

**BOARD MEMBERS & PUBLIC
APPOINTEES: PENSION
AND COMPENSATION
GUIDANCE NOTES**

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SECTION 1: INTRODUCTION, POWERS AND COVERAGE

Introduction

- 1.1 These Notes are for the guidance of departments. They set out the terms for providing pensions and compensation for loss of office on death, or injury, attributable to service that are acceptable for Board Member appointments. They are, however, *guidelines* to departments and do not in any way override the statutory or contracted provisions in a particular case, nor the duty to consider each case on its merits.

Powers to provide for pensions and compensation

- 1.2 Specific powers to pay or make provision for pensions and to pay compensation are needed in every case (see Section 2: Powers). What may be acceptable on policy grounds can only be implemented if the statutory or other authority permits.

Coverage

- 1.3 These Notes cover the superannuation and compensation arrangements for people who are appointed or re-appointed as Members of the Boards of nationalised industries, other public bodies and corporations, government committees and commissions and certain other appointments which are made by:
- (i) the Crown, on the advice of a Minister;
 - (ii) a Minister of the Crown;
 - (iii) an official on a Minister's behalf;
 - (iv) any other person or body where the approval of a Minister or government department is required;

where the pension or compensation arrangements are subject to Ministerial determination or approval.

What is NOT covered

- 1.4 These Notes do not cover the *staff* of such bodies. Nor do they cover posts in the:
- (i) Civil Service;
 - (ii) Armed Forces of the Crown;
 - (iii) any Parliamentary, Judicial, Ecclesiastical or Academic Offices; nor
 - (iv) any Office where the detailed superannuation provisions are prescribed by Statute.
- 1.5 Where a member of staff is promoted to the Board, departments will need to define their status (as Board Member or staff member, but not both) for pension and compensation purposes (see Section 3: Paragraph 3.11 dealing with Dual Status).

Consultation and Negotiation

- 1.6 Before considering public appointments departments are advised to consider this guidance and in most cases it should not be necessary to seek further guidance from the Treasury team which provided advice on such matters (currently PSP). However, if it is proposed to depart from the general principles set out in this guidance. Departments will find it helpful to discuss possible pension and compensation arrangements with the Treasury at an early stage.
- 1.7 Negotiations with Board Members on the terms and conditions of their appointment should not imply that they are required to work for a specified number of hours or days each week/month. To do so might give them employee status. For the same reasons “remuneration” rather than “salary” should be the term used in correspondence. However, the Member may be informed in writing that the remuneration is a proportion of a notional full-time rate based on the assumption that the time commitment will be an average of about “x” days per week.
- 1.8 Treasury approval to pension and compensation terms for Board Members should be sought in good time if statutorily required. In such cases no firm offer should be made to a Board Member without prior Treasury consent in writing. The absence of a Treasury reply must not be taken to imply approval.
- 1.9 Chapter 2 of *Government Accounting*, Power to incur expenditure, outlines the requirement for Treasury approval for all expenditure. Hard copies can be purchased from The Stationery Office, or web access is free at

www.government-accounting.gov.uk

and via the Treasury’s GSI website

www.hm-treasury.gsi.gov.uk

SECTION 2: OVERVIEW AND GENERAL NOTES

Pension options

- 2.1 What is necessary to recruit and retain a Board Member will be an important consideration in deciding on the nature, and cost, of the pension terms that can be offered.
- 2.2 Against this background, the pension arrangements that would generally be considered appropriate for Board Members are as follows:
- (i) a pension arrangement which is broadly by-analogy with the staff pension scheme (see section 4), possibly with modifications;
 - (ii) an approved personal pension arrangement (see section 5) with a commercial provider, whether a new arrangements or continuation of an existing one;
 - (iii) a non-pensionable appointment (which might be recognised in settling pay or terminal bonus arrangements);
- 2.3 More exceptionally the following terms may be used:
- (iv) remaining a member of the staff pension scheme, subject to certain qualifications. (N.B. This option is only available for those appointed from the staff of the Board);
 - (v) becoming a member of the staff pension scheme in certain limited cases, e.g. executive directors of Government-owned companies (GOCOs) and only if this is permitted by the rules of the staff pension scheme and a director's terms of service agreement; or

Choice of arrangements

- 2.4 The choice among these options is for the Board Member to exercise. Under no circumstances should departments give advice on which pension option is most advantageous. To do so would mean the department breaching the *Financial Services and Markets Act 2000*.
- 2.5 What is advantageous will vary depending on each individual's particular circumstances. Departments may provide any factual information available to assist with the choice of option, but if a Board Member needs specialist advice, it will be for them to seek it from a qualified person or financial consultant who is authorised under the *Financial Services and Markets Act 2000*. The department must provide any factual information available to assist with the choice of option.

SECTION 3: POWERS TO PENSION AND COMPENSATE

Enabling powers

- 3.1 It is essential to have enabling powers to determine the pension and compensation arrangements for Board Members. Departments should review existing powers and, where they are found to be deficient, take remedial action at the earliest opportunity.
- 3.2 Where a body is established by means other than statute, provision for pensions and compensation should be made in Articles of Association, the Memorandum of Understanding, or conditions of Grant-in-Aid, as appropriate.

Old Bodies and Statutory Officeholders

- 3.3 Legislation enacted before 1994 usually required HM Treasury or Cabinet Office consent to terms and conditions. Before such powers to pension and compensate are exercised Treasury or Cabinet Office consent should be obtained.

New Bodies

- 3.4 More recent legislation (i.e. from 1994 onwards) does not usually require formal Treasury consent.

Form of Powers

- 3.5 When a body is established, whether by Statute, Royal Charter or Royal Warrant, explicit powers to pension and compensate Board Members must be taken, even when there is no immediate intention to use these powers.
- 3.6 An example of such powers is paragraphs 2 and 3 of Schedule 2 to the *Regional Development Agencies Act 1998* (see Annex A).

What Powers Should Provide

- 3.7 Enabling powers should provide for: -
 - (i) the pension arrangements of Board Members and their dependants;
 - (ii) the possibility of staff members to remain in the staff pension scheme if they are appointed to the Board;
 - (iii) compensation for the premature termination of a Board Member's appointment; and
 - (iv) and provide compensation for premature termination of an appointment
- 3.8 For items (i) and (iii) above the body requires a power to pay or make provision for the payment of pensions, allowances, gratuities and compensation to, or in respect of, Board Members as the Minister, with the consent of the Treasury, (where Treasury consent is required), may determine.

The power to “make provision for the payment of” is needed so that the power is sufficiently wide for contributions to be paid to an occupational pension scheme or other pension provider. The reference to “or in respect of” covers dependants’ pensions and death benefits. In view of the variety of arrangements that are available for pensioning Board Members, a Minister needs full discretion as to what they may determine.

- 3.9 Section 16 sets out the circumstances when compensation may be payable and the principles underlying the calculation of the lump sum. A suitable model may be found in paragraph 3 (3) of Schedule 2 to the *Regional Development Agencies Act 1998* (see Annex B).

Staff Members choosing to remain in the staff pension scheme if they are appointed to the Board

- 3.10 For 3.7 (ii) above, staff members appointed to the Board normally prefer to remain in the staff pension scheme. For that, specific provision is needed since a power to provide a pension scheme for staff would not cover Board Members. To avoid Board Members being in a position to determine their own pensions, discretionary features of staff pension schemes, e.g. the grant of free added years must only be exercised at the discretion of departmental Ministers with Treasury consent (where appropriate). A suitable model may be found in sub-paragraph 8(5)(a) of Schedule 1 to the *Legal Aid (Scotland) Act 1986* (see Annex C).

No dual status and other standards

- 3.11 Board Members who take up appointment on promotion from the staff of the body should be required to resign as members of staff. They should therefore have no entitlement to staff severance terms in respect of their Board appointment. This should be made clear to Board Members before they take up appointment, and this should be included in their letter of appointment.
- 3.12 Advice on the standards expected from public appointees is given in ‘*Making Public Appointments, A best practice guide for departments*’ (February 2004), published by the Cabinet Office. It can be found at:

<http://www.cabinet-office.gsi.gov.uk/public/guide.doc>

Secondment

- 3.13 It is not evident that it would be appropriate to appoint a Board member who is legally on secondment from another employer in respect of that Board appointment (a different scenario to an ex officio appointment of a member of the staff of the body controlled by the Board, as envisaged in 3.10 above). If in an isolated case such a secondment were nevertheless considered to be a lawful and proper exercise of the powers to appoint, the Board member on secondment would still legally be in the employ of that employer and could remain a member of that employer’s pension scheme. It would then be acceptable for the Board to pay an employer’s pension contribution to that

scheme, provided the cost was reasonable, e.g. not more than 30 per cent of pay.

- 3.14 However, it would not be acceptable for a Board to pay any element in an employer contribution rate that was attributable to past underfunding of a seconding employer's scheme and such a contribution ought to be limited to current liabilities only.

SCHEDULE 2
THE REGIONAL DEVELOPMENT AGENCIES ACT 1998

Chairman and deputy chairman

2. *A person designated as chairman or deputy chairman of a regional development agency shall hold office as such in accordance with the terms of his appointment unless and until-*

- (a) he resigns that office by giving notice to the Secretary of State, or*
- (b) he ceases to be a member,*

and shall, on ceasing to be chairman or deputy chairman, be eligible for further designation as such in accordance with paragraph (a) or, as the case may be, paragraph (b) of section 2(4) at any time when he is a member

Remuneration, pensions, etc.

3. (1) *A regional development agency shall pay to its members such remuneration, and such travelling and other allowances, as may be determined by the Secretary of State.*

(2) *A regional development agency shall, if so required by the Secretary of State-*

- (a) pay such pension, allowances or gratuities as may be determined by the Secretary of State to or in respect of a person who is or has been a member,*
- (b) make such payments as may be determined by the Secretary of State towards provision for the payment of a pension, allowances or gratuities to or in respect of a person who is or has been a member, or*
- (c) provide and maintain such schemes (whether contributory or not) as may be determined by the Secretary of State for the payment of pensions, allowances or gratuities to or in respect of persons who are or have been members.*

ANNEX B TO SECTION 3

Schedule 2 **Regional Development Agencies Act 1998**

(3) If, when a person ceases to hold office as a member of a regional development agency, the Secretary of State determines that there are special circumstances which make it right that the person should receive compensation, the agency shall pay to him by way of compensation a sum of such amount as may be determined by the Secretary of State.

ANNEX C TO SECTION 3

Legal Aid (Scotland) Act 1986 **Schedule 1**

(5) If an employee of the Board becomes a member of the Board and was by reference to his employment by the Board a participant in a pension scheme established and administered by it for the benefit of its employees-

(a) the Board may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee of the Board whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 6 above; but

(b) if the Board determines as aforesaid, any discretion as to the benefits payable to or in respect of him which the scheme confers on the Board shall be exercised only with the consent of the Secretary of State.

SECTION 4: MEMBERS PENSIONED BROADLY BY-ANALOGY WITH STAFF PENSION SCHEMES AND/OR PCSPS PREMIUM

Broadly by-analogy with the staff scheme

- 4.1 This arrangement provides for a pension broadly by-analogy to the staff pension scheme. Generally, Board Members cannot be pensioned in the same pension scheme as the staff, but they can have access to similar types of benefits. Board Members should therefore be told that the option is *broadly by-analogy* with the staff scheme.

Broadly by-analogy with PCSPS Premium

- 4.2 In some cases, for example where there is no staff scheme, it may still be thought appropriate to pension Board members by analogy with the PCSPS Premium arrangements. (In many cases staff will either already be within the PCSPS or a separate staff scheme will be based upon the PCSPS.)

Modifications

- 4.3 It is usually necessary to modify the staff scheme to take account of the special nature of Board Member appointments, and to make the scheme approvable by the Inland Revenue. The modifications can include:

a) Maximum age of entry

Waiving any maximum age of entry to the scheme. A proportion of Board Members are appointed past the normal pensionable retirement age and without this modification some appointees might be unpensionable.

b) Normal retirement age (NRA) and normal pension age (NPA)

Waiving any age for compulsory retirement under the contract of employment. However, normal pension age remains that of the staff scheme/PCSPPS, subject to Inland Revenue maxima not being exceeded. The normal pension age under a scheme is the age at which the members are entitled to take unreduced immediate pension benefits.

c) Appointee contributions

Board Members are subject to contributions throughout the period of the appointment, even though the staff scheme/PCSPPS rules may provide for their cessation at normal pension age. This is, of course, because Board Members are appointed on a different basis and can, for example, be recruited after the NPA: some appointees would not pay any contributions without such a modification.

d) Transfer values

The crediting of any transfer value received on the basis of actuarial equivalence (see paragraph 4.6) and not under any more favourable

rule that might apply (e.g. the Public Sector transfer club terms) under the staff scheme/PCSPS. Board Member appointments pay is, on the whole, set at a high level. Uplifting transfer values by applying a more favourable basis than actuarial equivalence would increase costs considerably. Both inward and outward transfer values should be calculated on actuarial equivalence basis.

e) Amendments to staff scheme/PCSPS rules

The rules of the staff scheme/PCSPS at the date of appointment will apply any subsequent amendments will automatically feed through, unless the Minister who is responsible for the appointment decides otherwise.

f) Discretionary features

Any discretionary features of the staff scheme/PCSPS will only apply with the consent of the Minister.

- 4.4 The list is not exhaustive and may for example vary depending upon what scheme is used as the base. General discretions applicable to scheme members, e.g. for the increase in post-retirement pensions based upon the Retail Prices Index (RPI), can apply to Board Members without explicit Ministerial consent, unless there is some legislative requirement.
- 4.5 If a staff scheme has a feature that should not be applicable to a Board Member, e.g. actuarial uplift for a pension coming into payment after the NRA, this should be added to the list of modifications. It is important to check with legal advisers that the determination reflects the appropriate provisions that should be applied to Board Members.

Transfer values

- 4.6 Board Members may bring into their pension scheme the value of any pension benefits acquired in other employment. Such a transfer value will be assessed on the basis of actuarial equivalence. Standard actuarial tables cannot be used and departments/boards must consult with the Government Actuary's Department (GAD) to obtain a quote.
- 4.7 Board members must be told that if their previous pension arrangement was inferior, or their previous remuneration lower, the amount of reckonable service to be credited may not produce a year for year credit. The service credit could also be less if the transfer value does not take into account future increase in earnings, or for full post-retirement pension increases. Board members should not commit themselves to transferring benefits from a previous scheme until they know what service credit will be given.
- 4.8 Transfer values are quoted by the previous employer's pension scheme and are valid for three months. The credit is calculated on the basis of the age, remuneration and market adjustment at that time. The Board member must decide to accept the transfer value and will be held during this period, even if

the amount actually paid by the previous employer is different from the estimate. After three months a new transfer value quotation should be obtained and the calculation process repeated on the basis of the prevailing factors at that time.

- 4.9 If a Board member changes their pension option during the course of an appointment, the service credit given for any transfer value received will be on the basis of actuarial equivalence at the time the option is changed, not at the date of the appointment.
- 4.10 The administrators of the Board Member's pension arrangement should observe the same time limits as the scheme upon which their determination is based. Any such limit should be drawn to the Member's attention at the time of the appointment.

Added years

- 4.11 Some staff pension schemes provide for the discretionary granting of added years. Ministers have decided that it would normally be wrong to grant added years because this is potentially a very costly option for Boards and is unlikely to offer value for money. This is in respect of either an attempt to make up deficient pension cover from previous employments, or to build up the value of the current remuneration package. To do otherwise might well distort the balance of the remuneration package too much towards pension.
- 4.12 Instead, Board Members may buy added years where the scheme allows, or to make provision for Additional Voluntary Contributions (AVCs).
- 4.13 In exceptional circumstances a modest number of added years might be granted to an exceptional candidate, or to retain an existing Board Member whose service is considered essential. By their very nature such cases should be rare and early consultation with the Treasury and the PSO is necessary before departments begin to even talk with potential or existing Board Members.
- 4.14 The Treasury will be interested in the
- Strength of the exception;
 - The total value of the remuneration;
 - The extent to which the Board Member has availed themselves of the opportunity to buy added years.
- 4.15 Where added years are granted they must accrue evenly over the period of the appointment. A Board Member leaving early will only have accrued a proportion of the added years.
- 4.16 Appointees can, however, buy their own added years where the scheme on which theirs is modelled allows the staff to do so. The terms will be the same as for staff who are fixed-term appointees. If in doubt, contact the Government Actuary's Department (GAD).

Additional Voluntary Contributions (AVCs)

- 4.17 Board Members must, under the provisions of sections 111 and 132 of the *Pensions Scheme Act 1993*, be given the opportunity to buy additional pensions benefits such as extra years, additional death-in-service benefits or increased widows'/widower's benefits via Additional Voluntary Contributions (AVCs). Provisions would normally be made in the Members' by-analogy arrangement.
- 4.18 Board Members, like their staff counterparts, can make Additional Voluntary Contributions (AVCs) provided that all contributions (which will include any employer contributions) do not exceed the Inland Revenue limits.
- 4.19 It will be necessary to establish in advance with the Revenue that the proposed contributions, and the resulting benefits, do not exceed Inland Revenue limits. A member also has the option of making free-standing AVCs (FSAVCs) to a pension provider of their choice.

Stakeholder pensions

- 4.20 From October 2001 employers are required to provide a stakeholder pension to employees under section 3 of the *Welfare Reform and Pensions Act 1999*. Whilst it is not clear if Office holders are employees for this purpose, Office holders may have access to the same stakeholder providers as the staff scheme if they so wish.
- 4.21 For example, PCSPS Partnership terms may be made available to a Board member or appointee if a scheme is to be broadly by-analogy to the PCSPS. Office holders can, of course, make their own provision for stakeholder pensions on the open market from different stakeholder providers.

Addresses

- 4.22 GAD's address is:

Government Actuary's Department
Finlaison House
15-17 Furnival Street
London EC4A 1AB
www.gad.gov.uk

The Revenue is at:

Savings, Pensions & Share Schemes
Inland Revenue
Yorke House
PO Box 62
Castle Meadow Road

NOTTINGHAM NG2 1BG
www.inlandrevenue.gov.uk

ANNEX A TO SECTION 4

BOARD MEMBER/OFFICE HOLDER APPOINTMENTS BROADLY BY-ANALOGY TO PCSPS PREMIUM

SPECIMEN LETTER OFFERING PENSION TERMS

This draft letter offers an outline of what may be appropriate. It must be considered in the light of all the circumstances and the principles set out in the guidance notes and departments' own legal advice.

DRAFT LETTER

1. Your post will be pensionable as long as you continue to be engaged on executive duties. Your pension falls to be determined by the Secretary of State for..... under section....of theAct [with the consent of the Treasury].

Exercise of option

2. You may choose to be pensioned in one of three ways set out below. As the pension arrangement is a major part of your remuneration package, you should exercise your initial choice without delay. If you delay and we have not arranged for a contracting-out certificate, you will be paying higher national insurance contributions at the higher rate until the Inland Revenue issue a contracting-out certificate.

Option 1: Broadly by -analogy to [the staff scheme]/[PCSPS Premium]

3. You may choose to be pensioned broadly by-analogy to the [staff scheme]/[PCSPS Premium arrangements] [*delete whichever does not apply*]. A pension arrangement broadly by-analogy with the [staff pension scheme]/[PCSPS Premium arrangements] will be contracted-out of the state second pension (S2P) to the extent permitted by legislation, subject to the approval of the Inland Revenue.

4. The following modifications will apply to your pension:

(i) Subsequent changes

the rules in force of the date of your appointment will apply and any subsequent changes will automatically be applied, unless the Secretary of State [with the approval of the Treasury] determines otherwise;

(ii) Discretionary features

any discretionary features shall be exercised by the Secretary of State [with the consent of the Treasury];

(iii) Transfer payments

any transfer payment that you bring from a former pension will be calculated on the basis of its actuarial equivalence and not any more favourable provision in the [staff scheme]/[PCSPS] rules;

(iv) Normal retirement age

any maximum age of entry shall be waived over the period of your appointment, including any renewal. Neither will the compulsory retirement age apply: the terms of your appointment will dictate when your appointment will end;

(v) Service

all service will count for pension and will not stop at normal pension age;

(vi) Contributions

You will be liable to pay contributions throughout your appointment and your contributions will not cease at any named age;

(vii) Ending the appointment

Any age for compulsory retirement will be waived. The terms of your appointment will determine when your appointment will end.

You will receive your pension immediately if:

- the appointment or any renewal ends on or after the normal pension age of the [staff scheme]/[PCSPS];
- if a renewal is not offered after the expiry of an appointment and you have reached the early retirement age of the [staff scheme]/[PCSPS];
- if you retire on ill-health grounds before reaching the normal pension age. Any enhancement for ill-health will be the lesser of
 - a) that provided by the ill-health rules; or
 - b) a period equal to the un-expired portion of the appointment.

You will receive a pension at the normal pension age if you:

- Indicate that you do not wish to be re-appointed;
- Decline re-appointment; or
- Resign.

(viii) Benefits

benefits will be calculated on actual service and remuneration;

(ix) Approved Early Retirement

The rules covering approved early retirement (AER) will not apply to your appointment.

5. A pension arrangement broadly by-analogy to the [staff scheme]/[PCSPS] will be contracted-out of the state second pension (S2P), subject to the contracting-out rules.

6. In making a choice office holders who have other pensionable appointments may wish to be aware of the Revenue's limitations. See annex c to chapter 7 of the Board Members' Pensions and Compensation Guidance Notes (BMPCGN) for further advice, or contact the appointing department.

Option 2: Personal Pensions and stakeholder pensions

9. You may choose, like the staff of your organisation, to be pensioned using one of the stakeholder providers. If so contributions will be made on the same basis as for staff members. But the Board may also make a contribution to a personal pension or stakeholder of your choice. The amount of any such contribution must be agreed before the terms of your appointment are finalised.

Option 3: State second pension (S2P)

10. If you do not want a personal pension, stakeholder pension or broadly by-analogy scheme your national insurance contributions will be higher to enter you in to the State Second Pension (S2P).

11. I would be grateful if you could let us know as soon as possible what arrangement you prefer in order that we may set the administrative procedures underway.

ANNEX B TO SECTION 4

BOARD MEMBER/OFFICE HOLDER APPOINTMENTS POST-SEPTEMBER 2002

SPECIMEN PENSION DETERMINATION: BROADLY BY-ANALOGY WITH THE STAFF PENSION SCHEME/PCSPS PREMIUM

THE *[insert name of board member]* PENSION SCHEME

POWERS TO PROVIDE A PENSION

The Secretary of State for *[insert office]*, with the consent of the Treasury¹, under the powers in section *[insert number]* of the *[insert name of Act]* Act *[insert year]*, hereby determines that in respect of the appointment as Chairman/Member of the *[insert name of Board]* Board from *[insert date of appointment]* pension and other benefits shall accrue in respect of *[insert name of Board Member]* ("the beneficiary") in accordance with the following paragraphs of this determination.

ENTITLEMENT

2. The provisions of the *[insert pension scheme name]* Board Staff Superannuation Scheme ("the staff scheme")/*[Principal Civil Service Pension Scheme ("the PCSPS scheme")]* *[delete whichever is inappropriate]* as in force on *[date of appointment]* shall apply in respect of the beneficiary, subject to the modifications specified in paragraph 3. But the beneficiary shall not be, nor be entitled to be, a member of the staff scheme.

MODIFICATIONS

3. The modifications to the *[staff]/[PCSPS]* scheme, referred to in paragraph 2, are as follows:

a. Subsequent Changes

Any amendment made to the *[staff]/[PCSPS]* scheme after *[date of appointment]* shall apply to the beneficiary, unless the Secretary of State, with the approval of the Treasury, determines otherwise.

b. Discretionary Features

Any discretion in the *[staff]/[PCSPS]* scheme to apply particular features of it to an individual shall be exercised only by the Secretary of State, with the approval of the Treasury.

c. Transfer payments

If a transfer payment is received in respect of previous pensionable service from another occupational pension scheme, it shall be credited on the basis of its *actuarial equivalence* and not on any more favourable rule that would apply in respect of an

¹ HM Treasury consent is not always required: see the appropriate statute for guidance

employee's transfer payments to the [staff]/[PCSPS] scheme² Transfer payments out are treated in a similar manner, i.e. treated on the basis of actuarial equivalence. However, for qualifying purposes such service in the transferring scheme shall count in full.

d. Normal retirement age

Any maximum age of entry to the [staff]/[PCSPS] scheme shall be waived³ and the terms of the beneficiary's appointment, or any renewal, shall override any provision in the [staff]/[PCSPS] scheme about retirement age.

e. Appointee contributions

Subject to Inland Revenue limits contributions shall be payable throughout the period of appointment and any renewal, and shall not cease at the normal pension age of the [staff]/[PCSPS] scheme if the beneficiary's appointment, or any renewal, continues beyond that age.

f. Ending of the appointment

A pension will be payable immediately

On Age grounds

a) if the beneficiary's appointment, or any renewal, ends *on or after* the normal pension age of the [staff]/[PCSPS] scheme; or

On Early retirement

b) if renewal of the appointment, or if a subsequent appointment is not offered on its normal expiry when they have reached the early retirement age⁴ of the [staff]/[PCSPS] scheme; or

On Ill-health Retirement

c) if the beneficiary retires on ill-health grounds before reaching the normal pension age. Any enhancement of pensionable service on ill-health retirement will be restricted to whichever is the lesser of

- i) that provided by the ill-health Rules, or
- ii) to a period equal to the un-expired period of the beneficiary's appointment.

A pension will be payable at the [staff]/[PCSPS] scheme's normal age of retirement

On Resignation or declination of re-appointment

- d) if the beneficiary has indicated that they do not wish to be reappointed, or
- e) if they decline re-appointment, or
- f) if they resign their appointment.

g. Early payment of pensions under approved early retirement (AER)

² N.B. Late payment of a transfer value could affect the credit given

³ If appropriate

⁴ Typically 50 or 55.

Rules of the [staff]/[PCSPS] scheme that provide for approved early retirement (AER) shall not apply to your appointment.

h. Inland Revenue limits

Any contributions shall not in any one year, exceed 15% of their annual remuneration or 15% of the permitted maximum specified in any Order then in force made by the Treasury under Section 590C of the 1988 Act, whichever is the lesser.

This includes contributions whether by lump sum, or to an Additional Voluntary Contribution Scheme approved by the Board of the Inland Revenue under Section 591(2)(h) of the Income and Corporation Taxes Act 1988, when aggregated with all other contributions payable by the beneficiary under this arrangement using the provisions of the [staff]/[PCSPS] scheme.

Part-time appointments only

Benefits shall be calculated using qualifying service (including any renewal) and actual pensionable remuneration (which will be a proportion of the full-time rate). The calendar length of the beneficiary's appointment will be used to determine the length of qualifying service, for the individuals and any dependants' pension, subject to any overriding Revenue requirements.

STATUS OF DETERMINATION

4. This determination is hereby approved as an appropriate scheme for the purposes of the definition of a "statutory scheme" in Section 612(1) of the Income and Corporation Taxes Act 1988, established under the provisions of the *[insert name of Act] Act [insert date of Act]*.

Signed by the Authority of the Secretary of State for *[insert name of department]* this *[insert date]* day of *[insert month and year]*

..... (signed), a Member of the Senior Civil Service⁵ in the Department of *[insert name of department]*

⁵ An officer who has the authority to sign on behalf of the Minister, not normally below SCS level.

NOTES

Part-time appointments

If the appointment is part-time the italicised section at 3(i) must be included.

Injury benefits

Some schemes provide for injury benefits within the pension scheme rather than as a freestanding set of regulations. These need to be dis-applied if the board member appointment is broadly by-analogy to such a scheme and is to obtain Revenue clearance.

With the approval of the Treasury

The phrases “with the approval of the Treasury” and “with the consent of the Treasury” which are used in paragraphs 1, 3a, 3b can be omitted where the legislation does not require Treasury approval or consent. However, if the appointment is made under an Act that uses those phrases then they must be retained.

SECTION 5: PERSONAL PENSIONS

Electing for a personal pension

- 5.1 A Board Member can elect to have a personal pension from the outset or at any time during their appointment.
- 5.2 If a Member chooses the option of a personal pension, departments and Boards will need to consider what contribution the Board might make and should be guided by the cost to the Board of the alternative pension arrangements which the Member has been offered.
- 5.3 If in doubt, the sponsor department should consult HM Treasury where it is proposed to contribute to a personal pension arrangement. The cost should be borne in mind as part of the overall remuneration package.

Contribution to an Existing Personal Pension Scheme

- 5.4 Individuals may also continue with existing personal pensions. If a Board Member already has a personal pension plan to which the immediately preceding employer contributed, consideration can be given to continuing to making a contribution to the plan, subject to cost being acceptable.

Inland Revenue limits

- 5.5 The Inland Revenue currently limits the amount of contributions that may be paid to a personal pension by virtue of section 640(2) of the *Income and Corporation Taxes Act 1988*. The current limits applying to a particular tax year (where age is measured as at 5 April, before that tax year starts) are:

Up to age 35	17.5%
Age 36 to 45	20%
Age 46 to 50	25%
Age 51 to 55	30%
Age 56 to 60	35%
Age 61 to 74	40%
Age 75 and over	No longer able to contribute

- 5.6 The Earnings cap (see section 7) also applies to personal pension arrangements. Remuneration above the level of the earnings cap can be made pensionable by means of a non-approved pension arrangement (also see section 7), but this will add considerably to costs and this should be assessed before offering this option.

Changes to the tax regime

- 5.7 However, the tax regime will change from 6 April 2006 (A-day). In future all pension provision will be judged against a lifetime allowance initially of £ 1.5 million, rising as follows:

2007 - £ 1.6 million
2008 - £ 1.65 million
2009 - £ 1.75 million
2010 - £ 1.8 million

The lifetime allowance will be reviewed every five years (quinquennially).

SECTION 6: PAY SACRIFICE

Method to make pension provision

- 6.1 Board Members can choose to maximise their pension provision at their own expense by a pay sacrifice. The Member surrenders part of the remuneration package (salary or bonus) in favour of larger employer pension contributions, producing additional pension benefits.
- 6.2 There are important tax implications involved in a salary sacrifice: whilst the salary is taxable, the employee is not taxed on the value of the employer contributions to a pension scheme. Also the employer does not pay NI contributions on the pension contributions.
- 6.3 Any sacrifice in excess of £ 5,000 a year must be reported to the District tax office.
- 6.4 Points to note are that:
- The reduced remuneration becomes the pensionable pay, both for benefits and contributions: using this late in a career where the pension is based on a final salary would reduce the pension; and
 - The Revenue will require the benefits accruing from a sacrifice to be aggregated with other pension provision(s) when calculating overall Revenue limits.

Documentation

- 6.5 The sacrifice must be formally documented before the pay is reduced to show that the member has irrevocably lost the right to remuneration. Whilst the document will record the remuneration reduction it should avoid any mention of the sacrifice as a pension contribution.
- 6.6 Departments and Boards should take legal advice on the form that such a declaration should take and clear it with the Revenue, copied to the Treasury, before showing it to a Member or their advisers.
- 6.7 Departments may wish to consider consulting the Inland Revenue about such pay sacrifices.

SECTION 7: UN-REGISTERED SCHEMES: TOP-UP SCHEMES

- 7.1 Unapproved schemes can be used in connection with the main approved scheme to provide benefits on the portion of the remuneration in excess of the earnings cap. This remains, however, subject to the normal criteria on ensuring the is acceptable is no more than is needed to recruit and retain a Member.
- 7.2 In addition, these non-approved schemes, known as ‘top-up’ schemes, do not attract tax privileges either on contributions, investment income (if any) or benefits. Members pay tax on the pension and lump sum when these are put into payment.

Cost

- 7.3 The cost of a ‘top-up’ arrangement must be taken into account in determining the appropriate remuneration package for the individual Board Member. GAD can advise on the cost of the proposed arrangement.

New tax regime and limits

- 7.4 In December 2002 and December 2003 the Government published consultation papers *Simplifying the taxation of pensions*, which propose replacing the current tax regimes with a new, single regime. Budget 2004 confirmed the simplification process and the operative date is 6 April 2006, known as A-day. One of the features will be a lifetime limit on how much an individual can save in a tax-privileged pension. A starting limit of £ 1.5 million has been proposed, along with an annual limit of £ 215,000 initially for the increase in value of a pension.
- 7.5 Unapproved top-ups may continue in the new regime, but do not attract any of the tax advantages. Amounts in such schemes will not be tested against the lifetime allowance limit.
- 7.6 Transitional protection will be available for pension rights accrued at 6 April 2006 within non-registered schemes like top-ups.

The pensionable earnings cap

- 7.7 Until A-day the pensionable earnings cap is the limit on the amount of remuneration on which the benefits and contributions can be based for individuals whose schemes are established after 14 March 1989. For the tax year 2004-05 the amount is £ 102,000 and is normally increased at the time of the Budget in line with prices, subject to being a multiple of £600. Any earnings above this limit are ignored for pension calculations.

Tax year	Earnings limit
1988-89	No limit
1989-90	£ 60,000
1990-91	£ 64,800
1991-92	£ 71,400

1992-93	£ 75,000
1993-94	£ 75,000
1994-95	£ 76,800
1995-96	£ 78,600
1996-97	£ 82,200
1997-98	£ 84,000
1998-99	£ 87,600
1999-00	£ 90,600
2000-01	£ 91,800
2001-02	£ 95,400
2002-03	£ 97,200
2003-04	£ 99,000
2004-05	£ 102,000

7.8 Please note that where an individual has separate jobs with employers who are not associated employers, the limit applies *separately* to the earnings from each employment. See annex C to this section for more information about concurrent employments.

Structure of the Top-up Scheme

7.9 Top-up schemes do not have to adopt any particular form but can be constructed to meet particular requirements. Annex A shows a model top-up might work to stand alongside a standard broadly by-analogy scheme. Where it is proposed to pay a Board Member a salary *above* the level of the earnings cap, consideration can be given whether or not to provide a ‘top-up’ arrangement. This can be funded or unfunded.

Funded unapproved Retirement benefits Schemes (FURBS)

7.10 In a Funded Unapproved Retirement Benefit Scheme (FURBS) the Board Member will be taxed on the employer contribution as a benefit in kind.⁶

7.11 Since April 1999 employer contributions are subject to National Insurance.

7.12 The employer may be entitled to a Schedule D deduction on the contributions made.

7.13 Any lump sum benefit will be tax-free as long as tax has been paid on the underlying fund. But any pension will be subject to income tax.

Unfunded unapproved retirement benefits schemes (URBS)

7.14 If a Board Member with a broadly by-analogy pension arrangement has a top-up scheme this would be an unfunded unapproved retirement benefit schemes (URBS) as the uncapped pension is also unfunded. Some staff occupational pension schemes have a ‘top-up’ scheme running in tandem with the main scheme.

⁶ For Guidance see Inland Revenue booklet on the Tax Treatment of Top-up Pension Schemes.

7.15 A specimen 'top-up' arrangement is at Annex B to this section. In view of the diversity of occupational pension schemes departments are advised to take legal advice on the detailed drafting.

How a top-up works

Example

A 5-year fixed –term appointment, paid £150K. Pensions cap is £ 102,000 (April 2004)

Revenue approved broadly by-analogy pension

Allowable pension will be $5/60\text{ths} \times \text{£ } 102,000$ (Capped)

Pension = £ 8,500 ($5/60 \times 102,000$)

The employer decides to pension the excess of £ 48,000 (salary £150,000 less cap of £102,000).

Unapproved top-Up

$5/60\text{ths} \times \text{£ } 48,000 = \text{£ } 4,000$

Check

Pension if no Cap existed = $5/60\text{ths} \times \text{£ } 150\text{K} = \text{£ } 12,500$

Income for appointee from:

Approved By-analogy scheme	£ 8,500
Unapproved Top-Up	£ 4,000

Total	£ 12,500

Annex B to section 7

SPECIMEN TOP-UP ARRANGEMENT

Under section [*insert section*] of the [*insert Act*], the Secretary of State for [*insert Department*], with the consent of the Treasury, hereby determines that in respect of the appointment of the beneficiary as a member of [*insert Board name*] the Board shall provide a pension arrangement for and in respect of the beneficiary in accordance with the following paragraphs of this determination with effect from [*insert date of appointment*].

Definitions

In this determination:

- (i) the “Approved Scheme” means the pension arrangement, applying only to the pensionable pay which does not at any time exceed the “the permitted maximum”, established for and in respect of the beneficiary, with effect from [*insert date of appointment*], under the terms of the determination made by the Secretary of State for [*insert department of state*] with the approval of the Treasury⁷, on [*date*];
- (ii) “the beneficiary” means [*insert name of appointee*];
- (iii) “period of office” means, in relation to the beneficiary, their period of office as a member of [*insert name of board, committee etc.*] pursuant to their appointment with effect from [*insert date of appointment*] and any renewal or further renewal of that appointment;
- (iv) “the permitted maximum” has the meaning given in section 590C of the Income and Corporation Taxes Act 1988; and
- (v) the “Rules” means the Rules of the scheme and any reference to a numbered Rule is a reference to the rule bearing that number;
- (vi) unless the context otherwise requires, expressions used herein have the same meaning as the Rules.

Modifications

The provisions of the Rules as in force on [*insert date of appointment*] shall apply to or in respect of the beneficiary subject to the modifications specified below, but they shall not be, nor entitled to be, a member of the scheme.

The modifications to the Rules are as follows:

⁷ If legislation requires HMT approval or consent

Disregard of the Cap

- (i) in construing the Rules for the purposes of this determination, the capping provisions of Schedule 6 to the Finance Act 1989, so far as they alter the effect of the rules, shall be disregarded;

Membership

- (ii) any reference in the Rules to a period of membership shall, in relation to the beneficiary, be taken as a reference to their period of office;

Application only to the excess over the cap

- (iii) the pension arrangement established under this determination and, for the purposes of this determination, shall apply only to that part of the beneficiary's pensionable pay which exceeds the permitted maximum and is therefore not pensionable under the Approved Scheme;

Reckoning beyond normal retirement age

- (iv) if the beneficiary's period of office and any renewal continues beyond the age of [*insert normal age retirement of scheme*] service shall continue to count for pension;

Ending of the appointment

- (v) a pension will be payable immediately, if applicable, at the same time as the standard pension is payable;

Application of subsequent rule changes

- (vi) any amendment made to the Rules after [*insert date of appointment*] shall apply unless the Secretary of State, with the agreement of the Treasury, indicates otherwise;

Discretionary rules

- (vii) any discretion in the Rules to apply particular features of them to an individual shall, in the case of the beneficiary, be exercisable only by the Secretary of State, with the approval of the Treasury;
- (viii) if, before the normal expiry date of the appointment or of any renewal, such appointment or renewal is terminated or the beneficiary resigns by reason of either the beneficiary being prevented by mental or physical incapacity from the performance of their duties, the additional period of membership for the purposes of Rule [*insert ill-health rule numbers*] shall be restricted to whichever is the lesser of the period provided by that Rule, or a period equal

to the additional period of membership which the beneficiary would have secured if they had served to the end of their appointment;

Disregard of Revenue limits

(ix) Rule(s) [*any rule defining Inland Revenue limits*] shall not apply.

Signed by the Authority of the Secretary of State for [*department*] on [*date*].

Signed.....

Print Name (block capitals).....

A member of the Senior Civil Service in the Department of [*insert name of department*].

CONCURRENT EMPLOYMENT: THE EARNINGS CAP

1. Two or more pensionable associated offices or employments

The cap applies to the **aggregate** earnings. See (section 590(3)(e) *Income and Corporation Taxes Act 1988 (ICTA)*).

2. Two or more pensionable non-associated offices or employments

The cap applies **separately** to each pensionable employment

3. Two or more non-pensionable sources of earnings

The section 640A ICTA cap on net relevant earnings for personal pension scheme contributions applies to the **aggregate** net relevant earnings, whether or not the sources are associated, and irrespective of the schedule under which income is assessed.

4. One or more pensionable office or employment PLUS one or more non-pensionable office or employment.

Where the pensionable and non-pensionable employments are associated, section 646A ICTA applies.

Where they are not associated the earnings cap applies to each source of earnings pensionable through an occupational scheme (unless these sources are themselves associated – see 1 above) and separately to the aggregate non-pensionable net relevant earnings for personal pension scheme contributions.

5. One or more pensionable offices or employments PLUS one or more sources of earnings assessable under schedule D.

The earnings cap applies to the pensionable earnings, in aggregate if the employments are associated, otherwise separately. The separate cap applies to the aggregate net relevant earnings for personal pension scheme contributions purposes. No account is taken of any association between schedule D and schedule E sources.

SECTION 8: MEMBERS WHO CHOOSE NOT TO HAVE A PENSION ARRANGEMENT

- 8.1 A Board Member may choose not to have a pension arrangement. This may arise when the member is already in receipt of a pension from a former employment, or will receive a pension when reaching retirement age.
- 8.2 In these circumstances, a Board Member might prefer a terminal bonus arrangement, entitlement to which might build up evenly over the period of the appointment and be paid usually when the appointment has been completed.
- 8.3 Alternatively, the lack of a pension arrangement might be recognised in the level of pay for the appointment.
- 8.4 The cost of either arrangement should not be greater than the cost of an acceptable pension arrangement.

SECTION 9: PART-TIME BOARD MEMBERS AND OFFICE HOLDERS

Eligibility of part-time members

- 9.1 Most Board Member posts are part-time. It is perfectly acceptable to pension part-time Board Members with executive responsibilities who are paid. Departments should look at the DTI guidance on part-timers on the DTI website www.dti.gov.uk if they are unsure about the applicability of the recent EU Directives: The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 SI 2000/1551 and The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, SI 2002/2034. Pensionability should be taken into account in settling the appropriate pay structure.
- 9.2 Part-time appointments have the same range of potential pension options as full-time appointees. Contributions are payable in the normal way. Part-time service counts at its actual length for any qualifying period, e.g. a commitment to three days a week over two years meets the two-year qualifying service for benefits.

Fee-Paid Service

- 9.3 The Inland Revenue will only approve pension arrangements where the pensionable pay is assessed under Schedule E (PAYE). For further detailed information see IR Practice Notes (IR 12 2001). Paragraph 3.4 says:

Persons assessed under Schedule D

3.4 Agents, consultants, and other who are assessed to income tax on their earnings under Schedule D cannot be provided with benefits under an approved scheme in respect of those earnings.

- 9.4 In addition, some occupational schemes do not admit fee-paid or sessional workers. The rules of the schemes must be checked to ensure that a fee-paid member can be offered a broadly by analogy arrangement.

Calculation of Benefits

- 9.5 It is relatively straightforward to calculate the pension benefits of a part-time member where the pattern of work does not alter throughout the appointment. Following the example of the PCSPS, the calculation is traditionally done on the basis of full-time remuneration and part-time hours.
- 9.6 For example, A Board member on a five-year contract, working two days a week, remunerated at the rate of 2/5ths of the full-time equivalent (e.g. £ 100,000) has a pension based on a 1/60th accrual rate. Reckonable service is therefore two years.

$1/60 \times £ 100,000 \times 2 \text{ years reckonable service} = £ 3,333 \text{ per annum}$

Two differing time commitments

9.7 Where a Board Member is paid at different proportions of full-time remuneration, because the time commitment changed throughout the appointment, different calculations are required.

9.8 Under these circumstances the methodology adopted is to calculate the pension separately for each period of service (Y1), (Y)2 etc. on the basis of the actual part-time pensionable remuneration at the end of each period (S1), S(2). The remuneration can then be uprated by the Retail Prices Index (RPI) as allowed under the Proviso (iv) in Appendix I of IR12.

9.9 This produces the formula

$$Y(1) \times S(1) \times RPI(1) +$$

$$Y(2) \times S(2) \times RPI(2) \times P$$

Where Y is the calendar period of the appointment

S is the actual part-time remuneration

And RPI(1) is the increase in RPI from the last day of retirement up to the retirement date

P is the relevant pension fraction e.g. 1/60.

9.10 Assume a five year appointment, starting at 1 April 2002 and ending on 31 March 2007, which consisted of three years at two days a week, followed by two years at three days a week. Full-time remuneration would have been £ 100,000.

Y(1) = 3 years and Y(2) = 2 years

S(1) = £ 40,000 and S(2) = £ 60,000

RPI = 1.0444 (taken from pensions increase multiplier tables distributed by Treasury annually)

(Y)1 is $2/60 \times £ 40,000 = £ 1,333.32$

Uprated by RPI multiplier of 1.0444) = £ 1,392.53

(Y)2 is $3/60 \times £ 60,000 = £ 3,000$

Total pension is 1,392.53

 + 3,000.00

 = 4,392.53

Where no full-time rate can be established

9.11 Where no full-time equivalent can be established, the pension should be calculated by multiplying the part-time remuneration by five (the number of

days that full-time service would cover) and divided by the number of days in the assumed time commitment.

SECTION 10: PROMOTION AND TRANSFERS BETWEEN BOARDS

Promotion

- 10.1 When a Board Member is appointed to a higher office on the same Board, the pension arrangements agreed for the original appointment will continue to apply. The remuneration of the new appointment will, however, set the pensionable pay to be used.

Appointment to Another Board

- 10.2 When a full-time Board Member is appointed to another Board, the normal pension options are again available (see paragraph 2.2 for options).

Member of Staff Pension Scheme

- 10.3 However, a Board Member who remained a member of the staff pension scheme during the first appointment (see Section 3: Former Staff Members who remain in the Staff Pension Scheme) will not be able to continue in membership of that scheme on taking up the other appointment.

Transfer to Another Board

- 10.4 If a Minister transfers a Board Member to another Board before the qualifying period for entitlement to any pension has been completed, the Minister may decide that the qualifying period for a pension in respect of the first appointment be reduced to coincide with the period served.

SECTION 11: CONTRACTING-OUT

Policy

- 11.1 It is policy for Board Members to be contracted-out of the state second pension arrangements. But to do so a pension must provide for pension benefits in place of the State Second Pension (S2P).
- 11.2 The rules surrounding contracting-out are quite complex. Basically, Board Members who contract-out of S2P pay a lower, contracted-out rate of National Insurance Contributions (NICs) in return for the occupational pension scheme undertaking to provide a minimum pension at least as good as that provided for by S2P. In all but a very few cases it will be considerably better.

National insurance rebate

- 11.3 One of the chief attractions of contracting-out is that both the employer and employee pay reduced NI contributions. The saving is known as the contracted-out rebate. It is calculated as the percentage of the employee's earnings between the lower and upper earnings limits.
- 11.4 The contracted-out rebates for those in contracted-out salary related occupational schemes are currently (2004/05):
- 1.6% less on the member's contributions
 - 3.5% less on the employer's contributions.

This represents the difference between the contracted-out rate and the not contracted-out rate (sometimes known as the contracted-in rate).

- 11.5 Where a Board Member is not making National Insurance Contributions, e.g. because of the levels of contributions made in other employments, a contracting-out certificate is not required.

Contracting-out certificate

- 11.6 The body which will pay the Board Member's pension when it becomes due is responsible for contracting-out the Member's individual pension arrangement. The body must:
- Give written notice to the Board Member in the manner specified by Regulation 3(1)(a) of the *Occupational Pension Schemes (Contracting-Out) Regulations 1996*, the administrator of their scheme and, if applicable, the trade union covering the appointee;
 - Submit form CA7300 (election to contract out) to the National Insurance Contributions Office (NICO);

- Provide a Reference scheme test certificate, obtained from an actuary. For most Board Member appointments the actuary will be the Government Actuary.

11.7 Contributions payable for Board Members, whether serving full or part-time, who are not pensionable or who have not been contracted-out, will be at the not contracted-out rate. Where the Revenue agrees to backdate a contracted-out certificate, a refund of excess contributions may be obtained from them.

Re-assurance statement

11.8 After the contracting-out certificate is issued, when prompted by the Revenue, the body will need to provide a triennial/quinquennial re-assurance statement. Schemes that have ceased to contract-out but continue to hold contracted-out rights, i.e. benefits are preserved but are not in payment yet, will be subject to the triennial/quinquennial re-assurance exercise.

Reference Documents

11.9 More detailed guidance governing contracting-out can be found in Inland Revenue publications like leaflet CA14C “*Contracted-Out Guidance for Salary Related Pension Schemes and Salary Related Overseas Schemes*”.

11.10 Contact addresses:

Inland Revenue
National Insurance Contributions Office (NICO)
Services to Pensions Industry
Chillingham House
Benton Park View
Benton Park Road
Longbenton
Newcastle-upon-Tyne
NE98 1ZZ
Tel: 0191 213 5000

Website: www.inlandrevenue.gov.uk

Government Actuary’s Department
Pensions Directorate
Finlaison House
15-17 Furnival Street
LONDON
EC4A 1AB

Website: www.gad.gov.uk

SECTION 12: INJURY BENEFITS

Injury or Disease

- 12.1 If a Board Member suffers an injury or contracts a disease that is attributable to the nature of the duty as a Board Member and, as a result of that injury or disease, suffers an impairment of earning capacity, they may be eligible for injury compensation benefits.
- 12.2 Compensation benefits, which may be paid in addition to pension scheme benefits, may also be paid to the Member's dependants if the member dies as a result of injury or disease.

Benefits Received

- 12.3 A Member who is injured will normally receive benefits broadly by-analogy with those that would apply in the like circumstances to a member of staff of the Board.

No Provision of Injury Benefits

- 12.4 Where there is no provision for injury benefits that can be applied in this way, the Treasury will be prepared to consider the award of benefits under or broadly by-analogy with the Civil Service Injury Benefits Scheme. However, such a course should not be followed merely because the relevant staff injury scheme provided a lower level of benefit.

Power to Pay Injury Benefit

- 12.5 A power for the Board to pay such amounts as may be decided by the appropriate Minister by way of "pension, allowance or gratuity" should cover any injury benefit payable. The injury benefit terms should be defined at the time of the Board Member's appointment. In any cases of doubt, departments will need to take legal advice.

SECTION 13: ABATEMENT

General policy

- 13.1 Where a potential appointee has indicated a willingness to serve, the department should establish if the individual is already in receipt of a public service pension, as defined by section 1 of the *Pensions Schemes Act 1993*. Where such a pension exists consideration must be given as to whether the pension or pay should be abated to comply with Government policy. This must be done before any contract of employment is finalised.
- 13.2 Government policy requires that pensions should be abated in certain circumstances where public servants are re-employed. This is to ensure that the payment of pension in addition to pay from the re-employed post does not exceed the level of pre-retirement pay where there has been no real retirement from a career.
- 13.3 This policy applies to both staff and Members of Public Boards.
- 13.4 Abatement falls into two different categories. Firstly, in-service abatement, where an individual is re-employed in a post covered by the same pension scheme that is paying the individual's pension. Secondly, inter-service abatement, which applies where re-employment is covered by a different public service pension scheme.

In-service abatement

- 13.5 In-service abatement is usually applied automatically under public service pension scheme rules. It applies regardless of whether an individual rejoins the scheme on re-employment. Where on re-employment a pensioner opts for a personal pension or to be in S2P, or even fee-paid non-pensionable basis, in-service abatement still applies.
- 13.6 Where a by-analogy staff scheme is involved, e.g. an individual receives a pension from one of the main public service schemes and is re-employed by an employer with a pension scheme that operates by-analogy to the same main scheme, abatement is dealt with by inter-service arrangement as there are two distinct pension schemes.

Inter-service abatement

- 13.7 Inter-service abatement may be necessary where an individual has retired early (i.e. before normal retirement age) from one public service and is re-employed in the public service in a post covered by a different public service pension scheme.
- 13.8 It applies where
- Recruitment was limited to people with either general or particular public service experience; or

- there has been no general advertisement of the post; or
- There has been no formal competition for the appointment.

13.9 Inter-service abatement ceases when the pensioner reaches the normal pensionable age of the scheme from which they receive their pension.

13.10 Inter-service abatement does not apply to someone whose pension has been actuarially reduced to take account of early payment.

13.11 Scheme rules will generally not provide for inter-service abatement. Any abatement authority must therefore be written into the contract. Board Members may be given the choice of abating their pension or their re-employed pay.

13.12 Where Members choose to abate their pension they should provide written authority to do so that can be sent to the scheme that pays the pension. The scheme should be asked to confirm that abatement has been put into effect.

13.13 Where pay is abated any subsequent pay increase should be proportionate to the amount of pay remaining in payment, e.g. a 1% increase in pay is applied as 1% of the individuals' pay in receipt.

Calculating abatement

13.14 The amount of abatement is calculated by comparing total remuneration (excluding non-pensionable allowances) PLUS pension with the pensionable pay at the time of retirement.

13.15 An example is

Re-employed remuneration	£ 20,000
+ Pension	£ 15,000

	£ 35,000
Less	
Pensionable pay	
At retirement	£ 30,000
Abatement	= £ 5,000

Gap between retirement and re-employment

13.16 Where there is a time gap between retirement and re-employment then pensionable pay at retirement should be uprated using public service pension increase factors.

SECTION 14: RETIREMENT (INCLUDING EARLY RETIREMENT AND ILL-HEALTH)

Expiration of Appointment

- 14.1 When a Board Members' appointment expires and is not renewed, they will normally receive their pension from the pension age set under the scheme rules, or their date of their retirement, whichever is the later.

Reaching Retirement Age during Course of Appointment

- 14.2 Board Members who reach retiring age during the course of their appointment or re-appointment will not normally receive their pension until the appointment ends. If the scheme rules provide for payment during the appointment with the same Board, or other Board, the question of abatement must be considered see section 14).

Appointment not Renewed within 10 years of Normal Pension Age

- 14.3 A Board Member not offered re-appointment within 10 years of the normal pension age⁸ specified in the pension scheme should be treated as compulsorily retired and paid their pension, provided the scheme allows for the immediate payment of pension on compulsory early retirement or redundancy. Early payment of pension, whether in full or actuarially reduced, must be within the rules of the Member's pension scheme. If the Member's scheme only provides immediate payment for termination within, say, five years of retirement age, that rule must be observed.
- 14.4 From 10 December 2003 Board members should not be offered new appointments which provide for pensions to be payable before age 55. The increase in the earliest age at which a pension may be taken forms part of the Inland Revenue new simplified tax regime for pensions.

When concessions are not applicable

- 14.5 The above early retirement concessions will not apply if a Board Member declines a re-appointment, resigns or makes it known that they do not want to be re-appointed.

Service to End of Appointment

- 14.6 Also, where the Member has served to the end of their appointment, there is no entitlement to compensation for enforced early retirement. For

⁸ i.e., the earliest age at which pension normally becomes payable (without reduction)

example, they should not be granted added years of reckonable service, lump sum etc.

Members of Staff Pension Schemes

- 14.7 Board Members who remain a member of a staff pension scheme (see Section 3) will be eligible to receive early payment of pension within the rules of the pension scheme if they are not offered renewal of their appointment.

Pension Broadly By-Analogy with the Staff Pension Scheme

- 14.8 Where a Board Member is pensioned broadly by-analogy with the staff pension scheme, and that scheme does not provide for immediate pension on redundancy, but redundant staff are paid an allowance as a matter of right until the deferred pension comes into payment, the Board member may be paid an allowance.

Early Payment of Pension

- 14.9 Where the staff pension scheme does not provide for early payment of pension (i.e. it does not recognise not offering renewal as leaving on redundancy), the appointing Minister responsible may direct the Board to pay the equivalent of a pension from the Board's revenue until the deferred pension comes into payment. In these circumstances, the member should give an undertaking to refund any lump-sum element of the benefit paid by the Board (plus any increase that may be payable on it) when the benefit is eventually paid by the scheme.
- 14.10 The tax implications of paying a lump sum early would need to be considered, as an early lump sum may be taxed as a redundancy lump sum and not treated as tax-free pension lump sum. Where the pension can be commuted to provide a lump sum, and the Member exercises that option on taking early retirement, similar considerations apply. Where possible, an agreement that the sum advanced is repayable on reaching the scheme pensionable age, or the date of death if that is sooner, should be obtained.
- 14.11 It may be possible to secure an enforceable agreement for payment to the Board by the scheme administrators, but first they should be consulted and legal advice taken. Board Members promoted from the staff should be informed of these provisions at the time of their appointment to the Board.

Retirement on Ill-Health Grounds

- 14.12 A Board Member pensioned broadly by-analogy with a staff pension scheme, who has to retire for medical reasons, may have their reckonable

service enhanced, provided this is allowable within the scheme rules. The enhancement will be limited to whichever is the lesser of

- (a) enhancement as indicated by the scheme's rules; or
- (b) the unexpired portion of the appointment.

14.13 Where the scheme rules do not provide for ill-health retirements to those on period appointments, and would deny ill-health benefits to Board Members, the rules may be waived at the discretion of the Minister.

SECTION 15: COMPENSATION FOR EARLY TERMINATION

Compensation

- 15.1 A Minister may consider paying compensation on the early termination of a Board appointment. Specific enabling powers must exist to do this (see section 2). The amount of compensation is at the Minister's discretion *but* prior Treasury approval may be required, especially if the payment is in excess of any contractual entitlement.

Conditions for Payment of Compensation

- 15.2 No compensation is normally due at the expiry of an appointment, nor where a Minister exercises a power to terminate on the grounds of non-attendance at meetings, bankruptcy or inefficiency.
- 15.3 No compensation should normally be payable where an appointee resigns voluntarily before the normal expiration of the appointment (but see also 15.5 below). However, a Minister may wish to replace an appointee in the public interest. In such a case compensation may be offered to induce an appointee to resign.
- 15.4 Compensation may be due to redundancy from a statutory winding-up, or a merger of bodies, or by administrative action. In the circumstances where two or more Boards merge, compensation may be considered for appointees whose appointments are terminated early. Equally, those appointed to the new Board but on less favourable conditions, e.g. lower remuneration, may also be compensated.

Calculation of Compensation

- 15.5 Where an appointee's termination would have been treated as redundancy if they were a staff member, if the rules of the pension scheme permit they may collect an immediate pension and lump sum. If enhanced service is provided for this it should not result in more pensionable service than if they had served to the end of the appointment.
- 15.6 Compensation may cover any financial loss as a result of the early termination. The calculation broadly follows the approach an Employment Tribunal would take in assessing damages for breach of contract.
- 15.7 The starting point is therefore the net loss (after tax and employee's national insurance) of the remuneration for the unexpired portion of the contract. This includes any fringe benefits, e.g. use of a car, and the value of pension benefits accruing over the remainder of the contract. This is modified by likely mitigation from any suitable alternative employment (an Employment Tribunal would expect an individual to seek to mitigate their loss by obtaining alternative employment). The loss is discounted for immediate payment and other actuarial factors.

- 15.8 The Government Actuary's Department (GAD) is available to advise on the calculation. They will charge for this service. The factors that they need to calculate a package are set out in the attached annex. GAD need time to calculate this sum and it would be helpful if departments could discuss the prospects of alternative employment with the appointee *before* GAD are asked to calculate compensation. It is preferable to obtain a statement from the appointee about the prospects of obtaining any employment beforehand, if possible. Alternatively departments can ask GAD to establish scenarios for a number of mitigation circumstances rather than approaching the individual.
- 15.9 In all cases legal advice is necessary and prior consultation with HM Treasury may be necessary before any approach is made to an appointee about compensation. In such cases the Treasury's written consent should be obtained to the terms of a compensation settlement before payment is made.

Annex to section 15

DATA REQUIRED BY GAD

Personal data

Post

Name

Gender

Date of birth

Marital status (married, single, divorced)

Ages of any dependent children

Start and expiry date of current appointment

Period of notice

Date of early termination

Remuneration (including separately any fringe benefits, bonuses and performance related pay)

Alternative income: assumptions about prospects of alternative employment

Pension arrangements

A Method of pensionability (e.g. broadly by-analogy, personal pension)

B Copy of pension determination

B2 Where a determination has not been issued:

Description of pension scheme and benefits provided, including any personal provisions

C Qualifying service required for pension

D Contributions payable

(i) by member

(ii) in cases of personal pensions, by Board

E Agreed pensionable remuneration

F Length of relevant service (which may include previous service with this or other boards)

G Amount of benefits payable proposed for early termination and from what date

H Amount that would have been payable if contract had continued to end

I Pensionable Pay

J Final pensionable pay

Send to:

Stephen Humphrey

Occupational Pensions Division A1

Government Actuary's Department

15-17 Furnival Street

London EC4A 1AB

Tel: 020 7211 2646

E-mail: stephen.humphrey@gad.gov.uk

SECTION 16: ABOLITION AND MERGER OF BOARDS

Abolition and merger

- 16.1 An Appointee or Board Member may be entitled to compensation if their appointment is terminated early due to the merging or winding up of a Board.
- 16.2 Where there is uncertainty whether a Board will continue, periods of appointment or renewal should be restricted to a year (or even a few months) until a final termination date is known.

Abolition of a Board

- 16.3 When a Board is to be abolished departments should ensure that there are adequate powers to pay compensation to members and to enable any pension obligations to be met, including possible future revisions and increases.
- 16.4 The source of finance to meet the residual liabilities must be specified. This is important for bodies that are not financed directly by Estimates, and especially so if it is financed by charges and levies. For bodies financed by grant-in-aid, compensation and pensions may be financed by the Estimate from which the grant was paid. Departments should consider each case in consultation with their appropriate Treasury Spending Team.
- 16.5 Statues abolishing Boards should not repeal pension and compensation provisions prematurely as the terms of compensation may not be settled by the appointed day, and the power to determine pension increases etc. may be required for many years.

Merger of Boards

- 16.6 Similar considerations will apply where Boards are merged. Members who cannot be offered a comparable appointment in the new body may be entitled to compensation. Normally the continuing liabilities, including pension and compensation payments, will be transferred to the new body.
- 16.7 Consultation will be needed with departmental legal advisers and, where appropriate, Parliamentary Counsel.

SECTION 17: PENSION INCREASES

Increasing pensions in payment

- 17.1 Board Members (or Appointees) who are members of staff pension schemes or who are pensioned broadly by-analogy with staff pension schemes will have their pensions increased according to the rules of those schemes, unless otherwise determined by a Minister.
- 17.2 Where pension increases are provided for other than by the pension scheme it should be possible, subject to taking legal advice, to advise Board Members at retirement that their pension will be increased as for staff.
- 17.3 If pension increases are discretionary the amount of the increase will be determined when it falls due.
- 17.4 The rate at which official pensions have been increased for the last 11 years are set out below.

Increases in official pensions under the Pensions (Increase) Act 1971:

Date	Increase
11 April 1994	1.8 %
10 April 1995	2.2 %
8 April 1996	3.9 %
7 April 1997	2.1 %
6 April 1998	3.6 %
12 April 1999	3.2 %
10 April 2000	1.1 %
9 April 2001	3.3 %
8 April 2002	1.7 %
7 April 2003	1.7 %
12 April 2004	2.8 %

SECTION 18: DOCUMENTATION AND DISCLOSURE OF PENSION ENTITLEMENTS

Disclosure

18.1 Care must be taken in communicating, both orally and in writing, with potential and actual Board Members and Appointees about pension arrangements. Nothing should be said or written to create inadvertently a contractual obligation. Departments may wish to consult with their legal advisers before communicating with potential Members: it may be difficult to correct any misunderstanding *after* a Member has taken up appointment.

Initial Approaches to Potential Appointees

18.2 It is sufficient to indicate if an appointment is pensionable when advertising an appointment, or during the early stages of making an appointment. In response to queries potential Members or Appointees should be advised, preferably in writing, that they may be 'pensioned along lines broadly similar to those of the staff' and 'if you prefer, consideration would be given to contributing to a personal pension'.

Offers of Pensionability

18.3 A person offered a Board appointment should be advised in writing as soon as possible about the options available. A specimen letter is at annex A to section 4. Any special arrangements should be recorded and agreed in writing before the appointment is accepted.

Pension Determination

18.4 Where the Member or Appointee opts for an arrangement broadly by-analogy with the staff scheme, a formal pension determination setting out the terms is issued by the appointing department. A determination must be drafted by the department in consultation with their legal adviser, cleared with the Inland Revenue and any other appropriate authority, the Board member and the body responsible for implementing it.

18.5 After clearance a member of the senior civil service on behalf of the Minister, or appointing authority, should sign the determination. A copy of the final determination should be sent to the Revenue (see 18.8 below).

18.6 A specimen pension determination for an arrangement by-analogy to the PCSPS arrangement is set out at annex B to section 4.

18.7 Where a Board Member opts for a personal pension arrangement the Board's agreed contribution should be included in the terms of appointment.

18.8 Useful addresses include:

IR Savings, Pensions, Share Schemes

Yorke House
PO Box 62
Castle Meadow Road
NOTTINGHAM NG2 1BG
Tel: 0115 974 1600

Disclosure of pension benefits

- 18.9 In line with best practice in the private sector, details of the salary and pension entitlements of Board members should be provided in the annual accounts of the organisation concerned. Further guidance on the information to be given is contained in:
- For central government departments and executive agencies – paragraph 8.5 of the Resource Accounting Manual (<http://www.resource.accounting.gov.uk>);
 - For trading funds – paragraph 10.3.2 of “Trading Funds: Accounts Guidance” (http://www.hm-treasury.gov.uk/media//492Actrading_fund_guidance02_03.pdf); and
 - For Non-Departmental Public Bodies – paragraph 11.4.2 of “Non-Departmental Public Bodies: Annual Reports and Accounts Guide” (http://www.hm-treasury.gov.uk/media/D8C01?NDPB_guidance02_03.pdf).
- 18.10 The Cabinet Office has recommended that letters of appointment for Board Members should include a condition that he or she consents to the disclosure of information on his or her salary and pension entitlements, and has provided guidance on suitable wording for the purpose (see EPN/60 issued in April 2003 or contact employerhelpdesk@cabinet-office.x.gsi.gov.uk). This approach is necessary to comply with the provisions of the *Data Protection Act 1998*.