

Free-standing Additional Voluntary Contribution Schemes

FSAVCs Guidance Notes

Issued by the Pension Schemes Office,
an Executive Office of the Inland Revenue

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These Notes should be read in conjunction with "PSO Updates", which periodically amend or expand upon them.

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Part 1. Introduction

Notes

1.1 Occasional PSO Updates are used to amplify or amend this manual. Where such amendments are announced, the changes can be identified in the text by background shading or high-lighting. This high-lighting is removed when a new set of amendments is announced.

FSAVCS: Approval

1.2 A Free Standing Additional Voluntary Contributions Scheme (FSAVCS) is a *retirement benefits scheme* established solely to accept contributions from employees to top up benefits provided by their employers' pension schemes.

1.3 Unless stated otherwise references to Sections or Chapters and Parts will be to Sections or Chapters and Parts of the *Taxes Act*. References to *PN* are to IR12(1997) (Practice Notes on Approval of Occupational Pension Schemes).

1.4 FSAVCSs are *approved* at the discretion of the Board by virtue of section 591(2)(h). The rules of an FSAVCS must therefore prohibit acceptance of any contributions from a member's employer, including any payment for administrative expenses. That being the case no FSAVCS is capable of being *approved* under section 590. The powers and duties of the Board to approve schemes are administered by the Pension Schemes Office (*PSO*).

1.5 These notes describe the practice of the Board for the *approval* of FSAVCSs. They supersede entirely the supplement to IR 12(1989) issued in August 1989.

1.6 It is possible to contract out of the State Earnings Related Pension Scheme through membership of an FSAVCS. But as contributions paid by the Inland Revenue in the form of rebates of National Insurance contributions to the scheme would not attract tax relief contracting-out is not covered in these notes. A member of a FSAVCS may be entitled to contract out of SERPS through a 'minimum contributions only' personal pension membership as described in the guide on personal pension schemes IR76 paragraph 3.13.

1.7 Terms defined in Appendix I are identified in the text by the use of italics.

Part 2. Establishment of Schemes

Conditions

2.1 An FSAVCS can be *approved* only if it is established by one of the following:

(a) a person authorised under Chapter III of Part I of the Financial Services Act 1986 to carry on investment business and who carries on business of the following kind

(i) issuing insurance policies or annuity contracts;

(ii) managing authorised unit trust schemes;

(b) a building society within the meaning of the Building Societies Act 1986 or a pension company within the meaning of the Building Societies (Designation of Pension Companies) Order 1987 (SI 1987/1871) which is an associate of a building society;

(c) an institution authorised under the Banking Act 1987 or a body corporate which is a subsidiary or holding company of such an institution, or is a subsidiary of the holding company of such an institution;

(d) an Authorised Corporate Director of an open-ended investment company;

(e) the trustees of a scheme *approved* under Chapter I Part XIV as a centralised scheme for non-associated employers (see Part 21 of Practice Notes).

2.2 A scheme established by a person managing a unit trust scheme (see paragraph 2.1(a)(ii) above) will be *approved* only if

(i) it is established as a unit trust and the units in it are redeemable only when a benefit (which might be an authorised repayment of surplus contributions) is payable under the rules of the FSAVCS or when the fund accumulated in respect of the member is to be transferred to another scheme (see Part 14); and

(ii) that unit trust is authorised by the Financial Services Authority or other regulatory body.

2.3 There must be a named administrator.

2.4 It must be clearly stated in the document establishing the scheme that the sole purpose is the provision of *relevant benefits* for members.

2.5 The scheme must be established under an irrevocable trust.

2.6 It must be clearly stated in the document establishing the scheme that any alteration to a scheme must be referred to the *PSO* for prior *approval*.

2.7 It is a requirement that, apart from death benefits, FSAVCSs will operate on a money purchase basis.

2.8 The scheme rules must contain a provision which binds the administrator to comply with The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 (SI 1993 No 3016) as amended by S.I. 1999/1964 and S.I. 2000/1088 (see Part 18). Appendix IV contains a model rule which should be used for this purpose.

Part 3. Membership

Conditions

3.1 The right to pay additional voluntary contributions (AVCs) to an FSAVCS is available only to employees while they are accruing benefits (see paragraph 3.5) under an *approved retirement benefits scheme* (or such a scheme being considered for *approval*) or a *relevant statutory scheme* of their present employer or to which that employer contributes. This requirement will be regarded as met even if the individual is covered only for death in service benefits under his employer's *approved retirement* benefits or *relevant statutory scheme*(s) - but see paragraph 3.4 below. If the member withdraws from all such schemes of the employer while still in service, contributions to the FSAVCS must cease. Contributions may continue, or even commence, after the *normal retirement date* provided that benefits continue to accrue under the *main scheme*. No contributions may be paid after the *relevant date*, except as provided under paragraph 4.8.

3.2 An employee must not contribute to more than one FSAVCS in respect of the same employment in any one tax year. This requirement does not affect the individual's right to pay, at the same time, AVCs to an *approved retirement benefits scheme* or a *relevant statutory scheme* of the employer, provided the limit in paragraph 4.2 is not exceeded.

3.3 *Controlling directors* must be excluded from membership. If a member becomes a *controlling director* contributions must cease at once. Conversely, if he or she ceases to be a *controlling director*, contributions may be started or resumed in accordance with paragraph 3.1.

3.4 Where membership of an FSAVCS is by virtue of a *main scheme* providing benefits only on death, it should be borne in mind that any provision for the member under the FSAVCS of *relevant benefits* (other than on death) will mean that *earnings* from that employment will not count as net relevant *earnings* under section 646 for the purposes of a personal pension scheme.

3.5 Benefits are regarded as accruing (for the purpose of paragraph 3.1) in final salary schemes when, for example, contributions are continuing; *pensionable service* is continuing; or there is an increase on late *retirement*. In money purchase schemes accrual could include where contributions or policy bonuses are continuing, and benefits have not been made paid-up.

Part 4. Contributions

General

4.1 Contributions to an FSAVCS will normally consist only of employee's contributions. The exception would be if a scheme is being used for contracting-out (see paragraph 1.5).

4.2 In a tax year the total of an employee's gross contributions (i.e. before the deduction of basic rate tax at source) to all *approved retirement benefits schemes* or *relevant statutory scheme(s)* of the employer (or to which the employer has contributed) and an FSAVCS must not exceed 15% of the member's *earnings* from the employment for that year. For this purpose *earnings* must, unless the member has *continued rights*, be limited to the *permitted maximum*. The rules of the FSAVCS must therefore restrict the member's contributions accordingly. Any minimum contributions paid by the Inland Revenue do not count towards the 15% limit (see paragraphs 1.5 and 4.1). For *SDCS* the overall maximum contribution limits are described in *PN 22.9-12*.

Headroom Checks

4.3 Subject to paragraph 17.5 it will be necessary to ensure that the level of contributions to the FSAVCS is not likely to cause the aggregate benefits from all schemes providing benefits in respect of service with the employer to exceed the limits appropriate to *approval*. The necessary checks are more fully described in paragraphs 17.8 to 17.12.

Exception to Headroom Checks

4.4 *Headroom* checks are not required if gross contributions to the FSAVCS in respect of the employment are £2,400 per tax year or less, but it should be noted that the 15% limit in paragraph 4.2 still applies.

Excess Contributions

4.5 Where contributions have been paid which, when added to the basic rate tax relief given at source, exceed the 15% limit in paragraph 4.2 or the agreed *headroom* in paragraph 4.3 the excess is not an acceptable contribution. The amount of the excess (net of basic rate tax at the rate in force when the contribution was paid), should be returned to the member as soon as possible. The amount returned is neither a formal repayment of an employee's contribution for the purposes of section 598 nor a return of surplus AVCs to which section 599A applies. Any higher rate tax relief obtained on the excess must be repaid by the member. Any tax relief obtained by the FSAVCS in respect of such an excess must be set off against the scheme's next recovery claim to *FICO* (see paragraphs 15.4-5).

Excess Contributions: Later Headroom Check

4.6 The Revenue will be prepared to regard contributions as being paid in error, as decided by the FSAVCS administrator (and therefore immediately refundable to the employee), if a *headroom* check reveals that benefits will exceed Revenue limits. This may arise if a *headroom* check, not required at the time the employee joins the FSAVCS, is required subsequently when, for example, contributions are increased to an amount above the £2,400 threshold and a surplus check under Part 18 at the *relevant date* is expected to be more than 5 years in the future from the time that the overfunding is discovered. The FSAVCS administrator may repay excess contributions to the employee for up to the entire period of membership, subject to a maximum of 5 years, without reference to *PSO*, but where a longer period is involved permission should be sought from *PSO*. The administrator may deduct expenses from any interest etc. on the refunded amount but it should not normally be necessary to refund an amount lower than the original contributions. In all cases where contributions are refunded adjustments should be made to the recovery claims made to *FICO* under paragraphs 15.4-5. It should also be stressed that providers and financial advisors should prevent this problem arising as far as possible by properly following the requirements of the Financial Services Act (see paragraph 17.7).

Temporary Absence

4.7 During a period of temporary absence or secondment without change of employment, membership of an FSAVCS may continue only if the employee remains in full membership (see [PN 3.11](#) and [15.8](#)) of the employer's [approved retirement benefits](#) or [relevant statutory scheme\(s\)](#). In this context full membership will not be prejudiced if the member's contributions to the employer's [approved retirement benefits](#) or [relevant statutory scheme\(s\)](#) are suspended. During such an absence, however, contributions to the FSAVCS may be made only to the extent that there are actual [earnings](#) chargeable to UK tax to which the 15% limit can be applied.

Leaving Pensionable Service

4.8 Contributions relating to an employment where the member has left [pensionable service](#) may in practice be continued for the period up to the time that a surplus check is made under Part 18, provided that the continued contributions are within the same tax year of leaving. The rules must require the member to tell the administrator that the employment has ended. Where the member asks to continue paying contributions (and the FSAVCS administrator so permits) the member should be informed when the surplus check is made and that no contributions are valid beyond that date. The member should be asked to provide any evidence to show that the 15% limit is not breached in relation to the former employment, where there is any doubt.

Change of Employment

4.9 Contributions to an FSAVCS may continue or recommence on change of employment, provided the member joins the new employer's [approved retirement benefits scheme](#) or [relevant statutory scheme](#). Contributions in respect of the new employment may only be made when eligibility has been established (see paragraphs [17.2](#) to [17.8](#)). The treatment of benefits already accrued is set out in paragraph [6.6](#).

Flexible Use of AVC Facility

4.10 Where the facility mentioned in paragraph [5.3](#) is offered and the member opts to take FSAVCS benefits before taking benefits from the employer's scheme, contributions may nonetheless continue to the FSAVCS. This assumes that the member is still in employment and is subject to such conditions being within the 15% limit (paragraph [4.2](#)). Conversely if the member postpones taking benefits under paragraph [5.7](#) no further contributions can be made if the member is no longer in [pensionable service](#).

Part 5. Payment of Benefits

General

5.1 The primary objective of an FSAVCS is to provide benefits which commence on *retirement*. Except where the facility for flexible payment of benefits from AVCs is offered, as stated in paragraph 5.3, benefits will be paid, and *retirement* will generally be construed as, the same time as the member's benefits first commence under an *approved retirement benefits* or *relevant statutory scheme* of the employer. Where a member participates in more than one such scheme of the employer, the FSAVCS benefits should commence when the first *retirement* benefits are paid under any one of those schemes. Exceptionally, where a member exercises an option under the rules of the first or only scheme to take the lump sum benefit but to defer the payment of pension, the payment of the FSAVCS benefits may also be deferred until pension benefits are paid under the employer's scheme(s). (The checks required to be carried out at the *relevant date* will still be done when the first benefit is paid and the FSAVCS benefit deferred may, thereafter, be increased actuarially or by the growth in the member's fund.) A policy of insurance for the FSAVCS need not be written showing a specified age of *retirement*. It would be sufficient to state that the benefits will be payable at the same time as the benefits from the employer's scheme save on leaving *pensionable service* (see Part 9).

5.2 Where the member has left *pensionable service* with the employer to whose scheme the benefits are linked and benefits from the employer's scheme are deferred, *retirement* benefits may become payable at any time between the attainment of age 50 (or earlier on grounds of *incapacity*) and the attainment of age 75 (see Part 9). (Exceptionally, benefits may be paid, at an agreed *normal retirement date* of earlier than age 50, in cases which fall within *PN 6.7*.) Where contributions to the FSAVCS continue by virtue of a subsequent employment, the accrued benefits relating to that subsequent employment must commence in accordance with paragraph 5.1, but benefits by virtue of the earlier employment may begin separately.

Facility For Flexible Use of AVCs

5.3 As an alternative the member may elect to commence receiving benefits at any time between the attainment of age 50 (or earlier if the member leaves the employment because of *incapacity*) and age 75, irrespective of whether or not the member has retired, left *pensionable service* or taken benefits from an *approved retirement benefits scheme* or *relevant statutory scheme*. This is dependent on the scheme offering the facility. Schemes which have introduced the facility before July 2000 are not obliged, for the purposes of tax *approval*, to amend scheme rules straightaway but should do so within 2 years of introducing the facility. At the time of introducing the facility they should make an announcement to members.

5.4 *Pension credit rights* allocated to an ex-spouse **or former civil partner** may be retained in the original member's FSAVCS and paid as benefits to the ex-spouse **or former civil partner** in due course at the discretion of the administrator of the scheme, subject to the ex-spouse **or former civil partner** being between age 50 and age 75.

Other Benefits

5.5 Benefits from an FSAVCS may also be in the form of a lump sum payable on the death of the member before the commencement of *retirement* benefits (see Part 10) or a pension for a widow, widower, **surviving civil partner** or *dependant* payable on the death of the member at any time (see Parts 10 and 11). Also, contributions may be utilised to provide cost of living increases in relation to pensions from the *main scheme* (see paragraph 8.1).

Income Withdrawal Facility

5.6 Pensions from FSAVCS may be paid, if the scheme so provides, in the form of income drawdown instead of by annuity purchase. The conditions applying to such pensions are set out in Appendix XII of *PN*.

Flexible Use of FSAVCs

5.7 The facility to offer FSAVC benefits without reference to *retirement* or the timing of benefits from the *approved retirement benefits scheme* or *relevant statutory scheme* of the employer (see paragraph 5.3) may cover, for example:

- the right to take FSAVC benefits before the benefits from the employer's scheme only, or
- the right, up to age 75, to defer FSAVC benefits beyond the date that benefits from the employer's scheme have come into payment only, or
- both of the above.

The FSAVC scheme provisions and announcements to members or potential members should make it clear what is being offered.

5.8 The facility, if used, must be applied such that all of the FSAVC benefits relating to a particular employment of a member are grouped for this purpose. Therefore any FSAVCS with other providers relating to the same employment should be treated in the same way e.g. all applied for drawdown or none. But other FSAVC benefits relating to a different employment of the member may be excluded for this purpose. These principles are consistent with the provision in paragraph 6.6 whereby FSAVC benefits for a single employment are linked, and notionally segregated for different employments.

Part 6. Member's Benefits

Form of Benefits

6.1 *Retirement* benefits should normally consist of pensions payable for life (or guaranteed for up to 10 years) and may include pensions for a member's widow, widower, *surviving civil partner* or *dependant(s)*. If exceptionally a scheme is asked to provide a temporary pension bridging the period until another pension comes into payment this may be in order subject to the consent of the *PSO*. Members may be given the facility to purchase an annuity through an open market option.

Limits

6.2 The aggregate benefits from all *approved retirement benefits schemes* and *relevant statutory scheme(s)* (i.e. the employer's scheme(s)) and all FSAVCS insofar as they provide benefits in respect of service with the same employer) must not exceed Revenue maxima. For *SDCS* see paragraph 6.5. But see paragraphs 6.7 and 6.8 about the timing of the maximum benefits check where the facility for flexible use of FSAVCS as described in paragraph 5.3 is applicable.

FSAVC Benefits Paid Before Benefits From Employer's Scheme

6.3 If the member elected to have the benefits paid prior to *normal retirement date* in accordance with paragraph 5.3, the benefits payable at this time must be in the form of *income drawdown* and must not be secured by the purchase of an annuity. The *income drawdown* should continue until such time that the member takes benefits from the employer's scheme, at which time an annuity should be purchased. But if the FSAVCS has an income drawdown facility as stated at paragraph 5.6, income drawdown may continue after this time, up until the member reaches age 75.

6.4 The conditions applying to an FSAVCS pension paid in drawdown under paragraph 6.3 are as described in Appendix XII of *PN*.

Surpluses

6.5 Surplus AVCs are calculated in accordance with the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 (SI 1993 No 3016 as amended and may either be repaid to the member or utilised, within normal Inland Revenue limits, to provide additional benefits. See Part 16 for the taxation treatment of such a repayment and Part 18 in relation to the calculation of surplus.

6.6 A check to find out the maximum aggregate benefits payable to a member will be made at the time that benefits from the employer's scheme are to be paid. Such a check will identify any excessive FSAVCS benefits arising from the Surplus AVC Regulations mentioned in paragraph 6.7. If an FSAVC pension was already being paid under the facility in paragraph 5.3, then the maximum benefits check, and the identification and disposal of any surplus will nonetheless be dealt with at this time, and not at the date that FSAVC benefits started. The ongoing FSAVC pension must then be secured by the purchase of an annuity, unless the drawdown facility of paragraph 5.6 applies, in which case the FSAVCS pension may continue in drawdown.

6.7 For the purpose of the maximum benefits limit check, the FSAVC pension should be valued at its current level at the time of the check. The current level of the FSAVC pension will be calculated by reference to the tables of the Government Actuaries Department (see Appendix XII of *PN*) at the date the benefits from the employer's scheme come into payment. An assumption that the drawdown level is set at 100% should be used. Any *retirement* lump sum should be deducted first but included in the calculation at its annuity value. This annuity value should be determined using an appropriate commutation factor (see *PN* 7.51-7.57). If the member concerned has annual remuneration which at any time after attaining age 50 has exceeded half the *permitted maximum* (at its level in the year of the check), then the accumulated amount of FSAVC instalments of pension already paid should also be counted. This additional restriction also applies to *controlling directors*, but such directors would not, in the normal course, be members of an FSAVCS (see

paragraph 3.3).

6.8 If an FSAVC pension is to be paid later than the date that benefits from the employer's scheme are paid under the facility in paragraph 5.3, the maximum benefits limit check is still carried out, and disposal of any surplus FSAVCs dealt with, at the time when the benefits from the employer's scheme are paid. The calculation of the value of the FSAVCS benefits stated above at paragraph 6.7 applies.

6.9 Because, where paragraph 6.8 applies, the FSAVC pension is not coming into payment when the benefits are paid, it is necessary to know the form of benefits required from the FSAVC to enable the surplus FSAVC check to be made. The member should be asked to specify the form of benefit e.g. flat rate, guaranteed, survivor's pension etc. But the member may, if the scheme so permits, be able to vary the choice when the FSAVC pension eventually comes into payment.

SDCS

6.10 Where the *main scheme* is an *SDCS* the question of limiting aggregate benefits at *retirement* will not arise. The full amount available from the FSAVCS can be used to provide pension benefits for the member and/or *dependant(s)*, and paragraph 6.2 does not apply.

Change of Employment

6.11 When a member continues to pay contributions following a change in employment (see paragraph 4.7), unless the service can be regarded as continuous (e.g. because the new employer is associated with the old), the member's account to the date of change must be notionally segregated and remain separately identifiable (including subsequent investment income). This segregation is needed so that it is possible to distinguish between aggregable benefits and *retained benefits*. Notional segregation is also necessary in the case of unconnected or unassociated employments if these employments are concurrent.

Change of Scheme from SDCS

6.12 If a member moves from the employer's *SDCS* to any other type of *approved retirement benefits scheme* or *relevant statutory scheme* of that employer, membership of the FSAVCS may continue subject to a *headroom* check if appropriate (see paragraph 17.8). In these circumstances the member's account to the date of change must be notionally segregated and remain separately identifiable (including subsequent investment income). While benefits from this account must be taken into account for the conventional limits which apply under the new scheme, they should not themselves be restricted.

Change of Scheme to SDCS

6.13 Notional segregation is also necessary where a member moves to an *SDCS* from any other type of *approved retirement benefits* or *relevant statutory scheme* of the same employer. Benefits from the segregated account associated with the *SDCS* should not be restricted. Such a change of scheme will necessitate contributions to be tested in accordance with paragraph 4.3 if the FSAVCS contributions exceed £2,400 gross. A surplus check will not be required unless a member is leaving an employment

Part 7. Lump Sum Benefits

Restriction

7.1 Benefits from an FSAVCS may not be taken in lump sum form except as permitted by paragraph 7.4, or following a transfer being received from a personal pension scheme (paragraph 14.7).

Deferring FSAVC Benefits

7.2 If a member chooses to defer taking FSAVCS benefits under paragraph 5.3 at the time when benefits from the employer's scheme come into payment, there will be no entitlement to a lump sum benefit which might otherwise have been payable because of an earlier transfer payment from a personal pension scheme. Neither will a lump sum be payable when the member eventually opts (no later than age 75) for the FSAVC benefits to come into payment.

7.3 Deferring FSAVCS benefits under paragraph 7.2 will have the effect of reducing any lump sum entitlement under the employer's scheme if such a lump sum is measured by reference to the initial amount of pension from the employer's scheme (see Appendix XII of *PN*).

Commutation for Triviality or Serious Ill-health

7.4 The rules of an FSAVCS may permit full commutation, of the member's pension on grounds of serious ill-health or, in relation to a specific employment, triviality on exactly the same terms as for an *approved main scheme* provided that the pensions (if any) from all *approved retirement benefits schemes* or *relevant statutory schemes* of the employer are also being commuted for the same reason. It must be emphasised that the triviality limit of £260 per year is to be applied to the aggregate benefits from all the employer's schemes and all FSAVCS in respect of that employment. Any pension benefits accrued under the FSAVCS in respect of other employments, however, would be unaffected.

7.5 If commutation is allowed, the administrator of the FSAVCS will be liable for a 20% tax charge on the whole of the lump sum from the FSAVCS under section 599 (see *PN* 17.27).

Part 8. Increases of Pensions in Payment

Limit

8.1 Pensions payable from an FSAVCS may be level or increasing to take account of inflation. The level of increase should not exceed that produced, on a year-on-year basis, by the greater of 3% or the increase in the Cost of Living Index. The benefits of the FSAVCS may be solely in the form of increases relating to a pension from the *main scheme* to the extent that it is not already fully increased.

Part 9. Leaving Pensionable Service

Occasion for Surplus Check

9.1 Leaving *pensionable service* i.e. either leaving the employment of the employer without taking benefits, or simply withdrawing from membership of the employer's *approved retirement benefits schemes* or *relevant statutory schemes* while remaining in service, is an occasion for benefits to be tested to identify any surplus (see paragraph 6.5). Once tested no further check is necessary in relation to the benefits accrued in respect of that employment unless:

- the individual rejoins the service or *pensionable service* of the employer on the basis that scheme benefits are provided by reference to the aggregate of both periods of service with the employer (see *PN* 7.2 and b(i) of Appendix IV of *PN*), and
- contributions to the FSAVCS are resumed.

9.2 The procedures for the identification and disposal of surplus AVCs are described in Part 18.

Refund of Contributions

9.3 A member who, on leaving *pensionable service*, is given a refund of contributions (with or without interest) and no other benefit (except a Guaranteed Minimum Pension or other contracted-out benefit) from his *main scheme*, must be given a similar refund, and no other benefit in respect of that *pensionable service*, from the FSAVCS. Similarly where the *main scheme* is non-contributory on the part of the member and no benefit is given, a refund of contributions must be made from the FSAVCS. The amount of the refund is subject to a 20% charge to tax under section 598 but no part of such a refund will be treated as a refund of surplus AVCs under section 599A (see paragraph 16.1).

9.4 On leaving *pensionable service* the member's entitlement to contribute to an FSAVCS ceases, except as described in paragraph 4.8. That entitlement may start again on joining an *approved retirement benefits scheme* or *relevant statutory scheme* with the same or another employer. Where contributions re-commence after a change of employment the member's accrued benefits under the FSAVCS in respect of the former employment must be notionally segregated (see paragraph 6.6) and a new account started for further contributions. This is also the case where *pensionable service* is resumed with the same employer in circumstances where (b)(ii) of Appendix IV of *PN* is in point i.e. the two periods of service are not being aggregated for Inland Revenue limits purposes.

9.5 The member may have the following options:

- (a) for the benefits to remain payable from the FSAVCS at any time between attainment of age 50 (or earlier, on grounds of *incapacity* or on attaining an early normal *retirement* age (see paragraph 5.2)) and attainment of age 75, or
- (b) for the benefits to be bought out under a *section 32 policy*, or
- (c) for a transfer payment to be made to an *approved* personal pension scheme or to an *approved retirement benefits scheme* or *relevant statutory scheme* of a subsequent employer (see Part 14), or, if contributions are to continue, to another FSAVCS.

Whichever option is elected, any insured lump sum death benefit provided by the FSAVCS which continues to be payable on death after cessation of *pensionable service*, but before the member's pension has come into payment, must be limited to twice the member's final remuneration at the time of leaving *pensionable service*. A refund of contributions (with or without interest) may also be paid on death provided that the contributions in point have not been applied to secure benefits payable solely on the death of the member. As far as possible any remaining benefits in excess of this limit should be paid in pension form to a widow, widower, **surviving civil partner** and/or

dependant.

9.6 The provisions above about breaking the link between the timing of the payment of benefits from the employer's scheme and benefits from the FSAVCS are separate from the facility described in paragraph 5.3 about the flexible use of FSAVCS. An FSAVCS which does not include the latter as a facility may nonetheless apply the conditions of this Part.

Part 10. Death in Service

Occasion for Surplus Check

10.1 Death of a member while in *pensionable service* is, like *retirement* or leaving *pensionable service*, an occasion for benefits to be tested to identify any surplus (see paragraph 18.5). Any surplus so identified on death which is not applied to provide other approvable benefits should be paid (after deduction of tax - see Part 16) to the member's legal personal representatives. If the *main scheme* is an *SDCS* this test is not relevant and the whole of the member's fund may be applied to secure benefits (see *PN* 22.25).

10.2 Lump sum death benefits (payable as described in paragraph 5.5) may be distributed on a discretionary basis in exactly the same way as under any other *approved retirement benefits scheme* (see *PN* 11.5). The recipients of these benefits need not be the same as those chosen under the *main scheme*.

10.3 If the FSAVCS offers a facility for the flexible use of FSAVCs (see paragraph 5.3), then if the member dies

- while the FSAVCS pension is in payment and:
- before taking benefits from the employers scheme

death in service benefits may be paid, as set out in *PN* Part 11.

10.4 If the member dies

- before taking an FSAVC pension, and
- before taking the main (non-AVC) benefits from the employer's scheme

death in service benefits will apply in the normal way. The facility for a widow, widower, **surviving civil partner** and/or *dependant* to opt for income drawdown may be made available if the scheme permits.

Part 11. Death in Retirement

Benefits

11.1 Benefits payable from an FSAVCS on the death of a member may be in the form of pension for a widow, widower, **surviving civil partner** and/or *dependant* and a lump sum under a guarantee (see part 12 of *PN*). As the amount of benefits payable will have been tested on the earlier of leaving *pensionable service* and *retirement* to identify any surplus (see paragraph 6.5) no further checks are necessary.

11.2 Where the employer's scheme is an *SDCS*, the FSAVCS may provide benefits on the same basis and in the same circumstances detailed in *PN* 22.26 to 22.28.

11.3 If the FSAVC offers a facility for the flexible use of FSAVC (see paragraph 5.3), then if the member dies

- while the FSAVC pension is in payment and
- after taking benefits from the employer's scheme

benefits appropriate on death in *retirement* may be paid. Such benefits could include a lump sum representing a guaranteed pension for up to 5 years and a pension for a widow, widower, **surviving civil partner** and/or *dependant*.

11.4 An FSAVCS pension may be guaranteed for up to 10 years, from the later of the date of the start of the FSAVCS pension or the main benefits from the employer's scheme. Where these dates are the same, any guarantee should run from that date.

11.5 The guarantee period for the FSAVCS pension may differ in length for the pension from the employer's scheme. The two guarantees run independently of each other.

11.6 If the member dies

- after taking main (non AVC) benefits from the employer's scheme and
- before taking an FSAVC pension

then a further check for maximum aggregate benefits will be made as stated at paragraph 6.5, and any surplus FSAVCs identified.

11.7 Where FSAVC funds are held to provide benefits for the member, any remaining FSAVC fund can be refunded to the member's legal personal representatives, subject to tax under section 599A (see Part 16). Or they can be used for a pension for the member's widow, widower, **surviving civil partner** and/or *dependant* within limits for maximum benefits.

11.8 Any FSAVC funds held to provide own right widow's, widower's, **surviving civil partner's**, *dependant's* benefits should be tested against the benefit limit in the scheme rules. Any funds in excess of those needed to provide benefits up to the limit in the scheme rules may be refunded to the member's legal personal representatives, subject to tax under section 599A. Or they may be used for the provision of further widow's, widower's, **surviving civil partner's**, *dependant's* benefits subject to maximum benefit limits.

Part 12. Funding

Conditions

12.1 An FSAVCS may be either insured or self-administered. As funds will be maintained on a money purchase basis it is necessary to keep track of each member's actuarial interest in the scheme but any earmarking (except of policies) must be purely notional i.e. solely for the purpose of calculating entitlement to *relevant benefits*.

12.2 There must be a rule prohibiting loans from the scheme (or on security of any policy) to the member or his or her family or to the member's employer.

Part 13. Discontinuance of Schemes

Conditions

13.1 If an FSAVCS is discontinued or wound-up the treatment of each member's benefits will vary according to whether the *main scheme* is an *SDCS* or whether or not the member remains in *pensionable service*.

13.2 If the member has ceased to be in *pensionable service* (see Part 9), in which case a surplus AVC check as described in Part 18 will be made, or if the *main scheme* is an *SDCS*, benefits may be secured either by a transfer (see paragraph 14.1) or the purchase of a *section 32 policy*. Benefits already in payment should be secured by the purchase of an immediate annuity in the member's name (or by policy assignment) or where practicable these may be transferred either to the *main scheme* or another *approved* scheme of the employer for payment in the form of an immediate annuity.

13.3 If the member remains in *pensionable service* the only options open are either a transfer to another FSAVCS or a transfer to an *approved retirement benefits scheme* or *relevant statutory scheme* of the current employer. The *main scheme* must be advised within 60 days, by the administrator of the FSAVCS, of the action taken.

Part 14. Transfers

Transfers Out When Pensionable Service has Ceased

14.1 The extent to which transfers are available out of an FSAVCS depends on whether or not the member has left *pensionable service* (see Part 9). Where *pensionable service* has ceased transfers are available to any of the forms of tax advantaged arrangements (see *PN* 10.22 to 10.24) which are capable of accepting transfers.

Transfers Out Whilst in Pensionable Service

14.2 While the member remains in *pensionable service* with the current employer the only permissible transfer is to another FSAVCS or to an *approved retirement benefits scheme* or *relevant statutory scheme* of the current employer. On making a transfer payment to another FSAVCS the administrator of the transferring scheme must notify the *main scheme* of the identity of the receiving scheme within 60 days.

14.3 If the member has commenced *income withdrawals* as described at paragraph 6.3 such a transfer is still permissible provided it represents the whole of the member's rights under the FSAVCS in relation to the employment in question. The FSAVCS must supply to the scheme administrator of the receiving scheme (or insurance company) details of the status of the member, a statement of the member's annual *earnings* after age 50, and the aggregate amount of FSAVC pension drawn in the period up to the date of transfer. This is for the purpose of the valuation described in paragraph 6.7.

14.4 In the event of an FSAVCS being subject to a *pension sharing order*, the *pension credit rights* may be transferred to another pension scheme and if so, would be subject to a nil certificate. The member's FSAVCS fund would be reduced by the corresponding amount.

Nil Certificates

14.5 When making a transfer payment, the administrator of the FSAVCS should provide the receiving scheme with a certificate (a NIL certificate) to the effect that the transfer value is not to be used to provide *retirement* benefits in lump sum form, unless the transfer payment includes a lump sum benefit from an earlier transfer from a personal pension scheme.

Transfers In

14.6 Membership of an FSAVCS for the sole purpose of accepting transfer payments is not permissible. The individual must be a contributing member of the FSAVCS before a transfer payment can be accepted on his or her behalf.

14.7 The rules of an FSAVCS may not permit the acceptance of a transfer value except from another FSAVCS, an *approved* personal pension scheme, or a separate AVC scheme of the employer as described at paragraph 14.11. Where such a transfer value is accepted an appropriate notification must be made by the FSAVCS administrator to the *main scheme* (see paragraph 17.16).

14.8 An FSAVCS may receive *pension credit rights* which have arisen from another FSAVCS or a personal pension scheme. The criteria for the acceptance of a transfer payment outlined in Part 14 would apply.

Transfers In From Personal Pension Schemes

14.9 It is permissible for an FSAVCS to ring-fence an incoming transfer payment from a personal pension scheme so as to allow a lump sum to be paid at benefits payment date from the FSAVCS. The lump sum may be an amount up to 25% of the transfer payment, including subsequent investment income.

14.10 The transfer from a personal pension scheme should be made in the form of an assignment of the individual policy, suitably endorsed to be subject to the rules of the FSAVCS. If such an assignment is not possible, for example if the transferring personal pension scheme secures the benefits under a master policy rather than individual policies, then the transfer payment must be made in cash. Transfers of assets must not be made.

14.11 The transfer payment should be held subject to the rules of the FSAVCS. This means that the benefits derived from the transfer, including the *retirement* lump sum, should begin at the same time as the remainder of the benefits derived during membership of the FSAVCS. This will still apply if the transfer has been made in the form of an assignment of a group or cluster of insurance contracts for the member.

14.12 Before the transfer payment is accepted, the administrator of the FSAVCS should make a *headroom* check as described in Part 17, regardless of whether the initial contribution exceeds £2,400. This is to ensure that the personal pension scheme benefits are taken into account for Inland Revenue limits purposes. If the *headroom* check shows that there is no scope to pay contributions to the FSAVCS without exceeding Inland Revenue limits, then the transfer should not proceed. It is not appropriate to become a member of a FSAVCS solely by reference to a transfer payment.

Transfers In From Employer's AVC Schemes

14.13 A transfer payment may be accepted from a separate AVC scheme of the employer in circumstances where the individual continues to be a member of the *main scheme* of the employer. In such a situation, the individual has not left *pensionable service* with the employer and there is no surplus AVC check taking place. It should be made a condition of membership of the FSAVCS that contributions are to be paid or have been paid in the past in relation to the same employment.

Part 15. Tax Relief

General

15.1 Tax relief on a member's contributions will be given by way of a deduction from the actual contribution of an amount equal to income tax at the basic rate. The member must claim any higher rate relief by completing the appropriate part of the tax return. Members may need to provide their Tax Office with evidence of membership. A Voluntary Contribution Certificate (VCC) should be used for this purpose and must be given to the member shortly after the first contribution to the scheme is paid. If, however, the scheme documents make provision for a cooling off period during which membership may be cancelled, the VCC must not be given until the expiry of that period. (See Appendix V for a specimen VCC).

15.2 A member may be required by the Tax Office to produce evidence of payment of a particular contribution or contributions. Where this is other than the first payment under the scheme, a contribution receipt (not a form VCC) should be issued. A specimen receipt is included at Appendix VI. Any form of official receipt is acceptable providing the scheme (including the SF approval reference number), amounts and dates of payment are identified together with the member's name, National Insurance number and providers reference number.

15.3 Tax relief on a member's contribution is allowable in the tax year of payment of the contribution. Where the total contributions paid in the tax year are less than the maximum amount (see paragraph 4.2), the unused amount is lost for tax relief purposes. In other words, a contribution may neither be carried back to an earlier tax year nor unused relief carried forward to a later tax year; the contribution can only be considered for tax relief in the actual tax year of payment.

15.4 Section 593(3)(b) enables the administrator of an FSAVCS to recover from the Inland Revenue the amount deducted by a member. The payment to the scheme of such amounts is dealt with by [FICO](#) (Savings and Investments (PP)), St John's House, Merton Road, Bootle, Merseyside L69 9BB.

15.5 The [PSO](#) will advise [FICO](#) when an FSAVCS has been [approved](#) and they, in turn, will send to the scheme administrator an information pack explaining the repayment procedures.

Part 16. Taxation of Repayment of Surplus AVCs

General

16.1 When a surplus AVC fund is repaid to a member or to the legal personal representatives (in the event of the member's death - see paragraph 10.1) from an *approved retirement* benefits or *relevant statutory scheme* the administrator of that scheme becomes liable to tax under Case VI of Schedule D. The tax is charged under section 599A at the rate of 32% (for 2000/01) on such amount as, after deduction of tax at that rate, would equal the amount repaid to the member or his/her personal representatives. Where a member takes a refund of contributions on leaving service (see *PN* 10.45 - 10.46), any part of that refund which comprises a return of AVCs is chargeable under section 598 (see *PN* 17.20) and not under section 599A.

16.2 In the hands of the member or legal personal representatives the repayment is treated as being net of basic rate tax in the tax year of receipt. This tax is not repayable and a higher rate taxpayer will have to pay additional tax on the grossed up amount. There is, however, no higher rate liability if the repayment arises on death. The administrator of the scheme, making the refund, is required to give the member or his or her personal representatives a certificate showing the amount to be declared in his or her tax return (see Appendix VII for a specimen certificate). This figure should be the amount which, after deduction of tax at the basic rate, would equal the amount repaid.

Example

16.3 A surplus AVC fund of £1,000 is held by the scheme administrator.

-STEP A.

The scheme administrator, in satisfaction of its liability, deducts tax at 32%, viz.

Surplus	= £1,000
Less tax	= £ 320
Payable to member	= £ 680

-STEP B.

The member receives £670. This is treated as income which has suffered basic rate tax of 22%, viz.

Net received	= £680
Grossed up at basic rate	= £871.79 (amount to be certified and declared in employee's tax return)

If the member is a basic rate taxpayer, there is no further liability.

-STEP C.

If the member is a higher rate taxpayer he or she will be chargeable at the higher rate on the grossed-up repayment, viz.

£ 871.79 @ 18% (40% - 22%) = £156.92 further liability

Note: The tax charge under section 599A was 35% for 1995/96, 34% for 1996/97 and 33% for 1997/98 to 1999/2000.

Part 17. Administration Procedures

Introduction

17.1 This Part describes the procedures necessary to ensure that:

- applicants are eligible for membership of an FSAVCS and
- total contributions are within the required limits.

Detailed information about these requirements can be found in the Regulations entitled The Occupational Pension Schemes (Additional Voluntary Contributions) Regulations 1987 (SI 1987 No 1749) as amended.

APPLICATION FOR MEMBERSHIP

Application Form

17.2 Before accepting contributions from a new member or further contributions from an existing member who changes employment the administrator of the FSAVCS must obtain a completed application form signed by the individual. (To help providers with their preparation of the form a checklist (PS 303) of the requirements is included at Appendix VIII.) This application form, which should confirm the individual's eligibility, is an application for tax relief at source on the contributions and must therefore include a prominent warning that:

- it is a serious offence to make false statements and
- to do so could lead to prosecution

17.3 The information required from the individual on the application form should include:

(a) full name and address,

(b) date of birth,

(c) full National Insurance number,

(d) Tax Office and reference number,

(e) an estimate of *earnings* from the relevant employment in the current tax year (see paragraph 17.18),

(f) full name and address of the employer,

(g) full name or title of the *approved retirement benefits scheme* or *relevant statutory scheme(s)* of the employer under which benefits for the individual are accruing, and full name and address of administrator,

(h) the gross amount, expressed either as an annual monetary amount or as a percentage of annual *earnings* (see paragraph 4.2), of the individual's contributions to all *approved retirement benefits schemes* or *relevant statutory schemes* of the employer,

(i) the proposed annual contribution to the FSAVCS (indicating whether the figure quoted is a net or gross contribution), and

(j) the benefits required from the FSAVCS.

Declaration

17.4 In addition the application must include a declaration by the applicant that:

- (a) he or she is currently accruing benefits under the scheme(s) referred to at (g) of paragraph 17.3,
- (b) the total contributions to the FSAVCS and all *approved retirement benefits schemes* and *relevant statutory scheme(s)* of the employer do not exceed 15% of *earnings* (subject to the *permitted maximum* if the applicant has no *continued rights*) in respect of the employment,
- (c) no contributions to any other FSAVCS are being paid in the current tax year in respect of the same employment,
- (d) he or she is not a *controlling director*,
- (e) he or she undertakes to abide by the rules of the FSAVCS and to inform the FSAVCS administrator within 30 days if
 - there is any change of employment (including becoming self-employed or unemployed), or
 - he or she becomes a *controlling director*, or
 - he or she should cease to accrue benefits under the employer's *approved retirement benefits schemes* or *relevant statutory schemes*,
- (f) to the best of the applicant's knowledge and belief the particulars given on the application are correct and complete, and
- (g) he or she understands that no pension under the FSAVCS may be assigned commuted or surrendered except in accordance with the rules of the scheme (see paragraphs 7.1 to 7.2).

CONTRIBUTIONS FOR WHICH NO HEADROOM TEST IS NECESSARY

17.5 Subject to paragraphs 17.2 - 17.4 and 17.6 an FSAVCS may accept contributions from an individual without checking whether there is *headroom* if:

- (a) the individual is eligible for membership of the FSAVCS (see Part 3), and
- (b) the gross FSAVCS contribution does not exceed £2,400 per tax year, and
- (c) the total contributions paid in the tax year by the individual to all *approved retirement benefits schemes* and *relevant statutory scheme(s)* (including the FSAVCS) do not exceed 15% of the individual's *earnings* (subject to the *permitted maximum* if the individual has no *continued rights*) in that year (see paragraph 4.2).

17.6 To ensure that the requirement of paragraph 17.5(c) is met the FSAVCS administrator must obtain from the individual documentary evidence from which *earnings* and contributions can reasonably be ascertained (see paragraphs 17.18 - 17.27 in respect of returns and quality of evidence). This evidence should be obtained within 30 days of the date on which the individual first pays a contribution. If it is not provided within that period, membership should be cancelled, the contributions refunded and any tax relief obtained repaid to the Inland Revenue.

Financial Services Act

17.7 Providers and their agents are reminded that meeting the requirements of paragraph 17.5 may not be sufficient to meet their obligations under the Financial Services Act.

CHECKS ON HEADROOM

Supplementary Information

17.8 A *headroom* check is required where:

- (a) the intended contributions exceed £2,400 gross in a tax year, or
- (b) on change of employment contributions continue to exceed £2,400 in a tax year, or
- (c) an individual earning more than £16,000 per tax year (i.e. equating to contributions of £2,400 where 15% of *earnings* are paid) wants to know the maximum they can contribute, or
- (d) it is proposed to accept a transfer from a personal pension scheme (see paragraph 14.8).

This check is required to be carried out by the administrator of the FSAVCS on the basis of information provided by the individual. The individual will need to approach the administrator of the *main scheme* for much of this information using his or her rights under the Disclosure of Information requirements of the Pension Schemes Act 1993. The *headroom* check is additional to, not an alternative to, the 15% of *earnings* test (paragraph 17.5(c)).

17.9 The nature of the calculation of *headroom* varies depending on whether or not the *main scheme* is an *SDCS*. Paragraph 17.10 explains the check necessary where the *main scheme* is an *SDCS* and paragraphs 17.11 - 17.13 deal with the necessary actions for other cases.

SDCS

17.10 Where the *main scheme* is an *SDCS* the *headroom* check consists of a test that the total contributions (including those of the employer) to the *SDCS* and the FSAVCS in a tax year:

- (a) do not exceed 17.5% of *earnings* in that year, and
- (b) applied to secure benefits payable on the employee's death before *retirement* do not exceed 5% of those *earnings*.

For this purpose *earnings* must be limited to the *permitted maximum* (except in relation to a member with *continued rights*) and the member's contributions limited to 15% within the 17.5% mentioned in (a) above (see paragraph 4.2).

Other employer's schemes

17.11 Where the *main scheme* is other than an *SDCS*, information is required to carry out the *headroom* check. The necessary information will vary with the nature of the benefits under the *main scheme* and is as follows:

All schemes

- (a) current *earnings* from the relevant employment,
- (b) *normal retirement date*,
- (c) date service with the employer commenced,
- (d) whether an election has been made to revoke any *continued rights*. If the member is anticipating early *retirement* then it will be necessary to specify whether an option described in *PN 7.27* has been exercised or an election under paragraph 29 of Schedule 6 FA 1989 made,
- (e) whether the member is one to whom *PN 7.4 A or B* applies and *retained benefits* are not required to be taken into account in the calculation of maximum benefits. If this information

is not readily available, where for example the individual is in the first year of membership of the *main scheme*, *retained benefits* should be taken into account on a provisional basis,

(f) death in service benefits payable - only required where it is proposed to pay such benefits (other than a refund of contributions) under the FSAVCS.

Other information required from the individual

(g) details of the paid-up value of benefits from other FSAVCS relating to the employment,

(h) subject to (e) details of the current value of any *retained benefits*.

Schemes providing defined benefits

(i) date *pensionable service* commenced,

(j) benefit accrual rate or formula (for both members and *dependants*),

(k) current pensionable *earnings* (i.e. those in respect of which benefits are calculated),

(l) details of any provisions for augmentation or abatement of benefits.

Schemes providing money purchase benefits

(m) current value of member's account,

(n) rate of combined contributions by employer and member,

(o) the amount of the contributions in (n) to be used for death benefits.

Calculation of Headroom

17.12 The calculation of *headroom* where the *main scheme* is not an *SDCS* is an actuarial calculation of the difference in value between maximum approvable benefits and the level of benefits being provided for the member at *normal retirement date* under the *main scheme*. If, however, the individual expresses the intention to retire early and the *main scheme* rules permit such action, the calculation of *headroom* may be based on the earlier intended *retirement* date.

Actuarial assumptions appropriate to the *main scheme* may, if desired be used for these calculations but otherwise the following model set of assumptions should be adopted. Where the model is used it must be used in its entirety since there is a relationship between the various percentages therein.

Valuation rate of interest to be earned on investment

10% per annum.

Net investment yield (pre-*retirement*)

The margin between the valuation rate of interest and general increases in salaries must be assumed to be 2.5% per annum.

Net investment yield (post-*retirement*)

6% per annum.

Pensioners Mortality

The mortality assumption, including allowance for future improvements, should be PA(90) rated down two years.

Salary Scale

Where the member indicates an expectation of career escalation, a suitable allowance not exceeding 1% may be deducted from the net investment yield. In making these calculations providers should take account of the projected *permitted maximum* at the assumed *retirement* date projecting the *permitted maximum* (in terms of *PN 13.17*) at a rate not greater than 7% per annum.

Staff turnover etc

Members should normally be assumed to remain in the scheme until *normal retirement date* unless the intention to retire early has been expressed as mentioned in the opening paragraph above.

Appendix II to these Guidance Notes shows one method for calculating *headroom*. Schemes may use other reasonable methods.

Retained Benefits

17.13 Where it is necessary to take account of *retained benefits* the current value of the following *retained benefits* may be taken as:

- (a) for preserved benefits in a defined benefit scheme, the transfer value available from that scheme,
- (b) for benefits to be determined by reference to the value of units, the value of those units,
- (c) for benefits to be determined by reference to the amount of a deposit, the amount of that deposit,
- (d) for insurance contracts, the surrender value.

Transfer credits are another form of *retained benefits*. Where transfer credits are by way of added years in the present scheme, the benefits available at *normal retirement date* should be calculated according to the rules of that scheme. Where transfer credits are by way of money purchase benefits the allowance for *retained benefits* may be calculated as for other money purchase benefits.

17.14 An initial or further test on *headroom* may become necessary when the amount of FSAVCS contributions increases. The circumstances in which such a test is required are:

- (a) where the amount of gross contributions in a tax year is increased beyond £2,400 for the first time, or
- (b) if the increased contribution exceeds an amount or a fraction of current *earnings* justified by a previous check on *headroom*. Subject to paragraph 17.15, the retest may be waived if either,
 - (i) the increased contribution is not more than 10% greater than that justified for a previous year in which a *headroom* check was applied, or
 - (ii) the increase since the last *headroom* check is not proportionately greater than the increase in the individual's *earnings* over the same period.

When applying a further check it will not be necessary to obtain further evidence (see paragraphs 17.18 to 17.27) if the proposed rate of contributions can be justified on the basis of evidence obtained previously.

17.15 Whenever contributions to an FSAVCS commence or increase the scheme administrator must ensure that the statutory 15% limit on aggregate contributions is not exceeded (see

paragraph 4.2).

ACCEPTANCE AS A MEMBER

Member Notification

17.16 As soon as an individual is committed to membership of an FSAVCS (i.e. not before the expiry of any cooling off period during which the individual may cancel his or her membership) and in any event within 60 days the scheme administrator must notify the administrator of the *main scheme*. This notification which must be in writing should include the individual's FSAVCS membership and National Insurance numbers and must be retained by the receiving administrator because it forms the basis for the surplus calculation procedures. A similar notification must be sent within 60 days for retention by the administrator of a new *main scheme* on change of employment of an existing member. Likewise, where a transfer payment is received from another FSAVCS, which consists of contributions paid whilst accruing benefits under the *main scheme*, or from an *approved* personal pension scheme a notification should be made within 60 days to that *main scheme*. Should the identity of the *main scheme* change, the notification together with its attaching responsibilities must be transferred by the administrator of the existing *main scheme* to the administrator of the new *main scheme*.

PAYMENT OF BENEFITS

17.17 No benefits under an FSAVCS may commence until the procedures relating to the calculation of surplus in relation to the relevant employment have been completed and the required authority given by the *leading scheme* (see paragraph 18.6).

QUALITY OF EVIDENCE, TOLERANCES AND RETENTION OF RECORDS

Evidence of Earnings and Contributions

17.18 Reasonable documentary evidence in respect of the current employment must be obtained in support of the individual's estimate of *earnings* and level of contributions paid to the employer's scheme(s) (see paragraph 17.3(e) and (h)). This is required both on joining the FSAVCS (whether a *headroom* check is appropriate or not) and whenever a calculation is carried out by the FSAVCS provider for the purposes of determining *headroom* or whether a contribution is within the statutory 15% of *earnings* (or total contributions to an *SDCS* are within 17.5%).

This evidence may be the payslip for the latest pay period or for the last pay period of the preceding tax year. The form P60 is not acceptable as evidence of *earnings* because it would show "net pay" after deduction of contributions to the employer's scheme(s) and therefore the 15% limit could not be ascertained. A copy of the evidence need not be retained; it will be sufficient to record the amounts of contributions and *earnings* shown, the date the evidence was obtained and the form it took. The estimate and the documentary evidence should be obtained within 30 days after the date on which the individual first pays a net contribution. If it is not provided within that period membership of the scheme should be cancelled and the contributions refunded.

17.19 The estimate is the normal basis for determining the contribution level. Where the evidence presented does not fully substantiate the individual's estimate of *earnings* (see paragraph 17.3(e)) a tolerance of not more than 10% may be accepted.

17.20 If the evidence plus 10% is less than the estimate then it cannot be considered to be supportive and the scheme may contact the member and obtain an explanation. This may result in the original estimate being reduced by the member and this can only be effected by means of a written note to the scheme which should then be held with the original application form. The scheme should not under any circumstances alter the original estimate on the application form but it must alter its own records.

17.21 Another possibility is that further evidence may be produced to back up the original estimate - e.g. a recent payslip which is more up to date than that of last year. If the scheme is then satisfied it is merely a question of recording the fresh evidence on its records in the normal way.

17.22 If no satisfactory explanation is sought or obtained in a case where the evidence of *earnings* plus 10% is less than the estimate then the proposed contributions may still be accepted provided that they can be justified on the basis of the evidence. The scheme should attach a brief note to the application form to this effect and must also replace the estimate by the evidence in their records. Again, however, the scheme should not under any circumstances attempt to alter the member's original estimate on the application form. The scheme should also ensure that if the member wishes to raise the contribution level above that permitted by the evidence it can only be acceptable providing further evidence is produced to support the new contribution level. This may in practice still be lower than the first original estimate.

17.23 If the evidence produced is greater than the estimate given, the scheme need take no further action except to record the evidence. The contributions must not exceed the limit imposed by the estimate. If at some future time the member wishes to raise the contributions to a level above that permitted by the estimate then he or she should be asked to give a revised estimate in writing and some form of recent evidence. (Although the scheme will still have a record of the evidence originally given this may now be well out of date.)

Increases in Contributions

17.24 If a member wishes to increase contributions beyond the amount justified by the estimate previously given (and supported by evidence) the scheme administrator must obtain a revised estimate again duly supported by documentary evidence. The further estimate and evidence must be obtained within 30 days of the payment of the increased contribution. If they are not provided within that period the amount by which the increased contribution exceeds the original level of contribution should be refunded (see paragraph 4.5).

Evidence of Benefits in Kind

17.25 Where an individual indicates that they wish taxable benefits from the employment to be taken into account in calculating the maximum contribution permissible the evidence to be obtained should be:

- (a) the current year's Notice of Coding (which will detail the total assessable benefits), or
- (b) a memorandum from the salary/wages department, or
- (c) a communication from the employer, on headed notepaper, detailing the taxable benefits for the year.

Authorised Representatives

17.26 Estimates and evidence of *earnings* obtained by an authorised representative (including an independent financial adviser) of a scheme need not be seen by the scheme administrator but it is the responsibility of the scheme administrator to ensure that details of the estimates and evidence are held on record.

Retention of Records

17.27 The records of this evidence together with the calculations of maximum contributions should be retained while the individual remains a contributor and for six years thereafter. These records should be kept centrally to facilitate their production for inspection when required.

Part 18. Calculation of Surplus AVCs

Relevant Date

18.1 The occasion for checks to identify and calculate any surplus AVCs is specified by The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 (SI 1993 No3016 as amended) as the earliest of *retirement*, leaving *pensionable service* or death. No such check is necessary where the *main scheme* is an *SDCS*. If the member is in receipt of *income withdrawals* as a result of commencing benefits prior to *normal retirement date* the check should be made at *retirement*. Also, if the member dies after taking his or her *main scheme* benefits but before taking the FSAVCS benefits, a second surplus test will be required at this point in time.

Leading Scheme

18.2 The responsibility for calculating any surplus AVCs is that of the administrator of the *leading scheme*. The identity of the *leading scheme* is determined by the administrator of the *main scheme* using the basis described in this paragraph. If the member has paid AVCs to any *approved retirement benefits* or *relevant statutory scheme* of the employer (other than to secure added years of service) the *leading scheme* is the *main scheme*. If not, the *leading scheme* will be the FSAVCS from which the *main scheme* has last received a notification under paragraph 17.16.

Benefit Certificate

18.3 If the *leading scheme* is an FSAVCS the administrator of the *main scheme* must, within 30 days of becoming aware that the *relevant date* has occurred, notify the FSAVCS that it (the FSAVCS) is the *leading scheme* giving details of the time and occasion of the *relevant date* and, so that the FSAVCS can carry out its *leading scheme* responsibilities, a certificate showing details of:

- (a) the initial annual amount of the member's pension (before allocation under *PN* 12.5 or commutation see *PN* Part 8) payable or prospectively payable under all *approved retirement benefits schemes* or *relevant statutory scheme(s)* of the employer or to which the employer has contributed,
- (b) the prospective annual amount of spouse's **or civil partner's** pension (excluding pensions provided by allocation under *PN* 12.5) payable under all *approved retirement benefits schemes* or *relevant statutory scheme(s)* of the employer or to which the employer has contributed,
- (c) the rate of post *retirement* increases of the pensions payable under (a) and (b) either guaranteed or, where not guaranteed, the average of the percentages by which pensions payable have been increased in each of the three years preceding the *relevant date*,
- (d) the details of the calculation of the maximum annual amount under the rules of the *main scheme* of the aggregate member's pension and *pension equivalent* payable from all *approved retirement benefits schemes* or *relevant statutory scheme(s)* in respect of the member's service with the employer (see paragraph 18.4),
- (e) the maximum annual amount under the rules of the *main scheme* of the prospective spouse's **or civil partner's** pension payable from all *approved retirement benefits* or *relevant statutory scheme(s)* providing benefits in respect of the member's service with the employer (see paragraph 18.4),
- (f) the measure of final remuneration upon which the maxima in (d) and (e) and where appropriate (i) below were based (see paragraph 18.4).

If the *relevant date* is the date of the member's death the details at (a) and (d) are not required but

the certificate should instead give details of:

(g) the amount of the aggregate lump sum benefit (excluding refunds of contributions) payable from all *approved retirement benefits schemes* or *relevant statutory scheme(s)* of the employer or to which the employer has contributed, and

(h) the maximum amount under the rules of the *main scheme* of the lump sum benefit (excluding refunds of contributions) payable from all *approved retirement benefits schemes* or *relevant statutory scheme(s)* providing benefits in respect of service with the employer (see paragraph 18.4).

The identity of any other FSAVCS to which the member has contributed by reference to the employment should also be given.

At the same time as this certificate is given, each of the FSAVCs identified above should be notified of the identity of the *leading scheme* and that a benefit certificate has been provided.

Some employer's *retirement benefits schemes* (e.g. many *relevant statutory schemes*) may not include a formal Inland Revenue limits rule in their documentation and thus will have difficulty in providing the details required at (d), (e) or (i). Such a scheme should use the specimen limits rule set out in Appendix III for this purpose.

Where schemes provide separate pension and lump sum *retirement* benefits the references to pension before commutation are to be construed as the aggregate of the pension and the *pension equivalent* of the separate lump sum.

Calculation of Maxima

18.4 The maxima under (d), (e) and (i) of paragraph 18.3 may be calculated by reference to whichever of the following measures of final remuneration is chosen by the administrator of the *main scheme*:

(a) the measure of annual remuneration on which the benefits of the *main scheme* are calculated, or

(b) the greatest measure of annual remuneration on which, under the rules of the *main scheme*, benefits could be calculated, or

(c) the average (subject, where appropriate, to the *permitted maximum*) of the annual remuneration from the relevant employment of the last three years of assessment from which tax was deducted for the purposes of section 203 (i.e. for PAYE).

For the purpose of calculating maximum benefits on early *retirement* or leaving *pensionable service*, (see *PN* 7.36 and 10.9 - 10.10) benefits secured by the AVC fund are not to be treated as money purchase benefits. This does not conflict with Department of Social Security legislation concerning the preservation of benefits as this specifically allows the surplus AVCs element of the short service benefit to be repaid.

Calculation of Surplus

18.5 The *leading scheme* (whether the *main scheme* or an FSAVCS) is responsible for obtaining details of the benefits payable under any (other) FSAVCS and for calculating any surplus benefits in respect of the relevant types of benefit (e.g. member's pension, spouse's **or civil partner's** pension or lump sum death benefits as appropriate) payable out of the member's AVCs funds. There is no objection to a provision allowing members an option to change the form of AVCs benefits payable. Such an option must be exercised before any surplus is repaid as it may necessitate re-calculation of the surplus. Surplus benefits are calculated using the formula $A - B$ where:

A is the initial pension (as described in (a) or (b) of paragraph 18.3) or lump sum on

death (as in (h) of paragraph 18.3) payable or prospectively payable in respect of service with the employer (i.e. including any AVC benefits, FSAVC benefits, or benefits relating to the purchase of added years of service from *approved retirement benefits schemes* or *relevant statutory schemes* of the employer) and

B is the maximum amount of the relevant form of benefit that may be paid under the rules of the *main scheme* either as advised in the benefit certificate given under paragraph 18.3 or, where the *leading scheme* is the *main scheme*, as determined by the administrator of that scheme in accordance with paragraph 18.4.

Disposal of Surplus

18.6 Having calculated the surplus benefits it becomes possible to calculate the surplus AVCs which may be refunded to the member. The amount refundable is the lesser of:

- (a) the value of the surplus benefits, and
- (b) the accumulated value of the member's AVCs.

As an alternative to the refund it may be possible to utilise the surplus AVCs to secure further benefits for the member and/their spouse **or civil partner** and/or *dependant(s)* within normal Inland Revenue limits. For this purpose when acting as the *leading scheme*, the rules of all FSAVCSs should include a suitable limits rule - an example of such a rule is set out in Appendix III. It is the duty of the *leading scheme* (having consulted the member) to instruct the various schemes involved as to what benefits are to be paid and the amount of the surplus benefits, the value of which is to be refunded. Each scheme refunding AVCs will be subject to the requirements of Part 16. Where the *leading scheme* is an FSAVCS it will notify the *main scheme* of the amounts and kind of benefits provided by each FSAVCS.

18.7 Where death has occurred after the member has taken the *main scheme* benefits but prior to taking benefits from the FSAVCS the fund may be paid to the member's legal personal representatives (after deduction of tax - see Part 16), or used to provide an annuity for a widow, widower, **surviving civil partner** or *dependant*.

Deferred benefits

18.8 Where benefits are not payable at or from the *relevant date* the surplus benefits may be calculated by reference to a current valuation of those benefits without making assumptions as to revaluation in the period of deferment. Money purchase benefits may be valued as the amount of benefit which can be secured at the *relevant date*. Administrators may use more sophisticated valuations if they wish.

Once the *leading scheme's* duties under paragraphs 18.5 and 18.6 have been met any remaining deferred benefits under an FSAVCS may be released from the requirement that they must be paid at the same time as benefits from the *main scheme* and they are not subject to further limits tests on their amount (but see paragraphs 6.11 and 9.1).

Basis For Control by Leading Scheme

18.9 The authority of the *leading scheme* to call for information and to control the payment of AVCs benefits and the repayment of surplus flows from provisions in the Regulations (see paragraph 18.1) which preclude any such payment or repayment without the authority of the *leading scheme*. The actual arrangements for the necessary exchange of information, determination of the member's wishes and the consequent authorities are not prescribed but guidance is available from the various Representative Bodies for the Pensions Industry.

Distribution of Surplus AVCs on Death

18.10 Where the *relevant date* is the date of the member's death any surplus AVCs identified should be paid (after deduction of tax - see Part 16) to the member's personal representatives.

Appendix I. Glossary

ABBREVIATIONS AND DEFINITIONS USED IN THE GUIDANCE NOTES

Approval

'Approval' refers in the case of a *retirement benefits scheme* to approval (or to such a scheme being considered for approval) under Chapter I Part XIV of the Taxes Act, and in the case of a personal pension scheme to approval under Chapter IV of that Part. An FSAVCS is a *retirement benefits scheme*, for approval purposes.

Approved

'Approved' refers in the case of a *retirement benefits scheme* to approval (or to such a scheme being considered for approval) under Chapter I Part XIV of the Taxes Act, and in the case of a personal pension scheme to approval under Chapter IV of that Part. An FSAVCS is a *retirement benefits scheme*, for approval purposes.

Continued Rights

'Continued Rights' is to be construed in accordance with Appendix III of Practice Notes.

Controlling Director

'Controlling Director' is defined in Appendix I of Practice Notes.

Dependant

'Dependant' is defined in Appendix I of the Practice Notes.

Earnings

'Earnings' mean remuneration as defined in Appendix I of Practice Notes.

FICO

'FICO' is the Financial Intermediaries and Claims Office of the Inland Revenue.

Headroom

'Headroom' is the maximum amount of additional contributions which may be paid to an FSAVCS consistent with normal Inland Revenue limits on benefits from *approved retirement benefit scheme(s)*.

Incapacity

'Incapacity' is defined in Appendix I of Practice Notes.

Income Withdrawals

'Income Withdrawals' shall have the meaning ascribed in section 634A

Index

'Index' means the Government's Index of Retail Prices.

Leading Scheme

'Leading Scheme' is the employer's *retirement benefits scheme* or the FSAVCS which is

responsible for the calculation of any surplus AVCs and for directing its disposal. The selection of the leading scheme is determined in accordance with paragraph 18.2.

Main Scheme

'Main Scheme' in relation to a member of an FSAVCS means the *retirement benefits scheme* of that member's employer which is providing that individual's main benefits. Although the main scheme is identified in Regulations there is no objection to another *retirement benefits scheme* of the employer carrying out the duties of the main scheme as an agent for that scheme.

Normal Retirement Date

'Normal Retirement Date' means the date of attainment by a member of the employer's *retirement benefits scheme* of the age specified in the rules of that scheme as the age at which a member should normally retire.

PN

'PN' followed by a number identifies a paragraph in the booklet IR12(1997) Practice Notes on Approval of Occupational Pension Schemes, or as amended.

PSO

'PSO' is the Pension Schemes Office of the Inland Revenue.

Pension Credit Rights

'Pension Credit Rights' means rights to benefits arising under section 29, Welfare Reform and Pensions Act 1999.

Pension Equivalent

'Pension Equivalent' is defined by The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 (SI 1993 No 3016) as an annuity of £1 for each £12 of lump sum payable under the rules of the scheme other than by way of commutation.

Pensionable Service

'Pensionable Service' means service for an employer in respect of which benefits accrue under an *approved retirement benefits scheme*.

Pension Sharing Order

'Pension Sharing Order' means a split of pension rights, arising after divorce under the provisions of the Welfare Reform and Pension Act 1999.

Permitted Maximum

'Permitted Maximum' is defined in section 590C as £60,000 for 1988/89 and 1989/90 with provision for that amount to be increased on an index linked formula for subsequent years by Treasury Order. For 1990/91 it is £64,800, for 1991/2 £71,400, for 1992/3 and 1993/4 £75,000, for 1994/95 £76,800, for 1995/96 £78,600, for 1996/97 £82,200, for 1997/98 £84,000, 1998/99 £87,600, for 1999/00 £90,600 and for 2000/01 £91,800.

Relevant Benefits

'Relevant Benefits' shall have the meaning ascribed in section 612.

Relevant Date

'Relevant Date' is the occasion of the earliest of a member's *retirement*, death or leaving *pensionable service*.

Relevant Statutory Scheme

'Relevant Statutory Scheme' shall have the meaning ascribed to it by section 611A(1).

Retained Benefits

'Retained Benefits' is defined in Appendix I of Practice Notes.

Retirement

'Retirement' is to be construed in accordance with paragraph 5.1.

Retirement Benefits Scheme

'Retirement Benefits Scheme' is defined in Appendix I to Practice Notes.

SDCS

'SDCS' means Simplified Defined Contribution Scheme and is described in Part 22 of Practice Notes.

Section 32 Policy

'Section 32 Policy' is a form of annuity contract for buying-out for the purposes of sections 431B(2)(d) and (e) and 591(2)(g) (see *PN* 10.37 - 10.45).

Taxes Act

'Taxes Act' is the Income and Corporation Taxes Act 1988 as amended by subsequent Finance Acts.

Appendix II. Headroom Check

Calculation of Maximum Approvable Pension (MAP) and Maximum Approvable Widow's(er's), Surviving Civil Partner's or Dependant's Pension (MAWP)

Stage 1.

Information required

n = years of service (not exceeding 40) with employer to *normal retirement date* (NRD)

s = the lesser of n and 20

r = current value of total annual emoluments (subject where appropriate to the *permitted maximum* set out in section 590C ICTA 1988) from the pensionable employment i.e. those assessable under Schedule E but excluding share option gains and golden handshakes

y = to be calculated by reference to the table in *PN 7.29* if required in Step 1

RB = *retained benefits* from previous employments if appropriate (see paragraph 17.11(e) and *PN 7.4A* and 4B)

For this purpose the present value of the *retained benefits* (see paragraph 17.11) needs to be rolled up to NRD by the addition of compound interest at 2.5%* and then converted into the *pension equivalent* by using an appropriate annuity rate#. For *retained benefits* which consist of added years credited in respect of a transfer payment received, see paragraph 17.13.

* Where career escalation of salary is appropriate substitute 1.5%

The current market annuity rate appropriate to the employee's sex and prospective *retirement* age.

Calculation method:

1. Does scheme membership pre-date 17.3.1987?

Yes: calculate $y/60 \times r$ and

No: calculate $s/30 \times r$

Enter result in A: (____)

2. Are there any RBs?

Yes: calculate $2r/3 - RB$. Enter result in B: (____)

No: Box A is MAP and no further calculation required

3. Does A exceed B?

Yes: calculate $nr/60$ and enter in C: (____)

No: A is MAP and no further calculation required

4. Does B exceed C?

Yes: B is MAP

No: C is MAP

5. MAWP = $(2/3 \times \text{Box A})$

NB Where there is more than one potential beneficiary the total MAWP may be increased to Box A.

Calculation of Scheme Benefits and Maximum Annual Contribution

Stage 2.

In general benefits fall into two categories, either final salary or money purchase with a possible combination of both (e.g. where AVCs have been paid to a final salary scheme).

-Final Salary Benefits

Information required:

- a. Number of years of *pensionable service* (excluding added years from transfers).
- b. Rate of accrual. This will normally be a fraction of pensionable salary (e.g. $1/60 \times c$) for each year of *pensionable service* but it could be a fixed monetary amount.
- c. Current pensionable salary.
- d. State Retirement Pension abatement (where appropriate) - this could for example be effected by restricting pensionable salary).

Calculation method:

1. Calculate scheme benefits as $(a \times b) - d$.
2. Deduct scheme benefits from MAP and, if applicable, MAWP.
3. Capitalise balance of pensions by reference to appropriate annuity rates#.
4. Calculate the contribution expressed as a level percentage of salary, which will produce a fund equal to the product of Step 3 on the basis of 2.5% pa* compound interest assumption.

-Money Purchase Benefits or Mixed Benefits

Information required:

- e. Current value of fund allocated to the provision of benefits for and in respect of the member. This should include the current paid up value of any other FSAVCSs relating to service with the present employer.
- f. Current rate of combined annual contributions from both employer and member.

Calculation method:

1. Calculate final value of e at NRD by addition of compound interest at 2.5%*.

Enter product in D: (____)

2. Calculate final value of future total annual contributions on the assumption that rate notified at f continues and on assumption of 2.5%* compound interest.

Enter product in E: (____)

3. Deduct any final salary benefits from MAP and, if applicable, MAWP.
4. Capitalise balance of pensions using appropriate annuity rates#.
5. Deduct total of D & E from capitalised value of MAP and, if applicable, MAWP less final

salary benefits.

6. Calculate the contribution expressed as a level percentage of salary which will produce a fund equal to the product of Step 5 on the basis of 2.5% pa* compound interest assumption.

* Where career escalation of salary is appropriate substitute 1.5%.

Rates calculated in accordance with appropriate actuarial tables. What is appropriate will depend on the age (at NRD) and sex of the member and (if appropriate) his or her spouse **or civil partner** and/or *dependants*. See paragraphs 17.12.

Appendix III. Inland Revenue Limits Rule Suitable for an FSAVCs

GENERAL

aIII.0)

Notwithstanding anything to the contrary in the Scheme provisions, for the purpose of calculating surplus AVCs and determining to what extent any such surplus may be used to provide further benefits, the amount of benefits payable to a Member or to a Member's widow, widower, **surviving civil partner**, dependant or other beneficiaries in respect of the Member's Service shall be subject to the limits set out below. For the purpose of these limits, the following terms shall have the meanings ascribed to them.

Act shall mean the Income and Corporation Taxes Act 1988 and any statutory amendment, modification or re-enactment thereof.

Aggregate Retirement Benefit shall mean the aggregate of:

- i. the Member's pension in respect of Service under this Scheme and any Associated Scheme, and
- ii. the pension equivalent of the Member's Lump Sum Retirement Benefit. For this purpose the pension equivalent is one twelfth of the cash value of the Lump Sum Retirement Benefit or, for a Class B or Class C Member is to be calculated on such other basis appropriate to the Scheme and approved by the Pension Schemes Office of the Inland Revenue. But see paragraph 5(5)(b) of The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 (SI 1993 No 3016) for the purpose of calculating surplus AVCs.

Associated Scheme shall mean any Relevant Scheme providing benefits in respect of Service.

Class A Member shall mean any Member where the Employer's Scheme was established on or after 14 March 1989 or where the Employer's Scheme was in existence prior to 14 March 1989 and the Member joined that scheme on or after 1 June 1989 or any other Member who has elected to become a Class A Member (however termed) under the rules of the Employer's Scheme.

Class B Member shall mean any Member who joined the Employer's Scheme on or after 17 March 1987 and before 1 June 1989 and has not elected to become a Class A Member.

Class C Member shall mean any Member who joined the Employer's Scheme before 17 March 1987 and has not elected to become a Class A Member.

Connected Scheme shall mean any scheme approved or seeking approval under Chapter I Part XIV of the Act which is connected with the Scheme in relation to the Member, i.e., if:

- (a) there is a period during which the Member has been the employee of 2 associated employers, and
- (b) that period counts under both schemes as a period in respect of which benefits are payable, and
- (c) the period counts under one scheme for service with one employer and under the other for service with the other employer.

For this purpose employers are associated if, directly or indirectly, one is controlled by the other, or both are controlled by a third party. Control has the meaning in section 840 of the Act, or in the case of a close company, section 416 of the Act.

Employer means the current Employer of a Member participating in the Scheme.

Employer's Scheme means the scheme of the Member's Employer which provides the benefits to which the benefits of the Scheme are additional. For the purposes of the definitions of Class A, B and C Members the Employer's Scheme shall be deemed to include any other scheme of the Employer or a Relevant Employer giving rise to continued rights for the Member by virtue of or by analogy the Occupational Pension Schemes (Transitional Provisions) Regulations 1988 (SI 1988 No 1436) and with the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes) Regulations 1990 (SI 1990 No 2101).

Final Remuneration shall mean the greater of

(a) the highest emoluments from the Employer which are assessable to income tax under Case I or II of Schedule E and upon which tax liability has been determined for any period of 12 months in the 5 years preceding the relevant date being the aggregate of:

(i) the basic pay for the year in question, and

(ii) the yearly average over 3 or more consecutive years ending with the expiry of the corresponding basic pay year, of any fluctuating emoluments provided that fluctuating emoluments of a year other than the basic pay year may be increased in proportion to any increase in the Index from the last day of that year up to the last day of the basic pay year. Remuneration that is received after the relevant date and upon which tax liability has been determined will be treated as a fluctuating emolument (providing it was earned or qualified for prior to the relevant date). In these circumstances the yearly average of 3 or more consecutive years must not begin later than the commencement of the basic pay year,

and

(b) the yearly average of the total emoluments from the Employer which are assessable to income tax under Case I or II of Schedule E and upon which tax liability has been determined for any 3 or more consecutive years ending not earlier than 10 years before the relevant date. Where such emoluments are received after the relevant date but are earned or qualified for prior to that date they may be included provided that in these circumstances the averaging period of 3 or more consecutive years begins no later than the commencement of the year ending with the relevant date.

Provided that:

(i) remuneration and total emoluments do not include any amounts which arise from the acquisition or disposal of shares or an interest in shares or from a right to acquire shares (except where the shares or rights were acquired or granted before 17 March 1987 or where the relevant date relates to the death of the Member while in Service) or anything in respect of which tax is chargeable by virtue of section 148 of the Act;

(ii) where Final Remuneration is computed by reference to any year other than the last complete year ending on the relevant date, the Member's remuneration (as calculated in (a) above) or total emoluments (for the purposes of (b) above) of any year may be increased in proportion to any increase in the Index from the last day of that year up to the relevant date;

(iii) the total amount of any profit related pay (whether relieved from income tax or not) may be classed as pensionable remuneration and treated as a fluctuating emolument;

(iv) an early retirement pension in payment from the Employer may not be included in Final Remuneration;

(v) a Member in receipt of a much reduced remuneration by reason of incapacity

i.e. under a sick pay or permanent health insurance scheme, for more than 10 years up to the relevant date, may calculate Final Remuneration under (a) or (b) above with the Final Remuneration calculated at the cessation of normal pay and increased in accordance with the Index.

(vi) in relation to a Class A Member Final Remuneration shall not exceed the permitted maximum;

(vii) in relation to any Class B or C Member whose remuneration in any year subsequent to 5 April 1987 used for the purpose of calculating benefits has exceed £100,000 or such other sum as may for the time being be specified in an order made by the Treasury, Final Remuneration shall be the amount ascertained in accordance with (b) above and (a) above shall not apply unless the Member chooses to adopt £100,000 or, on retiring before 6 April 1991, the remuneration assessed to tax under Case I or II of Schedule E for the year of assessment 1986/87, as his Final Remuneration.

For the purposes of providing immediate benefits at the relevant date it will be permitted to calculate Final Remuneration on the appropriate basis above using remuneration assessable to tax under Case I or II of Schedule E and upon which tax liability has not been determined. On determination of this liability Final Remuneration must be recalculated. Should this result in a lower Final Remuneration then benefits in payment should be reduced as necessary.

Final Remuneration for Members who work abroad in an overseas branch of a United Kingdom company and who belong to the United Kingdom Employer's pension scheme, may be calculated using the remuneration paid to them even though this has not been subjected to income tax under Case I or II of Schedule E in the United Kingdom.

Where a Member has become temporarily absent through secondment to another employer in the United Kingdom, Final Remuneration may include remuneration paid by the employer to whom he/she has been seconded providing the remuneration has been assessed to income tax under Case I or II of Schedule E and falls within the definition above.

Final Remuneration for Members temporarily seconded abroad by a UK resident employer to work for a non resident employer may be calculated using a notional salary based on the equivalent UK rate of remuneration for the job.

A Member, who retires during a period of unpaid absence, may calculate Final Remuneration under (a) or (b) above with the Final Remuneration calculated at cessation of paid employment with his Employer and increased in accordance with the Index.

Incapacity means physical or mental deterioration which is sufficiently serious to prevent a Member from following normal employment or which seriously impairs earning capacity. It does not mean simply a decline in energy or ability.

Index shall mean the Government's Index of Retail Prices.

Lump Sum Retirement Benefit shall mean the total value of all retirement benefits payable in any form other than non-commutable pension under any Associated Scheme.

Normal Retirement Date means the date of attainment by a scheme member of the age specified in the rules of the Employer's Scheme as the age at which a member should normally retire. Where a member participates in more than one Employer's Scheme the Normal Retirement Date shall be construed as the date on which the first retirement benefits are paid from any one of those schemes.

Pensionable Service shall have the meaning ascribed to it by section 70(2) of the Pension Schemes Act 1993.

Permitted Maximum shall have the meaning ascribed to it by section 590C(2) of the Act.

Relevant Date shall mean the date of retirement, leaving pensionable service or death as the case may be.

Relevant Employer is an employer as defined in Statutory Instrument 1988 No 1436 or in Statutory Instrument 1990 No 2101.

Relevant Scheme shall mean any other scheme approved or seeking approval under Chapter I Part XIV of the Act or a relevant statutory scheme as defined in section 611A of the Act or any scheme which has been accepted by the Inland Revenue as "corresponding" for the purposes of section 596(2)(b) of the Act.

Retained Benefits shall mean benefits for a Member derived from

- (a) retirement benefits schemes approved or seeking approval under Chapter I Part XIV or relevant statutory schemes as defined in section 611A of the Act, excluding benefits in respect of Service,
- (b) funds to which section 608 of the Act applies excluding benefits in respect of Service,
- (c) retirement benefits schemes which have been accepted by the Inland Revenue as "corresponding" for the purposes of section 596(2)(b) of the Act, excluding benefits in respect of Service,
- (d) retirement annuity contracts or trust schemes approved under Chapter III Part XIV of the Act, or personal pension schemes approved under Chapter IV Part XIV (other than arrangements thereunder to which only Minimum Contributions are paid during periods of membership of non-contracted-out occupational pension schemes) which related to relevant earnings from the current employment, or previous employments (including periods of self employment whether alone or in partnership),
- (e) transfer payments from overseas schemes held in a type of arrangement defined in (a) or (d) above, excluding those in respect of Service.

Including such benefits which have been transferred to another scheme, whether or not in the United Kingdom but excluding such benefits which relate to service with an unassociated employer which is concurrent with service.

If the total of the Retained Benefits is less than a pension of £260 those Retained Benefits may be disregarded.

If the Member's earnings in the 12 months after entry to the Scheme (including any other Relevant Scheme providing benefits in respect of service with the current Employer) do not exceed one quarter of the permitted maximum, benefits from these sources, other than those transferred into the Employer's Scheme, shall not be classed as Retained Benefits.

Retained Death Benefits shall mean any lump sum benefits payable on the Member's death derived from the sources set out in the retained benefits section above but if the total of Retained Lump Sum Death Benefit is less than £2,500 it may be disregarded. Benefits representing a return of the Member's own contributions plus interest thereon may be ignored for this purpose: benefits derived from a return of fund under retirement annuity contracts approved under Chapter III Part XIV of the Act or personal pension schemes approved under Chapter IV Part XIV of the Act may also be ignored for this purpose.

Service shall mean service with the Employer, plus any period of service in respect of another employment which the Board of Inland Revenue specifically agree may be aggregated (concurrent

service to count only once) for the purpose of providing benefits under the Employer's Scheme.

THE MEMBER'S AGGREGATE RETIREMENT BENEFIT SHALL NOT EXCEED:

Class A Member

aIII.1.A)

(a) On retirement at any time between age 50 and age 75, except before normal retirement date on grounds of incapacity, a pension of 1/60th of Final Remuneration for each year of Service (not exceeding 40 years) or, if greater,

the lesser of:

I. 1/30th of Final Remuneration for each year of Service (not exceeding 20 years), and

II. 2/3rds of Final Remuneration minus the pension value of all retained benefits.

(b) On retirement before the normal retirement date on grounds of incapacity an immediate pension in accordance with paragraph (a) above on the basis of the number of years which would have counted as Service had the Member remained in the employer's service to the normal retirement date.

(c) On leaving pensionable service before the normal retirement date a deferred pension:

I. for Members who remain in Service, of that proportion of the amount calculated in accordance with paragraph (b) above that the number (not exceeding 40) of years of Service completed before leaving pensionable service bears to the potential number (not exceeding 40) of years of Service had the Member remained in pensionable service to the normal retirement date,

II. for other Members the amount calculated in accordance with paragraph (a) above.

The amount so computed may be increased by a fixed rate not exceeding 5% for each year or, if greater, in proportion to any increase in the Index which has occurred between the date of termination of pensionable service and the date on which the pension begins to be payable.

(d) Benefits for a Class A Member are further restricted as necessary to ensure that the Member's total retirement benefit from this Scheme and from any Associated or Connected Scheme does not exceed a pension of 1/30th of the permitted maximum for each year of service. For the purpose of this limit service is the aggregate of Service and any period of service which gives rise to benefits under a Connected Scheme provided that no period is to be counted more than once and the total shall not exceed 20 years. The permitted maximum in this context is that for the year of assessment in which the benefits commence to be paid or, if earlier, are transferred out of the Employer's Scheme. For the purpose of calculating the total retirement benefit the pension equivalent of benefits in any form other than pension is one twelfth of its cash value.

Class B and Class C Members

aIII.1.B)

(e) On retirement at the normal retirement date a pension of 1/60ths of Final Remuneration for each year of Service (not exceeding 40 years) or, if greater,

the lesser of:

I.

-(i) for Class C Members the fraction of Final Remuneration ascertained from the following table:

Years of Service	Appropriate fraction
6	8/60
7	16/60
8	24/60
9	32/60
10 or more	40/60

-(ii) for Class B Members 1/30th of Final Remuneration for each year of Service (not exceeding 20 years),

and

II.

2/3rds of Final Remuneration minus the pension value of all retained benefits.

(f) On retirement before normal retirement date on grounds of incapacity, the amount calculated in accordance with paragraph (e) above on the basis that Service is taken as the potential number of years of Service had the Member remained in Service to the normal retirement date.

(g) On retirement before normal retirement date other than on grounds of incapacity a pension of the greater of:

(i) 1/60th of Final Remuneration for each year of Service (not exceeding 40 years)

and

(ii) that proportion of the amount calculated in accordance with paragraph (f) above that the number (not exceeding 40) of years of Service completed before leaving Service bears to the potential number (not exceeding 40) of years of service had the Member remained in Service to normal retirement date.

(h) On retirement after normal retirement date, a pension of the greatest of:-

(i) the amount calculated in accordance with paragraph (e) above on the basis that the actual date of retirement was the Member's normal retirement date,

(ii) the amount which could have been provided at normal retirement date in accordance with paragraph (e) above increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period, and

(iii) where the Member's total Service has exceeded 40 years, the aggregate of 1/60th of Final Remuneration for each year of Service before normal retirement date (not exceeding 40 such years) and of a further 1/60th of Final Remuneration for each year of Service after normal retirement date, with an overall maximum of

45 reckonable years,

Final Remuneration being computed in respect of (i) and (iii) above as at the actual date of retirement, provided that if a Member elects to take any part of his benefits under this Scheme in advance of actual retirement, the limits set out above shall apply as if he had retired at the date that election takes effect, no account being taken of subsequent Service, save that the maximum amount of any uncommuted pension not commencing immediately may be increased either actuarially in respect of the period of deferment or in proportion to any increase in the Index during that period.

(i) On leaving pensionable service before normal retirement date a deferred pension calculated in accordance with paragraph (g) above. The amount so computed may be increased by a fixed rate not exceeding 5% for each complete year or, if greater, in proportion to any increase in the Index which has occurred between the date of termination of pensionable service and the date on which the pension begins to be payable.

(j) In addition to the maximum Aggregate Retirement Benefit, a Member may be provided such further benefits as can be secured by the accumulated fund arising from any transfer value received but only to the extent that it does not represent benefits accrued in respect of Service.

LUMP SUM BENEFIT PAYABLE ON DEATH IN SERVICE

All Members

allI.2.1)

The lump sum benefit (exclusive of any refund of the Member's own contributions* and any interest thereon) payable on the death of a Member while in Service before the commencement of his pension shall not, when aggregated with all like benefits under Associated Schemes, exceed the greater of:-

(a) £5,000, and

[(b) 4 times the greater of the annual rate (subject to the permitted maximum for Class A Members) of the Member's basic salary or wages at the date of death together with the yearly average of fluctuating emoluments received in the 3 years (or the whole period of Service if less) up to the date of death and Final Remuneration less the amount of any Retained Death Benefits] or

[(b) 2 times the greater of the annual rate (subject to the permitted maximum for Class A Members) of the Member's basic salary or wages at the date of death together with the yearly average of fluctuating emoluments received in the 3 years (or the whole period of Service if less) up to the date of death and Final Remuneration.]

* This exclusion does not cover any member's contributions which have been applied to secure the payment of benefits on death in service

WIDOW'S, WIDOWER'S, SURVIVING CIVIL PARTNER'S AND DEPENDANTS' BENEFITS

All Members

allI.3.1)

Any pension for a widow, widower, surviving civil partner or dependant, when aggregated with the pensions, other than those provided by surrender of the Member's own pension, payable to that person under all Associated Schemes, shall not exceed a pension of 2/3rds of the appropriate maximum Aggregate Retirement Benefit payable to the Member immediately before his death under paragraph (l) above ignoring any restriction for the Member's Retained Benefit (if in Service the appropriate maximum will be that applicable to retirement on grounds of incapacity). If pensions are payable to more than one of the surviving spouse or civil partner and dependants, the

total pensions under this and all Associated Schemes must not exceed the full amount of the appropriate maximum Aggregate Retirement Benefit for the Member.

INCREASES OF PENSIONS IN PAYMENT

all.4.1)

The amount of any pension payable under this scheme and any Associated Scheme may be increased by an amount not exceeding that produced, on a year-on-year basis, by the greater of 3% or the increase in the Index since the pension started.

Appendix IV. FSAVC Model Rule

Model Rule Suitable for an FSAVCs

aIV.1.1)

The administrator of the scheme shall comply with the requirements of Regulation 4 of The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993 (SI 1993 No 3016) and where the scheme is the leading scheme in relation to a member, with the requirements of Regulation 6 of those Regulations so far as they concern Free Standing Additional Voluntary Contributions Schemes. If these Regulations are amended or replaced by any other Regulations then this clause will have effect as if it had been amended or replaced accordingly.

Appendix V. FSAVC VCC

The ABC Free Standing Additional Voluntary Contributions Scheme

Voluntary Contribution Certificate (VCC).

The scheme was approved by the Inland Revenue, Pension Schemes

Office on, as an exempt approved Free Standing Additional Voluntary Contributions Scheme for the purposes of Chapter I Part XIV Income and Corporation Taxes Act 1988 under the reference SF 86/.....

The administrator of the scheme is:

ABC
10 Annuity Street
Anytown
AN1 9EJ

Name of Member Membership No

NI Number.....

CONTRIBUTIONS

1 . The Member paid the first contribution to the scheme on

This amounted to £ before the deduction of basic rate tax.

2 . Further contributions of £ before the deduction of basic rate tax will be paid at intervals.

(Please insert yearly, half-yearly, quarterly or monthly as appropriate)

3 . Additional single contributions may be paid.

NOTE

This certificate is not a guarantee that contributions will qualify for tax relief. It is issued for the purpose of production to the Inland Revenue and is of no value for any other purpose.

Appendix VI. FSAVC Contribution Receipt

The ABC Free-Standing Additional Voluntary Contributions Scheme

Contribution Receipt.

The scheme is approved by the Inland Revenue, Pension Schemes Office as an exempt approved Free Standing Additional Voluntary Contributions Scheme for the purposes of Chapter I Part XIV Income and Corporation Taxes Act 1988 under the reference

SF 86/.....

The administrator of the scheme is:

ABC
10 Annuity Street
Anytown
AN1 9EJ

Name of Member Membership No

NI Number.....

CONTRIBUTION(S): All amounts are before deduction of basic rate tax

[1. A contribution of £was paid on]

[2. Contributions totalling £

were paid in the year 6 April to 5 April]

NOTE

This certificate is not a guarantee that contributions will qualify for tax relief. It is issued for the purpose of production to the Inland Revenue and is of no value for any other purpose.

Appendix VII. Repayment of Surplus AVCs Certificate

The ABC Free-Standing Additional Voluntary Contributions Scheme

Repayment of Surplus AVCs Certificate.

The scheme was approved by the Inland Revenue, Pension Schemes Office

on, as an exempt approved Free Standing Additional Voluntary Contributions Scheme for the purposes of Chapter I Part XIV Income and Corporation Taxes Act 1988 under the reference SF 86/.....

The administrator of the scheme is:

ABC
10 Annuity Street
Anytown
AN1 9EJ

Name of Member Membership No

NI Number

SURPLUS CONTRIBUTIONS REFUNDED

An amount of £ before the deduction of basic rate tax was refunded

on

NOTE

This certificate is issued to assist with the completion of your tax return and is of no value for any other purpose.

Appendix VIII. FSAVC Mis Selling

FSA PIA Announcement

1. The Financial Services Authority (FSA) and the Personal Investment Authority (PIA) jointly announced on 28 February 2000 that regulated firms should review the circumstances whereby individuals joined specific categories of FSAVCS. The review applies to those regulated firms which advised on or arranged sales of an FSAVCS between 28 April 1988 and 15 August 1999. Such cases were formally reviewed between April 2000 and the end of December 2002.

Cases to be reviewed

2. The review required firms to focus on those categories of investors who were at greatest risk of loss from poor advice. The review covered:

- matched AVC schemes – where the employer was willing to match an employee's additional voluntary contributions (AVCs) either in total or in part within an employer's *retirement benefits scheme*;
- other subsidised AVC schemes – where the investor could have received enhanced benefits from increased contributions by the employer from their employer's *retirement benefits scheme*;
- cases where investors who converted PPS membership to a FSAVCS and were waiting to join the matched or other subsidised AVC scheme in question when they joined the PPS;
- cases where investors requested a review (whether in response to a direct invitation mailing or otherwise) where the sale was advised on or arranged during the review period;
- cases where a review was required by the FSA, which had previously been the subject of a complaint that had been settled.

Redress

3. The guiding principle in providing redress following a review was to put the individual back into the financial position he or she would have been in had the mis-selling not occurred i.e. broadly the same position which would have applied if the identified alternative additional pension provision had been taken out.

Compensation

4. The form of redress for individuals may be to:

- apply the FSAVCS pension rights to an AVC scheme or AVC section of a *retirement benefits scheme* or *relevant statutory scheme* of the employer;
- top up the FSAVCS fund held for the member. It may be possible to apply reduced administrative charges for the element of redress applicable to future rights;
- apply the FSAVCS pension rights to the main fund of an employer's *retirement benefits scheme* or *relevant statutory scheme*. This may be appropriate where the employer's scheme is tiered i.e. where the employer provides a benefit enhancement (as opposed to paying extra contributions to match the level of AVCs).

The application of pension rights as described in the above three bullet points will not normally be regarded as a transfer payment by the Inland Revenue:

- if *pensionable service* has ceased the FSAVCS pension rights (including any redress element due under the review) may be transferred to a PPS or SHP (see Part 14.1 to 14.5 of the Inland Revenue FSAVCS Guidance Notes IR12 Supplement). Membership of the PPS / SHP in these circumstances could be on a 'transfer only' basis as mentioned in Inland Revenue Personal Pension Schemes Guidance Notes IR76 paragraph 3.5;
- where the option of topping up the FSAVCS fund held for the member is not possible, because no new business is being taken, the individual is able to join a new FSAVCS solely for the purpose of accepting the redress payment and without the need to make any contributions to it.

5. Compensation payments may be made to cover any financial loss. This compensation may also cover any 'lost' AVC benefits in Matched AVC schemes. Compensation is normally by way of enhanced pension provision. But where this is not possible, for example where:

- the individual has retired or died (and catching-up payments are needed to match what he or she would already have received from the FSAVCS or any annuity purchased), or
- the amount of compensation is £500 or less, (this is applicable to an 'actual loss' under the conditions of the review and not to 'prospective loss' cases),

then the redress amount may be paid as a lump sum direct to the investor or the legal personal representatives after death.

Compensation should only be paid direct to the individual if it is impractical for redress to be achieved by the provision of *retirement* benefits.

6. Where the mis-sold FSAVCS has been transferred either to another FSAVCS or another *approved* scheme, the redress payment can be paid to that scheme currently holding the transfer payment. In the event that the rules of that scheme do not allow for redress monies such as when the member has left *pensionable service*, it is permissible for the compensation to be placed in a "compensation only" FSAVC, designed specifically to take such payments, where it is no longer possible to top-up the FSAVC scheme policy, provided that the FSAVC forms part of a pension scheme for the member. Alternatively, the redress monies can go into any *retirement* benefit scheme, the employee has subsequently joined.

Inland Revenue Maximum Benefit Limits

7. It may be that the payment of redress gave rise to the possibility of benefits exceeding approvable limits in the employer's scheme. In determining whether a surplus exists, the maximum benefit limits may be applied in the following sequence:

- (a) firstly pay regard to the employer's provision,
- (b) then the employee's provision from AVCs,
- (c) lastly apply the compensation payment.

Consequently, excesses will in most cases be derived from the compensation payment rather than surplus AVCs. Such excesses may be paid as a lump sum direct to the individual. But if the excess, or part of it, does arise from surplus AVCs, it will be necessary to apply a tax charge under section 599A of the *Taxes Act*.

Tax Position

8. A payment of compensation could be taxable. But where compensation is paid directly as a result of the FSA / PIA review, and is determined in accordance with the FSA's guidance for the performance of the review, it may be paid free of income tax and capital gains tax. The authority

for this is Extra Statutory Concession A99, the details of which are covered in these guidance notes. The exemption applies whether the compensation is paid to a pension scheme or direct to the individual. The exemption under ESC A99 would also arise where redress is provided in “execution-only” cases.

9. The exemption does not apply to annuities or other annual payments arising from compensation. It will, however, apply to lump sum compensation payments paid to make up arrears of annuity / pension instalments.

10. If an amount in respect of ‘distress and inconvenience’ is added to a compensation payment it will be exempt from tax under the provisions of Section 51(2) of the Taxation of Chargeable Gains Act 1992.

Form of Compensation

11. The compensation payment will qualify for tax exemption if it consists of:

- a capital sum determined in accordance with the FSA Guidance for the performance of the review, or;
- interest on the whole or part of that capital sum for a period ending on or before the earliest date on which the capital was determined.

When Tax Free compensation payments may be made

12. The exemption from tax will be given only for compensation payments made as a result of offers of redress made under the terms of the specific review mentioned in paragraph 1 above.

If previous compensation payments have been made, there will be no objection to second payments that give the correct outcome from the formal review. These subsequent payments may be tax-free.

13. There is no need to clear in advance with the Inland Revenue the payment of compensation resulting from the review mentioned in paragraph 1.

Headroom Checks

14. Compensation payments arising from the review will not be treated as contributions so that there would not be a requirement for a *headroom* check to be undertaken

Reinstatement and Continued Rights

15. The provisions of Regulation 10(2) of S I 1988 No 1436 will enable an individual to re-join an AVC scheme on the same basis as prevailed at the time of the opt-out to join the FSAVCS. This means that if an individual was paying AVCs into an arrangement originally entered into before 8 April 1987 there will be no prohibition on an appropriate part of the benefits arising being taken in lump sum form.

Individuals Who Have Taken Benefits

16. If an individual is in receipt of an annuity derived from the mis-sold FSAVCS policy there will be no objection to the annuity provider accepting any compensation payments due under the review and changing the structure or amount of that annuity accordingly.

If it is not possible to re-profile or augment the annuity contract there will be no objection to the compensation being applied back to the FSAVCS and a further annuity being immediately purchased with that money. If the augmentation results in aggregate benefits exceeding Inland Revenue maximum limits, the excess should be dealt with as stated at paragraph 7 above.