**Appendix A**

 **Contents of the instrument of transfer**

The provisions of Schedule 2 to the Regulations prescribing the contents of an instrument of transfer are set out below in bolder type. Although the regulations refer to the “transferor” and “transferee”, these terms have been replaced in these notes by the terms “transferring” (for transferor) and “receiving” (for transferee). Additional explanatory notes have also been added.

1. **The instrument shall state that it is an instrument of transfer of the engagements of the organisation named therein as the transferring organisation to the organisation named therein as the receiving organisation, and that upon the coming into operation of the instrument the members of the transferring organisation will become members of the receiving organisation and be subject to that organisation's rules.**

We suggest that this can be achieved by using the following paragraphs, which also cover the requirement set out in paragraph 2(iv) below.

 1. This instrument of transfer of the engagements of ... (hereinafter called "the transferring association") to ... (hereinafter called "the receiving association") shall, if duly approved by a resolution of the members of the transferor association, take effect on ... or the date of registration of this instrument whichever is the later (hereinafter called "the effective date") [see note to paragraph 2 below].

 2. On the effective date the members of the transferring association will become members of the receiving association and be subject to that association's rules."

Note also that section 97(2) of the Act states that "a trade union [or unincorporated employer's association] may transfer its engagements to another trade union [or association] which undertakes to fulfil those engagements ...". The application form mentioned in paragraph 24 of this Guide must include a statement regarding the manner in which the receiving association has given such an undertaking. It is not a requirement of the Regulations that the undertaking should be given in the instrument of transfer. It is for the parties to decide how the undertaking should be given. However, they may wish to consider whether it would be convenient to include the undertaking as an additional clause in the instrument of transfer.

1. **The instrument shall:-**

 **(i) state what contributions and benefits will be applicable to members of the transferring organisation under the receiving organisation's rules;**

 **(ii) if members of the transferring organisation are to be allocated to a branch or section or to branches or sections of the receiving organisation, give particulars of such allocation or the method by which it is to be decided;**

 **(iii) state whether before registration of the instrument the receiving organisation's rules are to be altered in their application to members of the transferring organisation and, if so, the effect of any alterations;**

 **(iv) without prejudice [to section 101 of the Act], state the date on which the instrument is to take effect.**

If the rights of the former members of the transferring association's members are to differ in any way from the rights of the receiving associations’ members, the rules of the receiving association may need alteration to so provide before the instrument can be registered. (For example, if they are to retain some or all of their present contribution and benefit scales or if they are to form a branch or branches of their own within the receiving association, or are to be subject to any special conditions). The nature of any such proposed alterations of rules must be explained in the instrument, and the instrument cannot be registered until the alterations are made. The power given to the receiving association's governing body to make such alterations is explained in paragraphs 22 and 23 of this Guide.

1. **The instrument shall specify any property held for the benefit of the transferring organisation or for the benefit of a branch of the transferring organisation which is not to be vested in the appropriate trustees as defined [in section 105 of the Act], and shall state the proposed disposition of any such property.**

This requirement follows from section 105 of the Act. Under the Act all property of an unincorporated employers' association is to be vested in trustees. Section 105 provides that, on a transfer of engagements, all trust property held for the benefit of the transferring association or its branches will vest automatically in "the appropriate trustees" without any conveyance or assignment (or assignation in Scotland), except:-

 (i) property excepted by the instrument of transfer from the operation of section 105, and

 (ii) stocks and securities in public funds (which need the usual transfers of title).

This automatic vesting takes place on the effective date of the instrument - unless the appropriate trustees have not been appointed at that time, when it will be deferred until they are appointed.

The "appropriate trustees" are the trustees of the receiving employers' association in every case except one. That case concerns any property which is to be held for a branch of the receiving association, and "the appropriate trustees" of that property are the trustees of that branch. However, even in that case if the rules of the receiving association provide that such branch property is to be held by the trustees of the receiving association itself then the appropriate trustees will be the trustees of the receiving association.

The result is that the property of the transferring association (except public stocks and securities) will transfer automatically unless anything is stated in the instrument of transfer. Nothing need be said in the instrument about any property which the parties are content to allow to vest in the trustees of the receiving association. Nor is anything required to be said about property which is intended to be vested in the trustees of a branch of the receiving association for the benefit of that branch (since they are the "appropriate trustees" for that property). However, it is advisable for purposes of clarity to specify in the instrument any property which is to be held for the benefit of a branch, identifying the branch expressly. But if any property of the transferring association is intended to be transferred to any recipient other than the "appropriate trustees" then that property must be specified in the instrument, and the instrument must also state what is to be done with it. An example might be a proposal to transfer certain property into a special trust fund for members or officials of the transferring association who have already retired.

1. **The instrument shall be signed by three members of the committee of management or other governing body, and the secretary, of each of the organisations.**

Before the instrument is signed it is advisable to send a draft to the Certification Office for examination in case revisions are necessary before it can be approved. When the draft has been agreed two copies should be signed in the manner indicated and the originals, not photocopies, sent for the formal approval of the Certification Officer who will return one copy endorsed 'Approved'.