or more of his Dependants other than (or in addition to) the person to whom the Member is married at the date on which the notice is given. In such case the terms and conditions of payment relating to the pension for the person or persons in respect of whom such option is exercised shall be as notified by the Trustees to the Member.

## **31.**

### ***CEASING TO BE ELIGIBLE AND VOLUNTARY WITHDRAWAL***

#### **Ceasing to be eligible**

**31.1** A Member of the NATS Section who while remaining in Service ceases to be within the eligibility category described in Rule 21 shall be treated for the purposes of the NATS Section (other than for the purposes of Rule 27) as having left Service.

### **Voluntary withdrawal**

**31.2** A Member of the NATS Section may give written notice to the Trustees that he wishes to withdraw from membership of the NATS Section while otherwise remaining eligible. Such notice shall be for a minimum period of one month expiring at the end of a calendar month and the Member shall be treated for the purposes of the NATS Section (other than for the purposes of Rule 27) as having left Service at the date of expiry of the notice.

Notwithstanding the provisions of Rule 21, such a Member shall not be readmitted to membership of the NATS Section except with the permission of the Trustees and on such basis as the Trustees shall determine and provided that the continued approval of the Scheme under Chapter I of Part XIV of the Taxes Act is not prejudiced by this.

## **32.**

### **MEMBERS WHO CEASE TO BE IN SERVICE**

#### **Refund of contributions**

**32.1** A Member who ceases to be a Current Member of the NATS Section before Normal Pension Date and who at the date of such cessation is not a Qualifying Leaver shall be entitled to elect in lieu of any other benefits from the NATS Section a refund of any contributions paid by him to the NATS Section (and under the Previous Scheme Provisions) (other than any voluntary contributions) and his Transferred Contributions (if any), with the addition of 3% per annum compound interest thereon up to the date of payment of the refund. Such refund shall be subject to any deduction in accordance with Rule 43.

If such Member has been in Contracted-out Membership the Trustees will pay a Contributions Equivalent Premium in respect of him and the liability of the Trustees to provide a Guaranteed Minimum Pension or Spouse's Guaranteed Minimum Pension in respect of the Member shall thereupon be extinguished. For such a Member the amount of refund described in the previous paragraph shall be reduced by a proportion of the Contributions Equivalent Premium being the amount recoverable under section 61 of the Pension Schemes Act 1993<sup>(9)</sup>.

If a Member to whom this Rule applies has paid voluntary contributions to the NATS Section the amount payable under the first paragraph of this Rule will, if previously arranged with the Trustees, be increased by an amount determined by the Trustees in accordance with the basis so arranged.

A Member to whom the first paragraph of this Rule applies may, in lieu of receiving a refund as described above, elect that the amount payable under that paragraph be transferred to an insurance policy or to a different retirement benefits scheme in accordance with the provisions of Rule 33 or Rule 34 respectively and such amount shall be the Member's Cash Value for the purposes of those Rules.

#### **Deferred pension**

**32.2** A Member who ceases to be a Current Member of the NATS Section before Normal Pension Date and who is a Qualifying Leaver at the date of such cessation shall, except as provided in Rule 32.4, be entitled to a pension commencing from Normal Pension Date calculated in accordance with Rule 24.2 together with any benefit secured by voluntary contributions made by him to the NATS Section and any interest or other return accruing thereto.

**32.3** Any pension to which a Member of the NATS Section is entitled under this Rule shall, except where stated otherwise, be subject to the same terms conditions and options as would apply

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(9) Section 61 was amended by the Pensions Act 1995 (c. 26), section 151 and Schedule 5, paragraphs 18 and 55.

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to the pension or pensions which would be payable to or in respect of him from the NATS Section if he were a Current Member until his Normal Pension Date.

### **Option for buy-out or transfer**

**32.4** Except as provided below in this Rule, a Member to whom Rule 32.2 applies shall have the option to arrange for the whole or a part of his entitlement under the NATS Section to be transferred to an insurance policy or to a different retirement benefits scheme in accordance with Rule 33 or Rule 34 respectively or to one or more insurance policies and/or retirement benefits schemes as the Member requires. Such option may be elected at any time before any benefits become payable in respect of him from the NATS Section and prior to the later of:

- (i) the commencement of the year which ends on the day before Normal Pension Date; and
- (ii) the date which occurs twelve months after the cessation of the Member's Service (or such later date as shall be agreed by the Member with the Trustees).

### **Restriction on option**

**32.5** In respect of a Member of the NATS Section who has withdrawn from membership of the NATS Section in accordance with Rule 31.2 and remains in the employ of any of the Employers the option available under Rule 32.4 shall, if the Trustees in their absolute discretion so decide, be available in respect of only a part of the Member's entitlement under the NATS Section. Such part shall be calculated by the Trustees as not less than the proportion which the Member's Service in the NATS Section after 5 April 1988 bears to his total actual Service.

### **Separate periods of Pensionable Service**

- (a) (a) If a Member of the NATS Section is entitled to benefit from the NATS Section in respect of separate periods of Pensionable Service, then for the purpose of determining the amount of his entitlement to such benefit each such period shall except insofar as the provisions of Appendix 4 are concerned, and except as described paragraph (b) below, be treated separately as though it were his only period of Pensionable Service, provided always that:
  - (i) in a case where the earlier of any two periods of Pensionable Service was one during which the Member was for the purposes of the Pension Schemes Act 1993 in contracted-out employment by reference to the NATS Section and which has under the provisions of that Act not been treated as terminated, the foregoing shall not apply and the two periods of Pensionable Service shall for the purposes of calculating the total benefits in respect of the Member under the NATS Section be treated as continuous; and
  - (ii) in respect of a Class A Member who is a Controlling Director who has a period of Service with more than one Employer, any period of his Service with an Employer which is associated with another Employer by virtue of a permanent community of interest rather than because one Employer is controlled by the other or both are controlled by a third party (control for this purpose having the meaning in section 840 of the Taxes Act<sup>(10)</sup> or, in the case of a close company, section 416 of that Act) shall be treated separately from any other period of the Member's Service for the purposes of Appendix 4.
- (b) Notwithstanding paragraph (a) above, a Member of the NATS Section who on ceasing to be in the employment of any of the Employers retained an entitlement to benefit under

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(10) 1988 c. 1.

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the NATS Section and who recommences Pensionable Service under the NATS Section within one year (or such longer period as the Trustees may in their discretion allow) may, provided that Rule 33 or 34 has not been applied in respect of him and that he is not in receipt of a pension from the NATS Section, elect by notice in writing to the Trustees that such earlier and later periods of Pensionable Service shall be deemed to be one continuous period of Pensionable Service subject to the following conditions:

- (i) any amounts included within the earlier period by virtue of sub-paragraphs (a) and (c) of the definition of **Pensionable Service** (or the corresponding terms of the Previous Scheme Provisions) shall be excluded;
- (ii) the Member shall complete such forms of discharge of liability in respect of any entitlement to benefit relating to such earlier period of Pensionable Service as the Trustee shall require;
- (iii) the Member shall pay to the Trustees a sum equal to any amount paid to him from the NATS Section in respect of his earlier period of Pensionable Service and any amounts of tax for which the Trustees become liable as a result of such payment together with compound interest on such amount at 3% per annum (but excluding any amounts relating to periods of Pensionable Service excluded in accordance with condition (i) above).

### 33.

#### **PROVISION OF BENEFITS UNDER APPROVED POLICIES**

**33.1** Subject as hereinafter provided, upon receipt, before any benefits become payable in respect of him under the NATS Section and prior to the commencement of the year which ends on the day before Normal Pension Date (or such later date as shall be agreed by the Member with the Trustees), of the written request of a Member to whom Rule 32.2 or the final sentence of Rule 32.1 applies, the Trustees shall make arrangements to apply such Member's Cash Value to the purchase of appropriate benefits under an Approved Policy issued to the Member by an Authorised Insurance Company chosen by the Member.

**33.2** In their application of this Rule 33 the Trustees shall have regard to the provisions of the Pension Schemes Act 1993(11).

**33.3** The Trustees may at their discretion make arrangements as described above other than at the request of the Member but not without his consent and may choose an Authorised Insurance Company for the purposes of Rule 33.1 above if the Member fails to do so.

**33.4** Prior to the completion of arrangements made in accordance with this Rule the Member shall complete such forms (if any) as the Trustees shall request and upon payment from the NATS Section of the Member's Cash Value the Member and any other person or persons to whom any benefit would have been payable in consequence of the Member's membership of the NATS Section shall cease to have any claim on the NATS Section in respect of the amount so paid and in respect of the benefit (determined by the Actuary) to which such amount relates.

### 34.

#### **TRANSFERS FROM THE NATS SECTION**

**34.1** Subject to Rule 34.2 and to any undertaking given to the Board of Inland Revenue for the purposes of this Rule, if any Member to whom Rule 32.2 or the final sentence of Rule 32.1 applies becomes or is to become a member of any other retirement benefits arrangement approved

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(11) 1993 c. 48.

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or approvable under the Taxes Act, or becomes or is to become a member of another Section of the Scheme, then, in substitution for and in satisfaction of the whole or a specified part of the benefits which would otherwise arise under the NATS Section in consequence of his membership of it, the Trustees shall at the written request of the Member or with his consent pay such Member's Cash Value (or the equivalent in assurance contracts or policies or other assets forming part of the Section Assets) in respect thereof or such greater amount as the Trustees shall determine to such other retirement benefits arrangement or Section provided that the trustees of or persons administering such other retirement benefits arrangement are willing to accept such payment. Any payment made under this Rule shall be made upon the basis that the Member shall be entitled under such other arrangement or Section to such benefits (consistent with the existing formal approval of that retirement benefits arrangement or Section, as appropriate, by the Board of Inland Revenue) in respect of such payment as the Trustees may in their discretion arrange with the trustees of or persons administering the other retirement benefits arrangement, provided that such benefits shall be such as to satisfy the provisions of the Pension Schemes Act 1993.

**34.2** Any payment made under this Rule shall be subject to the following conditions:

- (a) where making a transfer to another retirement benefits scheme (as opposed to another Section), before making such a payment the Trustees shall ascertain from the trustees of or persons administering such other retirement benefits arrangement under which section of which Act such retirement benefits arrangement is approved or capable of approval by the Board of Inland Revenue;
- (b) no payment relating to less than the whole of the benefits in respect of the Member under the NATS Section shall be made from the NATS Section without the consent of the Board of Inland Revenue unless the benefits which are to remain payable in respect of him under the NATS Section are Acceptable Residual Benefits;
- (c) no such payment shall be made unless the Trustees are satisfied that such part, but only such part, of the value thereof as is derived from contributions (if any) of the Member of the NATS Section (and under the Previous Scheme Provisions) will be treated in such other retirement benefits arrangement or Section as member's contributions and the Trustees shall certify to the trustees of or persons administering such other arrangement the amount to be so treated;
- (d) a payment under this Rule relating to a Member's Guaranteed Minimum Pension shall be made only if:
  - (i) the other retirement benefits arrangement or Section is a contracted-out occupational pension scheme, an appropriate Personal Pension Scheme as described in Chapter I of Part III of the Pension Schemes Act 1993, or any other scheme approved for the purpose by the National Insurance Contributions Office of the Inland Revenue; and
  - (ii) where the payment is made to an occupational pension scheme, the Member has entered employment with an employer which is or, in the case of a Section 53(12) Scheme, was contributing to such scheme;
- (e) when making a payment under this Rule to an approved Personal Pension Scheme the Administrator shall provide a certificate of the maximum lump sum payable on retirement in respect of such payment if the Member:
  - (i) was aged 45 or more at the time that the payment was made, or
  - (ii) has at any time within the 10 years preceding the date on which the right to the payment being made arose been in respect of any employment to which the payment or any part of it relates, either

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(12) 1993 c. 48; section 53 was amended by the Pensions Act 1995 (c. 26), sections 151 and 177 and Schedule 5, paragraphs 18 and 48 and the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2), section 1(1) and Schedule 1, paragraphs 52 and 53.

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- (a) a Controlling Director, or
- (b) in receipt of annual remuneration in excess of an amount equal to the Permitted Maximum for the year of assessment in which the date of payment falls; or
- (iii) is entitled to benefits included in the payment which arise from a retirement benefits scheme under which the normal retirement age is 45 or less.

**34.3** At the written request of a Member to whom Rule 32.2 or the final sentence of Rule 32.1 apply the Trustees shall make a payment of the Member's Cash Value to a pension arrangement (other than one approved or approvable under the Taxes Act) of any type and on any terms regarded by the Board of Inland Revenue and where applicable by the Department of Social Security as being appropriate for the purposes of this Rule.

**34.4** Upon a payment being made under this Rule the Member and any other person or persons to whom any benefit would have been payable in consequence of the Member's membership of the NATS Section shall cease to have any claim on the NATS Section to the extent that such benefit has been substituted and satisfied by such payment.

## 35.

### ***TRANSFERS TO THE NATS SECTION***

**35.1** Subject to Rule 35.2 below and to any undertaking given to the Board of Inland Revenue for the purposes of this Rule if any Member or if any group of Members of the NATS Section of the Scheme is entitled to benefit under any other retirement benefits arrangement or another Section of the Scheme then, in accordance with the provisions of the other arrangement or Section or at the written request of any Member, the Trustees may:

- (a) accept from the other arrangement or Section any cash sum that the trustees thereof or persons having the necessary powers thereunder may be authorised to pay to them in substitution for the benefit for or in respect of the Member thereunder or for a part of such benefits, and/or
- (b) accept from the other arrangement or Section an assignment or transfer to the Trustees of such annuity or assurance contracts or policies on the life of the Member or such other assets or investments which the Trustees are empowered to acquire or retain in accordance with the provisions of the NATS Section as may be included within such other arrangement, and/or
- (c) accept a new annuity or assurance contract or policy or an amendment of an existing annuity or assurance contract or policy which will secure, among other things, benefits on the life of the Member.

**35.2** Before accepting any payment or transfer to the NATS Section or any annuity or assurance contract or policy or any amendment or assignment thereof and before conferring any right or benefit under the NATS Section under this Rule the Trustees shall satisfy themselves that such acceptance or conferment will not prejudice the approval of the Scheme under the Taxes Act.

**35.3** Upon such acceptance as aforesaid the Trustees shall, subject to Rules 35.4, 35.5 and 35.6 of this Rule and Appendix 5, confer on the Member such rights and benefits under the NATS Section as they shall determine on the advice of the Actuary having regard to the nature and value of the assets so received and shall notify the Member accordingly; provided always that:

- (a) the benefits arising on retirement from a payment or transfer shall not be capable of commutation nor shall they be paid in lump sum form if the payment or transfer is accompanied by a certificate from the administrator of the other arrangement or Section to the effect that the payment or transfer is not to be used to provide benefits in lump sum form; and

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- (b) for Continued Rights Members pension benefits on retirement arising from a payment or transfer (other than from another scheme of the Employer or any company firm or individual which is or may become associated in business with the Sponsoring Section Employer) may be commuted only if and to the extent that a certificate has been obtained from the administrator of the other arrangement showing the maximum lump sum payable from the payment or transfer. The amount so certified may be increased in proportion to any increase in the Index since the date the payment or transfer was received; and
- (c) where the payment or transfer is in respect of a Former Civil Servant and is from one of the Civil Service Schemes the benefit conferred on the Member shall be a number of additional years of Pensionable Service equal to the number of years prior to the date on which he became a Member which were regarded as reckonable service for superannuation purposes under such scheme in respect of him,

except that provisos (a) and (b) above shall not apply where the Trustees have conferred an additional period of Pensionable Service in the NATS Section on the Member in respect of the payment or transfer.

**35.4** Such part, but only such part, of the assets so received as is derived from the contributions (if any) made by the Member under the other arrangement or Section (as certified by the trustees thereof or other person or persons administering the other arrangement) shall be treated in the NATS Section as Member's contributions and such part thereof as is derived from voluntary contributions of the Member (certified as aforesaid) shall, at the option of the Member and if agreed between the Member and the Trustees, be treated in the NATS Section as Member's voluntary contributions.

**35.5** The Trustees shall not assume liability in respect of a Member of the NATS Section for

- (a) an Equivalent Pension Benefit (as defined in the National Insurance Act 1965(13)); or
- (b) a Guaranteed Minimum Pension, or
- (c) Protected Rights

unless the payment or transfer to the NATS Section is in their opinion on the advice of the Actuary sufficient to secure the said benefit and before assuming such liability they shall ascertain from the trustees of or persons administering the other arrangement or Section the amount of such benefit. Upon assuming such liability they shall impose such restrictions on the options available to the Member as shall be necessary to comply with the requirements of the National Insurance Act 1965 or the Pension Schemes Act 1993 as appropriate.

**35.6** In the event of the Member leaving Service in the NATS Section before Normal Pension Date for any reason except death he shall be entitled to the full amount of the benefit conferred upon him by the Trustees as aforesaid unless the Member in accordance with the Rules is to receive a return of his own contributions in lieu of other benefit. In that event the return of any of the contributions which are referred to in Rule 35.4 above shall be in lieu of the whole of the benefits conferred upon the Member by the Trustees as aforesaid.

## **36.**

### ***TEMPORARY ABSENCE FROM WORK***

**36.1** If a Current Member of the NATS Section is temporarily absent from work, he may with the consent of his Employer and subject to the following paragraphs of this Rule, be deemed for the purposes of these Rules to remain a Current Member of the NATS Section in the Service of the Employers:

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(13) 1965 c. 51.

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- (a) for any period before Normal Pension Date during which the absence is due to his injury or illness, or to secondment to a United Kingdom Government Department or work of national importance of a like nature; or
- (b) for any other period before Normal Pension Date not exceeding three years or ten years if the Member remains resident in the United Kingdom (or such longer period as shall be acceptable to the Board of Inland Revenue).

**36.2** Rule 36.1 shall not apply in respect of any period after the Member has become a member of any other retirement benefits scheme or another Section of the Scheme unless prior confirmation has been obtained from the Board of Inland Revenue that approval of the Scheme under the Taxes Act will not thereby be prejudiced.

### **Continuation or suspension of contributions**

**36.3** Where the Employer notifies the Trustees that a Member of the NATS Section is temporarily absent on full pay or that he is on sick leave on full pay or on half pay such Member shall be deemed to remain in Service under the NATS Section in accordance with Rule 36.1 and shall continue to pay contributions under Rule 23.1 together with the proportion (if any) of the Member's voluntary contributions to the NATS Section agreed between the Trustees and the Member.

For the purposes of this Rule in relation to the calculation of benefit hereunder the Trustees shall treat as conclusive any statement made by the Employers in writing that a Member is or was in receipt of full pay or half pay for any period or part of a period of absence.

If the Member's contributions to the NATS Section are continued in whole or in part during any such period as aforesaid, the whole of such period shall be included in the Member's Pensionable Service, provided always that no such period shall be included in Pensionable Service which would conflict with the requirements of the Board of Inland Revenue.

**36.4** A person who is deemed to remain a Current Member of the NATS Section in accordance with this Rule 36 (other than a person to whom Rule 36.3 applies) may, with the consent of the Trustees suspend his contributions (if any) to the NATS Section or may continue to pay contributions on any basis agreed with the Trustees and acceptable to the Board of Inland Revenue, provided that in respect of any period of Paid Maternity Absence a Member shall not be required to pay contributions calculated with reference to remuneration in excess of the amount of contractual remuneration or statutory maternity pay actually paid to or for her in respect of that period.

If no contributions are paid by such Member to the NATS Section during any period throughout which he is deemed to be a Current Member in accordance with this Rule 36 the Trustees shall exclude such period from the Member's Pensionable Service except as provided below.

If the Member's contributions to the NATS Section are continued in whole or in part during any such period as aforesaid the whole or, respectively, an appropriate proportion of such period (determined by the Trustees) shall be included in the Member's Pensionable Service, provided always that no such period shall be included in Pensionable Service which would conflict with the requirements of the Board of Inland Revenue.

### **Maternity leave**

#### **Paid Maternity Absence**

- (a) (a) If a female Member of the NATS Section is absent from work during any period which is Paid Maternity Absence she shall be deemed to remain a Current Member in Service throughout such period. The provision of death benefits from the NATS Section in respect of her shall continue throughout such period and such period shall be

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included within her Pensionable Service. Such Member's remuneration for the purpose of calculating any benefit from the NATS Section shall be not less than an amount calculated with reference to the remuneration to be attributable to such period in accordance with paragraph 5 of schedule 5 to the Social Security Act 1989(14).

#### **Maternity leave after Paid Maternity Absence**

- (b) If a female Member of the NATS Section is absent from work on maternity leave she shall continue to be deemed to be a Current Member in Service in accordance with Rule 36.1 after the cessation of her period of Paid Maternity Absence until the expiry of the period during which she may exercise her right under the said Act to return to work or, if earlier, the date of her notice to the Employer of her intention not to return to work and the provisions of this Rule 36 other than paragraph (a) above shall apply in respect of that part of her absence which follows the period of her Paid Maternity Absence.

#### **Concurrent membership of sick pay scheme**

**36.6** A Member of the NATS Section who is absent from employment and whether or not there is in respect of him a clear expectation of returning to Service may at the discretion of the Trustees be deemed to remain a Current Member in accordance with Rule 36.1 during any period during which he is in receipt of benefit which will not continue beyond Normal Pension Date from a sick pay scheme of the Employer.

#### **Continuation of death benefits**

**36.7** Death benefits under the NATS Section shall continue in force in respect of Members who are deemed to be Current Members of the NATS Section in accordance with this Rule 36.

#### **Adjustment of remuneration**

**36.8** If the remuneration of a Member of the NATS Section to whom this Rule 36 has been applied is reduced or suspended during any period of absence, the amount of any benefit which is to be calculated in respect of the Member by reference to such remuneration shall, except as provided in Rule 36.5(a), be calculated during any period of absence for six months or less, or absence for sick leave, having regard to the remuneration which the Trustees in their discretion determine that the Member would have received had he been in active employment on full pay, and during any period of absence in excess of six months, other than absence for sick leave, shall be such other amount or rate of remuneration which the Employer, with the consent of the Trustees, considers to be appropriate.

**36.9** If at the expiry of the appropriate period specified in this Rule 36 the Member has not returned to work, he shall cease to be a Current Member of the NATS Section.

### **37.**

#### ***APPLICATION OF DEATH BENEFITS***

**37.1** In respect of any benefit which is expressed to be payable under the NATS Section in accordance with this Rule the Trustees shall, subject to Rule 37.3, as soon as practicable after the Member's death pay such benefit to the Member's personal representatives and/or pay or apply such benefit to or for the benefit of any one or more of the Member's Dependants and Relations living or conceived but not yet born at the Member's death and/or such persons or bodies as the Member may have notified in writing to the Trustees (as being persons or bodies whom the Member wishes

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(14) 1989 c. 24.

the Trustees to consider as possible recipients of any benefit payable from the NATS Section on the Member's death) and/or people who would be entitled to benefit from the Member's estate (whether by testamentary disposition or under the law relating to intestacy) in such shares and in such manner as the Trustees shall decide. In exercising this discretion the Trustees may have regard to but shall not be bound by any wishes notified to the Trustees by the Member. The Trustees may in exercise of their discretion under this Rule pay such lump sum or any part thereof to trustees to hold upon such trusts and subject to such powers and provisions as the Trustees may direct and in this connection the Trustees shall have power to declare trusts and appoint separate trustees thereof and provide for their remuneration.

**37.2** If at the end of the period of two years after the Member's death the Trustees shall not have made the said payment or shall have made payment of only part of the benefit aforesaid the Trustees shall pay the whole or the balance (as the case may be) of such benefit to the Member's personal representatives, except that if the residuary estate of the Member falls to be treated as bona vacantia belonging to the Crown or to the Duchy of Lancaster or the Duchy of Cornwall the said benefit or such balance thereof shall not be payable but shall fall into and form part of the assets of the NATS Section for all the purposes of the NATS Section.

**37.3** In the case of a Member of the NATS Section who has died while in Service and who at the date of his death was a Controlling Director who had reached his 75th birthday, Rule 37.1 shall not apply and the said benefit shall instead be paid to his Spouse (if any), or if he leaves no Spouse then to his personal representatives.

**37.4** In this Rule 37:

**Dependants** means in respect of a Member of the NATS Section, the persons included within the definition of **Dependant** in Appendix 1 and also includes any other person or persons towards whose maintenance or education the Member has contributed in cash or otherwise; and

**Relations** means in respect of a Member of the NATS Section:

- (a) the widow or widower of the Member or any former spouse of the Member,
- (b) any Child or other descendant of the Member and the spouse or widow or widower of any such Child or other descendant,
- (c) the father or mother (whether natural or adoptive) or other ancestor of the Member or his spouse and the widow or widower of such father or mother or other ancestor,
- (d) any brother or sister (whether of the whole blood or the half blood and whether natural or adoptive) of the Member or his spouse and the widow or widower of any such person, and
- (e) the children and grandchildren of the Member's grandparents and of the grandparents of his spouse, and the spouse of any such child or grandchild

(and for this purpose Child includes a stepchild, a legally adopted child and a child to whom in the opinion of the Trustees the Member or other person as appropriate stands or would but for the Member's death have stood in the place of a parent).

**37.5** Before making any payment in accordance with this Rule 37 the Trustees shall have regard, where appropriate, to any order of the Court made in accordance with the Matrimonial Causes Act 1973(15).

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(15) 1973 c. 18.

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### 38.

#### **PAYMENT OF PENSIONS**

##### **Payment of pensions**

**38.1** Pensions from the NATS Section shall be payable by monthly instalments in advance, the first payment being due on the day on which the pension becomes payable.

**38.2** Subject always to Rule 39 the amount of each instalment of pension hereunder shall be 1/12th of the annual amount, provided that the annual amount of any pension payable from the NATS Section shall where it is not a multiple of 12 pence be rounded up to the next multiple of 12 pence above.

**38.3** A pension payable from the NATS Section to or in respect of a Member of the NATS Section shall cease with the last instalment falling due before the death of the recipient of such pension, except as described in Rule 27.2 and Rule 38.4.

**38.4** A pension payable from the NATS Section to or in respect of a Qualifying Child shall cease with the last instalment falling due before the earlier of (i) the attainment of age 18 by the Qualifying Child, and (ii) the death of the Qualifying Child, provided always that:

- (i) if at the date of (i) above the Qualifying Child is in receipt of full-time educational or full-time or substantially full-time vocational training of at least two years' duration the emoluments for which (if any) receivable by the Qualifying Child are of such amount as should in the opinion of the Trustees be ignored the pension shall continue to be payable until such education or training ceases or until the Qualifying Child attains age 25 whichever is the earliest; and
- (ii) for the purposes of this Rule education or training shall not be regarded as ceasing upon the occurrence of any break therein which the Trustees consider to be of short duration or incidental in the course of such education or training.

##### **Change in manner of payment and variable pension option**

- (a) (a) Subject always to Appendix 4 and Appendix 5, at the request of or with the consent of a Member or other beneficiary a benefit payable from the NATS Section to or in respect of him may at the discretion of the Trustees be payable in a different manner or in a different form from that described in these NATS Rules and the amount thereof may be adjusted appropriately provided always that:
  - (i) the total benefits in respect of him shall not be less than the Trustees after consultation with the Actuary consider to be actuarially equivalent; and
  - (ii) this Rule shall not be operated in such a way as to cause the pension to which a Member or his Spouse is entitled in accordance with Appendix 5 to be payable for less than such person's lifetime.
- (b) The provisions of paragraph (a) above may at the request of a Member be applied to increase the amount of the Member's pension in course of payment from the NATS Section prior to State Pensionable Age so that such pension immediately prior to that age shall, as far as may be practicable, be equal to the aggregate immediately after that age of the Member's pension from the NATS Section and the State pension payable to the Member. For this purpose the State pension payable to the Member shall be taken to be the full rate of basic State pension payable to a single person as at the date of commencement of the Member's pension from the NATS Section.

The application of this paragraph (b) shall be subject to paragraph (a) above except that:

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- (i) it shall be applied at the option of the Member and not at the discretion of the Trustees; and
- (ii) by request in writing to the Trustees, a Member may exercise such option or cancel the exercise of such option within the period of three months after commencement of payment of his pension from the NATS Section subject to any terms imposed by the Trustees in order to satisfy the requirements (if any) of the Board of Inland Revenue.

Any alteration to a Member's pension from the NATS Section as a result of the application of this paragraph (b) shall be disregarded in the calculation of the Member's Relevant Pension.

### **Method of payment of benefits**

**38.6** Every person entitled to receive a pension or other benefit under the NATS Section shall notify the Trustees, or as they may direct, of the bank or building society in the United Kingdom or address to which the pension or other benefit may be sent. Subject to Rule 22, such payment will be made in sterling to such person's bank or building society account in the United Kingdom or by cheque crossed "a/c payee only" and sent through the post at the risk of the recipient to the address last notified to the Trustees or as the Trustees shall determine having regard to a request from the recipient.

## **39.**

### ***INCREASES IN PENSIONS IN PAYMENT***

**39.1** Pensions in course of payment from the NATS Section shall be increased in each year on 1 April by the percentage increase in the cost of living over the past year as shown in the Index for the month of February prior to the relevant 1 April or, in the case of a pension which commenced to be paid within the year to 31 March by a proportional amount calculated on a basis determined by the Trustees with the advice of the Actuary; provided always that

- (a) increases under this Rule to a Member's pension shall, after attainment by the Member of State Pensionable Age, be calculated in respect only of that part (if any) of the Member's pension which is in excess of his Guaranteed Minimum Pension except that this proviso shall not be applied in respect of a Member until the 1 April after the 1 April which next follows his attainment of State Pensionable Age; and
- (b) increases under this Rule to a pension payable under the NATS Section to a Member's Spouse shall be calculated in respect only of that part (if any) of the Spouse's pension which exceeds the Spouse's Guaranteed Minimum Pension in respect of the Member or, in the case of a pension payable at the rate described in Rule 28.3(a), that part (if any) of the Spouse's pension which exceeds twice the Spouse's Guaranteed Minimum Pension in respect of the Member at the date of his death except that this proviso shall not be applied in respect of the first increase to be made under this Rule to any pension payable to the Spouse of a Member who has died before attainment of State Pensionable Age; and
- (c) the said pensions shall be increased at least to such extent and on such dates as are necessary to comply with the provisions of Chapter I of Part V of the Pension Schemes Act 1993(16) and the requirements of the Department of Social Security in relation to the increase in pensions in payment; and
- (d) if there is a percentage decrease in the cost of living as shown in the Index references in this Rule 39 to increases and increasing a Member's pension shall be taken to be references

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(16) 1993 c. 48.

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to decreases and decreasing a Member's pension but such decreases shall be such as the Trustees with the consent of the Employers may determine and shall not apply:

- (i) to pensions of a Member who became entitled to a deferred pension hereunder upon ceasing to be a Current Member more than 365 days before Normal Pension Date; or
- (ii) so as to reduce a Member's pension from the NATS Section below the level of such pension at the date of its commencement,

and provided further that paragraphs (a) and (b) above shall not apply if the person to whom such pension is payable is not in receipt of the increases paid by the State in respect of the notional state pension to which the Guaranteed Minimum Pension or Spouse's Guaranteed Minimum Pension corresponds.

Increases in accordance with this Rule 39 shall be not less in amount than are required to satisfy sections 51 to 54 of the Pensions Act 1995(17) and shall satisfy any other requirements of that Act relating to such increases including requirements relating to amounts of increases and to dates of payment and other terms and conditions relating thereto.

#### **40.**

##### **MEMBER'S CATEGORY OPTION**

**40.1** All Members of the NATS Section shall be Class B Members and their benefits from the NATS Section shall be subject to the provisions of Section B of Appendix 4 except for any Member who gives notice in accordance with Rule 40.2 that he wishes to be treated as a Class A Member.

**40.2** A Class B Member who wishes to be treated for the purposes of the NATS Section as a Class A Member shall before his Latest Option Date and before attaining age 75 give written notice to the Administrator in such form as the Administrator shall require. Such Member shall be treated for the purposes of the NATS Section as a Class A Member and the provisions of Section A of Appendix 4 shall apply to his benefits under the NATS Section instead of Section B of Appendix 4.

##### **41. NON-ASSIGNABILITY, FORFEITURE AND UNCLAIMED BENEFITS**

**41.1** No benefit provided from the NATS Section is capable of being assigned or charged in any way.

**41.2** Any person who:

- (a) purports or attempts to assign, charge or alienate in whole or in part any benefit or right to benefit to which he is entitled or may become entitled under the NATS Section; or
- (b) is bankrupt when he first becomes entitled to a benefit under the NATS Section; or
- (c) becomes bankrupt whilst in receipt of a pension from the NATS Section; or
- (d) does or suffers anything whereby such benefit or right to benefit would but for this Rule 41 become vested in or payable to any other person or body,

shall, subject always to the provisions of sections 91 and 92 of the Pensions Act 1995, immediately forfeit all right to the payment of benefit or further benefit from the NATS Section other than Guaranteed Minimum Pension, provided always that if the Trustees in their discretion so determine they may commence or resume payment of any benefit forfeited under this Rule by reason of the bankruptcy of any person if that person is discharged from such bankruptcy and provides evidence of such discharge satisfactory to the Trustees.

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(17) 1995 c. 26; section 51 was amended by the Welfare Reform and Pensions Act 1999 (c. 30), section 84(1) and Schedule 12, Part I, paragraphs 43 and 51; section 53 was amended by that Act, section 84(1) and Schedule 12, Part I, paragraphs 43 and 52; section 54 was amended by that Act, section 18 and Schedule 2, paragraph 13.

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**41.3** Where a benefit payable under the NATS Section to any person has been forfeited by operation of Rule 41.2, the Trustees shall have power at their discretion to hold, pay or apply such benefit for the support and maintenance of that person or his Spouse or children or other Dependants or any of them, provided always that payment shall not be made to any person purporting to be an assignee or chargee of such benefit.

#### **Unclaimed benefits**

**41.** The Trustees shall have power if in the exercise of their discretion they so determine to place any monies representing benefits payable under the NATS Rules to which a claim enforceable under the provisions of the NATS Rules is not made within six years of their becoming payable to the credit of the Section Assets of the NATS Section and no person shall thereafter have any further claim to or interest in such benefits.

#### **42.**

#### ***PAYMENTS TO MINORS AND PERSONS UNDER A DISABILITY***

**42.** Notwithstanding anything contained to the contrary in the Trust Deed or the NATS Rules, where payment of any benefit from the NATS Section is to be made to a Minor or to a person who is in the opinion of a Medical Adviser suffering from any mental disorder or physical or other incapacity rendering him unable to manage his affairs or to give a proper receipt for the whole or any part of the benefit the Trustees may in their discretion determine that such pension or other benefit shall be paid to and applied for the benefit of the Minor or for the maintenance of that person by such person or persons body corporate or institution as seem to the Trustees to be best for the benefit of such Minor or other person and the receipt of that person or persons body corporate or institution so paid shall be a complete discharge for such pension or other benefit and the Trustees shall be under no liability to see to the application thereof.

#### **43.**

#### ***TAXATION***

**43.** Without prejudice to any express provision contained in the Trust Deed or NATS Rules:

- (a) the Trustees shall be entitled to deduct from the Section Assets a sum equal to any tax, levy, fee or duty for which the Trustees become liable in respect of the NATS Section; and
- (b) the Trustees shall be entitled to deduct from any benefit or other payment made under the NATS Section a sum equal to any tax, levy, fee or duty for which the Trustees become liable in consequence of such payment.

In particular, if any liability to Inheritance Tax (including interest on such tax) arises in respect of any benefit falling to be paid to any person whomsoever under the NATS Section, the Trustees may either discharge that liability and deduct the amount so paid from the benefit or may postpone payment of the benefit until the liability has been discharged or provided for to their satisfaction.

#### **44.**

#### ***CESSATION OF EMPLOYERS' CONTRIBUTIONS***

Any Employer may at any time without the agreement of the Members but subject to the consent of the Sponsoring Section Employer (in the case of an Employer other than the Sponsoring Section Employer) terminate its liability to contribute to the NATS Section by giving six months' notice in writing to the Trustees (or, in the case of an Employer other than the Sponsoring Section Employer, such shorter period of notice as the Trustees shall be willing to accept). Upon receipt of such notice

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the Trustees shall notify or arrange for the notification of the Members employed by that Employer individually in writing to that effect. All liability to contribute to the NATS Section on the part of that Employer and such Members shall cease with effect from the date of such notice by the Employer except in so far as concerns any payments arising under Rule 17.3 or Rule 20.2 and any other payments due on or before such date and the provisions of Rule 19 or 20 (as appropriate) shall be applied.

**45.**

***PART-TIME SERVICE***

**45.** Notwithstanding any other provision of the NATS Section, the amount of pension to be payable from the NATS Section in respect of part-time Service of a Member shall be determined by the Trustees on the advice of the Actuary taking into account among other things the proportion which the number of hours of such Member's Service in any week bears to the number of hours in the Employer's standard working week, subject always to the requirements of the Board of Inland Revenue.

In respect of a Member whose Service includes both full-time and part-time Service the amount of pension from the NATS Section payable to or in respect of the Member shall be subject to such adjustment as shall be determined by the Trustees on the advice of the Actuary having regard to the requirements of the Board of Inland Revenue.

**46.**

***SET-OFF***

**46.** If a Member is discharged from Service in the NATS Section on account of his fraud or dishonesty or wilful damage to the property of the Employers or resigns from Service to avoid such discharge the Trustees shall be entitled if they think fit to set off against any money due to him under the NATS Section (other than benefits arising from a transfer into the NATS Section and other than the Member's Guaranteed Minimum Pension) such amounts as the Employers claim to be entitled to recover from the Member arising out of such fraud dishonesty or wilful damage as the case may be or such part of them as they think fit, provided that

- (a) subject to the terms of any agreement in writing between the Employers and the Member, the amount set off must not be greater than the actuarial value of the Member's actual or prospective benefits at the time of the reduction nor greater than the sum of the amounts claimed and the Member shall remain entitled to the balance of any benefits provided for and in respect of him (if any); and
- (b) the Trustees shall give the Member a certificate showing the amount set off and its effect on his benefits or prospective benefits under the NATS Section and shall send a copy of the certificate to the Employers; and
- (c) in the event of any dispute as to the amount to be set off the Trustees shall not satisfy any claim made by the Employers to the amount set off without prior production to them of an order of a competent court or an award of an arbitrator made in proceedings on a submission arising out of the said fraud dishonesty or damage under which the amount or some part of it has become enforceable against the Member and the final total amount set off shall be limited in such event to the total amount enforceable against the Member under such orders or awards as are produced to the Trustees; and
- (d) in a case to which paragraph (c) applies, if within 12 months of the Member's discharge or resignation or such longer period as the Trustees may reasonably allow the Employers have not produced an order of a competent court or an award of an arbitrator under which

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the amount set off or some part of it is enforceable the Member's benefits shall be paid free of any set off under this Rule; and

- (e) this Rule 46 may, subject always to any regulations made under section 91 of the Pensions Act 1995, also be applied (with any necessary alterations in point of detail) in relation to any sums owed to the NATS Section arising out of any fraudulent dishonest or criminal act of a Member.

#### 47.

##### **ADJUSTMENT FOR FAMILY BENEFIT CONTRIBUTIONS**

**47.1** The amount of any lump sum death benefit payable from the NATS Section in respect of a Member of the NATS Section and, subject always to Appendix 5, the amount of any pension payable from the NATS Section to a Member, shall be reduced by the amount of or if appropriate the pension equivalent of any Family Benefit Contributions in respect of the Member which in the opinion of the Trustees with the advice of the Actuary had not been paid prior to the date of death of the Member or, as appropriate, the date of commencement of his pension from the NATS Section.

- (a) (a) Upon the cessation of Service of a Member to whom this Rule 47.2 applies as described in paragraph (b) below there shall at the discretion of the Trustees be payable subject to any deduction in accordance with Rule 43 and subject where required by the Trustees to the Member's agreement to such terms and conditions, including paragraph (c) below, as the Trustees shall require but otherwise upon the request of a Member an amount equal to such proportion of his Family Benefit Contributions (together with 3% per annum compound interest thereon) as the Trustees with the advice of the Actuary shall consider to be appropriate. In the case of a Member whose cessation of Service was caused by his death such amount shall be payable in accordance with Rule 37.

Alternatively and in lieu of such amount, if the Member so requests and the Trustees agree, there may be payable an additional amount of pension determined by the Trustees on the advice of the Actuary as the equivalents of the said amount, subject always to Appendix 4.

- (b) This Rule 47.2 applies to a Member of the NATS Section (other than a Member who would have been excluded from this benefit if the Previous Scheme Provisions had continued to apply) who:
  - (i) has not been married at any time during his Pensionable Service and has never during such Pensionable Service had a Dependant eligible for benefit under rule 26.9; or
  - (ii) has been married at any time during his Pensionable Service but whose last or only marriage has been terminated by death of the Spouse or by divorce annulment or other dissolution and who during such Pensionable Service has never had a Dependant eligible for benefit under Rule 26.9; or
  - (iii) is any other person who was included for a benefit corresponding to this benefit in accordance with the Previous Scheme Provisions.
- (c) Except where the Trustees agree otherwise, a Member of the NATS Section who is to receive a refund or an additional amount of pension in accordance with paragraph (a) above shall give an undertaking that he will inform the Trustees if he subsequently marries and that he will then repay to the Trustees the amount so received (or in the case of an additional pension, the total of the instalments thereof so received) together with compound interest thereon as determined by the Trustees with the advice of the Actuary.

In consideration of such repayment the NATS Section shall accept a liability to provide a pension for the Member's Spouse and/or Qualifying Children and/or Dependents as shall be notified by the Trustees to the Member.

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**48.**

***OVERPAYMENT OF BENEFITS***

**48.** In the event of any overpayment of benefits under the NATS Section the Trustees may deduct the amount overpaid from any benefits subsequently due to any person in respect of the same membership but without prejudice to such rights as the Trustees may have to recover the overpayment in another manner.