

**No. 20030 of 2009**

**IN THE HIGH COURT OF JUSTICE**

**CHANCERY DIVISION**

**COMPANIES COURT**

**NATIONAL PROVIDENT LIFE LIMITED**

and

**PEARL ASSURANCE PLC**

and

**IN THE MATTER OF**

**PART VII OF THE FINANCIAL SERVICES AND MARKETS ACT 2000**

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**SCHEME**

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Herbert Smith LLP

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**PART A – DEFINITIONS AND INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Scheme, unless the subject or context requires otherwise, the following expressions bear the meanings respectively set opposite them:

**"2009 FSA Return"** means the FSA Return in respect of the financial year ending 31 December 2009;

**"Actual Amount"** means the calculation of the Specified Amount using the actual published methodology and assumptions shown in NPLL's 2009 FSA Return;

**"Actual Income Payments"** means the actual aggregate value of the Income Payments received by NPLL in respect of the Transferred Assets specified in paragraphs (C), (D) and (E) of the definition thereof for the period from but excluding the Effective Date to and including the Transfer Date, including any interest earned thereon;

**"Actual Liabilities"** means:

- (A) 100% of the Actual Amount; and
- (B) 100% of the amount of all Transferred Liabilities specified in paragraph (A)(2) of the definition thereof and any Residual Liabilities which, had they been Transferred Liabilities as at the Effective Date, would have fallen within paragraph (A)(2) of the definition of Transferred Liabilities;

**"Actuary"** means the person appointed by the relevant insurer from time to time to perform the duties set out in SUP 4.3.13R;

**"Adjustment Amount"** means the aggregate value of all amounts that have been paid or are payable by NPLL in respect of an NPLL SERP Policy which cease to be in force during the period from but excluding the Effective Date to and including the Transfer Date (and so are not included within the Transferred Business), including, but not limited to, amounts paid or payable by NPLL on: (1) the death of a Policyholder or other person whose life is insured under an NPLL SERP Policy, (2) the transfer of the benefits under an NPLL SERP Policy by a Policyholder to another insurance company or (3) the establishment of an annuity in respect of an NPLL SERP Policy whether by NPLL or by another insurance company on the exercise of an open market option;

**"Affiliate"** means, with respect to any specified person, any other person that, at the time of determination, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such specified person;

**"Allocated Estate"** means at any date the amount given by:

$$(X) + (Y) - (Z)$$

where:

(X) means £85,000,000 being the amount of the assets referred to in paragraph (D) of the definition of Transferred Assets;

(Y) means, as at the relevant date, the aggregate investment return (if any) on the assets referred to in paragraph (D) of the definition of Transferred Assets;

(Z) means, as at the relevant date, the aggregate amount of losses and costs (including, for the avoidance of doubt, guarantee costs) (if any) deducted from the aggregate of (X)+(Y) in accordance with the PPFM for the Pearl SERP Fund;

**"Asset Shares"** means asset shares determined in relation to the NPLL SERP Policies in accordance with the relevant PPFM and the provisions of paragraph 6 of Schedule 3 to the Demutualisation Scheme;

**"Assets Value"** means in respect of any Transferred Asset, Residual Asset or other property, its value determined in accordance with UK Regulation;

**"Bailiwick of Guernsey"** means the islands of Guernsey, Alderney, Sark, Herm, Jethou, Brecqhou and Lihou;

**"Balancing Amount"** means the amount determined in accordance with paragraph 10.1(C) to be transferred by Pearl or NPLL, as the case may be, on the Balancing Transfer Date;

**"Balancing Assets"** means property of NPLL selected by NPLL (in the case of paragraph 10.2(A)) or property of Pearl selected by Pearl (in the case of paragraph 10.2(B)) in each case having an Assets Value on the Balancing Transfer Date equal to the Balancing Amount, together with interest on such amount calculated on a daily basis from the Effective Date to the Balancing Transfer Date at the base rate of the Bank of England from time to time;

**"Balancing Transfer Date"** means a date selected by Pearl falling after the Determination Date and not being more than 90 days after the date on which the last of the 2009 FSA Returns of NPLL and Pearl has been deposited with the Insurance Regulator;

**"Best Estimate"** means a calculation of the Specified Amount using the best estimate of the policy data, methodology and assumptions which will be shown in NPLL's 2009 FSA Return;

**"Board"** means the board of directors from time to time of the relevant company;

**"Calculation Date"** means 31<sup>st</sup> December in each calendar year, or such other date in each calendar year as represents the accounting reference date (as such term is defined by the Companies Act 2006) of Pearl;

**"Closure Date"** is defined in paragraph 31.1;

**"COBS"** means the Conduct of Business Sourcebook issued by the Insurance Regulator;

**"Contract"** means any written contract, commitment, agreement, indenture, note, bond, mortgage, loan, instrument, lease or licence;

**"Control"** with respect to any specified person, means the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise. The terms "Controlled by", "under common Control with" and "Controlling" shall have correlative meanings;

**"Court"** means the High Court of Justice in England and Wales;

**"Deficit"** is defined in paragraph 26.1;

**"Deficit Amount"** is defined in paragraph 26.2;

**"Demutualisation Scheme"** means the insurance business transfer scheme transferring the whole of the long term business of the National Provident Institution to NPLL which took effect at 00.01am on 1 January 2000, or, as the context requires, such scheme as amended;

**"Determination Date"** is defined in paragraph 10.1;

**"Effective Date"** means 11.59 p.m. on 4 January 2010, except where it relates to the transfer of (i) any asset falling within paragraph (F) of the definition of Transferred Assets, or (ii) any liability falling within paragraph (B) of the definition of Transferred Liabilities, in which case the Effective Date shall be the date on which that Transferred Asset came into the possession of, or that Transferred Liability became attributable to, NPLL;

**"Encumbrance"** means any mortgage, charge, pledge, security assignment, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, any other encumbrance or security interest of any kind and any other type of preferential arrangement (including, without limitation, title transfer and retention agreements) having a similar effect;

**"Estimated Income Payments"** means the National Provident Life Fund Supervisory Board's best estimate of the aggregate value of the Income Payments received or to be received by NPLL in respect of the Transferred Assets specified in paragraphs (C), (D) and

(E) of the definition thereof for the period from but excluding the Effective Date to and including the Transfer Date, including any interest earned thereon;

**"Estimated Liabilities"** means:

- (A) 100% of the Best Estimate; and
- (B) 100% of the NPLL Board's best estimate of all the Transferred Liabilities specified in paragraph (A)(2) of the definition thereof and any Residual Liabilities which, had they been Transferred Liabilities as at the Effective Date, would have fallen within paragraph (A)(2) of the definition of Transferred Liabilities;

**"Estimated Transfer Amount"** means the aggregate Assets Value as at the Effective Date of Transferred Assets and Residual Assets of NPLL required to be transferred to Pearl pursuant to this Scheme in order that the total Assets Value as at the Effective Date of all of the Transferred Assets and Residual Assets is equal to the sum of the:

- (A) Estimated Liabilities; and
- (B) Estimated Income Payments;

**"Excluded Assets"** means all property of NPLL other than the Transferred Assets or the Residual Assets;

**"Excluded Liabilities"** means all liabilities of NPLL other than the Transferred Liabilities or the Residual Liabilities;

**"Excluded Policies"** means Transferred Policies under which any liability remains unsatisfied or outstanding at the Transfer Date:

- (A) written by NPLL in the course of carrying on insurance business in the United Kingdom or any other EEA State, in respect of which:
  - (1) for the purpose of paragraph 1(3) of Schedule 12 to FSMA, an EEA State other than the United Kingdom is the State of the commitment; and
  - (2) the Insurance Regulator has not prior to the making of the Order by which the Court sanctions this Scheme provided the certificate referred to in paragraph 4 of Schedule 12 to FSMA with respect to the relevant EEA State which is the State of the commitment,

and for these purposes **"EEA State"** and **"State of the commitment"** bear the meanings ascribed thereto by, or for the purposes of, FSMA;

- (B) written by NPLL in the course of carrying on Long Term Business but which are not otherwise capable of being transferred pursuant to FSMA on the Transfer Date or which the Court for any reason determines not to transfer by virtue of the Order; or
- (C) which are Guernsey Policies (to the extent that and for so long only as the Guernsey Scheme has not yet received the requisite court approval and become effective in accordance with its terms) or Jersey Policies (to the extent that and

for so long only as the Jersey Scheme has not yet received the requisite court approval and become effective in accordance with its terms),

including, for the avoidance of doubt:

- (i) any further Policy issued by NPLL pursuant to the exercise of any right or option under an Excluded Policy, as described in paragraph 6.5;
- (ii) any Policy within paragraph (A), (B) or (C) of this definition which has lapsed on or before the Transfer Date but which the relevant policyholder is entitled to require NPLL to reinstate; and
- (iii) any proposal for a Policy received or issued by or on behalf of NPLL before the Transfer Date which has not become a Policy in force by the Transfer Date but which would fall within paragraph (A), (B) or (C) of this definition were it to come into force;

**"Excluded Policies Reinsurance Agreement"** means the reinsurance agreement to be entered into between NPLL and Pearl in respect of Excluded Policies pursuant to paragraph 6.2 in the form agreed between NPLL and Pearl;

**"Existing NPLL Contingent Loan"** means the outstanding loan advanced to NPLL by NPLH pursuant to the amended consolidated contingent loan agreement dated 29 December 2006, as amended;

**"FSA Return"** means the return to the Insurance Regulator required to be prepared and deposited with the Insurance Regulator pursuant to Rule 9.6 of IPRU(INS);

**"FSMA"** means the Financial Services and Markets Act 2000;

**"GENPRU"** means the General Prudential Sourcebook issued by the Insurance Regulator;

**"Guernsey Policy"** means a Transferred Policy which was issued to a resident of the Bailiwick of Guernsey and which the Royal Court of Guernsey has jurisdiction to transfer pursuant to section 44(1)(c) of the Insurance Business (Bailiwick of Guernsey) Law 2002;

**"Guernsey Scheme"** means the scheme of transfer referred to in paragraph 2.6(A);

**"Guernsey Transfer Date"** means the time and date on which the Guernsey Scheme becomes effective in accordance with its terms;

**"Income Payment"** means in respect of an asset, a payment of interest or coupon or any other sum payable in respect thereof, provided that if any such sum is paid in a currency other than pounds sterling, the amount of such sum shall be converted into pounds sterling on the same basis as used for the purposes of the determination of the Assets Value;

**"Independent Expert"** means Mr Mike Arnold, the expert appointed to report on the terms of this Scheme pursuant to section 109 of FSMA, or any successor appointed to report on the same and approved by the Insurance Regulator;

**"INSPRU"** means the Prudential Sourcebook for Insurers issued by the Insurance Regulator;

**"Insurance Regulator"** means the Financial Services Authority, or such other governmental, statutory or other authority as shall from time to time carry out such

functions in relation to Long Term Business carried on in the United Kingdom as were at the date of this Scheme allocated to the Financial Services Authority under FSMA;

**"IPRU(INS)"** means the Interim Prudential Sourcebook for Insurers issued by the Insurance Regulator;

**"Jersey Policy"** means a Transferred Policy which forms part of the insurance business carried on by NPLL in or from within Jersey (as such expression is interpreted for the purpose of the Insurance Business (Jersey) Law 1996) and which the Royal Court of Jersey has jurisdiction to transfer pursuant to Article 27 of, and Schedule 2 to, the Insurance Business (Jersey) Law 1996;

**"Jersey Scheme"** means the scheme of transfer referred to in paragraph 2.6(B);

**"Jersey Transfer Date"** means the time and date on which the Jersey Scheme becomes effective in accordance with its terms;

**"Liabilities Value"** means in respect of any Transferred Liability or Residual Liability, its value determined in accordance with UK Regulation;

**"Loan Capital Fund"** has the meaning in the Demutualisation Scheme;

**"Long Term Business"** means the business of effecting or carrying out long term insurance contracts as principal being contracts falling within Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

**"Long Term Insurance Fund"** means the fund, or each of the funds, established and maintained by NPLL or by Pearl (as the context requires) pursuant to INSPRU 1.5.22R in respect of Long Term Business;

**"National Provident Life Fund"** has the meaning in the Demutualisation Scheme;

**"National Provident Life Fund Supervisory Board"** has the meaning in the Demutualisation Scheme;

**"NPHL"** means NP Life Holdings Limited, a company incorporated in England and Wales with registered number 3725026;

**"NPLL"** means National Provident Life Limited, a company incorporated in England and Wales with registered number 3641947;

**"NPLL Actuary"** means the Actuary appointed by NPLL from time to time;

**"NPLL Board"** means the Board of NPLL;

**"NPLL Long Term Fund"** means the Long Term Insurance Fund of NPLL;

**"NPLL SERP Policies"** means the non-linked deferred annuity Policies underwritten by NPLL within the categories described in Schedule 1 and under which any liability remains unsatisfied or outstanding at the Effective Date, including:

- (A) Policies written by NPLL which have lapsed on or before the Effective Date and which are reinstated by Pearl after the Effective Date;

- (B) all proposals for insurance received by or on behalf of NPLL before the Effective Date which have not become Policies in force by the Effective Date but which subsequently become Policies; and
- (C) the Guernsey Policies (with effect from the Guernsey Transfer Date only) and the Jersey Policies (with effect from the Jersey Transfer Date only),

but excluding any such Policies which are Excluded Policies;

**"Order"** means an order made by the Court pursuant to section 111 of FSMA sanctioning this Scheme and any order (including any subsequent order) in relation to this Scheme made by the Court pursuant to section 112 of FSMA;

**"Pearl"** means Pearl Assurance Plc, a company incorporated in England and Wales with registered number 1419;

**"Pearl Actuary"** means the Actuary appointed by Pearl from time to time;

**"Pearl Board"** means the Board of Pearl;

**"Pearl Contingent Loan"** means a loan which is advanced to Pearl pursuant to paragraph 26 under an agreement in the form agreed between Pearl and the Pearl Shareholder;

**"Pearl Contingent Loan Amount"** is defined in paragraph 26.4;

**"Pearl Fund"** means any or all (as applicable) of the funds established and maintained by Pearl pursuant to INSPRU 1.5.22R in respect of Long Term Business;

**"Pearl Long Term Insurance Fund"** means the Long Term Insurance Fund established and maintained by Pearl;

**"Pearl Pacific Fund"** means the 0:100 fund established and maintained by Pearl pursuant to the Section 68 Order;

**"Pearl PNP Fund"** means the 0:100 pensions non-profit fund established and maintained by Pearl as a sub-fund of the Pearl Long Term Insurance Fund;

**"Pearl SERP Capital Funds"** means the Pearl SERP Loan Capital Fund and the Pearl SERP Transfer Capital Fund, and **"Pearl SERP Capital Fund"** shall mean either the Pearl SERP Loan Capital Fund or the Pearl SERP Transfer Capital Fund, as the context may require;

**"Pearl SERP Fund"** means the Pearl Fund having that name established by Pearl in accordance with paragraph 11;

**"Pearl SERP Fund Charges"** is defined in paragraph 1 of Part A of Schedule 3;

**"Pearl SERP Loan Capital Fund"** means the separate account having that name established in accordance with paragraph 11;

**"Pearl SERP Transfer Capital Fund"** means the separate account having that name established in accordance with paragraph 11;

**"Pearl Shareholder"** means Pearl Group Holdings (No 2) Limited, a company incorporated in England and Wales with registered number 5282342 or such other person

or persons who are from time to time the legal and/or beneficial owners of the share capital of Pearl (but shall not include any person who holds not more than one ordinary share in the share capital of Pearl);

**"Pearl Shareholder Fund"** means the property and liabilities of Pearl other than those attributable to or represented by the Pearl Long Term Insurance Fund;

**"Pearl WP Actuary"** means the person appointed by Pearl from time to time to perform the "with-profits actuary function", as set out in SUP 4.3.16R;

**"Policy"** and **"Policyholder"** have the meanings ascribed to "policy" and "policyholder" by the Financial Services and Markets Act 2000 (Meaning of "Policy" and "Policyholder") Order 2001 (S.I. 2001/2361), and including at any time any constituent part of a Policy which gives rise to any separately identifiable benefit, and, for the avoidance of doubt, contracts of reinsurance issued by NPLL shall be deemed to be "Policies";

**"Policyholder Entitlement"** is defined in paragraph 6 of Part A of Schedule 4;

**"PPFM"** means the Principles and Practices of Financial Management prepared and issued by NPLL and Pearl from time to time as required by COBS 20.3;

**"Relevant Date"** means the Transfer Date except in the case of any Residual Asset or Residual Liability in which case it means the applicable Subsequent Transfer Date;

**"Relevant Pearl Funds"** means the Pearl SERP Fund and the Pearl SERP Capital Funds;

**"Required Transfer Amount"** means the aggregate Assets Value as at the Effective Date of Transferred Assets and Residual Assets of NPLL required to be transferred to Pearl pursuant to this Scheme in order that the total Assets Value as at the Effective Date of all of the Transferred Assets and Residual Assets is equal to the sum of the:

- (A) Actual Liabilities; and
- (B) Actual Income Payments;

**"Residual Assets"** means

- (A) any property of NPLL comprised in or relating to the Transferred Business (including any right, benefit or power of NPLL under any Transferred Policy):
  - (1) the transfer of which to Pearl pursuant to this Scheme requires, at the Transfer Date, either:
    - (a) the consent of any person (other than NPLL, Pearl or the Court);  
or
    - (b) the waiver by any person of any right to acquire, or be offered the right to, or to offer to, acquire or procure the acquisition by some other person of, all or any part of such property, being a right which directly or indirectly arises or is exercisable as a consequence of such transfer being proposed or taking effect,

but to the extent only of that part of the interest of NPLL in such property, the transfer of which requires such consent or waiver and, for

the avoidance of doubt, excepting rights, benefits and powers under the Excluded Policies; and

- (2) which the Court either does not have jurisdiction to transfer pursuant to section 112(1)(a) of FSMA (either at all or free of such right as is mentioned in paragraph (A)(1)(b) of this definition) or which (despite having such jurisdiction) the Court determines, notwithstanding section 112(2)(a) of FSMA, not to so transfer;
- (B) any other property of NPLL attributable to the Transferred Business (including any right or benefit under a Transferred Policy) where NPLL and Pearl agree that its transfer should be delayed;
- (C) any other interest of NPLL in any property or any agreement relating to any property which NPLL and Pearl shall agree prior to the Transfer Date is more conveniently to be transferred pursuant to this Scheme in conjunction with any property referred to in paragraphs (A) or (B) of this definition;
- (D) any property of NPLL attributable to the Transferred Business which cannot be transferred to or vested in Pearl on the Transfer Date for any other reason;
- (E) any other property of NPLL attributable to the Transferred Business (including any right or benefit under a Transferred Policy) in respect of which the Court makes an order as to the enforceability of an interest or right as referred to in section 112(A)(2)(b) of FSMA, unless NPLL and Pearl agree prior to the Transfer Date that it is to transfer on the Transfer Date; and
- (F) any proceeds of sale or income or other accrual or return whatsoever, whether or not in any case in the form of cash, earned or received from time to time after the Transfer Date in respect of any such property referred to in paragraphs (A) to (E) of this definition,

but excluding, for the avoidance of doubt, the Excluded Assets;

**"Residual Liabilities"** means any liability whatsoever of NPLL comprised in or relating to the Transferred Business (other than under an Excluded Policy):

- (A) that is attributable to or connected with a Residual Asset and exists or arises at any time before the Subsequent Transfer Date applicable to that Residual Asset;
- (B) the transfer of which to Pearl pursuant to this Scheme requires, as at the Transfer Date, the consent or waiver of any person (other than NPLL, Pearl or the Court) and which the Court either does not have jurisdiction to transfer pursuant to section 112(1)(a) of FSMA or which (despite having such jurisdiction) the Court determines, notwithstanding section 112(2)(a) of FSMA, not so to transfer;
- (C) the transfer of which NPLL and Pearl agree prior to the Transfer Date is to be delayed; or
- (D) which is attributable to or connected with a Residual Asset or a Residual Liability of NPLL referred to in paragraphs (A) to (C) of this definition that has arisen or arises at any time before the Subsequent Transfer Date applicable to that Residual Asset or Residual Liability,

but excluding, for the avoidance of doubt, the Excluded Liabilities;

**"RPI"** means the Retail Price Index maintained by the Office for National Statistics (or such substantially equivalent index as the Pearl Actuary with the approval of the Pearl Board (such approval not to be unreasonably withheld or delayed) may substitute therefor);

**"this Scheme"** means this Scheme in its original form or with or subject to any modification, addition or condition which may be approved or imposed in accordance with paragraph 33;

**"Section 68 Order"** means the order relating to the organisation and operation of the Pearl Long Term Insurance Fund, made by the Secretary of State for Trade and Industry and dated 13 September 1996;

**"SEF Balancing Assets"** means property of the National Provident Life Fund selected by the NPLL Board (in the case of paragraph 17.4(A)) or property of the Shareholder Equalisation Fund selected by the NPLL Board (in the case of paragraph 17.4(B)), in each case with the agreement of the National Provident Life Fund Supervisory Board, and in each case having an Assets Value on the SEF Balancing Transfer Date equal to the amount which is the difference between the SEF Determined Amount and the SEF Estimated Transfer Amount, together with interest on such difference calculated on a daily basis from the Effective Date to the SEF Balancing Transfer Date at the base rate of the Bank of England from time to time;

**"SEF Balancing Transfer Date"** means a date selected by NPLL falling after the SEF Determination Date and not being more than 90 days after the date on which the FSA Return of NPLL in respect of its financial year ending 31 December 2009 has been deposited with the Insurance Regulator;

**"SEF Determination Date"** is defined in paragraph 17.3;

**"SEF Determined Amount"** is the amount determined in accordance with paragraph 17.2;

**"SEF Estimated Transfer Amount"** is defined in paragraph 17.1;

**"Selection Criteria"** means, with respect to selections made by the National Provident Life Fund Supervisory Board:

- (A) that the assets in question were held by NPLL as at the Effective Date;
- (B) subject to paragraph (A) of this definition, having regard to the nature of the liabilities relating to the Transferred Business and having regard to NPLL's regulatory obligations and the advice of the NPLL Actuary; and
- (C) subject to paragraph (A) of this definition, having obtained the prior consent of the Pearl Board, the Pearl Board having had regard in granting such consent to the nature of the liabilities relating to the Transferred Business and its regulatory obligations and the advice of the Pearl Actuary;

**"Shareholder Equalisation Fund"** means the fund having that name and established by NPLL in accordance with paragraph 10A of the Demutualisation Scheme;

**"Shareholder Fund"** means the assets and liabilities of NPLL or Pearl other than those attributable to or represented by its Long Term Insurance Fund or Long Term Insurance Funds;

**"Specified Amount"** means 100% of the lower of:

- (A) the sums which would be shown in a realistic balance sheet of the NPLL Long Term Fund, prepared as at the Effective Date, at lines 35, 36 and 41 of Form 19 of the relevant FSA Return as they relate to the Transferred Business; and
- (B) the sums which would be shown in a regulatory valuation of the NPLL Long Term Fund, prepared as at the Effective Date, at column 9 of Form 51 of the relevant FSA Return, as they relate to the Transferred Business, had the valuation been performed on the interest rate and expense assumptions specified in Appendix 9.4 of NPLL's 2009 FSA Return and the mortality and surrender assumptions specified in Appendix 9.4A of NPLL's 2009 FSA Return;

**"Subsequent Transfer Date"** means in relation to any Residual Asset or Residual Liability, the date (and each date) after the Transfer Date on which such Residual Asset or Residual Liability is to be transferred to Pearl, namely:

- (A) in respect of any Residual Asset falling within paragraph (A) of the definition thereof, and of any Residual Liability which is attributable to or connected with that Residual Asset or which falls within paragraph (B) of the definition of Residual Liability, the date on which the requisite consent or waiver to enable the same to be transferred to Pearl upon the terms of this Scheme is:
  - (1) obtained;
  - (2) no longer required; or
  - (3) dispensed with by Order of the Court;
- (B) in respect of any Residual Asset falling within paragraph (B) of the definition thereof and of any Residual Liability which is attributable to or connected with that Residual Asset, the date agreed in writing by NPLL and Pearl;
- (C) in respect of any Residual Asset falling within paragraph (C) of the definition thereof and of any Residual Liability which is attributable to or connected with that Residual Asset, the date applicable to the property in conjunction with which it was agreed to be a Residual Asset;
- (D) in respect of any Residual Asset falling within paragraph (D) of the definition thereof and of any Residual Liability which is attributable to or connected with that Residual Asset, the date on which any such impediment to its transfer shall have been removed or overcome;
- (E) in respect of any Residual Asset falling within paragraph (E) of the definition thereof and of any Residual Liability which is attributable to or connected with that Residual Asset, the date (if any) agreed in writing between NPLL and Pearl;
- (F) in the case of any Residual Asset falling within paragraph (F) of the definition thereof, the date on which such Residual Asset is received or earned by NPLL; and

- (G) in respect of any Residual Liability falling within paragraph (C) of the definition thereof, the date agreed in writing by NPLL and Pearl;

**"SUP"** means the Supervision Manual issued by the Insurance Regulator;

**"taxation"** means all forms of tax, duty, rate, levy, charge or other imposition or withholding whenever and by whatever authority imposed and whether of the UK or elsewhere, including (without limitation) any tax on gross or net income profit or gains (including income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax, advance corporation tax, capital gains tax, capital transfer tax, inheritance tax, wealth taxes, development land tax, petroleum revenue tax, value added tax, customs duties, excise duties, lottery duty, air passenger duty, insurance premium tax, rates (including the uniform business rate), stamp duty, capital duty, stamp duty reserve tax, stamp duty land tax, pay as you earn (PAYE), national insurance and other similar contributions, any liability arising under Section 419, Section 703 or Section 747 of the Income and Corporation Taxes Act 1988 and other taxes, duties, rates, levies, charges, imposts or withholdings corresponding to, similar to, in the nature of, replaced by or replacing any of them together with any interest, penalty or fine in connection with any taxation, and any liability to make a payment by way of reimbursement, recharge, indemnity, damages or management charge connected in any way with any taxation and regardless of whether any such taxes, duties, rates, levies, charges, imposts, withholdings, interest, penalties or fines are chargeable directly or primarily against or attributable directly or primarily to NPLL or Pearl or any Affiliate of NPLL or Pearl or any other person and of whether any amount in respect of them is recoverable from any other person;

**"Transfer Capital Fund"** has the meaning in the Demutualisation Scheme;

**"Transfer Date"** means the time and date specified in paragraph 32.1;

**"Transferred Assets"** means all of the following whatsoever and wheresoever situated:

- (A) all rights, benefits and powers under or by virtue of Contracts or arrangements (including, without limitation, the Transferred Policies) to which NPLL is a party as at the Effective Date and which relate exclusively to the Transferred Business;
- (B) all rights and claims (present or future, actual or contingent) against any third party as at the Effective Date in relation to the Transferred Business or arising as a result of NPLL having carried on the Transferred Business;
- (C) assets with an estimated Assets Value as at the Effective Date equal to the value of the Asset Shares attributable to the NPLL SERP Policies at the Effective Date selected by the National Provident Life Fund Supervisory Board from amongst those allocated to the NPLL Long Term Fund, as the National Provident Life Fund Supervisory Board considers appropriate having followed the Selection Criteria;
- (D) assets with an Assets Value as at the Effective Date equal to £85,000,000 selected by the National Provident Life Fund Supervisory Board from amongst those allocated to the Transfer Capital Fund as at the Effective Date;
- (E) such of the assets allocated to the Transfer Capital Fund as at the Effective Date as shall be necessary to ensure that the aggregate Assets Value as at the Effective Date of the Transferred Assets specified in paragraphs (C), (D) and (E) of this

definition shall equal the Estimated Liabilities, such assets to be selected by the National Provident Life Fund Supervisory Board from amongst those allocated to the NPLL Long Term Fund, as the National Provident Life Fund Supervisory Board considers appropriate having followed the Selection Criteria;

- (F) assets with an estimated Assets Value as at the Transfer Date equal to the Estimated Income Payments; and
- (G) all and any property belonging to NPLL at any time before the Transfer Date which was not property of NPLL at 11.59 p.m. on 4 January 2010, but which would have fallen within paragraphs (A) or (B) of this definition of Transferred Assets had it been property of NPLL at that time;

but excluding the Residual Assets, the Excluded Assets and any rights, benefits and powers under the Excluded Policies;

**"Transferred Business"** means the part of the Long Term Business of NPLL comprising the carrying out of business under the Transferred Policies, including all activities carried on in connection with or for the purposes of such business, to be transferred pursuant to this Scheme;

**"Transferred Liabilities"** means all liabilities of NPLL:

- (A) whatsoever comprised in or attributable to the Transferred Business as at the Effective Date including (without prejudice to the generality of the foregoing):
  - (1) all liabilities under or by virtue of the Transferred Policies; and
  - (2) all liability to taxation attributable to the Transferred Business or to the transfer thereof, whensoever incurred; and
- (B) arising at any time before the Transfer Date which were not liabilities of NPLL at 11.59 p.m. on 4 January 2010, but which would have fallen within paragraph (A) of this definition of Transferred Liabilities had they been liabilities of NPLL at that time;

but excluding the Residual Liabilities and any liabilities under or relating to the Excluded Policies;

**"Transferred Policies"** means the non-linked deferred annuity Policies underwritten by NPLL within the categories described in Schedule 1 and under which any liability remains unsatisfied or outstanding at the Transfer Date, including:

- (A) Policies written by NPLL which have lapsed on or before the Transfer Date and which are reinstated by Pearl after the Transfer Date;
- (B) all proposals for insurance received by or on behalf of NPLL before the Transfer Date which have not become Policies in force by the Transfer Date but which subsequently become Policies; and
- (C) the Guernsey Policies (with effect from the Guernsey Transfer Date only) and the Jersey Policies (with effect from the Jersey Transfer Date only),

but excluding any such Policies which are Excluded Policies;

**"UK Regulation"** means the principles for the pillar 1 valuation of assets and liabilities of insurance companies carrying on business of the type carried on by Pearl prescribed by the relevant provisions of GENPRU and INSPRU (including, but not limited to, GENPRU 1.3 and INSPRU 1.2); and

**"VAT"** means value added or similar turnover or sales taxes, wheresoever imposed.

1.2 In this Scheme:

- (A) **"property"** and **"asset"** includes (without limitation) property, assets, rights (including, without limitation, contingent rights as to the repayment of tax) and powers of every description (whether present or future, actual or contingent) and includes property held on trust and securities, benefits (including, without limitation, tax benefits), powers of any description and any interest whatsoever in any of the foregoing;
- (B) **"liabilities"** includes (without limitation) duties and obligations of every description (whether present or future, actual or contingent);
- (C) **"transfer"** includes (as the context may require) "assign", "assignment" or "assignment", "dispose" or "disposal" or "convey" or "conveyance";
- (D) any reference to the singular shall include a reference to the plural and vice versa and any reference to the masculine shall include a reference to the feminine and neuter and vice versa;
- (E) any reference to an enactment, a statutory provision or any subordinate legislation shall be deemed to include a reference to that enactment, statutory provision or subordinate legislation as amended, replaced or re-enacted from time to time and to any instrument or order made from time to time under such enactment, statutory provision or subordinate legislation;
- (F) any reference to any rules or regulations issued by the Insurance Regulator shall be deemed to include a reference to such rules or regulations as amended or replaced from time to time;
- (G) expressions which have meanings under FSMA shall bear those meanings;
- (H) the expressions **"holding company"**, **"subsidiary"** and **"wholly-owned subsidiary"** shall have the same meanings as in the Companies Act 2006;
- (I) any reference to this Scheme shall include the Schedules to it and references to paragraphs, Parts or Schedules are to paragraphs or Parts of or Schedules to this Scheme;
- (J) headings are inserted for convenience only and shall not affect the construction of this Scheme;
- (K) any reference to a person shall include a reference to a body corporate, a partnership, an unincorporated association or to a person's executors or administrators, and for the avoidance of doubt, shall include a trustee;
- (L) if a period of time is specified from a given day or date or from the day or date of an actual event, it shall be calculated exclusive of that day or date;

- (M) any reference to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (N) any reference to a document in the agreed form is to the form of the relevant document agreed between the relevant persons in accordance with this Scheme and initialled by or on behalf of each of them for the purpose of identification prior to the date on which the Court sanctions this Scheme;
- (O) the expression "**variation**" shall include any variation, supplement, deletion, replacement or termination, however effected; and
- (P) any reference to an amount shall be exclusive of any applicable VAT.

## **PART B – INTRODUCTION**

### **2. INTRODUCTION**

2.1 NPLL is a company incorporated in England and Wales with registered number 3641947. The registered office of NPLL is situated at The Pearl Centre, Lynch Wood, Peterborough Business Park, Peterborough, Cambridgeshire PE2 6FY.

2.2 Pearl is a company incorporated in England and Wales with registered number 1419. The registered office of Pearl is situated at The Pearl Centre, Lynch Wood, Peterborough Business Park, Peterborough, Cambridgeshire PE2 6FY.

2.3 Each of NPLL and Pearl is an authorised person for the purposes of FSMA. NPLL has a Part IV permission under FSMA to carry on Long Term Business in Classes I, III and IV in the United Kingdom and Pearl has a Part IV permission under FSMA to carry on Long Term Business in Classes I to IV, VI and VII in the United Kingdom.

2.4 It is proposed that an application to the Court will be made by NPLL seeking the consent of the Court to certain proposed amendments to the Demutualisation Scheme (as set out in Schedule 2 to this Scheme), which application will be determined immediately before the application to the Court to sanction this Scheme.

2.5 It is proposed that:

(A) that part of the Long Term Business of NPLL which constitutes the Transferred Business (all of which including, for the avoidance of doubt, the Long Term Business constituted by the Guernsey Policies and Jersey Policies of NPLL is carried on in the United Kingdom), other than the Excluded Policies, shall, in accordance with this Scheme, be transferred to Pearl; and

(B) an Order be made accordingly for the sanction of this Scheme under section 111(1) of FSMA and that by the Order by which this Scheme is sanctioned, provision be made, as hereinafter appearing, for, inter alia, the transfers from NPLL to Pearl, pursuant to section 112(1) of FSMA.

2.6 It is further proposed that:

(A) the transfer of the Guernsey Policies to Pearl by this Scheme shall only take place to the extent that the transfer of such Policies to Pearl by a scheme of transfer pursuant to the Insurance Business (Bailiwick of Guernsey) Law 2002 has been approved by the Royal Court of Guernsey and has become effective; and

(B) the transfer of the Jersey Policies to Pearl by this Scheme shall only take place to the extent that the transfer of such Policies to Pearl by a scheme of transfer pursuant to the Insurance Business (Jersey) Law 1996 has been approved by the Royal Court of Jersey and has become effective,

and that if and to the extent that the Guernsey Transfer Date or the Jersey Transfer Date (as the case may be) has not fallen on or before the Transfer Date, then the Guernsey Policies or the Jersey Policies (as the case may be) shall be reinsured to Pearl on the terms set out in the Excluded Policies Reinsurance Agreement.

- 2.7 It is intended that, in advance of the Effective Date, although not pursuant or subject to the terms of this Scheme, the following steps will take place:
- (A) Pearl will procure that the Pearl Shareholder Fund will lend a sum to NPLH that is sufficient to ensure that, following the completion of the steps outlined below and immediately prior to the Effective Date, the Assets Value of the assets held within the Transfer Capital Fund is at least equal to the Estimated Liabilities less the aggregate of the sums specified in paragraphs (C) and (D) of the definition of Transferred Assets;
  - (B) NPLH will make a capital contribution of an amount equivalent to the loan referred to in paragraph 2.7(A) to the NPLL Shareholder Fund;
  - (C) NPLL will transfer the amount received in respect of this contribution to the Transfer Capital Fund;
  - (D) the amount received in respect of this contribution will be transferred from the Transfer Capital Fund to the Loan Capital Fund in return for assets of an equivalent value pursuant to paragraph 32.4 of the Demutualisation Scheme;
  - (E) the Loan Capital Fund will repay to NPLH an amount equivalent to the loan referred to in paragraph 2.7(A) of the outstanding principal (without interest) on the Existing NPLL Contingent Loan; and
  - (F) NPLH will repay an amount equivalent to the value of the loan referred to in paragraph 2.7(A) to the Pearl Shareholder Fund.
- 2.8 NPLL and Pearl each agree to appear by Counsel at the hearing of the application to sanction this Scheme, to undertake to be bound thereby and to execute all such documents and to do all such acts and things as may be necessary or expedient to be executed or done by it for the purposes of giving effect to this Scheme.

## **PART C – TRANSFER**

### **3. TRANSFER OF BUSINESS**

- 3.1 Each part of the Transferred Business, the Residual Assets and the Residual Liabilities shall be transferred to and be vested in Pearl in accordance with this Scheme, so that:
- (A) subject to paragraph 8, on and with effect from the Transfer Date, each Transferred Asset and all the rights, benefits, powers, obligations and interests of NPLL in it shall, by the Order and without any further act or instrument, be transferred to and be vested in Pearl and Pearl shall succeed to each Transferred Asset as if in all respects it were the same person in law as NPLL, subject to all Encumbrances (if any) affecting such asset;
  - (B) subject to paragraph 8, on and with effect from each Subsequent Transfer Date, each Residual Asset to which such Subsequent Transfer Date applies and all the rights, benefits, powers, obligations and interests of NPLL in it shall, by the Order and without any further act or instrument, be transferred to and be vested in Pearl and Pearl shall succeed to each Residual Asset as if in all respects it were the same person in law as NPLL, subject to all Encumbrances (if any) affecting such asset;
  - (C) on and with effect from the Transfer Date, each Transferred Liability shall, by the Order and without any further act or instrument, be transferred to and become a liability of Pearl and Pearl shall succeed to the Transferred Liability as if in all respects it were the same person in law as NPLL and such Transferred Liability shall cease to be a liability of NPLL; and
  - (D) on and with effect from each Subsequent Transfer Date, each Residual Liability to which such Subsequent Transfer Date applies shall, by the Order and without any further act or instrument, be transferred to and become a liability of Pearl and Pearl shall succeed to the Residual Liability as if in all respects it were the same person in law as NPLL and such Residual Liability shall cease to be a liability of NPLL.
- 3.2 Pearl shall accept without investigation or requisition such title as NPLL shall have at the Transfer Date to the Transferred Assets and, at any Subsequent Transfer Date, to each Residual Asset then transferred.
- 3.3 NPLL and Pearl shall take all reasonable steps, and execute such documents as may reasonably be required:
- (A) to effect or perfect the transfer to and vesting in Pearl of any Transferred Asset or Residual Asset pursuant to this Scheme;
  - (B) to effect or perfect the transfer to and assumption by Pearl of any Transferred Liability or Residual Liability pursuant to this Scheme; and
  - (C) to correct any errors in the identity or amount of the assets or liabilities so transferred.
- 3.4 Except as otherwise provided in the Order, the transfer of any rights, benefits, liabilities and obligations under or in connection with any Transferred Policy, Transferred Asset,

Residual Asset, Transferred Liability or Residual Liability pursuant to this Scheme shall take effect and shall be valid and binding on all parties having any interest in the same notwithstanding any restriction on transferring, assigning or otherwise dealing with the same and such transfer shall be deemed to take effect on the basis that it does not contravene any such restriction and does not give rise to any right to terminate, modify, acquire or claim an interest or right, or to treat an interest or right as terminated or modified.

- 3.5 An offer or invitation to treat made to or by NPLL prior to the Relevant Date in relation to the Transferred Business shall be construed and have effect after the Relevant Date as an offer or invitation to treat made to or by Pearl.
- 3.6 Any existing indemnity, power of attorney, authority, declaration or consent given to or by NPLL relating to any part of the Transferred Business (including, for the avoidance of doubt, the Transferred Policies) shall have effect from the Relevant Date as if given to or, as the case may be, by Pearl.
- 3.7 Any Contract or asset (including (i) any legal or beneficial title arising pursuant to any trust and (ii) any rights or liabilities pursuant to any custody arrangements) transferred to and vested in Pearl by virtue of the Order and which was held by NPLL (whether alone or jointly with others) as a trustee, custodian or in a similar fiduciary capacity shall, with effect from the Relevant Date, be held by Pearl (alone or jointly, as the case may be and in the capacity of a trustee, custodian or in a similar fiduciary capacity, as the case may be) subject to the rights, powers and duties previously applicable to the relevant trust, custodian or other fiduciary arrangement in question.
- 3.8 Any security in respect of the Transferred Business held immediately before the Relevant Date by NPLL, or by a nominee or agent of or trustee for NPLL, as security for the payment or discharge of any liability shall, on and from that day, be held by Pearl, or, as the case may require, by that nominee, agent or trustee for Pearl, and be available to Pearl (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of that liability (and if not physically delivered to Pearl shall be deemed to be so delivered on that day).
- 3.9 On and with effect from the Transfer Date, Pearl shall:
- (A) succeed to all rights, liabilities and obligations of NPLL in respect of any personal data which relates to the Transferred Business and which is subject to the Data Protection Act 1998;
  - (B) become the data controller of any personal data which relates to the Transferred Business and which is subject to the Data Protection Act 1998 in place of NPLL and shall be deemed to have been the controller of all such data at all material times when personal data was processed; and
  - (C) in respect of any personal data which relates to the Transferred Business be under the same duty by virtue of any law as NPLL was under to respect the confidentiality and privacy of any person in relation to that personal data and shall be bound by any specific notice or consent given, or request made by, the data subject which was binding on NPLL and which required NPLL not to use the personal data for marketing purposes,

and in any consent given by a data subject in respect of such data as is mentioned in this paragraph 3.9, any reference to NPLL shall be deemed to include a reference to Pearl.

- 3.10 The Transferred Assets, Residual Assets, Transferred Liabilities and Residual Liabilities shall be allocated in accordance with Part D.

#### **4. CONTINUITY OF PROCEEDINGS**

4.1 On and with effect from the Transfer Date, any proceedings or applications to any authority whether pending, current or future, by, against or in relation to and/or in respect of which NPLL is a party (or in the case of future proceedings, NPLL would be a party but for this Scheme) (including, without limitation, as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner) concerning the Transferred Business, the Transferred Policies, the Transferred Assets or the Transferred Liabilities shall be continued or commenced by, against or in relation to Pearl and Pearl shall be entitled to all defences, claims, counterclaims, settlements, rights of set-off and any other rights that would have been available to NPLL in relation to the Transferred Business, the Transferred Policies, the Transferred Assets, the Transferred Liabilities and such proceedings or applications.

4.2 On and with effect from the Subsequent Transfer Date applicable thereto, any proceedings or applications to any authority whether pending, current or future, by, against or in relation to and/or in respect of which NPLL is a party (or in the case of future proceedings, NPLL would be a party but for this Scheme) (including, without limitation, as the plaintiff, claimant, applicant, defendant, respondent, pursuer, defender or petitioner) concerning the Residual Assets or the Residual Liabilities which are to be transferred on such Subsequent Transfer Date shall be continued or commenced by, against or in relation to Pearl and Pearl shall be entitled to all defences, claims, counterclaims and rights of set-off that would have been available to NPLL in relation to the Residual Assets and the Residual Liabilities. Until such Subsequent Transfer Date, the relevant proceedings shall be continued by or against NPLL in accordance with the instructions of Pearl.

4.3 Any judgment, settlement, order or award obtained by or against NPLL concerning the Transferred Business, the Transferred Policies, the Transferred Assets, the Transferred Liabilities, the Residual Assets or the Residual Liabilities and which is not fully satisfied before the Relevant Date shall, on that date and to the extent to which it was enforceable by or against NPLL immediately prior to such date, become enforceable by or against Pearl (to the exclusion of NPLL).

#### **5. RIGHTS AND OBLIGATIONS UNDER TRANSFERRED POLICIES**

5.1 On and with effect from the Transfer Date, Pearl shall become entitled to all the rights, benefits and powers of NPLL whatsoever subsisting on the Transfer Date under or by virtue of the Transferred Policies.

5.2 Subject to the terms of this Scheme, every person who is a holder of any of the Transferred Policies shall on and with effect from the Transfer Date become entitled, in succession to, and to the exclusion of, any rights which he may have had against NPLL under any of the Transferred Policies, to the same rights against Pearl subject to the terms of this Scheme as were available to him against NPLL under such Policies and (as regards Transferred Policies under which premiums or other sums attributable or referable thereto continue to be payable) shall on and with effect from the Transfer Date account to Pearl for any further

or additional premiums or other sums attributable or referable thereto as and when the same become due and payable.

- 5.3 Pearl shall be entitled to any and all defences, claims, counterclaims and rights of set-off under the Transferred Policies which would have been available to NPLL.
- 5.4 Every person who holds a Transferred Policy shall, from and after the Transfer Date, in substitution for any liability or obligation owed by him thereunder to NPLL, be under the same liability to Pearl (in relation to any Excluded Policy, as agent of NPLL but subject to paragraph 6).
- 5.5 If any person entitled to do so with respect to a Transferred Policy exercises any right or option granted under the terms of that Policy and either:
- (A) the right or option provides for a new, additional or replacement Policy to be issued; or
  - (B) it is appropriate in the opinion of the Board of Pearl, having regard to the advice of the Pearl Actuary, in order to comply with that right or option to issue a new Policy,

such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by Pearl of a Policy which complies with the terms of such right or option, but (without prejudice to the right of such person to have the right or option satisfied by the issue by Pearl of such a Policy) if Pearl is not at the time of the exercise of such right or option writing Policies complying exactly with the Policy to which the right or option refers, Pearl shall be entitled to offer to such person as an alternative (and, if accepted, in lieu thereof) the Policy commonly offered by Pearl which Pearl considers to be the nearest equivalent Policy, in accordance with the terms and conditions applicable to Policies of Pearl at that time, provided that the issue of such Policy by Pearl would not in the opinion of its Board, having regard to the advice of the Pearl Actuary, result in a liability or in an increase in liability to taxation of the holder of such Policy (or in the event that such liability or increase in liability would occur Pearl shall have the option to indemnify the policyholder in full and to issue another Policy pursuant to this paragraph) or otherwise fail to satisfy the reasonable expectations of the holder of such Policy.

- 5.6 All references in any Transferred Policy to NPLL, its board of directors, its Actuary or any other officers or employees of NPLL shall from and after the Transfer Date be read as references to Pearl, its board of directors, Actuary or any other officers or employees of Pearl or, where appropriate, agents of Pearl to which the administration or investment management of the relevant part of the business carried on by Pearl has been delegated. In particular, but without limitation, all rights and/or duties exercisable or expressed to be exercisable or responsibilities to be performed by NPLL, its board of directors, Actuary or any other officers, employees or agents of NPLL in relation to any of the Transferred Policies shall, from and after the Transfer Date, be exercisable or required to be performed by Pearl, its board of directors, its Actuary or any other officers, employees or agents of Pearl.
- 5.7 Where the benefits of any Transferred Policy are held under the terms of a trust, such terms together with the terms of any rules applicable to any pension scheme in the case of any pension scheme under which benefits are referable to a Transferred Policy, shall operate and be construed on and from the Transfer Date on a basis which is consistent with the

transfer of such Transferred Policy in accordance with the provisions of this Scheme. For the avoidance of doubt:

- (A) where the consent of NPLL is required under any such terms, the consent of Pearl shall, with effect from the Transfer Date, instead be treated as required; and
- (B) where a power to appoint trustees under such terms is conferred on NPLL, that power shall, with effect from the Transfer Date, instead be treated as conferred on Pearl.

5.8 Pearl shall, on and with effect from the Transfer Date, as principal, take over from NPLL the administration and negotiation of proposals for insurance which would have been Transferred Policies had NPLL determined to accept them (but whether or not Pearl does so determine) and Pearl shall bear all expenses and liabilities in relation thereto but nothing contained herein shall oblige Pearl to accept any proposal for insurance received by or on behalf of NPLL before the Transfer Date but not accepted by NPLL by that date.

5.9 The provisions of paragraphs 5.1 to 5.8 shall apply, mutatis mutandis, to all Contracts comprising part of the Transferred Assets.

## **6. EXCLUDED POLICIES**

6.1 The Excluded Policies shall not be transferred to Pearl by this Scheme and, subject to paragraph 6.6, the liabilities under the Excluded Policies shall remain liabilities of NPLL but shall at all times after the Transfer Date but with effect from the Effective Date be reinsured in their entirety into Pearl on terms consistent with those described in paragraphs 6.2 and 6.3 (as appropriate).

6.2 On or prior to the Transfer Date but with effect from the Effective Date NPLL and Pearl shall enter into an Excluded Policies Reinsurance Agreement pursuant to which, on the Transfer Date but with effect from the Effective Date, all the liabilities of NPLL attributable to the Excluded Policies and all other amounts paid or payable by NPLL in respect of such Excluded Policies (including amounts paid or payable in connection with the surrender of any such Excluded Policy) shall be reinsured in their entirety into Pearl.

6.3 The premiums payable to Pearl under the Excluded Policies Reinsurance Agreement shall comprise an amount equal to:

- (A) the aggregate amount of the mathematical reserves relating to the Excluded Policies reassured as at the Effective Date, which shall be deemed to have been satisfied by the transfer to Pearl of the appropriate proportion of the Transferred Assets; and
- (B) all subsequent premium payments and all other amounts receivable or received by NPLL or received by Pearl pursuant to paragraph 7 in respect of such Excluded Policies at any time after the Effective Date, which part of the premium shall be deemed satisfied to the extent that such subsequent premium payments are received by Pearl (either from NPLL or pursuant to paragraph 7).

6.4 The liability of Pearl in respect of the Excluded Policies Reinsurance Agreement, including the obligation to make payments in respect of claims made and annuities in payment, shall be calculated so as to ensure that benefits are provided to holders of Excluded Policies

which are the same as the benefits which would have accrued to such policyholders if such Excluded Policies had been Transferred Policies.

6.5 If any person entitled to do so with respect to an Excluded Policy exercises any right or option granted under the terms of that Policy and either:

- (A) the right or option provides for a new, additional or replacement Policy to be issued; or
- (B) it is appropriate in the opinion of the Board of Pearl, having regard to the advice of the Actuary of Pearl, in order to comply with that right or option to issue a new Policy,

such person shall be entitled to require that the obligation thereby arising shall be satisfied by the issue by NPLL of a Policy which complies with the terms of such right or option but (without prejudice to the right of such person to have the right or option satisfied by the issue by NPLL of such a Policy):

- (1) Pearl shall be entitled to offer to such person as an alternative (and, if accepted, in lieu thereof) a Policy which complies with the terms of such right or option; and
- (2) if it is not at the time of the exercise of such right or option writing Policies complying exactly with the Policy to which the right or option refers, then Pearl shall be entitled to offer to such person as an alternative (and, if accepted, in lieu thereof) the Policy commonly offered by Pearl which Pearl considers to be the nearest equivalent Policy, in accordance with the terms and conditions applicable to Policies of Pearl at that time,

provided that the issue of such Policy by Pearl would not, in the opinion of the Board of Pearl, having regard to the advice of the Pearl Actuary, result in a liability, or an increase in the liability, to taxation of the holder of such Policy which would not have resulted had such Policy been issued by NPLL or otherwise fail to satisfy the reasonable expectations of the holder of such Policy.

6.6 If any Excluded Policy is novated to Pearl, the property and liabilities relating to such Policy shall, to the extent not previously transferred, be transferred to Pearl and such Policy shall thereafter be dealt with by Pearl under the provisions of this Scheme in all respects as if such Excluded Policy were a Transferred Policy.

6.7 Guernsey Policies shall be treated for all purposes of this Scheme as if they were Transferred Policies with effect from the Guernsey Transfer Date, and shall, on the later of the Transfer Date and the Guernsey Transfer Date, be transferred to and vested in Pearl by the Order (in addition to any order of the Royal Court of Guernsey).

6.8 Jersey Policies shall be treated for all purposes of this Scheme as if they were Transferred Policies with effect from the Jersey Transfer Date, and shall, on the later of the Transfer Date and the Jersey Transfer Date, be transferred to and vested in Pearl by the Order (in addition to any order of the Royal Court of Jersey).

## **7. PREMIUMS AND OTHER PAYMENTS**

- 7.1 All premiums and other amounts attributable or referable to the Transferred Policies or the Excluded Policies shall on and after the Transfer Date be payable to Pearl and shall be receivable and received by Pearl and shall be allocated to the fund to which the Policy to which they relate is allocated pursuant to paragraph 14 (or, in the case of Excluded Policies, to which they would have been allocated had they been Transferred Policies).
- 7.2 Any mandate or other instruction in force on the Transfer Date (including, without limitation, any instruction given to a bank by its customer in the form of a direct debit or standing order) and providing for the payment by a bank or other intermediary of premiums payable to NPLL under or in respect of any of the Transferred Policies or the Excluded Policies shall thereafter take effect as if it had provided for and authorised such payment to Pearl.
- 7.3 Any mandate or other instruction in force on the Transfer Date as to the manner of payment of any sum payable by NPLL under any of the Transferred Policies or the Excluded Policies shall, on and from the Transfer Date, continue in force as an effective authority to Pearl.

## **8. DECLARATION OF TRUST BY NPLL**

- 8.1 If:
- (A) any property of NPLL attributable to the Transferred Business (other than, for the avoidance of doubt, the Excluded Assets) is not, or is not capable of being, transferred to and vested in Pearl by the Order on the Transfer Date by reason of:
    - (A) such property being a Residual Asset; or
    - (B) such property being outside the jurisdiction of the Court; or
    - (C) any other reason; or
  - (B) any Residual Asset is not, or is not capable of being, transferred to and vested in Pearl by the Order on the Subsequent Transfer Date applicable thereto; or
  - (C) the transfer of any property of NPLL attributable to the Transferred Business outside the jurisdiction of the Court is not recognised by the laws of the jurisdiction in which such property is situated; or
  - (D) in any circumstances Pearl shall decide before the Transfer Date (or, in the case of any Residual Asset, before the Subsequent Transfer Date applicable thereto) that it is expedient not to effect a transfer of any property of NPLL,

then NPLL shall, from the Transfer Date (but save to the extent that giving effect to such a trust would require a waiver referred to in paragraph (A) of the definition of Residual Asset, which has not been obtained) hold any property referred to in paragraphs 8.1(A) to 8.1(D) as trustee for Pearl.

- 8.2 NPLL shall be subject to directions from Pearl in respect of any property referred to in paragraphs 8.1(A) to 8.1(D) from the Transfer Date until the relevant property is transferred to or otherwise vested in Pearl or is disposed of (whereupon NPLL shall

account to Pearl for the proceeds of sale thereof), and Pearl shall have authority to act as the attorney of NPLL in respect of such property for all such purposes.

- 8.3 In the event of any payment being made to, property being received by or right being conferred upon NPLL after the Transfer Date in respect of the Transferred Business, any Transferred Asset or any Residual Asset, NPLL shall, as soon as is reasonably practicable after its receipt, pay over the full amount of such payment or (to the extent to which it is able to do so) transfer such property or right to, or in accordance with the directions of, Pearl, and Pearl shall indemnify NPLL on demand against any costs incurred in making any such payment or transfer.

## **9. INDEMNITIES IN FAVOUR OF NPLL**

- 9.1 On and from the Transfer Date, Pearl shall discharge on NPLL's behalf or, failing that, shall indemnify NPLL against:

- (A) charges, costs and claims arising in respect of all Transferred Liabilities and Residual Liabilities which are not, or are not capable of being, transferred by this Scheme or by a vesting order pursuant to section 112(1) of FSMA (whether made before, on or after the Transfer Date) (other than liabilities which are the subject of paragraph 9.1(B)) until the relevant liability is transferred to or becomes a liability of Pearl; and
- (B) any amount paid by NPLL in respect of any liabilities of NPLL that are, whether wholly or in part, the subject of a policy of indemnity insurance or a claim or right of recovery against a third party, but only to the extent that NPLL, having made a claim under such a policy or against such third party, shall have failed to recover any such amount pursuant to rights it may have under such policy, claim or right of recovery (having used all reasonable endeavours to do so).

## **10. DETERMINATION OF VALUE OF TRANSFERRED ASSETS AND TRANSFERRED LIABILITIES**

- 10.1 On a date which is after the date by which the NPLL 2009 FSA Return has been deposited with the Insurance Regulator but on or before the Balancing Transfer Date (the relevant date being the "**Determination Date**"):

- (A) Pearl shall (using, where applicable, material contained or referred to in the NPLL 2009 FSA Return) determine and certify to NPLL the:
- (1) Estimated Transfer Amount; and
- (2) Required Transfer Amount;
- (B) NPLL shall determine and certify to Pearl the Adjustment Amount; and
- (C) the Balancing Amount shall be determined in accordance with the following formula:

$$\text{Balancing Amount} = A - (B + C)$$

where:

"A" is the Required Transfer Amount;

"B" is the Estimated Transfer Amount; and

"C" is the Adjustment Amount.

10.2 On and with effect from the Balancing Transfer Date:

- (A) if the Balancing Amount is positive, then Balancing Assets and all of the estate and interest of NPLL therein shall, by the Order and without any further act or instrument, be transferred from NPLL to, and be vested in, the Pearl SERP Fund, subject to all Encumbrances (if any) affecting such Balancing Assets, and those Balancing Assets shall be treated as Transferred Assets or Residual Assets (as the case may require) for the purposes of this Scheme; or
- (B) if the Balancing Amount is negative, then Balancing Assets and all of the estate and interest of Pearl therein shall, by the Order and without any further act or instrument, be transferred from the Pearl SERP Fund to, and be vested in, the National Provident Life Fund, subject to all Encumbrances (if any) affecting such Balancing Assets, and those Balancing Assets shall cease to be treated as Transferred Assets for the purposes of this Scheme.

10.3 Following the operation of paragraph 10.2:

- (A) the Pearl Board may, having regard to the advice of the Pearl Actuary and subject to FSMA, make such adjustment between the Pearl SERP Transfer Capital Fund and the Pearl SERP Fund as it considers appropriate; and
- (B) the NPLL Board may, having regard to the advice of the NPLL Actuary and subject to FSMA, make such adjustment to the Transfer Capital Fund and the National Provident Life Fund as it considers appropriate.

## **PART D – FUND STRUCTURE**

### **11. ESTABLISHMENT OF PEARL SERP FUND AND PEARL SERP CAPITAL FUNDS**

11.1 On and with effect from the Transfer Date, Pearl shall establish:

- (A) the Pearl SERP Fund as a separate sub-fund of the Pearl Long Term Insurance Fund; and
- (B) the Pearl SERP Loan Capital Fund and the Pearl SERP Transfer Capital Fund as separate accounts within the Pearl SERP Fund.

### **12. PURPOSE OF ALLOCATIONS**

Any allocation of property or attribution of liabilities, and any reallocation or reattribution of the same, which is made under the terms of this Scheme for the purpose of the maintenance of the Relevant Pearl Funds is for the purpose of establishing or recognising respective policyholder and shareholder entitlements from time to time and shall not be taken to limit the availability of all the property from time to time of Pearl to meet the liabilities which it is obliged by law to meet.

### **13. ALLOCATION OF PROPERTY TO THE PEARL SERP TRANSFER CAPITAL FUND**

On and with effect from the Transfer Date, Pearl shall procure that there is transferred from the Pearl Shareholder Fund to the Pearl SERP Fund and allocated to the Pearl SERP Transfer Capital Fund property with an Assets Value of the necessary amount such that, taking into account such transfer and the transfer of the Transferred Assets and Residual Assets under this Scheme, Pearl complies with INSPRU 1.1.27R and 1.1.28R in respect of the Pearl SERP Fund.

### **14. ALLOCATION OF POLICIES**

- 14.1 With effect from the Transfer Date, all the NPLL SERP Policies shall be allocated to the Pearl SERP Fund.
- 14.2 With effect from the Guernsey Transfer Date (if later than the Transfer Date) all the Guernsey Policies shall be allocated to the Pearl SERP Fund.
- 14.3 With effect from the Jersey Transfer Date (if later than the Transfer Date) all the Jersey Policies shall be allocated to the Pearl SERP Fund.

### **15. ALLOCATION OF ASSETS**

15.1 On and with effect from the Transfer Date the following shall be allocated to the Pearl SERP Fund:

- (A) All of the Transferred Assets, provided that those of the Transferred Asset referred to in paragraph 15.2 shall be more specifically allocated as there specified; and

- (B) to the extent that the same are allocated to the Transferred Business immediately prior to the Effective Date:
  - (A) all rights and benefits arising under the Excluded Policies Reinsurance Agreement; and
  - (B) the beneficial interest in all property held on trust pursuant to paragraph 8.1, and the right to receive any payment, property or right pursuant to paragraph 8.3, to the extent that, but for falling within the provisions of paragraph 8.1, such property (or the property to which such payment, property or right relates) would have fallen within the provisions of this paragraph 15.1.
- 15.2 On and with effect from the Transfer Date, those assets of NPLL which fall within paragraph (E) or paragraph (F) (where arising from the Transferred Assets falling within paragraph (E) of the definition of Transferred Assets) of the definition of Transferred Assets shall be allocated to the Pearl SERP Transfer Capital Fund.
- 15.3 On and with effect from the applicable Subsequent Transfer Date each Residual Asset to which that Subsequent Transfer Date relates shall be allocated to the fund to which it would have been allocated in accordance with the provisions of paragraph 15.1 or 15.2 had it been a Transferred Asset.

## **16. ALLOCATION OF LIABILITIES**

- 16.1 On and with effect from the Transfer Date the following shall be allocated to the Pearl SERP Fund:
  - (A) all Transferred Liabilities allocated to the NPLL Long Term Fund (including the Transfer Capital Fund) immediately prior to the Transfer Date;
  - (B) to the extent that the same are allocated to the NPLL Long Term Fund (including the Transfer Capital Fund) immediately prior to the Transfer Date, all liabilities attributable to the Excluded Policies Reinsurance Agreement;
  - (C) the liability to indemnify NPLL pursuant to paragraph 8.3 to the extent that the payment or property to which such indemnity relates is allocated by paragraph 15 to the Pearl SERP Fund; and
  - (D) the liability to discharge liabilities on NPLL's behalf, or failing that to indemnify NPLL, pursuant to paragraph 9, to the extent that such liability relates to the Pearl SERP Fund.
- 16.2 On and with effect from the applicable Subsequent Transfer Date each Residual Liability to which that Subsequent Transfer Date relates shall be allocated to the Pearl SERP Fund.
- 16.3 If any doubt, disagreement or difference shall arise as to the allocation or attribution of any Transferred Asset, Transferred Liability, Residual Asset or Residual Liability in accordance with this Scheme or in relation to any calculation to be made pursuant to this Scheme or whether a particular Asset is or was a Transferred Asset, the same shall be determined by the Pearl Board, having regard to the advice of the Pearl Actuary, and that decision shall be binding on Pearl and NPLL.

## 17. ESTABLISHMENT OF THE SHAREHOLDER EQUALISATION FUND

- 17.1 On and with effect from the Transfer Date NPLL shall procure that assets selected by the NPLL Board (having obtained the prior agreement of the National Provident Life Fund Supervisory Board) with an Assets Value as at the Effective Date equal to the NPLL Board's best estimate of the "**SEF Determined Amount**" (the "**SEF Estimated Transfer Amount**") are allocated from the National Provident Life Fund to the Shareholder Equalisation Fund.
- 17.2 The SEF Determined Amount shall be the amount required such that the value of  $(A+B) - (C+D)$  rounded to the nearest £1,000,000 is zero, provided that if the calculation of the SEF Determined Amount results in the value of F being greater than 95% of the value of E, the SEF Determined Amount shall be reduced to such lesser amount as would result in the value of F being equal to 95% of E, where:
- (A) "A" is the value of the financing costs attributable to Pearl as shown in the realistic balance sheet of the NPLL Long Term Fund, adjusted so that the liabilities in respect of the Transferred Business equals the Transferred Assets, prepared as at 31 December 2009 at line 45 of Form 19 of NPLL's 2009 FSA Return;
  - (B) "B" is the value of the working capital as shown in the realistic balance sheet of the NPLL Long Term Fund, adjusted so that the liabilities in respect of the Transferred Business equals the Transferred Assets, prepared as at 31 December 2009 at line 68 of Form 19 of NPLL's 2009 FSA Return;
  - (C) "C" is the value of the financing costs attributable to Pearl as shown in line 45 of Form 19 of the realistic balance sheet of the NPLL Long Term Fund prepared as at the date immediately after the Effective Date but on the assumption that the SEF Determined Amount had been determined on the Effective Date, calculated using consistent methodology and assumptions as are to be applied in preparing the NPLL 2009 FSA Return;
  - (D) "D" is the value of the working capital as shown in line 68 of Form 19 of the realistic balance sheet of the NPLL Long Term Fund prepared as at the date immediately after the Effective Date but on the assumption that the SEF Determined Amount had been determined on the Effective Date, calculated using consistent methodology and assumptions as are to be applied in preparing the NPLL 2009 FSA Return;
  - (E) "E" is the ratio of the planned deductions from the with profits reserve for prospective management actions divided by the with profits benefit reserve, each as included in the realistic balance sheet of the NPLL Long Term Fund, adjusted so that the liabilities in respect of the Transferred Business equals the Transferred Assets, prepared as at 31 December 2009 at line 36 of Form 19 and line 31 of Form 19 respectively of NPLL's 2009 FSA Return; and
  - (F) "F" is the ratio of the planned deductions from the with profits reserve for prospective management actions as included in line 36 of Form 19 divided by the with profits benefit reserve as shown in line 31 of Form 19 of the realistic balance sheet of the NPLL Long Term Fund prepared as at the date immediately after the Effective Date but on the assumption that the SEF Determined Amount had been

determined on the Effective Date, calculated using consistent methodology and assumptions as are to be applied in preparing the NPLL 2009 FSA Return.

- 17.3 On a date which is after the date by which the NPLL 2009 FSA Return has been deposited with the Insurance Regulator, but on or before the SEF Balancing Transfer Date (the relevant date being the "**SEF Determination Date**"), NPLL shall determine in relation to the Shareholder Equalisation Fund (using, where applicable, material contained or referred to in the NPLL 2009 FSA Return), and confirm to the National Provident Life Fund Supervisory Board, the SEF Determined Amount.
- 17.4 On and with effect from the SEF Balancing Transfer Date:
- (A) if the SEF Determined Amount exceeds the SEF Estimated Transfer Amount, then SEF Balancing Assets shall, by the Order and without any further act or instrument be allocated from the National Provident Life Fund to the Shareholder Equalisation Fund; or
  - (B) if the SEF Determined Amount is less than the SEF Estimated Transfer Amount, then SEF Balancing Assets shall, by the Order and without any further instrument be reallocated from the Shareholder Equalisation Fund to the National Provident Life Fund.

## **PART E – OPERATION OF THE RELEVANT PEARL FUNDS**

### **18. MAINTENANCE OF THE RELEVANT PEARL FUNDS**

18.1 At all times after the Transfer Date:

- (A) subject to paragraph 31 in relation to the Pearl SERP Fund, the Relevant Pearl Funds shall be separately maintained and Pearl shall procure that separate accounting records for the Relevant Pearl Funds shall at all times be maintained which shall be sufficient to enable the separate identification of the property and liabilities allocated to the Relevant Pearl Funds;
- (B) each Pearl SERP Capital Fund shall be maintained as an account within the Pearl SERP Fund and Pearl shall procure that sufficient accounting records shall at all times be maintained to enable the separate attribution of property to each Pearl SERP Capital Fund and to identify liabilities in respect of the matters set out in paragraphs 25.4 and 25.6; and
- (C) Pearl shall manage the Pearl SERP Fund in accordance with its PPFM from time to time in force.

18.2 Nothing in this Scheme shall at any time prevent Pearl from establishing and maintaining other Long Term Insurance Funds and writing in or reinsuring to any such other Long Term Insurance Funds any new Long Term Business.

### **19. THE PEARL PACIFIC FUND**

For the purpose of clause 7 of the Section 68 Order, the Pearl SERP Fund shall be treated as neither a With-Profits Sub-Fund nor a Without-Profits Sub-Fund (as defined in the Section 68 Order), to the intent that, other than in the event of a winding-up of Pearl or as required pursuant to the Section 68 Order, the holders of NPLL SERP Policies will not be entitled to any of the benefits or protections provided by the Pearl Pacific Fund to existing Pearl Policyholders and the Pearl Pacific Fund will not be available to support the solvency of the Pearl SERP Fund.

### **20. RIGHTS AND EXPECTATIONS IN RESPECT OF POLICIES ALLOCATED TO THE PEARL SERP FUND**

20.1 With effect from the Transfer Date and without prejudice to the right of holders of NPLL SERP Policies to participate in any distribution of the Allocated Estate, the rights and expectations of holders of NPLL SERP Policies shall be as described in the relevant PPFM for the Pearl SERP Fund.

20.2 For the avoidance of doubt, upon the cessation of the Pearl SERP Fund pursuant to paragraph 31, any surplus assets of the Pearl SERP Fund after Pearl has made provision in respect of its obligations to Policyholders whose Policies are allocated to the Pearl SERP Fund on the basis described in the relevant PPFM from time to time in force shall be attributable to the shareholders of Pearl on the basis set out in such PPFM.

## **21. TAXATION OF THE PEARL SERP FUND**

- 21.1 The Pearl SERP Fund shall be debited or charged in respect of taxation with an amount calculated by Pearl, reviewed by the Pearl Actuary, and confirmed by Pearl's auditors, on the basis of tax law and practice prevailing at the time, to be, and with the intent that it should be, the amount which would have been the amount of the liability of Pearl to taxation in respect of the Pearl SERP Fund if the Pearl SERP Fund had been established on the Effective Date and had constituted the whole long term insurance fund of a separate mutual life assurance company resident and carrying on business exclusively in the United Kingdom, as amended for any necessary adjustments to ensure taxation of the Pearl SERP Fund is not increased as a result of movements to or from the Pearl SERP Transfer Capital Fund and the Pearl SERP Loan Capital Fund and if all appropriate allowances and reliefs which would in such circumstances have been available had been claimed and received including any such allowances or reliefs transferred from NPLL, in particular any expenses of management, excess needs amounts, acquisition expenses, spread capital gains under Section 213(5) Taxation of Chargeable Gains Act 1992, loan relationship reliefs, capital redemption funds, PHI losses and capital allowances.
- 21.2 If after the Transfer Date there occurs a material change in the basis on which life assurance companies resident and carrying on business exclusively in the United Kingdom are subject to taxation, the provisions of paragraph 21.1 shall be amended by the Pearl Board to the extent necessary or desirable to ensure that paragraph 21.1 continues to have the same effect it had as at the Transfer Date.

## **22. ALLOCATION OF EXPENSES AND CHARGES**

There shall be allocated to the Pearl SERP Fund only such amounts in respect of expenses and charges as are determined in accordance with Schedule 3.

## **23. CREDITS TO THE PEARL SERP FUND**

- 23.1 On and at all times after the Transfer Date there shall be credited to the Pearl SERP Fund all of the following:
- (A) all property allocated or transferred to the Pearl SERP Fund in accordance with paragraphs 14.1 and 15.1;
  - (B) all amounts paid, and all property or rights transferred, by NPLL to Pearl pursuant to paragraph 8.3 to the extent that such amounts, property or rights fall within paragraph 15.1(B)(B);
  - (C) all premiums received by Pearl in respect of Policies allocated to the Pearl SERP Fund in accordance with paragraph 14.1, 14.2 or 14.3;
  - (D) all amounts received by Pearl in respect of the Excluded Policies Reinsurance Agreement pursuant to paragraph 15.1(B)(A);
  - (E) all amounts paid to Pearl and properly transferred to Pearl in consideration of or in connection with the transfer or novation to Pearl at any time on or after the Transfer Date of any Excluded Policy which is also a NPLL SERP Policy;
  - (F) such amounts as are required to be transferred to the Pearl SERP Fund by Court order pursuant to section 112 of FSMA;

- (G) all investment gains, earnings, income and profits arising from the property or business allocated to the Pearl SERP Fund (including subsidiaries from time to time);
- (H) any tax reliefs credited to or deemed to be credited to the Pearl SERP Fund in accordance with paragraph 21; and
- (I) any other amounts which are required by this Scheme to be credited to or received by the Pearl SERP Fund or which are determined by the Pearl Actuary in accordance with the principles underlying this Scheme to be properly attributable to or properly received and arising from the property and business of the Pearl SERP Fund.

## **24. DEBITS TO THE PEARL SERP FUND**

24.1 On and at all times after the Transfer Date there shall be debited and charged to the Pearl SERP Fund all of the following:

- (A) all payments made in respect of those liabilities (including, for the avoidance of doubt, taxation liabilities) which are allocated to the Pearl SERP Fund in accordance with paragraph 16.1;
- (B) any amounts paid to NPLL by Pearl pursuant to the indemnities contained in paragraph 8.3 to the extent that such payments relate to rights or property which are allocated to the Pearl SERP Fund;
- (C) any amounts paid and liabilities incurred by Pearl pursuant to paragraph 9 to the extent that such amounts paid and liabilities incurred relate to Transferred Liabilities or Residual Liabilities which, had they been transferred on the Transfer Date, would have been allocated to the Pearl SERP Fund;
- (D) all amounts payable in respect of Policies which are allocated to the Pearl SERP Fund in accordance with paragraph 14.1, 14.2 or 14.3 arising by reason of surrender, death annuity, disability, maturity or other event giving rise to a claim (including, for the avoidance of doubt, amounts payable as a consequence of any guarantee or option in any such Policy);
- (E) the amount of all payments made by Pearl in respect of the Excluded Policies Reinsurance Agreement;
- (F) all liabilities, costs, expenditure, losses and declines in the value of investments arising from the property or business allocated to the Pearl SERP Fund (including subsidiaries from time to time);
- (G) all amounts in respect of taxation which are debited or charged to the Pearl SERP Fund in accordance with paragraph 21;
- (H) the costs, liabilities and expenses incurred in respect of the acquisition, holding or disposal of any property comprised in the Pearl SERP Fund, including (without limitation) all commissions, expenses and investment management or other charges or liabilities properly attributable to the Pearl SERP Fund or the business allocated to it, as determined by the Pearl Actuary;

- (I) such charges and expenses as are allocated to the Pearl SERP Fund in accordance with paragraph 22 and Parts A and B of Schedule 3;
- (J) commissions paid to intermediaries and other third parties in respect of Policies which are allocated to the Pearl SERP Fund;
- (K) payments of principal and interest in respect of any liabilities of the Pearl SERP Fund in respect of borrowed monies;
- (L) such amounts as are required to be transferred from the Pearl SERP Fund by Court order pursuant to section 112 of FSMA;
- (M) in respect of claims upon vesting of pensions contracts, and to the extent the annuity in respect of such Policy is to be provided by Pearl, such assets as are required to be transferred from the Pearl SERP Fund to the Pearl PNP Fund on the relevant vesting date in order to purchase the annuity; and
- (N) any other amounts which are required by this Scheme to be debited or charged to the Pearl SERP Fund or which are determined by the Pearl Board, as advised by the Pearl Actuary, in accordance with the principles underlying this Scheme, to be properly attributable to the Pearl SERP Fund.

24.2 Except as provided for in paragraph 24.1, no sum or amount shall be debited or charged to the Pearl SERP Fund on or after the Transfer Date.

## **25. OPERATION OF THE PEARL SERP CAPITAL FUNDS**

25.1 Save as expressly required or permitted by this Scheme, there shall not at any time on or after the Transfer Date be any transfer, exchange or re-allocation of property or liabilities between the Pearl SERP Capital Funds except for:

- (A) any transfer or exchange of listed securities at mid-market value (after an appropriate allowance, determined by the Pearl Actuary, for deferred tax); and
- (B) such transfer, exchange or re-allocation of property other than listed securities on such arm's length terms (including, without limitation, terms reflecting an appropriate allowance, determined by the Pearl Actuary, for tax or deferred tax) as may have been approved by the Pearl Board.

25.2 The balance from time to time of each Pearl SERP Capital Fund shall comprise all amounts credited to it pursuant to paragraphs 25.3 or 25.5 less all amounts debited or charged to it pursuant to paragraphs 25.4 or 25.6.

25.3 On and at all times after the Transfer Date there shall be credited to the Pearl SERP Transfer Capital Fund all of the following:

- (A) such amounts as are transferred to the Pearl SERP Transfer Capital Fund pursuant to paragraph 26;
- (B) such property as is transferred to the Pearl SERP Transfer Capital Fund pursuant to paragraph 25.1;
- (C) such amounts as are required to be transferred to the Pearl SERP Transfer Capital Fund by Court order pursuant to section 112 of FSMA;

- (D) all investment gains, earnings, income and profits arising from the property allocated to the Pearl SERP Transfer Capital Fund;
- (E) all tax reliefs which are properly credited to or deemed to be credited to the Pearl SERP Transfer Capital Fund in accordance with this Scheme; and
- (F) any other amounts which are required by this Scheme to be credited to or received by the Pearl SERP Transfer Capital Fund or which are determined by the Pearl Board upon the advice of the Pearl Actuary in accordance with the principles underlying this Scheme to be properly attributable to the Pearl SERP Transfer Capital Fund.

25.4 On and at all times after the Transfer Date there shall be debited and charged to the Pearl SERP Transfer Capital Fund all of the following:

- (A) such amounts as are transferred from the Pearl SERP Transfer Capital Fund pursuant to paragraph 26;
- (B) such property as is transferred from the Pearl SERP Transfer Capital Fund pursuant to paragraph 25.1;
- (C) such amounts as are required to be transferred from the Pearl SERP Transfer Capital Fund by Court order pursuant to section 112 of FSMA;
- (D) in respect of each Pearl SERP Policy which vests on retirement, and to the extent the annuity in respect of such Policy is to be provided by Pearl, such assets as are required to be transferred from the Pearl SERP Transfer Capital Fund to the Pearl PNP Fund on the relevant vesting date in order to purchase the annuity;
- (E) all liabilities, costs, expenditure, losses and declines in the value of investments arising from the property allocated to the Pearl SERP Transfer Capital Fund (including amounts payable in connection with the investment management of the property allocated to the Pearl SERP Transfer Capital Fund);
- (F) all amounts in respect of taxation which are properly debited or charged to the Pearl SERP Transfer Capital Fund in accordance with this Scheme; and
- (G) any other amounts which are required by this Scheme to be debited or charged to the Pearl SERP Transfer Capital Fund or which are determined by the Pearl Board upon the advice of the Pearl Actuary in accordance with the principles underlying this Scheme to be properly attributable to the Pearl SERP Transfer Capital Fund.

25.5 On and at all times after the Transfer Date there shall be credited to the Pearl SERP Loan Capital Fund all of the following:

- (A) such amounts as are allocated to the Pearl SERP Loan Capital Fund pursuant to paragraph 26;
- (B) such property as is transferred to the Pearl SERP Loan Capital Fund pursuant to paragraph 25.1;
- (C) such amounts as are required to be transferred to the Pearl SERP Loan Capital Fund by Court order pursuant to section 112 of FSMA;

- (D) all investment gains, earnings, income and profits arising from the property allocated to the Pearl SERP Loan Capital Fund;
  - (E) all tax reliefs which are properly credited to or deemed to be credited to the Pearl SERP Loan Capital Fund in accordance with this Scheme; and
  - (F) any other amounts which are required by this Scheme to be credited to or received by the Pearl SERP Loan Capital Fund or which are determined by the Pearl Board upon the advice of the Pearl Actuary in accordance with the principles underlying this Scheme to be properly attributable to the Pearl SERP Loan Capital Fund.
- 25.6 On and at all times after the Transfer Date there shall be debited and charged to the Pearl SERP Loan Capital Fund all of the following:
- (A) such amounts as are repaid in respect of a Pearl Contingent Loan or are paid by way of interest on a Contingent Loan pursuant to paragraph 27.1;
  - (B) such property as is transferred from the Pearl SERP Loan Capital Fund pursuant to paragraph 25.1;
  - (C) such amounts as are required to be transferred from the Pearl SERP Loan Capital Fund by Court order pursuant to section 112 of FSMA;
  - (D) in respect of each Pearl SERP Policy which vests on retirement, and to the extent the annuity in respect of such Policy is to be provided by Pearl, such assets as are required to be transferred from the Pearl SERP Loan Capital Fund to the Pearl PNP Fund on the relevant vesting date in order to purchase the annuity;
  - (E) all amounts in respect of taxation which are properly debited or charged to the Pearl SERP Loan Capital Fund in accordance with this Scheme;
  - (F) such amounts as may be debited to the Pearl SERP Loan Capital Fund pursuant to paragraph 27.1; and
  - (G) any other amounts which are required by this Scheme to be debited or charged to the Pearl SERP Loan Capital Fund or which are determined by the Pearl Board upon the advice of the Pearl Actuary in accordance with the principles underlying this Scheme to be properly attributable to the Pearl SERP Loan Capital Fund.
- 25.7 Except as provided for in this Scheme, no sum or amount shall be debited or charged to either Pearl SERP Capital Fund on or after the Transfer Date.
- 25.8 The property from time to time comprising the Pearl SERP Capital Funds shall be used in the manner and for the purposes envisaged by the PPFM of the Pearl SERP Fund from time to time in force.
- 25.9 The balance of each Pearl SERP Capital Fund, together (in each case) with any accrued amount arising in respect thereof pursuant to paragraph 27, shall be disclosed (in a form acceptable to the Insurance Regulator) in the FSA Return made to the Insurance Regulator by Pearl.

**26. FUNDING OF DEFICITS IN THE PEARL SERP FUND**

26.1 For the purposes of this paragraph 26, a deficit (a "**Deficit**") shall exist at any time when, and in the amount by which, in the opinion of the Pearl Actuary:

- (A) the Assets Value of the property comprised in the Pearl SERP Fund or held in trust for the Pearl SERP Fund and the beneficial ownership in respect of which is allocated to the Pearl SERP Fund pursuant to paragraphs 8 and 15.1,

falls short of:

- (B) the greater of:
  - (1) the mathematical reserves and other insurance liabilities attributable to Policies allocated to the Pearl SERP Fund and Excluded Policies which would otherwise have been allocated to the Pearl SERP Fund and the non-insurance liabilities allocated to the Pearl SERP Fund, as determined in accordance with FSMA; and
  - (2) the amounts determined by the Pearl Actuary as necessary to be held within the Pearl SERP Fund to permit Pearl both (i) to continue to meet the reasonable expectations of the holders of Policies allocated to the Pearl SERP Fund and Excluded Policies which would otherwise have been allocated to the Pearl SERP Fund and (ii) to manage the Pearl SERP Fund in each case in a manner consistent with its PPFM from time to time in force. For the avoidance of doubt, for the purpose of this paragraph 26.1(B)(2) the reasonable expectations of holders of such Policies with regard to the security, but not the amount, of their benefits shall have regard to the existence of property of Pearl outside the Pearl Long Term Insurance Fund.

26.2 Without prejudice to any other means of funding the Deficit which the Pearl Board may select, if a Deficit arises at any time, property selected by the Pearl Board with an Assets Value equal to all or any part of the Deficit (the "**Deficit Amount**") may be transferred from the Pearl Shareholder Fund to the Pearl SERP Transfer Capital Fund and held on the terms specified in paragraph 26.3, or all or part of the Deficit Amount may instead be dealt with in accordance with paragraph 26.4.

26.3 The terms on which any amount shall be held within the Pearl SERP Transfer Capital Fund shall be as follows:

- (A) the amount so held shall be a liability of the Pearl SERP Fund to the Pearl Shareholder Fund only to the extent (if at all) that a Deficit would not thereby arise; and
- (B) any amount in the Pearl SERP Transfer Capital Fund may, to the extent that such amount is a liability as referred to in paragraph 26.3(A), at the discretion of the Pearl Board be transferred to the Pearl Shareholder Fund as soon as the Pearl Actuary determines that it should be so transferred and it can, consistent with FSMA, be so transferred.

26.4 At the Pearl Shareholder's discretion, provided that the Pearl Actuary is satisfied that the effect under the UK Regulation will be no less advantageous for the Pearl SERP Fund than

the effect of holding assets within the Pearl SERP Transfer Capital Fund, all or part of the Deficit Amount, or (whether or not a Deficit has arisen) all or any part of the property from time to time comprised in the Pearl SERP Transfer Capital Fund, may be dealt with as follows:

- (A) subject to the prior performance of the obligation in paragraph (B) below, the amount in question (the "**Pearl Contingent Loan Amount**") shall be transferred by Pearl from the Pearl SERP Transfer Capital Fund to the Pearl Shareholder Fund and/or distributed to the Pearl Shareholder;
- (B) the Pearl Shareholder will procure that a Pearl Contingent Loan will be made to Pearl (for the account of the Pearl SERP Loan Capital Fund) in an amount equal to the Pearl Contingent Loan Amount;
- (C) subject to the terms of such Pearl Contingent Loan, interest on the Pearl Contingent Loan will be calculated and paid pursuant to paragraph 27.1;
- (D) subject to the terms of such Pearl Contingent Loan, such Pearl Contingent Loan will be repayable at the Pearl Shareholder's discretion but subject to the prior performance of the obligations in paragraph (E) below where applicable and only if and to the extent that the Pearl Actuary determines that a Deficit would not thereby arise, with such repayment being limited in recourse to the property comprised in the Pearl SERP Loan Capital Fund; and
- (E) the Pearl Shareholder shall procure that, except in circumstances where failure to do so would not result in a Deficit arising in consequence of repayment of an amount of a Pearl Contingent Loan, an amount equal to any amount of the principal of a Pearl Contingent Loan which is proposed to be repaid pursuant to paragraph (D) above shall first have been contributed to Pearl for the account of the Pearl Shareholder Fund, whereupon Pearl shall allocate the same to, and it shall form part of, the Pearl SERP Transfer Capital Fund.

## **27. CONTINGENT LOAN INTEREST**

27.1 Subject to the terms of the Pearl Contingent Loans, any Pearl Contingent Loan (or, in the event there is outstanding more than one Pearl Contingent Loan, all such Pearl Contingent Loans together) shall bear interest, determined as at each Calculation Date, which shall be calculated as the sum of any amount by which the aggregate of all investment gains, earnings, income and profits arising in the period since the most recent Calculation Date from the property allocated to the Pearl SERP Loan Capital Fund exceeds the aggregate of all liabilities, costs, expenditure, losses and declines in the value of investments arising in such period from such property (including amounts payable in connection with the investment management of such property), which amount shall be borne by the Pearl SERP Loan Capital Fund.

27.2 The calculation of each amount of interest arising pursuant to paragraph 27.1 shall be made by Pearl as soon as practicable, and in any event not later than 60 days after the relevant Calculation Date. Subject to the terms of the Pearl Contingent Loans, the payment of any such amount shall take place not later than seven days following agreement or determination of the relevant amount pursuant to this paragraph 27.2.

## **28. INVESTMENT POLICY OF THE PEARL SERP CAPITAL FUNDS**

The Pearl Board shall determine the investment policy of the Pearl SERP Capital Funds. Such investment policy shall take account of (but shall not be bound by) the advice of the Pearl Actuary and shall have regard to the need for the property comprised in the Pearl SERP Capital Funds to be suitable for the purpose to which the Pearl SERP Capital Funds are to be put pursuant to the PPFM of the Pearl SERP Fund from time to time in force.

## **29. MITIGATION OF TAXATION**

29.1 Pearl may take any step which the Pearl Board considers necessary or desirable to mitigate the impact of any taxation (including stamp duty and stamp duty reserve tax and whether arising in the United Kingdom or elsewhere) which might arise in relation to the property allocated to the Pearl SERP Capital Funds from time to time. For such purposes, Pearl shall have the power to amend, replace or delete any provision of this Part E provided that:

- (A) an independent actuary has certified that in his opinion the proposed amendment, replacement or deletion will not adversely affect the security or reasonable expectations of the holders of Transferred Policies or Excluded Policies; and
- (B) the Insurance Regulator has been provided with details of the proposed amendment, replacement or deletion and a copy of the certificate referred to in paragraph (A) above and either the Insurance Regulator has, before the expiration of the period of three months beginning with the date on which it received such details and certificate, notified Pearl that it does not object to the amendment, replacement or deletion, or that period has elapsed without the Insurance Regulator having served on Pearl a written notice of objection.

## **30. DELAY IN ALLOCATIONS TO THE FUNDS**

If there is, for any reason, any delay (for which provision is not expressly made in this Scheme) in the allocation of any receipt, payment or other item to a Relevant Pearl Fund in accordance with this Scheme, the Pearl Board, having regard to the advice of the Pearl Actuary and subject to FSMA, may make such adjustment between such funds as it considers appropriate in accordance with the principles underlying this Scheme to take account of such delay.

## **31. PROVISION FOR CESSATION OF THE PEARL SERP FUND AND CONVERSION OF NPLL SERP POLICIES**

31.1 Pearl may elect to cease to maintain the Pearl SERP Fund as a separate sub-fund in the Pearl Long Term Insurance Fund as at a date (the "**Closure Date**") when the value of the assets in the Pearl SERP Fund falls below £250 million (increased annually at the annual rate of increase of the RPI with effect from the Effective Date) or such other amount below which the Pearl Board, having regard to the advice of the Pearl WP Actuary, considers maintenance of the Pearl SERP Fund is no longer administratively feasible. In such event:

- (A) the provisions of this Scheme relating to the maintenance of the Pearl SERP Fund as a separate sub-fund shall cease to apply and such modifications and/or additions shall be made to this Scheme as may be necessary to give effect to the closure of the Pearl SERP Fund;

- (B) all of the Policies, assets and liabilities allocated to the Pearl SERP Fund shall be reallocated to the Pearl PNP Fund and:
  - (A) such Policies shall be converted so as no longer to be treated as with-profits policies, on the basis, and following the process, described in Schedule 4; and
  - (B) all rights of such Policies to participate in any current or future surplus in the Pearl SERP Fund shall be deemed to be satisfied in full.

## **PART F – MISCELLANEOUS PROVISIONS**

### **32. TRANSFER DATE**

- 32.1 Subject to paragraph 32.3, this Scheme shall become operative at 12.01 a.m. on 15 February 2010 (the "**Transfer Date**"), or on such other time and date as NPLL and Pearl may agree (being a date and time falling after the making of the Order sanctioning this Scheme).
- 32.2 Unless this Scheme shall become operative in its entirety on or before 11.59 p.m. on 31 May 2010 or such later date and/or time, if any, as the Court may allow upon the application of NPLL and Pearl, it shall lapse.
- 32.3 This Scheme shall not become operative on the Transfer Date unless on or prior thereto:
- (A) NPLL and Pearl (as appropriate) receive such tax clearances and confirmations (in terms acceptable to each of NPLL and Pearl) from the HM Revenue and Customs as each of NPLL and Pearl (acting reasonably) consider appropriate or the requirement for any such confirmation is waived in whole or in part by each of NPLL and Pearl and with the approval of the Independent Expert;
  - (B) NPLL has obtained the consent of the Court to the amendments to the Demutualisation Scheme as set out in Schedule 2; and
  - (C) the Assets Value of the assets held within the Transfer Capital Fund is at least equal to the amount specified in paragraph 2.7(A).
- 32.4 In so far as this Scheme creates rights and obligations that exist only between the parties to it, it shall so far as possible be treated as having become effective as between the parties on the Effective Date, including, without prejudice to the generality of the foregoing, for accounting purposes and for determining the level of policyholder benefits, and references in this Scheme to the Effective Date shall be construed accordingly.
- 32.5 Nothing in this Scheme shall be taken to transfer or otherwise deal with on the Transfer Date, or purport to transfer or otherwise deal with on the Transfer Date, any asset, liability, right or obligation which was not legally capable of being so transferred or otherwise dealt with on the Transfer Date.
- 32.6 No transfer of any asset nor allocation of any liability made under this Scheme shall be treated, if and to the extent that such transfer or allocation would affect the legal rights or obligations of any third party, as being effective with regard to that third party before the Transfer Date.
- 32.7 Any Transferred Asset which ceases to be an asset of NPLL between the Effective Date and the Transfer Date shall be deemed to have been disposed of by Pearl at the date on which it was disposed of by NPLL.
- 32.8 Any Transferred Liability which ceases to be a liability of NPLL between the Effective Date and the Transfer Date shall be deemed to have been discharged by Pearl at the date on which it was discharged by NPLL.

### **33. MODIFICATIONS, AMENDMENTS OR ADDITIONS TO THIS SCHEME**

- 33.1 NPLL and Pearl may consent for and on behalf of the parties hereto and all other persons concerned (except the Insurance Regulator) to any modification of or addition to this Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Scheme, the Court may approve or impose.
- 33.2 Subject to paragraph 33.3, NPLL and Pearl shall at any time after the sanction of this Scheme be at liberty to apply to the Court for consent to amend its terms. If such consent is granted, NPLL or Pearl may amend the terms of this Scheme in accordance with such consent.
- 33.3 The consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Scheme (including amendments to correct manifest errors) that are agreed by NPLL and Pearl, provided that the Insurance Regulator has been notified of the proposed amendments and has indicated that it does not object thereto. If such confirmation of non-objection is obtained, Pearl may amend the terms of this Scheme in accordance with such consent.

### **34. EVIDENCE OF TRANSFER**

- 34.1 The production of a copy of the Order with any modifications, amendments and/or additions made under paragraph 33, shall for all purposes be evidence of the transfer to, and vesting in, Pearl:
- (A) on and with effect from the Transfer Date, of the Transferred Business, the Transferred Assets, the Transferred Liabilities and the Transferred Policies; and
  - (B) with effect from each relevant Subsequent Transfer Date, of the Residual Assets and Residual Liabilities.

### **35. COSTS AND EXPENSES**

NPLL and Pearl shall bear all legal and other professional costs of or incidental to the preparation and carrying into effect of this Scheme in such proportions as are agreed between them, and each of them shall allocate any such costs borne by it to its Shareholder Fund.

### **36. THIRD PARTY RIGHTS**

A person who is not a party to this Scheme may not enforce any term of this Scheme pursuant to the Contracts (Rights of Third Parties) Act 1999.

### **37. SUCCESSORS AND ASSIGNS**

This Scheme will bind and enure to the benefit of the successors and assigns of each of NPLL and Pearl.

### **38. GOVERNING LAW**

This Scheme is governed by, and shall be construed in accordance with, English law.

Dated 5 February 2010

**SCHEDULE 1**  
**TRANSFERRED POLICIES**

**NPLL SERP Policies**

<b>CAPSIL Product</b>	<b>Product Type</b>	<b>CAPSIL SERP Product Description</b>	<b>Target Pearl FUND</b>
DAS00R00	Pension	DASE WITH PROFIT	New SERP WP Fund
DAS03R00	Pension	DASE WITH PROF CONV FROM A1	New SERP WP Fund
SRP00R00	Pension	WP SERP 0 YRS PROP PUP	New SERP WP Fund
SRP00R36	Pension	WP SERP 3 YRS PROP PUP	New SERP WP Fund
SRP00R60	Pension	WP SERP 5 YRS PROP PUP	New SERP WP Fund
SRP00S00	Pension	WP SERP SINGLE PREM	New SERP WP Fund
SRP02R00	Pension	WP SERP SWITCHED FROM PPIP	New SERP WP Fund
SRP02S00	Pension	WP SERP SWITCHED FROM PPIP	New SERP WP Fund
SRP03R00	Pension	WP SERP -OLD A30YRS PROP PUP	New SERP WP Fund
SRP90R00	Pension	WP SERP 0 YRS PROP PUP	New SERP WP Fund
SRP90R60	Pension	WP SERP 5 YRS PROP PUP	New SERP WP Fund
SRP90R65	Pension	WP SERP 3/97SPOF(5YR PROP PUP)	New SERP WP Fund
SRP92R00	Pension	WP SERP SWITCHED FROM PPIP	New SERP WP Fund
TOP60S00	Pension	SERP top up SINGLE PREM	New SERP WP Fund
DAS00S00	Pension	DASE WITH PROFIT	New SERP WP Fund
SRP01R60	Pension	NP SERP 5 YRS PROP PUP	New SERP WP Fund
SRP01S00	Pension	NP SERP SINGLE PREM	New SERP WP Fund
SRP90R05	Pension	WP SERP 3/97SPOF(0YR PROP PUP)	New SERP WP Fund
SRP91R60	Pension	NP SERP 5 YRS PROP PUP	New SERP WP Fund

## SCHEDULE 2

### AMENDED DEMUTUALISATION SCHEME

With effect from the later of (i) the date on which the Order is granted by the Court and stamped accordingly; (ii) the date on which an order is granted by the Court and stamped accordingly to amend the provisions of the Demutualisation Scheme pursuant to paragraph 53.2 of the Demutualisation Scheme; and (iii) the Transfer Date, the provisions of the Demutualisation Scheme shall be amended and construed on the basis set out in this Schedule.

#### **Definitions**

Paragraph 1.1 shall be amended to include the following definitions:

**"COBS"** the Conduct of Business Sourcebook issued by the Insurance Regulator;

**"FSA Return"** the return to the Insurance Regulator required to be prepared and deposited with the Insurance Regulator pursuant to Rule 9.6 of IPRU(INS);

**"FSMA"** the Financial Services and Markets Act 2000;

**"IPRU(INS)"** the Interim Prudential Sourcebook for Insurers issued by the Insurance Regulator;

**"NPLL Actuary"** the meaning given in the Pearl Scheme;

**"Pearl Scheme"** the insurance business transfer scheme transferring part of the long term business of National Provident Life to Pearl, which was sanctioned by order of the Court made in February 2010 pursuant to claim number 20030 of 2009;

**"Pearl Scheme Effective Date"** the time and date specified in the definition of "Effective Date" in the Pearl Scheme;

**"PPFM"** the Principles and Practices of Financial Management prepared and issued by National Provident Life from time to time as required by COBS 20.3;

**"Shareholder Equalisation Fund"** the separate account having that name established in accordance with paragraph 10A.1 and Schedule 7;

**"SUP"** the Supervision Manual issued by the Insurance Regulator;

**"Transfer Date"** the meaning given in the Pearl Scheme;

**"With Profits Actuary"** the person appointed by National Provident Life from time to time to perform the "with-profits actuary function", as set out in SUP 4.3.16R;

#### **Credits and debits to the National Provident Life Fund, National Provident Life Capital Account, Transfer Capital Fund and Loan Capital Fund**

Paragraph 27 shall be amended to add the following wording as a new sub-paragraph 27(O) and sub-paragraphs 27(O) and 27(P) shall be re-numbered as 27(P) and 27(Q) accordingly;

"such amounts as are required to be transferred to the National Provident Life Fund by Court order pursuant to section 112 of FSMA;"

Paragraph 28.1 shall be amended to add the following wording as a new sub-paragraph 28.1(Z) and paragraphs 28.1(Z) and 28.1(AA) shall be re-numbered as 28.1(AA) and 28.1(BB) accordingly;

"such amounts as are required to be transferred from the National Provident Life Fund by Court order pursuant to section 112 of FSMA;"

Paragraph 36.1 shall be amended to add the following wording as a new sub-paragraph 36.1(D) and sub-paragraph 36.1(D) and 36.1(E) shall be renumbered as 36.1(E) and 36.1(F) accordingly;

"such amounts as are required to be transferred to the National Provident Life Capital Account by Court order made pursuant to section 112 of FSMA;"

Paragraph 36.2 shall be amended to add the following wording as a new sub-paragraph 36.2(E) and sub-paragraphs 36.2(E) and 36.2(F) shall be renumbered as 36.2(F) and 36.2(G) accordingly;

"such amounts as are required to be transferred from the National Provident Life Capital Account by Court order made pursuant to section 112 of FSMA;"

Paragraph 37.2 shall be amended to add the following wording as new sub-paragraph 37.2(D) and sub-paragraphs 37.2(D) and 37.2(E) shall be re-numbered as 37.2(E) and 37.2(F) accordingly;

"such amounts as are required to be transferred to the Transfer Capital Fund by Court order made pursuant to section 112 of FSMA;"

Paragraph 37.3 shall be amended to add the following wording as new sub-paragraph 37.3(E) and sub-paragraphs 37.3(E) and 37.3(F) shall be re-numbered as 37.3(F) and 37.3(G) accordingly;

"such amounts as are required to be transferred from the Transfer Capital Fund by Court order made pursuant to section 112 of FSMA;"

Paragraph 37.4 shall be amended to add the following wording as new sub-paragraph 37.4(D) and sub-paragraphs 37.4(D) and 37.4(E) shall be re-numbered as 37.4(E) and 37.4(F) accordingly;

"such amounts as are required to be transferred to the Loan Capital Fund by Court order made pursuant to section 112 of FSMA;"

Paragraph 37.5 shall be amended to add the following wording as new sub-paragraph 37.5(F) and sub-paragraphs 37.5(F) and 37.5(G) shall be re-numbered as 37.5(G) and 37.5(H) accordingly;

"such amounts as are required to be transferred from the Loan Capital Fund by Court order made pursuant to section 112 of FSMA;"

### **Mitigation of Taxation**

In paragraph 46(C), the words "National Provident Lifea" should be replaced by "a".

### **Use of the National Provident Life Capital Account**

The existing wording of paragraph 38.4(C) shall be replaced with the following wording:

"any amount in the Transfer Capital Fund may, to the extent such amount is a liability as referred to in paragraph 38.4(B), at the discretion of the National Provident Life Board be transferred to:

- (1) the Shareholders' Fund (and allocated to the National Provident Life Capital Account); or
- (2) Pearl, pursuant to a Court order made pursuant to section 112 of FSMA,

as soon as the With Profits Actuary determines that it should be so transferred and it can, consistent with FSMA, be so transferred."

The existing wording of paragraph 38.5(D) shall be replaced with the following wording:

"subject to the terms of the Contingent Loan, such Contingent Loan will be repayable at the Shareholder's discretion but subject to the prior performance of the obligation in paragraph (E) below and only if and to the extent that the With Profits Actuary determines that a Deficit would not thereby arise, with such repayment being limited in recourse to the property comprised in the Loan Capital Fund; and"

### **Principles of Financial Management**

Schedule 3 (Principles of Financial Management) shall be amended as follows:

The final sentence of paragraph 6 (which reads "Thereafter, those Asset Shares shall be accumulated by reference to the financial position, performance and experience of the National Provident Life Fund") shall be deleted and replaced by the following wording:

"Thereafter, and until the Hypothecation Date referred to below, those Asset Shares shall be accumulated by reference to the financial position, performance and experience of the National Provident Life Fund. With effect from the Hypothecation Date referred to below, Asset Shares of different groups of Policies shall accumulate on a basis described in the relevant PPFM and determined by the National Provident Life Fund Supervisory Board following advice from the With Profits Actuary. Without limitation, such basis may include an allocation of investment return as if distinct and different asset mixes had been allocated to identified groups of Policies, whether or not the National Provident Life Fund in fact holds such assets. For this purpose the Hypothecation Date shall be a date or (in the event further changes are to be made to the basis for the future accumulation of Asset Shares after an earlier Hypothecation Date) dates selected by the National Provident Life Fund Supervisory Board. The National Provident Life Supervisory Board shall give written notice to the Insurance Regulator of, and consult with the Insurance Regulator about, such proposed basis for the future accumulation of Asset Shares. National Provident Life shall not be entitled to implement the proposed basis for the future accumulation of Asset Shares until it has received notice in writing of the Insurance Regulator's non-objection to such proposal."

The following wording shall be added as a new paragraph 12:

"The Shareholder Equalisation Fund forms a component of policyholders' reasonable expectations (as such term is used by the Insurance Regulator) as regards security and will be available to provide assets which will be used to meet guarantees on National Provident Life Policies if required. However, the Shareholder Equalisation Fund does not form part of policyholders' reasonable expectations where Asset Shares exceed guaranteed benefits and it is not available to allow policyholders' reasonable expectations to exceed 100% of Asset Shares at any time."

### **Shareholder Equalisation Fund**

In Part D, the following shall be added as a new paragraph 10A, immediately after the provisions of paragraph 10 ("Establishment of Funds"):

"10A. ESTABLISHMENT OF THE SHAREHOLDER EQUALISATION FUND

10A.1 On the Transfer Date but with effect from the Pearl Scheme Effective Date National Provident Life shall establish the Shareholder Equalisation Fund as a separate account within the National Provident Life Fund.

10A.2 The provisions of Schedule 7 shall apply in respect of the Shareholder Equalisation Fund."

### **Schedule 7**

The following provisions shall be added as a new Schedule 7:

#### **"SCHEDULE 7**

#### **The Shareholder Equalisation Fund**

#### **1. MAINTENANCE OF THE SHAREHOLDER EQUALISATION FUND**

1.1 At all times after the Transfer Date but with effect from the Pearl Scheme Effective Date, the Shareholder Equalisation Fund shall be maintained as an account within the National Provident Life Fund and National Provident Life shall procure that:

- (i) separate accounting records for the Shareholder Equalisation Fund shall at all times be maintained which shall be sufficient to enable the separate identification of the property and liabilities allocated to the Shareholder Equalisation Fund; and
- (ii) all costs and expenses incurred by National Provident Life for the account of the Shareholder Equalisation Fund (including in respect of Tax) which relate to property and/or liabilities allocated to the Shareholder Equalisation Fund shall be borne by the Shareholder Equalisation Fund.

#### **2. RELEASE AMOUNTS**

2.1 An amount determined in accordance with paragraph 2.2 shall be calculated by National Provident Life as at each Calculation Date.

2.2 The amount to be calculated pursuant to paragraph 2.1 shall be determined on the basis set out in paragraph 3.1, as reduced by any Deficit which exists as at the relevant Calculation Date.

2.3 Subject to paragraph 2.4, the amount calculated pursuant to paragraph 2.1 shall be paid by National Provident Life from the Shareholder Equalisation Fund to the Loan Capital Fund or otherwise as Pearl may direct. Such payment shall be made as soon as practicable.

2.4 No amount shall be payable from the Shareholder Equalisation Fund pursuant to paragraph 2.3 except to the extent that:

- (i) such payment (taking account of any other payments falling to be made pursuant to this Scheme from the National Provident Life Fund as at such Calculation Date) would not result in a Deficit arising; and
- (ii) the investigation made by the NPLL Actuary pursuant to Section 18 of the Act as at the Calculation Date as at which such amount falls to be calculated discloses surplus arising in respect of the National Provident Life Fund since the previous investigation made pursuant to Section 18 of the Act (as disclosed in Regulatory Form 58, line 35, adjusted to take account of any payment previously made by National Provident Life pursuant to this paragraph 2 or paragraph 40).

**3. RESTRICTIONS ON RELEASE OF THE SHAREHOLDER EQUALISATION FUND**

3.1 Any release of assets from the Shareholder Equalisation Fund pursuant to paragraph 2 on a Calculation Date shall be no greater than the amounts which would not result in the value of the Shareholder Equalisation Fund falling below the levels set out in the table below:

<b>Calculation Date</b>	<b>Value Of Shareholder Equalisation Fund As Percentage of Opening Value Of The Fund</b>
31 December 2010	93 %
31 December 2011	86 %
31 December 2012	80 %
31 December 2013	74 %
31 December 2014	69 %
31 December 2015	64 %
31 December 2016	59 %
31 December 2017	54 %
31 December 2018	49 %
31 December 2019	44 %
31 December 2020	39 %
31 December 2021	34 %
31 December 2022	29 %
31 December 2023	24 %
31 December 2024	19 %
31 December 2025	14 %
31 December 2026	9 %
31 December 2027	4 %
31 December 2028 and subsequent Calculation Dates	0 %

**4. INVESTMENT POLICY OF THE SHAREHOLDER EQUALISATION FUND**

- 4.1 The National Provident Life Board shall determine the investment policy of the Shareholder Equalisation Fund. Such investment policy shall take account of (but shall not be bound by) the advice of the NPLL Actuary.

**5. RENEWED AVAILABILITY AND WINDING UP**

- 5.1 Neither National Provident Life nor, for the avoidance of doubt, the Shareholder or Pearl shall be obliged to make available again to the National Provident Life Fund for the purposes set out in this Schedule any amount by which the Shareholder Equalisation Fund has been reduced pursuant to this Schedule 7."

### SCHEDULE 3

#### EXPENSES AND CHARGES TO BE BORNE BY THE PEARL SERP FUND

##### Part A – Charging Arrangements

1. Subject to paragraph 3, amounts in respect of maintenance and termination expenses (excluding investment management fees) allocated to the Pearl SERP Fund in respect of Policies allocated to the Pearl SERP Fund and Excluded Policies which would otherwise be NPLL SERP Policies (the "**Pearl SERP Fund Charges**") shall be calculated annually by multiplying the annual per policy charge applicable at the time (determined as referred to below) by the number of policies in force on 1<sup>st</sup> July in each calendar year and shall, so far as practicable, be so allocated monthly in advance. For this purpose, the annual per policy charges shall be set at the levels set out in Part B of this Schedule, adjusted (on a compound basis) on 30<sup>th</sup> June in each calendar year, commencing on 30<sup>th</sup> June 2010, by reference to the sum of:
  - (A) the change in RPI over the previous 12 months; and
  - (B) 1 per cent. per annum.
2. Amounts in respect of investment management fees to be allocated to the Pearl SERP Fund shall at any time be the lower of:
  - a. a monthly fixed charge equivalent to an annual rate equal to 0.1125 per cent. of the average value of the property of the Pearl SERP Fund; and
  - b. the equivalent charge incurred by the National Provident Life Fund for similar services pursuant to paragraph 5 of Schedule 4 of the Demutualisation Scheme.
3. The total increase (in percentage terms) applying to the Pearl SERP Fund Charges after 31 December 2009, based on the annual adjustments made in accordance with paragraphs 1(A) and 1(B), shall not at any time be more than the total increase (in percentage terms) in the same period which applies to charges for similar services incurred by the National Provident Life Fund pursuant to the terms of Schedule 4 of the Demutualisation Scheme.

##### Part B – Maintenance and Termination Expenses

The following table shows the amounts in respect of maintenance and termination expenses, expressed as per policy charges referred to in paragraph 1 of Part A of this Schedule, being the charges applicable for the calendar year ending on 31 December 2010.

	<b>Regular premium non-PUP charges (£)</b>	<b>Single premium and PUP charges (£)</b>
<b>Per policy expenses</b>		
Self Employed Retirement Plan	53.97	21.68

## SCHEDULE 4

### CONVERSION OF POLICIES ALLOCATED TO THE PEARL SERP FUND

#### A. PRINCIPLES OF CALCULATION: SURPLUS

1. The Pearl Board (having regard to the advice of the Pearl WP Actuary) shall calculate the surplus (if any) existing at the Closure Date in the Pearl SERP Fund on the basis set out in this Schedule.
2. The calculations will, as far as possible, be in accordance with and consistent with the terms of the relevant PPFM.
3. The calculation of surplus will take account of the fair market value of all assets within the Pearl SERP Fund, less the value, on a consistent basis, of guaranteed benefits, policy options and bonuses allotted to the Closure Date in respect of Policies in force at that date and obligations in respect of any support (by means of contingent loan or otherwise) provided to the Pearl SERP Fund.
4. The calculation of surplus will:
  - (A) take into account all future costs of administering the policies of the Pearl SERP Fund including appropriate allowance for future inflation, taxation and adjusting for any anticipated cost savings as a result of implementing the conversion; and
  - (B) include the amount (if any) of the Allocated Estate as at the Closure Date.
5. The calculation of surplus will take into account all future costs of administering the policies of the Pearl SERP Fund including appropriate allowance for future inflation, taxation and adjusting for any anticipated cost savings as a result of implementing the conversion.
6. The costs of the independent expert and of implementing the conversion will be borne by the Pearl SERP Fund and will be deducted from the surplus.
7. The objective of the calculations described in this Part A shall be to determine a scale of guaranteed asset shares for the NPLL SERP Policies in force at the Closure Date such that holders of such Policies should receive at vesting or transfer the higher of asset share as so determined, calculated as at the date of vesting or transfer (including the relevant share of any smoothing account) and the value of any guaranteed amount ("**Policyholder Entitlement**"). Any surplus arising from the Pearl SERP Fund in excess of the cost of such aggregate Policyholder Entitlements shall belong to the Pearl PNP Fund, and conversely any shortfall shall be met by the Pearl PNP Fund. For this purpose, the cost of maintaining the most recently declared scale of reversionary bonuses after the Closure Date will be assessed on a consistent basis and:
  - (A) if the surplus calculated pursuant to paragraphs 1 to 5 above falls short of this cost then a scale of guaranteed reversionary bonuses, representing a proportion of the most recently declared scale of reversionary bonuses, will be determined for the NPLL SERP Policies in force at the Closure Date so that the cost of this revised scale of reversionary bonuses equates to the surplus; and
  - (B) if the surplus, calculated pursuant to paragraphs 1 to 5 above, exceeds this cost then the scale of guaranteed reversionary bonuses for the Pearl SERP Policies in

force at the Closure Date will be equal to the most recently declared scale of reversionary bonuses.

8. The guaranteed future terminal bonus (if any) for the NPLL SERP Policies in force at the Closure Date will be calculated using the following principles:
  - (A) asset shares will be projected using expected returns from investments notionally allocated to the NPLL SERP Policies as at the Closure Date in a manner consistent with the PPFM for the Pearl SERP Fund (adjusted for risk), net of tax, expenses and other costs as appropriate;
  - (B) scales of terminal bonus will reflect the projected asset shares and the need to convert asset shares into pension benefits, and will be declared for broad groups of Policies so that experience is pooled within those groups and allocations are fair between those groups;
  - (C) account will be taken of the guaranteed reversionary bonuses (if any) and an appropriate level of smoothing (consistent with the then current PPFM) will be applied where maturity payouts immediately prior to conversion are higher or lower than asset share; and
  - (D) the terminal bonus scales derived will then be proportionately adjusted so that the cost of terminal bonus, assessed on a consistent basis with the determination of surplus above, will ensure that the objective described in paragraph 6 of Part A of this Schedule is achieved as fully as possible.

## **B. CONVERSION PROCESS CONTROLS**

1. The Pearl Board, or an appointed sub-committee thereof, on the advice of the Pearl WP Actuary, will monitor the value of the assets in the Pearl SERP Fund for the purposes of determining the Closure Date and the basis of conversion.
2. Pearl shall appoint an independent expert to review and approve the calculation of the surplus and the proposed mode of its appropriation. The role of the independent expert will be to review the calculation of surplus and proposed mode of appropriation and to certify that these are fair to all policyholders whose Policies are subject to the proposed conversion, having regard to FSMA (and regulations and rules made thereunder) the terms of this Scheme and the terms of the relevant PPFM.
3. The independent expert must be suitable for the role by training and experience and Pearl must obtain written approval from the Insurance Regulator for such appointment.
4. Pearl shall also notify the Insurance Regulator in writing of, and consult with the Insurance Regulator about, the calculation of the surplus and the proposed mode of its appropriation.
5. No action to implement Pearl's proposals shall be taken under this Schedule unless:
  - (A) the Pearl Board, or sub-committee thereof, on the advice of the Pearl WP Actuary, has approved the proposals;
  - (B) the independent expert shall have certified in writing that the proposals are fair, having regard to FSMA (and regulations and rules thereunder), the terms of the Scheme and the relevant PPFM; and

- (C) the Insurance Regulator shall have confirmed in writing to Pearl that it has no objection to such proposals.