

**8. Power to borrow**

A1-029

The Trustees may borrow on the security of all or any part of the Trust Fund or otherwise for any purpose.

**9. Power of management**

A1-030

The Trustees shall have all the powers of an absolute beneficial owner in relation to the management and administration of the Trust Fund.

**10. Powers in relation to land and chattels**

A1-031

**10.1** The Trustees shall have all the powers of an absolute beneficial owner in relation to the disposition, development and improvement of any land comprised in the Trust Fund.

**10.2** The Trustees shall not be bound to maintain any building or other structure on land comprised in the Trust Fund or to preserve or repair any chattels comprised in the Trust Fund.

**11. Power to permit enjoyment of trust property**

A1-032

The Trustees may permit the Beneficiary to occupy or enjoy all or any part of the property comprised in the Trust Fund on such terms as they think fit.

**12. Power to insure property**

A1-033

The Trustees may insure all or any part of the property comprised in the Trust Fund against any risk, for any amount and on such terms as they think fit but shall not be bound to do so.

**13. Powers in relation to life insurance policies**

A1-034

The Trustees may apply all or any part of the Trust Fund in purchasing or maintaining any policy of insurance on the life of any person and shall have all the powers of an absolute beneficial owner in relation to any such policy.

**14. Power to establish Entities**

A1-035

The Trustees may establish any Entity for any purpose in connection with this Trust.

**15. Powers in relation to Entities**

A1-036

**15.1** The Trustees may enter into any compromise or arrangement in relation to any Entity in which the Trust Fund is invested.

**15.2** The Trustees may enter into any arrangements in relation to the winding up or liquidation of any Entity in which the Trust Fund is invested.

not the Trustees or any of them are for the time being resident or domiciled in, or otherwise connected with, such jurisdiction.

[(b) The Trustees may at any time declare in writing that, from the date of such declaration, the proper law of this Trust shall be that of any specified jurisdiction. No exercise of this power shall be effective unless the law of the jurisdiction specified is one under which this Trust remains irrevocable and all, or substantially all, of the trusts, powers and provisions contained in this Deed remain enforceable and capable of being exercised and so taking effect.

(c) Following any exercise of the power contained in sub-clause 6.3(b), the Trustees shall, by deed, make such consequential alterations or additions to this Deed as they consider necessary or desirable to ensure that, so far as may be possible, the trusts, powers and provisions of this Deed shall be as valid and effective as they were immediately prior to such change.

(d) The Trustees may, at any time, declare in writing that, from the date of such declaration, the forum for the administration of these trusts shall be the courts of any specified jurisdiction.]

[Notes: see A1-076.]

**PART 2—ADMINISTRATIVE PROVISIONS**

[Notes: see A1-077.]

**A1-028 7. Power of investment**

**7.1** The Trustees may apply any money to be invested in the purchase or acquisition (whether directly or through any Entity and either alone or jointly with other persons) of such property, of whatever nature and wherever situate and whether of a wasting nature, involving liabilities or producing income or not, or in making such loans with or without security, as they think fit so that they shall have the same powers to apply money to be invested as if they were an absolute beneficial owner.

**7.2** The Trustees may exchange property for other property on such terms as they think fit.

**7.3** The Trustees shall not be required to diversify the investment of the Trust Fund.

- 15.3 The Trustees shall not be bound to enquire into or be involved in the management of any Entity in which the Trust Fund is invested unless they have knowledge of circumstances which call for enquiry.

#### A1-037 16. Payment of expenses

The Trustees shall have power to pay out of income or capital, as they may in their discretion determine, any expenses relating to the Trust Fund (or any assets comprised within it) or its administration.

#### A1-038 [17. Powers in relation to minors

- 17.1 The Trustees may pay or transfer any assets comprised in, or any income of, the Trust Fund to the Beneficiary or to any parent or guardian of the Beneficiary and the receipt of the Beneficiary or of that parent or guardian shall be a full discharge to the Trustees.
- 17.2 The parent or guardian shall, in respect of any assets or income received in accordance with this clause, have the powers conferred on the Trustees by Part 2 of this Deed.]

#### A1-039 18. Power to appoint agents

The Trustees may employ and pay at the expense of the Trust Fund any agent in any part of the world to transact any business in connection with this Trust without being responsible for the fraud, dishonesty or negligence of such agent if employed in good faith.

#### A1-040 19. Power to employ nominees

The Trustees may hold all or any part of the Trust Fund in the name of one or more of the Trustees, or of any other person or partnership, as nominee on such terms as the Trustees think fit.

#### A1-041 20. Powers to delegate

- 20.1 The Trustees may engage any person or partnership as investment adviser to advise them on the investment of all or any part of the Trust Fund and they may, without being liable for any consequent loss, delegate to such investment adviser discretion to manage investments on such terms as the Trustees think fit.
- 20.2 The Trustees may, without being liable for any consequent loss, delegate to any person the operation of any bank, building society or other account.
- 20.3 Any trustee may, by deed revocable or irrevocable, delegate to another trustee or any other person the exercise of all or any trusts and powers conferred on such trustee (other than the power of

not the Trustees or any of them are for the time being resident or domiciled in, or otherwise connected with, such jurisdiction.

- [(b) The Trustees may at any time declare in writing that, from the date of such declaration, the proper law of this Trust shall be that of any specified jurisdiction. No exercise of this power shall be effective unless the law of the jurisdiction specified is one under which this Trust remains irrevocable and all, or substantially all, of the trusts, powers and provisions contained in this Deed remain enforceable and capable of being exercised and so taking effect.
- (c) Following any exercise of the power contained in sub-clause 6.3(b), the Trustees shall, by deed, make such consequential alterations or additions to this Deed as they consider necessary or desirable to ensure that, so far as may be possible, the trusts, powers and provisions of this Deed shall be as valid and effective as they were immediately prior to such change.
- (d) The Trustees may, at any time, declare in writing that, from the date of such declaration, the forum for the administration of these trusts shall be the courts of any specified jurisdiction.]

[Notes: see A1-076.]

### PART 2—ADMINISTRATIVE PROVISIONS

[Notes: see A1-077.]

#### A1-028 7. Power of investment

- 7.1 The Trustees may apply any money to be invested in the purchase or acquisition (whether directly or through any Entity and either alone or jointly with other persons) of such property, of whatever nature and wherever situate and whether of a wasting nature, involving liabilities or producing income or not, or in making such loans with or without security, as they think fit so that they shall have the same powers to apply money to be invested as if they were an absolute beneficial owner.
- 7.2 The Trustees may exchange property for other property on such terms as they think fit.
- 7.3 The Trustees shall not be required to diversify the investment of the Trust Fund.

co-trustee or former trustee for any breach or alleged breach of trust committed or suffered by such co-trustee or former trustee.

27. Release of powers A1-048

The Trustees may by deed (and so as to bind successive trustees of this Trust) release or restrict the future exercise of all or any of the powers conferred on them by this Trust.

28. Power to vary administrative provisions A1-049

The Trustees may by deed amend or add to the administrative provisions of this Trust.

SCHEDULE A1-050

[The initial Trust Fund]

Signed as a deed and delivered )
by [ ] )
in the presence of: )

Witness
Signature: .....
Name: .....
Address: .....
Occupation: .....

[A1-071 follows]

delegation conferred by this sub-clause) notwithstanding the fiduciary nature of such trusts and powers.

21. Power to give indemnities and other commitments A1-042

21.1 The Trustees may indemnify any person in respect of any liability relating to this Trust and may charge all or any part of the Trust Fund in connection with such indemnity in such manner as they think fit.

21.2 The Trustees may enter into any agreement or give any commitment that they think fit relating to the transfer or sale of any interest in any business or Entity in which the Trust Fund is invested or of any other assets forming part of the Trust Fund.

22. Payment of taxes A1-043

In the event of any inheritance tax or probate, succession, estate duty or other duties, fees or taxes whatever becoming payable in any part of the world in respect of the Trust Fund or any part of it in any circumstances whatever, the Trustees may pay all such duties, fees or taxes (notwithstanding that they are not recoverable from the Trustees or the Beneficiary) out of the capital or income of the Trust Fund at such time and in such manner as they think fit. The power to pay duties, fees and taxes conferred by this clause shall extend to any related interest and penalties and to the provision of information to, or the filing of returns with, any relevant tax authorities.

23. Trustee charging A1-044

23.1 A trustee which is a trust corporation or company authorised to undertake trust business shall be entitled to reimbursement of its proper expenses (including expenses incurred in connection with professional or other charges for business done, services rendered or time spent by any firm or member of a firm associated or connected with such trustee) and to remuneration for its services in accordance with its published terms and conditions for trust business in force from time to time, and, in the absence of any such published terms and conditions, in accordance with such terms and conditions as may from time to time be agreed between such trustee and the Settlor, or (if the Settlor is unfit, unable or unwilling to act) the person by whom the power of appointing new trustees is for the time being exercisable.

23.2 A trustee, whether acting as a person engaged in a profession or business or in a personal capacity, shall be entitled to all normal professional or other fees for business done, services rendered or time spent by such trustee personally or by such trustee's firm or company in the administration of this Trust, including acts which

a trustee not engaged in any profession or business could have done personally.

- 23.3 A trustee shall be entitled to retain any commission which may be received personally or by such trustee's firm in respect of any transaction carried out in relation to this Trust for which such trustee or trustee's firm is, in the normal course of business, allowed commission, notwithstanding that the receipt of such commission was procured by an exercise by such trustee or the Trustees of powers conferred by this Trust.

**A1-045 24. Power to receive remuneration**

A trustee may act and be remunerated as a director or other employee or as agent or adviser of any business or Entity in any way connected with the Trust Fund and shall not be liable to account for any remuneration, fees or profits received by the trustee in any such capacity.

**A1-045 25. Power to exercise powers notwithstanding personal interest**

- 25.1 The Trustees may enter into any purchase or sale or other transaction for value concerning the Trust Fund:
- (a) notwithstanding that one or more of the Trustees may be interested in the transaction other than as one of the Trustees; and
  - (b) without any trustee who is so interested being liable to account for any reasonable incidental profit.
- 25.2 The power conferred by sub-clause 25.1 shall only apply provided that the transaction is at least as favourable to the Trustees as if it had been effected:
- (a) in the case of a purchase or sale of shares or other securities listed on any stock exchange, at the middle market price on the day on which such shares or other securities are purchased or sold; or
  - (b) in the case of any other transaction, at a price and on terms such as would apply in the case of a transaction effected on fully commercial terms between unconnected persons.

**A1-047 26. Protection of the trustees generally**

- 26.1 No trustee shall be liable for any loss to the Trust Fund however arising except as a result of the fraud or dishonesty of such trustee or in the case of a professional trustee entitled to charge for his services as a trustee, for the negligence of such trustee.
- 26.2 No trustee shall be bound to take any proceedings against a co-trustee or former trustee or the personal representatives of a

or resident in any part of the world and whether or not it has separate legal personality and/or corporate identity.

- 1.7 The expression **'the Trustees'** shall include the trustees for the time being of this Trust.
- 1.8 References to the children, grandchildren and issue of any person shall include his children, grandchildren and issue (as the case may be), whether legitimate, legitimated[, illegitimate] or adopted [but shall exclude any illegitimate person and his descendants].
- [1.9 References to a person's widow or widower shall include the surviving spouse (but not former spouse) of such person, whether or not such surviving spouse has remarried or entered into a civil partnership.]
- [1.10 References to a person's surviving civil partner shall include the surviving civil partner (but not the former civil partner) of such person, whether or not such surviving civil partner has entered into another civil partnership or married.]
- 1.11 Words denoting the singular shall include the plural and vice versa.
- 1.12 Words denoting any gender shall include both the other genders.
- 1.13 References to any statutory provision shall include any statutory modification to or re-enactment of such provision.
- 1.14 The table of contents and clause headings are included for reference only and shall not affect the interpretation of this Deed.

[Notes: see B1-061.]

## 2. Power to receive additional property

B1-023

The Trustees may, at any time during the Trust Period, accept additional money, investments or other property, of whatever nature and wherever situate, paid or transferred to them by the Settlor or any other person. Such additional money, investments or other property shall, subject to any contrary direction, be held upon the trusts and with and subject to the powers and provisions of this Deed.

## 3. Power to add Discretionary Beneficiaries

B1-024

- 3.1 The Settlor, or such person as the Settlor shall have nominated in writing [or if none the Trustees], may, at any time during the Trust Period, add to the Discretionary Beneficiaries such persons [or Charities] or classes of persons [or Charities] as the person making the addition shall, subject to the application, if any, of the rule against perpetuities, determine.
- 3.2 Any such addition shall be made by deed:

the property specified in the Schedule. Further money, investments or other property may be paid or transferred to the Trustees by way of addition.

- (B) It is intended that this Settlement shall be irrevocable.

## PART 1—OPERATIVE PROVISIONS

### B1-022 1. Definitions and construction

In this Deed, where the context admits, the following definitions and rules of construction shall apply.

- 1.1 The **'Trust Fund'** shall mean:
- the property specified in the Schedule;
  - all money, investments or other property paid or transferred by any person to, or so as to be under the control of, and, in either case, accepted by the Trustees as additions;
  - all accumulations (if any) of income added to the Trust Fund; and
  - the money, investments and property from time to time representing the above.
- 1.2 The **'Trust Period'** shall mean the period ending on the earlier of:
- the last day of the period of 125 years from the date of this Deed; and
  - such date as shall for the time being be specified pursuant to the power conferred by clause [9].
- 1.3 The **'Discretionary Beneficiaries'** shall mean:
- the Settlor's children and remoter issue;
  - [the [spouses,] [widows and widowers,] [civil partners] [and surviving civil partners] of the Settlor's children and remoter issue]; and]
  - [ ]]; and]
  - [Charities]; and]
  - such other persons [or Charities] as are added under clause [3].
- 1.4 **'Beneficiary'** shall mean any Discretionary Beneficiary or any person or Charity actually or prospectively entitled to any share or interest in the capital or income of the Trust Fund.
- 1.5 **'Charity'** shall mean any Entity established only for purposes regarded as charitable under the law of England.
- 1.6 **'Entity'** shall mean any company, partnership, trust, foundation, establishment, association or other body established

- (c) be subject to the written consent of the Settlor during his lifetime].

[Notes: see B1-064.]

#### 5. Income trusts in default of appointment

B1-026

The provisions of this clause shall apply during the Trust Period subject to any exercise of the power conferred by sub-clause [4.1].

- 5.1 The Trustees shall pay or apply the income of the Trust Fund to or for the benefit of such of the Discretionary Beneficiaries as shall for the time being be in existence, in such shares and in such manner generally as the Trustees shall in their discretion from time to time think fit.
- 5.2 Notwithstanding the provisions of sub-clause 5.1, the Trustees may in their discretion accumulate the income by investing it in any investments authorised by this Deed or by law and, subject to sub-clause 5.3, shall hold such accumulations as an accretion to capital.
- 5.3 The Trustees may apply the whole or any part of the income accumulated under sub-clause 5.2 as if it were income arising in the then current year.

#### 6. Power to apply capital for Discretionary Beneficiaries

B1-027

The provisions of this clause shall apply during the Trust Period notwithstanding the provisions of clause [5] but subject to any exercise of the power conferred by sub-clause [4.1] [and, during the lifetime of the Settlor, to the Settlor's written consent].

- 6.1 The Trustees may pay or apply the whole or any part of the capital of the Trust Fund to or for the benefit of such of the Discretionary Beneficiaries, in such shares and in such manner generally as the Trustees shall in their discretion think fit.
- 6.2 The Trustees may apply the whole or any part of the capital of the Trust Fund by paying or transferring the same for the benefit of any of the Discretionary Beneficiaries to the trustees of any other trust or settlement, whether or not the proper law of such other trust or settlement shall be the proper law of this Trust.
- 6.3 The exercise of the power conferred by sub-clause 6.2 shall be subject to the following provisions:
- (a) upon the payment or transfer of any money or other property to the trustees of any such trust or settlement, the Trustees shall not be bound to see to the further application of such money or property;
  - (b) money or other property may be paid or transferred to the trustees of a discretionary trust, notwithstanding that the

- (a) naming or describing the persons [or Charities] or classes of persons [or Charities] to be added; and
- (b) specifying the date or event, not being earlier than the date of execution of the deed but before the end of the Trust Period, on the happening of which the addition shall take effect.

- [3.3 This power shall not be exercised so as to add to the Discretionary Beneficiaries either the Settlor or any person who shall previously have added property to the Trust Fund or the spouse or civil partner [or a minor child or stepchild who is unmarried and not in a civil partnership] for the time being of the Settlor or any such person.]

[Notes: see B1-063.]

#### B1-025 4. Discretionary trust of capital and income

- 4.1 The Trustees shall hold the capital and income of the Trust Fund upon trust for or for the benefit of such of the Discretionary Beneficiaries, at such ages or times, in such shares, upon such trusts (which may include discretionary or protective powers or trusts) and in such manner generally as the Trustees shall in their discretion appoint. Any such appointment may include such powers and provisions for the maintenance, education or other benefit of the Discretionary Beneficiaries or for the accumulation of income and such administrative powers and provisions as the Trustees think fit.
- 4.2 No exercise of the power conferred by sub-clause 4.1 shall invalidate any prior payment or application of all or any part of the capital or income of the Trust Fund under the trusts of this Deed or made under any other power conferred by this Deed or by law.
- 4.3 Any trusts and powers created by an appointment under sub-clause 4.1 may be delegated to any extent to any person, whether or not including the Trustees or any of them.
- [4.4 Notwithstanding clause [ ], the Trustees may not, during the Settlor's lifetime, release or restrict the power conferred by sub-clause 4.1 without his written consent.]
- 4.5 The exercise of the power of appointment conferred by sub-clause 4.1 shall:
- (a) be subject to the application, if any, of the rule against perpetuities; [and]
  - (b) be by deed, revocable during the Trust Period or irrevocable, executed during the Trust Period; and

**9. Power to alter Trust Period**

B1-029a

The Trustees may, at any time during the Trust Period, specify by deed, in relation to the whole or any part of the Trust Fund, a date for the purposes of sub-clause [1.2(b)]. The date specified shall not be earlier than the date of execution of such deed or later than the date on which the applicable perpetuity period expires.

[Notes: see B1-069.]

**10. Administrative powers**

B1-030

The Trustees shall, in addition and without prejudice to all statutory powers, have the powers and immunities set out in Part 2 of this Deed. No power conferred on the Trustees shall be exercised so as to conflict with the beneficial provisions of this Deed and the powers conferred on the Trustees shall be exercisable only during the Trust Period and subject to the application (if any) of the rule against perpetuities.

**11. Extended power of maintenance**

B1-031

The statutory powers to pay or apply income for maintenance, education or benefit shall apply but so that those powers shall be exercisable at the absolute discretion of the Trustees and free from the obligation to apply part only of the income for those purposes where other income is available.

**12. Extended power of advancement**

B1-032

The statutory provisions for advancement shall apply but so that the power of advancement shall extend to the whole, rather than one half, of the share or interest of the person for whose benefit the advancement is made.

**Appointment of new trustees**

B1-033

During the lifetime of the Settlor the power of appointing new trustees shall be vested in the Settlor.

A person may be appointed to be a trustee notwithstanding that such person is not resident in the United Kingdom. Remaining out of the United Kingdom for more than 12 months shall not be a ground for the removal of a trustee.

[Notes: see B1-072.]

**Proper law, forum and place of administration**

B1-034

The proper law of this Trust shall be that of England. All rights under this Deed shall be construed, and its construction and effect shall be determined, according to the law of England.

Discretionary Beneficiary for whose benefit the power is exercised is only a discretionary object of such trust;

- (c) money or other property may be paid or transferred to the trustees of any such trust or settlement notwithstanding that persons other than the Discretionary Beneficiary for whose benefit the power is exercised are or may become entitled to, or to the income of, the money or property so paid or transferred;
- (d) any exercise of the power shall be subject to the application, if any, of the rule against perpetuities; and
- (e) no money or other property shall be paid or transferred to the trustees of any trust or settlement in which the Settlor, or any person who shall have previously added property to the Trust Fund, or the spouse or civil partner [or a minor child or stepchild who is unmarried and not in a civil partnership] for the time being of the Settlor or any such person, is or may be interested.

[Notes: see B1-066.]

**B1-028 7. Trusts in default of appointment**

Subject to the provisions of clauses [4] to [6], the Trustees shall hold the capital and income of the Trust Fund upon trust absolutely for such of [the children and remoter issue of [ ] as shall be living at the end of the Trust Period and, if more than one, in equal shares per stirpes, so that no person shall take if any of his ascendants is alive and so capable of taking] [[ ] as shall then be living and if more than one in equal shares].

[Notes: see B1-067.]

**B1-029 8. Ultimate default trusts**

Subject to the provisions of clause [7], and if and so far as not wholly disposed of for any reason whatever by the above provisions, the capital and income of the Trust Fund shall be held upon trust for [ ] absolutely.

[Notes: see B1-068.]

stepchild who is unmarried and not in a civil partnership] for the time being of the Settlor or any such person.

- 15.2 The provisions of sub-clause 15.1 shall not preclude the Settlor or any such person from exercising any statutory right to claim reimbursement from the Trustees for any income tax or capital gains tax paid by him in respect of income arising to the Trustees or capital gains realised or deemed or treated as realised by them.
15.3 Subject to sub-clause 15.2, the prohibition in this clause shall apply notwithstanding anything else contained or implied in this Deed.

[Notes: see B1-074.]

16. Exclusion of Trusts of Land and Appointment of Trustees Act 1996, s 11(1)

Section 11(1) (trustees' duty to consult beneficiaries) of the Trusts of Land and Appointment of Trustees Act 1996 shall not apply to the trusts contained in this Deed.

PART 2—ADMINISTRATIVE PROVISIONS

[See Section H]

SCHEDULE

[The initial Trust Fund]

Signed as a deed and delivered )
by [ ] )
in the presence of: )

Witness

Signature: .....
Name: .....
Address: .....
Occupation: .....

[B1-061 follows]

- 14.2 The courts of England shall be the forum for the administration of these trusts.
14.3 The provisions of this sub-clause shall apply notwithstanding the provisions of sub-clauses 14.1 and 14.2.
(a) The Trustees shall have power, subject to the application, if any, of the rule against perpetuities, to carry on the general administration of these trusts in any jurisdiction in the world. This power shall be exercisable whether or not the law of such jurisdiction is for the time being the proper law of this Trust or the courts of such jurisdiction are for the time being the forum for the administration of these trusts, and whether or not the Trustees or any of them are for the time being resident or domiciled in, or otherwise connected with, such jurisdiction.
(b) The Trustees may at any time declare in writing that, from the date of such declaration, the proper law of this Trust shall be that of any specified jurisdiction. No exercise of this power shall be effective unless the law of the jurisdiction specified is one under which this Trust remains irrevocable and all, or substantially all, of the trusts, powers and provisions contained in this Deed remain enforceable and capable of being exercised and so taking effect.
(c) Following any exercise of the power contained in sub-clause 14.3(b), the Trustees shall, by deed, make such consequential alterations or additions to this Deed as they consider necessary or desirable to ensure that, so far as may be possible, the trusts, powers and provisions of this Deed shall be as valid and effective as they were immediately prior to such change.
(d) The Trustees may, at any time, declare in writing that, from the date of such declaration, the forum for the administration of these trusts shall be the courts of any specified jurisdiction.]

[Notes: see B1-073.]

B1-035 15. Exclusion of Settlor and spouse or civil partner [and minor children]

- 15.1 No discretion or power conferred on the Trustees or any other person by this Deed or by law shall be exercised, and no provision of this Deed shall operate directly or indirectly, so as to cause or permit any part of the capital or income of the Trust Fund to become in any way payable to or applicable for the benefit of the Settlor or any person who shall previously have added property to the Trust Fund or the spouse or civil partner [or a minor child or

## D2 Pension death benefit trust

Since April 6, 2006 (“A Day”), there has been a single regime for registered, formerly known as approved, UK pension schemes. A full review of this regime is outside the scope of this work and specific advice from a qualified pension adviser should always be taken. In simple terms, the rules allow scheme members to draw income (whether through an annuity or through income drawdown or a combination of the two) from their pension funds from age 55 (from April 6, 2010). From April 6, 2011, income drawdown replaced both the unsecured pension (known as “USP”) which a member could take before the age of 75 and the alternatively secured pension (known as “ASP”) which a member had to take at age 75 if his benefits had not been crystallised beforehand and the member did not purchase an annuity at that time. The maximum income that can be drawn down each year is capped at 100% of an equivalent annuity (120% if the provisions of Finance Bill 2013 are enacted) unless the member arranges to receive a guaranteed annual income of at least £20,000, in which case there is no limit on the amount that can be drawn down each year. Since April 6, 2011, there is no longer a requirement to use the fund to a secure pension income at age 75 and it can remain uncrystallised until death.

Most pension schemes provide for a lump sum (the “death benefit”) to be paid in the event of the scheme member’s death at a time when there is undrawn value within the scheme. The scheme rules will typically provide for the death benefit to be held on discretionary trusts for the scheme member’s family and dependants so that it does not form part of the scheme member’s estate for inheritance tax purposes. However, this is not always the case.

### Death benefits under occupational schemes

Schemes established by employers (whether these are final salary schemes or money purchase schemes) are generally established by way of trusts. These almost invariably include a discretion to apply the death benefit for the benefit of the family and dependants of the deceased member. In these cases, it will simply be a question of the member notifying the trustees (or his employers on their behalf) of his wishes in relation to the death benefit. This could include the trustees of a trust set up to receive such benefits if the employee wants to maximise flexibility. The form of nomination included as Precedent E13c, E13-151 may be used for this purpose.

### Assignability of death benefit

Since April 6, 1980, it has been possible to issue all types of individual pension arrangements on terms that allow the assignment of the death benefit to third parties. The other rights available to the scheme member (e.g. the right to withdraw a lump sum and to take an annuity or income drawdown) (the “pension rights”) cannot be beneficially assigned to a third party.

However, because the pension rights and the death benefit comprise a single chose in action, it is technically not possible to transfer title to the death benefit separately from title to the pension rights. One solution is for the policyholder to declare himself a trustee of both elements, on terms that the pension rights will be paid to the policyholder or other person entitled to them under the policy (e.g. annuity for surviving spouse or civil partner), but with more complex trusts for the benefit of third parties applicable to the death benefit.

Although it is understood that HMRC are prepared to accept that such trusts may be established by an assignment of the policy to the trustees of a settlement established on these terms, it may be safer, in view of the prohibition on assignment of the pension rights, to establish the trust by way of declaration, and this is the route adopted in the precedents. It is desirable for a further trustee to be appointed. This may be done in the declaration itself (see optional wording in the precedents) or alternatively using a separate deed of appointment (see Precedent E7a1, E7-011).

In order to be certain that any planning will be completely effective from a technical point of view, it is essential to check that the terms of the policy in question permit beneficial assignment of the death benefit. Some pre-1980 policies may require endorsement to enable this to be done. Old policies may also contain a power for the policyholder to opt for an annuity payable to his surviving spouse in place of the death benefit. Where this power has been exercised revocably, and the policyholder now wishes to revert to the death benefit (and to subject it to trusts) the exercise of the power will have to be revoked.

As indicated above, many newer personal pension policies and some other individual pension schemes (including most SIPP(s)) provide that the death benefit is automatically held by the scheme administrator on discretionary trusts for the scheme member’s family and dependants. It should be noted that many policies provide for different treatment to apply in respect of any death benefit under a “protected rights fund” (which replaced State Second Pension benefits where a policy was “contracted out” in relation to National Insurance contributions). However, since April 6, 2012 contracting out is no longer possible and existing funds are treated in the same way as other funds in the scheme.

In some cases, the scheme member cannot impose his own trusts. In this instance, the scheme administrator (usually the insurance company in the case of a personal pension scheme) will normally invite the scheme

### Death benefits under schemes established by individuals

Pension arrangements established by individuals since 1988 are generally in the form of personal pension policies. Prior to 1988, self-employed individuals were able to fund retirement annuity contracts governed by TA 1970 s.226 and some older individuals still have policies of this type (though many have now taken transfer values from such policies and used them to fund self-invested personal pension schemes (known as SIPP(s)). The death benefits from a s.226 contract can vary considerably – from a return of premiums paid to the value of the fund compounded over the years. There are often guaranteed annuity rates and so any transfer should be considered carefully. It is also possible for an individual to transfer his pension fund from an occupational pension scheme to a scheme administered by an insurance company (sometimes known as a Section 32 Buy-Out Policy, such schemes having been introduced by FA 1981 s.32).

Most post-1988 personal pension arrangements provide for the death benefit to be held on discretionary trusts by the insurance company or scheme administrator, but the death benefits under many older arrangements form part of the policyholder’s estate. As will be seen below, many arrangements which include discretionary trusts within the scheme rules allow these trusts to be overridden if the member establishes his own tailor-made trust to hold the death benefit.

The precedents in this sub-section are suitable for use where individuals with their own pension arrangements wish to establish trusts over the death benefits in the absence of or in place of discretions included in the scheme rules.

From April 6, 2011, registered personal pensions schemes established by individuals may pay the following lump sums on death:

- uncrystallised funds lump sum death benefit (payable from the funds in the arrangement at the individual’s death where the individual has not taken benefits in respect of the part of the arrangement concerned, eg on death before retirement or on death after retirement but without having taken benefits) (FA 2004 Sch.29 para.15);
- drawdown pension fund lump sum death benefit (payable, where the individual has started income drawdown, from the remainder of the fund not yet drawn down at the individual’s death) (FA 2004 Sch.29 para.17);
- annuity protection lump sum death benefit (if individual has used the funds to buy an annuity that guarantees that a set amount of income will be payable, the balance of that amount outstanding at the individual’s death may be paid as a lump sum) (FA 2004 Sch.29 para.16).

## Perpetuity issues

The Law Commission Report, *The Rules Against Perpetuities and Excessive Accumulations* (Law Com. Report No.251), published in 1998<sup>a</sup> (see <http://www.lawcom.gov.uk/docs/lc251.pdf>) highlighted the fact that there were a number of areas of uncertainty surrounding the operation of the perpetuity and accumulation rules in relation to pension schemes and nominations and powers of advancement under these. Unfortunately, some of these uncertainties still remain even though PAA 2009 has come fully into force.

### (a) Where the member joins the pension scheme after April 5, 2010

The perpetuity rules do not apply to the pension scheme itself. However, in relation to trusts created or funded pursuant to a nomination or the exercise of a power of advancement by the pension scheme trustees (both of which are treated in the same way as special powers of appointment for this purpose), the position is not totally clear. The wording of PAA 2009 s.15(1)(b) gives rise to uncertainty as it provides that the new 125-year perpetuity period (and the abolition of the restriction on accumulations) apply only to trusts made in exercise of a special power of appointment if the instrument creating that power takes effect after April 5, 2010.

If the pension scheme creating the power was set up before April 6, 2010 but the member joined after April 6, 2010, the view can be taken, relying on PAA 2009 s.19, that the power is treated as created by an instrument created when the member joined the pension scheme, so that the perpetuity period is the 125-year period beginning when the member joined the scheme and there is no restriction on the period during which the income can be accumulated. However, the position is not wholly without doubt.

### (b) Where the member joined the scheme before April 6, 2010

If the member joined before April 6, 2010, PAA 2009 s.15(1)(b) means that trusts created or funded pursuant to a nomination or the exercise of a power of advancement by the pension scheme trustees will be subject to the old rules.

### (c) Where the member imposes his own trusts

The above analysis does not apply where the trusts concerned are established by way of an assignment. Instead, if the pension scheme benefits have been assigned to a trust created by the member after April 5, 2010, the new 125-year perpetuity period will apply to the trust and there will be no restriction on the period during which the income can be accumulated.

member to complete a letter of wishes indicating how he would like the death benefit to be applied. Where the scheme member wants to maximise flexibility, he may wish to request payment to an existing trust if the scheme rules permit this, but see the potential inheritance tax consequences as discussed at D2-012 below. The form of nomination included as Precedent E13c, E13-151 may be modified for this purpose.

Another possibility is to request payment to the executors of the member's estate. Provided that the pension scheme administrators have discretion over payment of the death benefit, HMRC accept that it does not form part of the member's estate, even if paid to the executors. Thus such a payment would not incur inheritance tax on the transfer to the executors (if made within two years of death) or on transfer from the executors to a beneficiary of the estate who is absolutely entitled. HMRC have confirmed to the Association of British Insurers ("ABI") that this treatment applies whether the payment is made from a trust-based scheme or a contract-based scheme, provided in each case that the payment is made in exercise of a discretion by the trustees or scheme administrators, as the case may be (see ABI, 'ABI Technical Q&A on Pensions and IHT Points: Consolidated Version', at <http://lcr3.colq0xPAg>). Payment to the trustees of a nil rate band trust created by the will of the deceased member could therefore be considered although see D2-012 below for the inheritance tax implications of so doing.

In other cases, it is possible to subject the death benefit to tailor-made trusts even where, if this were not done, it would otherwise be held on discretionary trusts under the scheme. This may be attractive where the policyholder wishes the discretions to be exercised by trustees who have knowledge of his personal circumstances—perhaps the persons who are the executors of his will—rather than the scheme administrators.

Where an individual has built up a large number of pension policies during the course of his career, the likelihood is that the treatment of the death benefits will vary from policy to policy. As indicated above, the counsel of perfection requires the adviser to establish whether or not the death benefit under each of the policies is already subject to discretionary trusts in the hands of the administrators. If so, it is necessary to establish whether or not tailor-made trusts can override these and, if not, whether or not the existing trusts permit payment of the benefit to a tailor-made trust, and who may benefit under such a trust. This is a time-consuming exercise and individuals may be reluctant to incur the associated costs, especially if they regard the likelihood of dying before they draw the pension benefits as relatively remote. The making of detailed inquiries in relation to each policy may also be difficult to justify where the value of the death benefits attributable to the individual policies is small, albeit that they may represent a significant value when taken together. Precedent D2b contains useful wording where it is wished not to carry out a full review.

Where the death benefits were held in trust and therefore outside the scheme member's estate, it was formerly HMRC's practice to charge inheritance tax if a scheme member who was in poor health failed to take retirement benefits, thus causing a decrease in the value of his estate and an increase in the value of settled property for the purposes of IHTA 1984 s.3(3) (see *Fryer & Ors v Revenue & Customs* [2010] UKFTT 87 (TC) (17 February 2010) for a case where this principle was applied). However, under changes to the inheritance tax legislation contained in the Finance Act 2011, with effect from April 6, 2011, the potential charge under IHTA 1984 s.3(3) no longer applies where the benefits derive from a registered pension scheme, a qualifying non-UK pension scheme ("QNUP") or a scheme referred to in TA 1988 s.615 (schemes paying benefits to non-UK residents in respect of employments outside the UK).

Since under s.3(3) the omission to exercise the right is taken to have happened at the latest time that the right could have been exercised, this change to the legislation should have the effect of removing a possible charge to tax under s.3(3) in relation to such schemes in cases where the member is in poor health before April 6, 2011, but does not die until after that date.

Even if IHTA 1984 s.3(3) does apply (because the scheme is an unregistered scheme) there will be no inheritance tax charge where the member has omitted to exercise a right if the death benefits are paid to the deceased scheme member's surviving spouse or civil partner or someone who is financially dependent on the deceased scheme member.

It should be noted that, because IHTA 1984 s.3(3) applied only where there was an omission to exercise a right, an inheritance tax charge may still apply, whether or not the pension scheme is a registered one, to an assignment of death benefits to a trust when the scheme member is in poor health or if additional contributions are paid at a time when the scheme member is in poor health (see above).

### (c) Income tax and inheritance tax treatment of death benefits

From April 6, 2011, personal pension plan death benefits are subject to income tax as follows: D2-009a

- uncrystallised funds lump sum death benefit—There is an income tax charge, known as the special lump sum death benefit charge (at the rate of 55%) on an uncrystallised funds lump sum death benefit if the member dies over the age of 75 (FA 2004 s.206(1A)(b)). If the member dies under the age of 75 without crystallising the fund, there will be no income tax charge unless the Lifetime Allowance is exceeded (FA 2004 ss.214–226) – see below regarding the Lifetime Allowance.
- drawdown pension fund lump sum death benefit—There is an income tax charge, known as the special lump sum death benefit charge (at the rate of 55%) on an income drawdown pension lump sum death benefit whatever the age of the member at the date of death (FA 2004 s.206(1)(c)).

If the pension scheme benefits have been assigned to a trust created by the member before April 6, 2010, the old rules will apply to that trust.

## Tax implications of imposing trusts

### (a) Income tax risks

**D2-008** Under FA 2004 s.172 an assignment of a right under a pension scheme (unless part of a pension sharing order or provision) is treated as an unauthorised payment to the scheme member (or his personal representatives) with adverse tax consequences. HMRC confirmed in Pension Taxation Simplification Newsletter 17, dated July 31, 2006, that where death benefits go from being paid at the discretion of the scheme administrator to being paid at the discretion of the trustees, there will be no charge under s.172 because the discretionary beneficiaries do not have a "prospective entitlement" to the death benefits. HMRC confirmed that s.172 is aimed only at cases where rights or benefits are assigned away from the original scheme member and his dependants to a third party, e.g. on a sale of pension rights or death benefits.

### (b) Inheritance tax consequences during lifetime

**D2-009** An irrevocable assignment of death benefits into a discretionary trust is prima facie a disposition resulting in a transfer of value under IHTA 1984 s.3(1) and a lifetime chargeable transfer. The same analysis prima facie also applies where the member makes contributions to a scheme where the death benefits are held on trust. However, it has for many years been HMRC's view (originally confirmed in statements by Inland Revenue Capital Taxes Office) that, where the scheme member is in "normal health for a person of his age and sex at the time the transfer is made", the bulk of the value of the policy or the rights purchased by payment of premiums is attributable to the ability of the scheme member to take pension benefits during his lifetime rather than to the death benefit. Any such transfer is therefore accepted as being of purely nominal value. Inland Revenue Capital Taxes Office indicated in a letter to the ABI, dated June 5, 1991, that they would not inquire about the state of health of the scheme member at the time of the transfer provided he or she survived the assignment into trust for a period of two years. This two-year period is not a statutory period and inquiries about the health of the policyholder may be raised if he dies shortly after the expiry of the period. Consequently, it is important to establish the health of the scheme member at the time of the assignment. If a scheme member is held not to have been in normal health, the transfer is valued under normal principles, but HMRC does not seek to charge tax if the death benefits pass to the scheme member's spouse (or civil partner) and/or dependants.

**(e) Tax treatment of payments out by trustees**

Where the inclusion of the scheme member's personal representatives in the class of beneficiaries is not precluded by the rules applicable to the policy and they are so included, payments to the scheme member's personal representatives in exercise of the trustees' discretion (or if they take as default beneficiaries on the trustees' failure to exercise their discretion within the two-year period) will not form part of the scheme member's estate for inheritance tax purposes.

Any form of trust to which death benefits are assigned will, following FA 2006, be within the relevant property regime. The inheritance tax treatment of distributions from the new trust and the application of the 10-year charge will need to be considered. IHTA 1984 s.58(2A)(a), which put previous HMRC practice on a statutory footing, confirms that, where the death benefit is settled on discretionary trusts and is paid out within two years of the policyholder's death (strictly, two years from the date when the scheme administrator first knew, or ought reasonably to have known, of the death), no liability to inheritance tax will arise (on the basis that IHTA 1984 ss.58(1)(d) and 151 will continue to apply during this period so that the property will not be "relevant property"). However, where the pension trustees have discretion as to the manner in which they distribute the death benefits, HMRC take the view (see IHTM 17124) that, although the two-year period will apply to the exercise of their discretion, if they exercise that discretion by paying the death benefits to a separate trust, that trust will be subject to the normal inheritance tax charges which apply to relevant property. On this basis, any subsequent distributions from the recipient trust will be subject to an exit charge even if made within the balance of the two-year period. It is assumed that this regime will also apply where the scheme member imposes a discretionary trust (say in the form of Precedent D2a) and the trustees of that trust subsequently transfer the proceeds within the two-year period to, e.g. another lifetime trust established by the scheme member or to the trustees of the scheme member's will. HMRC accept that where the pension trustees or the trustees of a trust imposed by the scheme member have no discretion (such as where they are bound to pay the death benefits to the trust on the scheme member's death) the recipient trustees have the benefit of the two-year period within which to make outright distributions without any exit charge.

The scheme member is treated as the settlor of the new trust, which is important for the calculation of charges within the relevant property regime. If there is no discretionary trust under the scheme rules and the death benefit is settled by the scheme member during his lifetime, the settlement is treated as having been established on the date of its creation and the 10-year anniversary charge is calculated by reference to this date. If, however, the death benefit was held on discretionary trusts within the pension scheme and, on the death of the scheme member, it is paid to a settlement established by him, the date of the settlement for the

- annuity protection lump sum death benefit—There is an income tax charge, known as the special lump sum death benefit charge (at the rate of 55%) on an annuity protection lump sum death benefit whatever the age of the member at the date of death (FA 2004 s.206(1)(b)).

For more information, see the HMRC Registered Pension Schemes Manual RPSM 10106010–10106060.

Prior to April 6, 2011, an inheritance tax charge could arise under IHTA 1984 s.151A if the member died with an alternatively secured pension fund (on the value of the fund not used to provide a dependants' pension). From April 6, 2011 this charge no longer applies. In relation to registered schemes, QNUPs and s.615 schemes IHTA 1984 s.151(2) provides that where a member dies whilst entitled to a pension or annuity no account is taken of this interest in valuing his estate for inheritance tax purposes.

Inheritance tax will, however, continue to be chargeable, in addition to any income tax charge, in respect of pension death benefits paid as of right to the member's estate, and to lump sums paid on the member's death from unregistered schemes.

[D2-011 follows]

**(d) Reservation of benefit and pre-owned assets**

D2-011 HMRC have, in the past, taken the view that arrangements under which the scheme member, his estate or his personal representatives can benefit will result in the arrangements being treated as falling within the estate of the scheme member at his death. In the light of this attitude, some scheme rules provide that the death benefit may not be held on trusts under which the scheme member's estate or personal representatives can benefit. Since the same results can be achieved in practice without including them in the class of beneficiaries, it may be prudent to exclude them, as the precedents do. HMRC now accept (in the case of registered pension schemes) that no reservation of benefit or pre-owned assets concerns arise even though the scheme member retains the right to a lump sum and income drawdown or if the member or his estate is a potential beneficiary of the death benefit trust. However, they continue to take the view that a gift with reservation may arise in the use of an assignment into trust of the death benefit under an unregistered scheme if the member or his estate may benefit from the trust holding the death benefit (see IHTM17073). The precedents exclude the member and his estate from benefit as a matter of caution, given that the basis of HMRC's current view, and why the position should be different for registered and unregistered schemes, is not known, and it is possible therefore that their view on this issue may change again in future.

## Form of assignment

Precedent D2a is suitable where assignment of the death benefit is possible. It creates short-term discretionary trusts over the death benefit for a period of two years after the policyholder's death. Subject to any exercise of the overriding power of appointment during the period ending on the second anniversary of the policyholder's death (the specified period), the trustees have full discretion over income during the specified period.

It is envisaged that in many cases the trustees will within the two-year period appoint the death benefit outright to one or more individual beneficiaries, to the trustees of another inter vivos settlement which is included in the class of beneficiaries (or which is established following the policyholder's death for the benefit of persons included in the class of beneficiaries) or to the trustees of the policyholder's will. Long-term trusts can be created under the declaration by an appropriate exercise of the trustees' power of appointment, but, if this is to be done, a full set of administrative powers should be incorporated in the appointment as the precedent gives the trustees only essential basic powers. See above for the inheritance tax consequences of transfers to a further trust.

The class of beneficiaries under the trust is wide. It includes family members, dependants and anyone entitled to assets in the policyholder's estate on death, and the policyholder can nominate additional beneficiaries. As mentioned above, an existing inter vivos settlement can be included as a discretionary object. This gives the trustees the option of combining the death benefits of a number of policies in a single trust. It may be preferable for a separate declaration to be made over each policy at the outset (rather than adding additional policies to trusts established by a declaration made in conjunction with a policy taken out previously). This can have inheritance tax benefits (each trust having a separate nil rate band) and may offer additional flexibility and ease of administration and reporting. Precedent D2a adopts the one declaration per policy approach. If another inter vivos trust is to be included as a discretionary object, care must be taken to make the perpetuity and accumulation periods compatible as between the declaration and the settlement which is the object and this is still necessary under the PAA 2009.

Following the execution of the declaration (if it includes an appointment of an additional trustee or trustees) or the appointment of an additional trustee or trustees by a separate deed, notice of the assignment of the policy should be given to the policy provider (see Precedent E5c2, notice of assignment of life policy, E5-361).

Precedent D2b is designed for use where the individual policyholder prefers to establish a single trust to govern a number of individual policies. The terms of this precedent follow those of Precedent D2a save that this precedent also attempts to deal in a pragmatic way with those cases where a policyholder's instructions are that detailed inquiries as to

purposes of the 10-year anniversary is the date the scheme member first joined the original pension scheme. It is common for individuals with several pension policies (the death benefits under which are subject to individual declarations of trust) to set up pilot discretionary trusts during their lifetime to receive the death benefits under the various policies. When the death benefits are transferred to the pilot trust, there will, due to the above rules, be multiple 10-year anniversaries and this will increase administration costs. However, as HMRC's analysis in such cases is that there is a separate settlement in respect of the benefits received from each scheme, even if paid to one settlement created by the member, they also accept that separate nil rate bands may be available for each amount settled. Thus if the member joined the different schemes at intervals of more than seven years, one full nil rate band would be available in calculating the rate of charge applicable in respect of the benefits arising from each scheme (HMRC's view on this was confirmed to the ABI in 2010 (see ABI, 'ABI Technical Q&A on Pensions and IHT Points: Consolidated Version', at <http://cr3.colq0xPAg>)).

### (f) Lifetime allowance charge on death under 75 before taking pension benefits

**D2-013** From A Day there is a potential tax charge, separate from and in addition to any inheritance tax charge, if the total value of all pension benefits (including any benefits from life assurance policies which are part of a pension scheme) under an individual's pension funds exceeds the Lifetime Allowance. The Lifetime Allowance for 2013/14 is £1.5m, but from 2014/15 this will be reduced to £1.25m. A Lifetime Allowance Charge (FA 2004 s.214) can arise in a number of circumstances, including the transfer by pension scheme administrators of a lump sum death benefit due to a scheme member dying under the age of 75 (FA 2004 Sch.32 para.2) before all of his pension benefits have been taken, i.e. an uncrystallised funds lump sum death benefit (FA 2004 s.216 and Sch.32 para.16). In these circumstances, the total of the lump sums payable under all of the individual's pension funds needs to be assessed against his Lifetime Allowance. Any excess is subject to the charge at the rate of 55 per cent. However, there is no Lifetime Allowance Charge where death benefits are paid as a dependant's pension. It is the recipient of the lump sum death benefit who is responsible for paying the Lifetime Allowance Charge and lump sum death benefits are paid gross by pension scheme administrators (FA 2004 s.217). Therefore, if death benefits are held on trust it is the trustees' responsibility to pay the Lifetime Allowance Charge.

## Nomination of death in service benefit

Many companies provide their employees with death in service benefits under company pension schemes and group life insurance arrangements. **E13-151**

The trustees of the pension scheme or other arrangement will usually have an unfettered discretionary power to distribute the death in service benefits amongst a specified class often consisting of the employee's relatives and dependants, any individual of whom notice has been given to the trustees by the employee and, in some cases, trusts of which any of the above are beneficiaries. The distribution of death benefits pursuant to a discretion exercised by the trustees will not give rise to any inheritance tax charge and the death benefits will not form part of the employee's estate.

Where such discretion exists, it is worthwhile for the employee to make his wishes known to the trustees, particularly if he wishes to benefit a pre-existing trust or children. In the absence of any indication to the contrary, the trustees may be inclined to pay the benefit to the employee's personal representatives or immediate dependants, such as a surviving spouse or civil partner, which may in certain circumstances not be advantageous. Following the case of *Baird v Baird* [1990] 2 All E.R. 300 PC (Trin) it is confirmed that a nomination of death benefits under a company pension scheme is not a testamentary disposition and therefore will not have to comply with the Wills Act 1837.

The precedent contemplates a request (not a binding direction, which would be inconsistent with the necessary element of discretion) to the trustees of a pension scheme but can be adapted for use in other situations. In some cases schemes will have their own standard forms and in that situation those forms can be used.

There is also provision in the precedent for the trustees to consult with particular individuals as to the distribution of the death benefits. This will facilitate co-ordination between, say, the executors of the deceased and the trustees of the scheme so that the death benefits are applied in a manner that is compatible in fiscal and family terms with the devolution of the deceased's estate.

Where existing trusts are nominated, consideration needs to be given to the perpetuity provisions of the trust and the pension scheme. See introduction to sub-section D2 for further details.

For the inheritance tax implications of a transfer of death in service benefits from pension scheme trustees to the trustees of a new trust within two years of the employee's death see paragraph (e) of the introduction to sub-section D2.

[E13-161 follows]

## E10 Enlargement of powers

Often settlements have administrative powers which (either expressly or by application of general law) restrict trustees in their management of trust funds. Whilst the Trustee Act 2000 considerably improved the position in a number of areas, particularly investment powers, delegation and remuneration, its provisions fall short of the flexibility of a modern trust. It is still important therefore to be able to extend trustees' powers when required. This section sets out a number of precedents to vary the administrative powers of a settlement. **E10-001**

Precedent E10a provides for the enlargement of the trustees' powers by exercise of the relevant power in the long or short form administrative powers (clause 38, Precedent H1, H1-044, clause 32, Precedent H2, H2-027 and clause 32, Precedent H3, H3-032). These confer a very wide power of enlargement on the trustees which is not subject to any consent requirement: the precedent can be amended for use in conjunction with other powers which require, e.g. advice from an appropriately qualified lawyer before the power can be exercised.

If there is no specific power in the settlement then further administrative powers might be created by the trustees in exercise of the power of appointment vested in them. The case of *Re Rank's Settlement Trusts* [1979] 1 W.L.R. 1242 ChD decided that the words "otherwise at the discretion of any person ...and generally in such manner for the benefit ..." can confer upon trustees the authority to create further administrative powers which are reasonably ancillary to an appointment of beneficial interests. The ideal is to introduce such provisions in an appointment which effects a change of substantive trusts (e.g. by suitable amendments to Precedents E2b1, E2b2, E2b3, E2c3 or E2g). However, in *Re Rank's Settlement Trusts* itself, the change in the beneficial provisions was of a relatively minor nature. Precedent E10b therefore restates the beneficial provisions of the settlement, but with a small change to the class of beneficiaries. The precedent is based upon the discretionary settlement, Precedent B1a, B1-021, but the powers of appointment in all the core precedents will be suitable for the creation of administrative powers under the provisions of *Re Rank's Settlement Trusts*. However, care should be taken when exercising this power and restating the beneficial provisions in relation to any settlement with a pre-March 22, 2006 life interest or a transitional serial interest as this could cause the settlement to fall within the relevant property regime and give rise to an inheritance tax charge at 20 per cent.

If there is no power in the settlement to enlarge the administrative powers (either under the provisions of *Re Rank's Settlement Trusts*, or by

also F1-401 for an object combining education through sport with research into and relief from illness deriving from sport.

**Promotion of Christian religion and preservation of holy place—paragraph F1-400** F1-444

It is envisaged in this object that the place in question has some particular Christian association.

**Promotion of physical education coupled with research and relief of related injuries—paragraphs F1-401-F1-403** F1-445

This object combines the provision of sporting education (see F1-339) with research and treatment. It is important that the trust does not restrict itself to an elite (see F1-401 to F1-403).

**Promotion of efficient public administration and of industry and commerce—paragraph F1-404** F1-446

This object qualifies as charitable because it relates to the promotion of industry and commerce which was held to be charitable in *Crystal Palace Trustees v Minister of Town and Country Planning* [1951] Ch. 132.

**Overseas aid/refugees—paragraph F1-405** F1-447

This object is designed for an appeal trust to provide immediate overseas aid for the inhabitants of a particular region following a disaster as well as a continuing vehicle for the channelling of long-term assistance.

**Relief of unemployment—paragraph F1-406** F1-448

In March 1999 the Charity Commission announced that organisations seeking to relieve unemployment may qualify for charitable status, provided the organisations' primary purpose is the relief of unemployment for the public benefit and it can be demonstrated objectively that its activities are directed to the relief of unemployment generally or in a sufficiently significant section of the community. Any benefit to private interests must be strictly incidental to the organisation's purposes. The wording adopted here follows that suggested by the Commission.

**Promotion of urban and rural regeneration—paragraph F1-407** F1-449

In March 1999 the Charity Commission recognised the promotion of urban and rural regeneration for public benefit in areas of social and economic deprivation as a charitable purpose in its own right. An organisation for regeneration seeking charitable status will generally need to show that it has used clear and effective criteria, both in identifying an area in need of regeneration, and in assessing whether the public benefit from the organisation's proposed activities outweighs any private benefit which may be conferred on individuals or companies. The organisation will also need to demonstrate that it will be undertaking at least three or four of 10 specified activities. The precedent included here follows the Charity Commission's own suggested wording and covers all 10 such activities;

**F1-437 Education—paragraph F1-389**

Education can take many forms. The precedent shown would be appropriate for, e.g. a summer school, and of course there may be other subjects which are appropriate for the curriculum.

**F1-438 School and scholarships—paragraphs F1-390 and F1-391**

As schools are in general trading organisations it is usually more sensible to incorporate these with liability limited by guarantee (or a Charitable Incorporated Organisation—see introduction to Precedent F1) and not to establish them in the form of a trust, although a trust would be suitable as an appeal vehicle as here.

**F1-439 Preservation of buildings, etc.—paragraphs F1-392-F1-395**

The preservation of our heritage has particular contemporary appeal and provided there is the necessary element of public benefit it is regarded as charitable. This will invariably involve public access of a nature appropriate to the particular property to be preserved. The National Trust is the best known charity in this field, but many private charities have been set up.

If the settlor has the preservation of a particular property or object in mind, this should be specified. In general the property would have to be transferred to or an interest in it granted to the charity.

**F1-440 Museum—paragraph F1-396**

The establishment of a museum will have heritage connotations, but the emphasis will be slightly different in that it is not usually the museum itself which is being preserved for public benefit but the contents.

**F1-441 Church—paragraph F1-397**

A fund to contribute to church repair is charitable. This can be extended to any public part of a church or place of worship and to accommodation occupied by the incumbent priest or minister.

**F1-442 Promotion of religion—paragraph F1-398**

The promotion of religions can take many forms and is not confined to Christian religion. It must however contain an element of public benefit so that closed orders are not charitable. See also F1-400.

**F1-443 Promotion of education through sport—paragraph F1-399**

The provision of sporting facilities for educational purposes is charitable (see *IRC v McMullen* [1980] 1 All E.R. 887) and the objects shown here set out fairly wide parameters in this field. If there is to be concentration on a particular sport this should be specified, otherwise the words in square brackets should be omitted. Charity Commission guidance now recognises that, in order to be charitable, the provision of physical education need not be limited to those undergoing formal education. See also F1-409 above and F1-450a below. See

## Administrative clauses

The main general charitable precedents assume that trustees would be merely collecting income from investments and distributing it to other charities. Precedent F1c1 provides a wide range of flexible administrative provisions for use with Precedents F1a1, F1a2 and F1a3. The additional administrative powers in Precedent F1c2 should be included also where Precedent F1a3 is used. Where there are other specific objects, particularly of an active nature, it will usually be necessary to include further administrative clauses giving the trustees additional powers. A selection of such powers is given in Precedent F1c3. The administrative provisions should be inserted in Part 2 of the relevant document.

[F1-461 follows]

any which the organisation does not intend to undertake may be deleted—the core activities are those in sub-clauses (a), (b), (e) and (f).

### F1-450 *Specific sports charity not limited to the young—paragraph F1-408*

The Charity Commission issued guidance (RR11) in 2001 (updated in April 2003) on the extent to which sport is charitable. The clause given here is taken from the Charity Commission guidance. It is no longer necessary to follow the wording in Charities Act 2011 s.5 (formerly Recreational Charities Act 1958 s.1), or to limit the object to the physical education of those undergoing formal education. See also F1-431 and F1-443 above.

If sport generally is contemplated, use the word in square brackets. If a specific sport is contemplated, it should be referred to specifically.

### F1-450a *Sports charity for the young—paragraph F1-409*

The Charity Commission guidance on the extent to which sport is charitable referred to above makes it clear that it is no longer necessary to limit the object to the physical education of those undergoing formal education. See also F1-443 above.

[F1-451 follows]

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**7. Investment power**

The Trustees may apply any money to be invested in the purchase of or at interest upon the security of such shares, stocks, funds, securities, land, buildings, chattels or other investments or property of whatever nature and wherever situate, and whether involving liabilities or producing income or not, as they think fit, so that they shall have the same powers to apply money to be invested as if they were an absolute beneficial owner.

[Notes: see F1-497.]

**8. Trustees' responsibility regarding management of Entities**

The Trustees shall not be bound to interfere in the management or conduct of the business of any Entity, any interest in which, or any of the shares or securities of which, comprise the whole or any part of the Trust Fund. Where the Trustees' interest or holding of such shares is sufficient to confer control of the Entity concerned, the Trustees shall nevertheless from time to time obtain such information from the Entity as would be made available to a non-executive director of a company, to satisfy themselves (so far as may be possible from such information) that the affairs of the Entity are being properly managed and, in the absence of any notice to the contrary, the Trustees shall be at liberty to leave the conduct of its business (including the payment or non-payment of dividends) wholly to the directors or other authorised officers.

[Notes: see F1-498.]

**9. Powers in relation to land**

- 9.1 Subject to such restrictions imposed on them, and with such consents as may be required by law, the Trustees shall have all the powers of an absolute beneficial owner in relation to the disposition, development and improvement of any land comprised in the Trust Fund.
- 9.2 The Trustees shall not be bound to maintain any building or other structure on land comprised in the Trust Fund or to preserve or repair any chattels comprised in the Trust Fund.
- 9.3 The Trustees may transfer land comprised in the Trust Fund to such other charitable body or bodies, having objects the same as or similar to the Objects, on such terms as the Trustees shall in their discretion think fit.

[Notes: see F1-499.]

**10. Borrowing**

Subject to such restrictions imposed on them and such consents as may be required by law, the Trustees may borrow on the security of all or any part of the Trust Fund or otherwise for any purpose.

**F1-462 2. Dissemination of information**

The Trustees may

- 2.1 promote research and publish the useful results of such research;
- 2.2 commission, promote, publish, distribute and sell facsimiles, photographs, models and publications of every description;
- 2.3 provide, promote, sponsor and organise lectures, discussions, exhibitions and other like events.

**F1-463 3. Use of Charity's facilities**

- 3.1 Subject to sub-clause 3.2, the Trustees may make available all or any of the facilities of any property vested in the Trustees, or in which they have an interest, for such functions or to such bodies or individuals as the Trustees shall in their discretion think fit.
- 3.2 In exercising their powers pursuant to sub-clause 3.1, the Trustees shall ensure
  - (a) a proper fee at full market value shall be charged where the purposes for which the facilities are being made available do not fall within the Objects;
  - (b) the provision of such facilities shall not interfere with the Objects; and
  - (c) such facilities shall not be required at the time for the purposes of the Charity.

[Notes: see F1-493.]

**F1-464 4. Collaboration**

The Trustees may act in collaboration with any person, body, institution or authority.

**F1-465 5. Assistance to and support of other charities**

The Trustees may make contributions, as they may think fit, towards, or otherwise assist (and whether out of capital or income), any charitable trust, institution or body having objects similar to the Objects.

**F1-466 6. Appeals, etc**

- 6.1 Subject to sub-clause 6.2, the Trustees may appeal for and accept donations, subscriptions, legacies or other payments to be held on trust for the purposes of the Charity.
- 6.2 In raising funds the Trustees shall not undertake any substantial permanent trading activities other than directly in pursuit of the Objects.

[Notes: see F1-496.]

(f) Trustees to undertake such reviews within the period of 12 months shall not invalidate the delegation; subject to the provisions of clause [20], the Trustees shall be liable for any failure to take reasonable care in choosing the Managers, fixing or enforcing the terms upon which the Managers are employed, requiring the remedying of any breaches of those terms and otherwise supervising the Managers, but otherwise shall not be liable for the acts and defaults of the Managers.

[Notes: see F1-502.]

13. Custodians and nominees

- 13.1 The Trustees may hold all or any part of the Trust Fund in the name of any corporation or any other person (being, if individuals, at least two in number (whether or not including one or more of the Trustees)) as nominee for the trustees on such terms as the Trustees think fit.
- 13.2 The Trustees shall have power to appoint as custodian trustee any corporation empowered so to act, upon such terms as they shall think fit, and may transfer the whole or any part of the Trust Fund to or so as to be under the control of such custodian trustee, provided that the remuneration payable to such corporation shall in no case exceed what is provided for in sub-clause 13.4.
- 13.3 The Trustees shall have power by deed to discharge any custodian trustee appointed in accordance with sub-clause 13.2 and either trustee to appoint in accordance with the provisions of sub-clause 13.2 as a replacement custodian trustee any other corporation empowered so to act (whereupon any part of the Trust Fund held by such discharged custodian trustee shall be transferred to such replacement custodian trustee without replacement) (whereupon any part of the Trust Fund held by such discharged custodian trustee shall be transferred to or under the control of the Trustees).
- 13.4 Any trustee, being a corporation appointed to act as a custodian trustee, may act on its published terms and conditions in force from time to time, provided that this shall not authorise payment for any act to time, or services rendered by any director or other officer of such corporation in a personal capacity, and provided further that such a corporation acting as a custodian trustee shall not be permitted to charge in excess of the remuneration chargeable for the time being by the Public Trustee for acting as custodian trustee.

[Notes: see F1-500.]

F1-471 11. Reserves

The Trustees shall have power to establish funds for particular purposes or to maintain reserves.

[Notes: see F1-501.]

F1-472 12. Delegation

- 12.1 The Trustees may delegate such of their powers of management and administration as the Trustees may from time to time decide to committees, consisting of not less than one of their number and such other persons as the Trustees may appoint, and may make regulations for the conduct of such committees and from time to time amend such regulations. All acts and proceedings of any such committee shall be reported as soon as possible to the Trustees and no such committee shall incur expenditure on behalf of the Charity except in accordance with a budget which has been approved by the Trustees.
- 12.2 The Trustees may delegate, upon such terms and at such reasonable remuneration as the Trustees may think fit, to any person who is, in the opinion of the Trustees, qualified for that purpose, the management of any land comprised in the Trust Fund. All acts and proceedings of any such person must be reported to the Trustees as soon as possible.
- 12.3 The Trustees may delegate, upon such terms and at such reasonable remuneration as the Trustees may think fit, to professional investment managers (the 'Managers') the exercise of all or any of their powers of investment on condition that:
  - (a) such delegation shall be by an agreement which is made or evidenced in writing;
  - (b) the delegated powers shall be exercisable only within clear policy guidelines drawn up in advance by the Trustees and within the powers of investment conferred by this Deed;
  - (c) the Managers shall be under a duty to report promptly to the Trustees any exercise of the delegated powers, and in particular to report every transaction carried out by the Managers to the Trustees within 14 days, and to report on the performance of investments managed by them at least every three months;
  - (d) the Trustees shall be entitled at any time and without notice to review, alter or determine the delegation or its terms;
  - (e) the Trustees shall be bound to review the arrangements for delegation at intervals not (in the absence of special reasons) exceeding 12 months, but so that any failure by the

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13.5 In exercising the powers conferred by sub-clauses 13.1, 13.2 and 13.3 the Trustees shall comply with any guidance published by the Commission from time to time.

[Notes: see F1-503.]

#### F1-474 14. Power to employ staff and pay for services

The Trustees may

- 14.1 employ any person or firm, not being a trustee, to manage or assist in managing the day-to-day running of the Trust Fund; and
- 14.2 employ a secretary and such other officials or staff, not being a trustee, as the Trustees may in their discretion from time to time determine;

in either case upon such terms and at such remuneration as the Trustees think fit.

[Notes: see F1-504.]

#### F1-475 15. Regulations

The Trustees may make regulations for the management of the Charity and for the conduct of the business of the Trustees and may, from time to time, amend such regulations.

[Notes: see F1-505.]

#### F1-476 16. Bank accounts

16.1 The Trustees may open and maintain in the name of the Charity, or in such other name as the Trustees may think fit, bank accounts at such banks as the Trustees may from time to time decide, and at any time may pay any money forming part of the Trust Fund or its income to the credit of any such account or place the same on deposit with any bank.

16.2 Subject to sub-clause 16.3, the Trustees may from time to time make such arrangements as they shall think fit for the operation of any bank account in the name of the Charity or under the control of the Trustees.

16.3 All cheques and orders for payment of money from any bank account in the name of the Charity or under the control of the Trustees shall be signed by at least two trustees, subject to any regulations to the contrary made by the Trustees.

[Notes: see F1-506.]

#### 17. Power to pay for audit

The Trustees may arrange for the accounts of the Charity to be audited annually by a qualified accountant at the expense of the Trust Fund even if not so required by law.

[Notes: see F1-507.]

#### 18. Receipts

When making grants of any funds to any charitable organisation or charitable institution, the Trustees may accept as a good discharge in respect of institution, the receipt of the person purporting to be treasurer, any such funds the receipt of the person purporting to be secretary or other authorised officer for the time being of such charitable organisation or charitable institution.

#### 19. Power to insure

The Trustees may insure all or any part of the Trust Fund against any risk, for any amount and on such terms as they think fit.

#### 20. Trustee liability

Notwithstanding any other provision of this Deed, no trustee shall be liable for any loss to the Trust Fund arising by reason of

- 20.1 any unauthorised investment made in good faith (so long as he shall have sought professional advice before making such investment);
- 20.2 the negligence or fraud of any agent employed by such trustee or the Trustees in good faith, although the employment of any agent was not strictly necessary or expedient (provided such of the Trustees as were acting or omission made in good faith by such trustee or any of the Trustees.
- 20.3 any negligent act or omission made in good faith by such trustee or any of the Trustees.

[Notes: see F1-517.]

#### Costs

The Trustees may pay out of the capital or income of the Trust Fund all costs of and incidental to the creation of the Charity.

[Notes: see F1-513.]

#### Change of name

The Trustees may alter the name of the Charity by deed.