

**2002 No. 346**

**PENSIONS**

**The National Ports Council Pension Scheme (Excess  
Statutory Surplus) Order 2002**

*Made* - - - - - *18th February 2002*

*Laid before Parliament* *19th February 2002*

*Coming into force* - - *13th March 2002*

The Secretary of State for Transport, Local Government and the Regions, being the Minister of the Crown designated by the Treasury as having responsibility for the National Ports Council Pension Scheme, a public service pension scheme within the meaning given by section 124(1) of the Pensions Act 1995(a), in exercise of the powers conferred on him by sections 72 and 174 of that Act, and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the National Ports Council Pension Scheme (Excess Statutory Surplus) Order 2002 and shall come into force on 13th March 2002.

(2) In this Order:

“the Rules” means the Rules of the Scheme;

“the Scheme” means the National Ports Council Pension Scheme contained in the Schedule to the Deed of Variation dated 2nd September 1980 made between The National Ports Council and National Ports Council Pensions Trustees Limited, as amended by Instruments dated 21st September 1981, 1st November 1982 and 17th March 1992(b).

**Amendment of the Rules**

2.—(1) After Rule 46 there shall be inserted—

“*Utilisation of the Excess Statutory Surplus*

46A. Notwithstanding any other provision of the Rules, the schedule to the Rules (which contains provisions for the purposes of the utilisation of the Excess Statutory Surplus, within the meaning given therein) shall have effect.”.

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(a) 1995 c. 26.

(b) These instruments were all made by the Secretary of State for Transport under paragraph 9(4) of Schedule 5 to the Transport Act 1981 (c. 56).

(2) The following schedule shall be inserted as the schedule to the Rules—

“SCHEDULE  
EXCESS STATUTORY SURPLUS

1. In this Schedule—

“Benefit” means any pension in payment or in deferment and any widow’s or widower’s annuity in payment or in deferment under the Rules but does not include any lump sum;

“Deferred Member” means a Member who is entitled to a pension in deferment under the Rules;

“the Excess Statutory Surplus” means the amount by which, as at 30 June 1999, the value of the assets of the Scheme exceeds the value of the liabilities of the Scheme by a percentage which is more than the prescribed maximum for the purposes of Schedule 22 to the Income and Corporation Taxes Act 1988(a);

“the Excess Statutory Surplus Balance” means the Excess Statutory Surplus less 105 per cent of the value (calculated in accordance with Schedule 22 to the Income and Corporation Taxes Act 1988) as at 30 June 1999 of the Benefits payable under paragraphs 2 and 3;

“the Order” means the National Ports Council Pension Scheme (Excess Statutory Surplus) Order 2002;

“the Relevant Day”, in relation to a Benefit, means the later of 30 June 1990 and the date that Benefit first became payable;

“Surviving Spouse” means a widow or widower of a deceased Member who is entitled to a pension or to an annuity (or to both) under the Rules.

2. Subject to paragraph 4, each Pensioner, Deferred Member and Surviving Spouse who was entitled to a Benefit on 30 June 1999 shall be entitled to an increase of 6 per cent in the amount of such Benefit with effect on and from 1 July 1999.

3. Subject to paragraph 4, each Pensioner and Surviving Spouse who was entitled to a Benefit on 30 June 1999 shall be entitled to the payment of an amount equal to 6 per cent of the aggregate of the Benefits paid to him in respect of the period beginning on the Relevant Day and ending on 30 June 1999.

4. No amount shall be paid to a Pensioner, Deferred Member or Surviving Spouse by virtue of paragraph 2 or 3 to the extent that it would jeopardise the continued Approval of the Scheme.

5. For the purpose of calculating the amount which may be paid under the Rules by virtue of paragraph 2 or 3, in each case subject to paragraph 4, the maximum permitted annual amount of any Benefit pursuant to Rule 14 (after deducting any pension which has been commuted for a lump sum or surrendered to provide a Dependant’s pension) shall be increased on the same day as Benefits are increased annually in accordance with Rule 25 (“the Benefit Increase Date”)—

(a) in proportion to the increase in the index of retail prices over the year ending on the day immediately before the Benefit Increase Date, or

(b) by three per cent,

whichever is the greater, save that if the period between the Relevant Day and the next following Benefit Increase Date is less than one year, the increase for that period shall be the same proportion of that increase as that period of time is to a year.

6. No interest shall be paid in respect of any payment made by virtue of paragraph 2 or 3 in relation to any period.

7. By the end of the period of 15 working days, beginning with the day on which the Order comes into force, the Trustees shall pay to, or as directed by, the Secretary of State—

(a) a sum calculated as follows—

$M \times (1 + R)$ ; and

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(a) 1988 c. 1.

(b) interest on that sum accrued on a daily basis at the base rate of Barclays Bank plc for the period beginning on the day on which the Order comes into force and ending on the day immediately before the day on which payment is made.

8. For the purposes of paragraph 7—

M equals the market value of the Excess Statutory Surplus Balance, and for these purposes the market value of the Excess Statutory Surplus Balance means the Balance adjusted in accordance with the principles used for determining the market value of assets of the Trust Fund for the audited accounts of the Scheme as at 30 June 1999;

R equals the rate of return obtained on the assets of the Trust Fund over the period beginning on 1 July 1999 and ending on 12 March 2002.”.

Signed by the authority of the Secretary of State  
for Transport, Local Government and the Regions

*David Jamieson*  
Parliamentary Under Secretary of State,  
Department for Transport,  
Local Government and the Regions

18th February 2002

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the National Ports Council Pension Scheme (“the Scheme”). The Scheme is a public service pension scheme within the meaning given by section 124(1) of the Pensions Act 1995(c. 26).

Under the provisions of the Transport Act 1981(c. 56) The National Ports Council was wound up and the pension fund of the Scheme was vested in the Secretary of State. The Secretary of State was also given responsibility for the administration of the Scheme subject to him directing that the Scheme be administered by another person. The Secretary of State subsequently directed that the Public Trustee should be the administrator and the trustee of the Scheme. There are now also two further trustees, one of whom is a member nominated trustee.

On 23 January 2001 the actuary to the Scheme certified, for the purposes of paragraph 5(3) of Schedule 12 to the Finance Act 1986 (c. 41) that the value of the assets of the Scheme exceeded 105 per cent of the value of the liabilities of the Scheme as at 30 June 1999. Thus the Scheme had a funding surplus in excess of the prescribed statutory maximum (105 per cent) pursuant to Schedule 22 of the Income and Corporation Taxes Act 1988 (c. 1).

This Order makes amendments to the Rules of the Scheme to enable the excess statutory surplus to be utilised in accordance with proposals agreed between the Secretary of State and the trustees of the Scheme and subsequently made (on behalf of the trustees) by the administrator of the Scheme to, and approved by, the Inland Revenue.

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