

SCHEDULES

SCHEDULE 2

Section 11.

ADMINISTRATIVE PROVISIONS RELATING TO TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

PART I

ANNUAL RETURNS, AND QUALIFICATIONS, APPOINTMENT AND REMOVAL, AND FUNCTIONS, OF AUDITORS

Annual returns

- 1 (1) Subject to paragraph 5 below, the annual return of a trade union or an employers' association required by section 11(2) above shall be sent to the Registrar before 1st June and shall relate to the last preceding calendar year.
- 2 (2) The annual return shall be in such form and be signed by such persons as the Registrar may require.
- 2 Every annual return shall contain—
 - (a) revenue accounts indicating the income and expenditure of the trade union or employers' association for the period to which the return relates ;
 - (b) a balance sheet as at the end of that period ;
 - (c) such other accounts (if any) as the Registrar may require ;and
 - (d) a copy of the rules of the trade union or employers' association as in force at the end of that period ;and shall have attached to it a note of all changes in the officers of the union or association and of any change in the address of the head or main office of the union or association during the period to which the return relates.
- 3 Every revenue account, every balance sheet and every other account contained in a return in accordance with paragraph 2 above shall give a true and fair view of the matters to which it relates.
- 4 Every return, in addition to containing the accounts mentioned in paragraph 2 above, shall contain a copy of the report made by the auditor or auditors of the trade union or employers' association on those accounts under paragraph 18 below and such other documents relating to those accounts and such further particulars as the Registrar may require, subject in the case of the accounts contained in the return to such modifications (if any) as may be necessary to secure compliance with paragraph 3 above.
- 5 The Registrar, if in any particular case he considers it appropriate to do so—
 - (a) may direct that the period for which a return is to be sent to him under section 11(2) above shall be a period other than the calendar year last preceding the date on which the return is sent;

- (b) whether a direction under sub-paragraph (a) above is given or not, may direct that the date before which any such return is to be sent to him shall be such date (whether before or after 1st June) as may be specified in the direction.

Qualifications of auditors

- 6 Subject to paragraphs 7 to 9 below, a person shall not be qualified to be the auditor or one of the auditors of a trade union or employers' association unless he is either a member of one or more of the following bodies—
- (a) the Institute of Chartered Accountants in England and Wales ;
 - (b) the Institute of Chartered Accountants of Scotland ;
 - (c) the Association of Certified Accountants ;
 - (d) the Institute of Chartered Accountants in Ireland ;
 - (e) any other body of accountants established in the United Kingdom and for the time being recognised for the purposes of section 161(1)(a) of the Companies Act 1948 by the Secretary of State,
- or a person who is for the time being authorised by the Secretary of State under section 161(1)(b) of that Act as being a person with similar qualifications obtained outside the United Kingdom.
- 7 Notwithstanding anything in paragraph 6 above, a Scottish firm may act as auditor of a trade union or employers' association if, but only if, every partner of the firm is qualified so to act.
- 8 A person who is not qualified under paragraph 6 above may act in respect of any accounting period as auditor of a trade union or employers' association if—
- (a) it was registered under the Trade Union Acts 1871 to 1964 on 30th September 1971 ;
 - (b) he acted as its auditor in respect of the last period in relation to which it was required to make an annual return under section 16 of the Trade Union Act 1871 ;
 - (c) he has acted as its auditor in respect of every accounting period since that period ; and
 - (d) he is for the time being authorised by the Secretary of State under section 161(1)(b) of the Companies Act 1948 otherwise than as mentioned in paragraph 6 above.
- 9 (1) Two or more persons who are not qualified under paragraph 6 above may act as auditors of a trade union or employers' association in respect of any accounting period of that union or association if—
- (a) its receipts and payments in respect of its last preceding accounting period did not in the aggregate exceed £5,000 ;
 - (b) the number of its members at the end of its last preceding accounting period did not exceed 500 ; and
 - (c) the value of its assets at the end of its last preceding accounting period did not in the aggregate exceed £5,000.
- (2) Where by virtue of sub-paragraph (1) above persons who are not qualified under paragraph 6 above act as auditors in respect of any accounting period of a trade union or employers' association, the Registrar may at any time (whether during that period

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or after it comes to an end) direct the trade union or employers' association to appoint a person who is so qualified to audit its accounts for that period.

- (3) Regulations may—
- (a) substitute for any sum or number for the time being specified in sub-paragraph (1) above such sum or number as may be specified in the regulations ; and
 - (b) prescribe what receipts and payments shall be taken into account for the purposes of that sub-paragraph.
- 10 (1) None of the following persons shall act as auditor of a trade union or employers' association, that is to say—
- (a) an officer or employee of the trade union or employers' association or of any of its branches or sections ;
 - (b) a person who is a partner of, or in the employment of, or who employs, such an officer or employee;
 - (c) a body corporate.
- (2) References in this paragraph to an officer shall be construed as not including an auditor.

Appointment and removal of auditors

- 11 The rules of every trade union and every employers' association shall contain provision for the appointment and removal of auditors.
- 12 Notwithstanding anything in the rules of a trade union or employers' association, its auditor or auditors shall not be removed from office except by resolution passed at a general meeting of its members, or of delegates of its members.
- 13 (1) Notwithstanding anything in the rules of a trade union or employers' association, a qualified auditor appointed to audit its accounts for the preceding year of account shall (subject to sub-paragraph (2) of this paragraph) be re-appointed as auditor for the current year of account unless—
- (a) a resolution has been passed at a general meeting of the trade union or employers' association appointing somebody instead of him or providing expressly that he shall not be re-appointed, or
 - (b) he has given to the trade union or employers' association notice in writing of his unwillingness to be re-appointed, or
 - (c) he is ineligible for appointment as its auditor or one of its auditors for the current year of account, or
 - (d) he has ceased to act as its auditor or one of its auditors by reason of incapacity.
- (2) Where notice is given of an intended resolution to appoint some person or persons in place of a retiring auditor and the resolution cannot be proceeded with at the meeting because of the death or incapacity of that person or persons, or because he or they are ineligible for appointment as auditor or auditors for the current year of account, the retiring auditor shall not be automatically re-appointed by virtue of this paragraph.
- (3) For the purposes of this paragraph a person is ineligible for appointment as auditor of a trade union or employers' association for the current year of account if, but only if,—

- (a) he would be precluded by paragraph 10 above from acting as its auditor for that year, or
 - (b) he is not a qualified auditor at the time when the question of his appointment falls to be considered.
- (4) In this paragraph "qualified auditor", in relation to a trade union or employers' association, means a person qualified to be its auditor or one of its auditors in accordance with paragraphs 6 to 9 above, "the current year of account", in relation to the appointment of a person as auditor, means the year of account in which the question of that appointment arises, and "the preceding year of account" means the year of account immediately preceding the current year of account.
- 14 Regulations may make provision as to the procedure to be followed when it is intended to move a resolution—
- (a) appointing another auditor or other auditors in place of a retiring auditor or retiring auditors of a trade union or an employers' association, or
 - (b) providing expressly that a retiring auditor or auditors of a trade union or an employers' association shall not be re-appointed,
- and as to the rights of auditors and members of a trade union or an employers' association in relation to such a motion.
- 15 (1) Where any regulations made under paragraph 14 above require copies of any representations made by a retiring auditor to be sent out, or require any such representations to be read out at a meeting, the High Court or the Court of Session, on the application of the trade union or employers' association or of any other person, may dispense with that requirement if satisfied that the rights conferred on the retiring auditor by the regulations are being abused to secure needless publicity for defamatory matter.
- (2) On any such application the High Court or the Court of Session may order the costs or expenses of the trade union or employers' association to be paid, in whole or in part, by the retiring auditor, whether he is a party to the application or not.

Auditor's right of access to books and information and right to be heard at meetings

- 16 Every auditor of a trade union or an employers' association—
- (a) shall have a right of access at all times to its accounting records and to all other documents relating to its affairs, and
 - (b) shall be entitled to require from its officers, or the officers of any of its branches or sections, such information and explanations as he thinks necessary for the performance of his duties as auditor.
- 17 Every auditor of a trade union or an employers' association shall be entitled—
- (a) to attend any general meetings of its members, or of delegates of its members, and to receive all notices of and other communications relating to any general meeting which any such member or delegate is entitled to receive, and
 - (b) to be heard at any meeting which he attends on any part of the business of the meeting which concerns him as auditor.

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Auditors' reports

- 18 The auditor or auditors of a trade union or an employers' association shall make a report to it on the accounts of the trade union or employers' association audited by him or them and contained in its annual return.
- 19 The report shall state whether, in the opinion of the auditor or auditors, those accounts give a true and fair view of the matters to which they relate.
- 20 It shall be the duty of the auditor or auditors, in preparing a report under paragraph 18 above, to carry out such investigations as will enable him or them to form an opinion as to the following matters, that is to say—
- (a) whether the trade union or employers' association has kept proper accounting records in accordance with the requirements of section 10 above ;
 - (b) whether it has maintained a satisfactory system of control over its transactions in accordance with the requirements of that section ; and
 - (c) whether the accounts to which the report refers are in agreement with the accounting records ;
- and if in the opinion of the auditor or auditors the trade union or employers' association has failed to comply with section 10(2)(a) or (b) above or if the accounts to which the report relates are not in agreement with the accounting records, the auditor or auditors shall state that fact in the report.
- 21 If an auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of an audit, he shall state that fact in his report.
- 22 In this Part of this Schedule " accounting period ", in relation to a trade union or an employers' association, means any period in relation to which it is required under section 11(2) above to send a return to the Registrar.

PART II

MEMBERS' SUPERANNUATION SCHEMES

Examination of superannuation schemes

- 23 Subject to paragraphs 29 to 31 below, every trade union and every employers' association which at the commencement of this Part of this Schedule is maintaining a members' superannuation scheme shall arrange for the scheme, as it has effect at a date not later than two years from the commencement of this Part of this Schedule, to be examined by an appropriately qualified actuary, and for the actuary to make a report to the trade union or employers' association on the results of his examination of the scheme.
- 24 Where a members' superannuation scheme to which paragraph 23 above applies includes provision for the maintenance of a separate fund for the purpose of the scheme, the examination under that paragraph shall include a valuation (as at the date by reference to which the examination is carried out) of the assets comprised in that fund and of the liabilities falling to be discharged out of it.
- 25 The report made by the actuary on the results of his examination of any such scheme—

- (a) shall state whether in his opinion the premium or contribution rates are adequate and whether the accounting or funding arrangements are suitable, and
 - (b) if the scheme provides for the maintenance of a separate fund for the purposes of the scheme, shall state whether in his opinion the fund is adequate.
- 26 A copy of any report made by an actuary under paragraph 23 above, signed by the actuary, shall be sent to the Registrar; and it shall be the duty of the trade union or employers' association to make such arrangements under that paragraph as will enable the report to be sent to the Registrar before the end of the period of one year from the date by reference to which the actuarial examination was carried out.
- 27 Subject to paragraphs 30 and 31 below, no trade union or employers' association shall after the commencement of this Part of this Schedule begin to maintain a members' superannuation scheme unless, before the date on which the scheme begins to be maintained,—
- (a) the proposals for the scheme have been examined by an appropriately qualified actuary ; and
 - (b) a copy of a report made to the trade union or employers' association by the actuary on the results of his examination of the proposals, signed by the actuary, has been sent to the Registrar;
- and the provisions of paragraph 25 above shall have effect in relation to a report under this paragraph on the proposals for a scheme as they have effect in relation to a report on a scheme under paragraph 23 above.
- 28 A copy of any report made to a trade union or employers' association under paragraph 23 or paragraph 27 above shall, on the application of any of its members, be supplied to him free of charge.
- 29 Where on the application of a trade union or employers' association the Registrar is satisfied—
- (a) that a members' superannuation scheme maintained by it, as it had effect at a date not more than two years before the commencement of this Part of this Schedule, has been examined by an actuary ;
 - (b) that the qualifications of the actuary were adequate for the purpose of carrying out the examination; and
 - (c) that the examination, and the report made by the actuary on its results, fulfil the requirements of paragraphs 24 and 25 above,
- the Registrar may direct that paragraph 23 above shall have effect, in relation to that scheme, as if for the reference to two years from the commencement of this Part of this Schedule there were substituted a reference to five years from the date by reference to which that examination was carried out.
- 30 The Registrar, on the application of a trade union or employers' association, may exempt any members' superannuation scheme which it maintains or proposes to maintain from the requirements of paragraph 23 or (as the case may be) paragraph 27 above, if he is satisfied that, by reason of the small number of members to which the scheme is or would be applicable or for any other special reasons, it is unnecessary for the scheme to be examined in accordance with those requirements.
- 31 The Registrar may at any time revoke any exemption granted under paragraph 30 above if it appears to him that the circumstances by reason of which the exemption was granted have ceased to exist.

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Periodical re-examination of schemes

- 32 (1) Where a trade union or employers' association for the time being maintains a members' superannuation scheme, and either—
- (a) the scheme has been examined in pursuance of paragraph 23 above or in pursuance of this paragraph, or
 - (b) the scheme itself has not been so examined but the proposals for the scheme have been examined in pursuance of paragraph 27 above,
- the trade union or employers' association in question shall arrange for that scheme, as it has effect at each successive relevant date, to be examined by an appropriately qualified actuary, and for a report to be made to it by the actuary on the result of his examination of the scheme.
- (2) Subject to the next following sub-paragraph, in this paragraph " relevant date ", in relation to a members' superannuation scheme, means such date as the trade union or employers' association in question may determine, not being later than five years after the date by reference to which the last examination of the scheme, or (as the case may be) the examination of the proposals for the scheme, was carried out in accordance with paragraph 23 or paragraph 27 above or in accordance with the preceding sub-paragraph.
- (3) In the case of any trade union or employers' association the Registrar may direct that, in relation to any time after the making of the direction, sub-paragraph (2) of this paragraph shall have effect as if, for the reference to five years there was substituted a reference to such shorter period as may be specified in the direction.

33 The provisions of paragraphs 24 to 26 and paragraph 28 above shall have effect in relation to the examination of a scheme under paragraph 32 above as they have effect in relation to the examination of a scheme under paragraph 23 above.

Separate fund for members' superannuation scheme

- 34 After the commencement of this Part of this Schedule no trade union or employers' association shall maintain a members' superannuation scheme which was not established before the commencement of this Part of this Schedule unless it maintains a separate fund for the payments of benefits in accordance with the scheme.
- 35 After the end of the period of five years beginning with the date on which paragraph 34 above comes into operation no trade union or employers' association shall maintain a members' superannuation scheme (whenever established) unless it maintains a separate fund for the payment of benefits in accordance with the scheme.

Interpretation of Part II

- 36 In this Part of this Schedule—
- (a) " members' superannuation scheme " means any scheme or arrangement made by or on behalf of a trade union or employers' association (including any scheme or arrangement shown in the rules of a trade union or employers' association) in so far as it provides for benefits to be paid by way of pension (including any widows' or children's pensions or dependants' pensions) to or in respect of members or former members of the trade union or employers' association and to be so paid either out of the funds (whether

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- the general funds or any other fund) of the "trade union or employers' association or under any insurance scheme maintained out of those funds ;
- (b) " appropriately qualified actuary" in relation to a trade union or employers' association, means a person who is either a Fellow of the Institute of Actuaries or a Fellow of the Faculty of Actuaries or is approved by the Registrar on the application of the trade union or employers' association as a person having actuarial knowledge ; and
- (c) " separate fund" means a fund separate from the general funds of the trade unions or employers' association.