

SCOTTISH WIDOWS PLATFORM PENSION DISCRETIONARY TRUST

What is the Pension Discretionary Trust?

A discretionary trust designed for use with Scottish Widows Personal Pension issued under the Embark Personal Pension Scheme.

What are the aims of the trust?

- To enable you (the 'member') to choose the people who will decide how any lump sum death benefit (as defined in the 'Definitions' section of the trust) is distributed amongst your chosen trust beneficiaries in the event of your death, rather than relying on Embark Investment Services Limited (EISL), the Scheme Administrator of the scheme, to decide who should receive benefits. The people you select as your trustees will normally have a better idea of your intentions than EISL.
- To enable benefits payable on your death to be appointed at any time during the trust period (up to 125 years from the start of the trust) by (i) you during your lifetime, or (ii) by the trustees after your death. If a trust beneficiary should die, or if you or your trustees change the default beneficiaries (see below) during the trust period, there will be no adverse inheritance tax (IHT) consequences.

Using an individual trust may not change the tax treatment of any payment that EISL makes, but it will give you more control in selecting who makes the decision as to who will receive any lump sum death benefit. You should note that any lump sum payable in the event of your death if you are aged 75 or older will be subject to tax at 45% when paid to an individual trust. Trusts are complex so we recommend you take advice on how this will help you.

How does it work?

Your Retirement account is issued under the scheme, which is a pension scheme registered with HM Revenue & Customs (HMRC) for the purposes of the Finance Act 2004. Taking out a retirement account means that you become a member of the scheme.

The way in which certain lump sum death benefits are paid in the event of your death depends on whether you declare your own individual trust.

If you do not declare your own individual trust EISL will decide who receives any lump sum death benefit, selecting one or more beneficiaries from the classes of potential beneficiary set out in the trust deed and rules of the scheme.

In making its decision, EISL will take into account your personal circumstances and any death benefit nominations you have made.

If you declare your own individual trust any lump sum death benefit will be paid to your trustees.

During your lifetime, you will be in control of deciding who will receive any lump sum death benefit under the trust. You can do this and, at any time, by making an absolute appointment which is irrevocable. You may alternatively leave it to your trustees to choose the beneficiary(ies) once any lump sum death benefit has become payable. Clearly, substantial benefits will only accrue to the trust when the death benefits are paid.

If no absolute appointment has been made after your death, your trustees will be able to decide who will benefit from any part of the trust fund (as defined in the 'Definitions' section of the trust). Your trustees will select one or more beneficiaries from the classes of potential beneficiary set out in the trust. You can let your trustees know who you would currently wish to benefit by giving them a letter setting out your wishes, or by making a revocable appointment which your trustees can choose to follow or change after your death.

You should bear in mind that the full settled property IHT charging regime applies to a Pension Discretionary (125 year) Trust where its trustees do not exercise their discretion over the distribution of the whole trust fund within two years of your death. This means that there can be an IHT charge when property is paid out of the trust or at each 10 year anniversary of the trust. However, even if a liability does arise, this is unlikely to be significant.

Any benefits payable under the Personal Pension other than a lump sum death benefit will continue to be held under the terms of the account for the appropriate person. For example, any retirement benefits (tax-free cash and pension) will continue to be held for your absolute benefit.

When should this trust not be used?

When you are happy to allow EISL to decide who receives any lump sum death benefit.

Can all the death benefits be dealt with by EISL?

No, it should be noted that in some cases, EISL may decide to pay death benefits as a pension rather than as a lump sum.

It should also be noted that there are circumstances where a lump sum is paid out other than to your trustees. For example, it may be that, on your death, funds are designated to drawdown under which the designated beneficiary(ies) will be entitled to draw on those funds.

Please refer to the Scottish Widows Platform terms and conditions for full details of the benefits payable.

How is the trust set up?

Completing the trust form is straightforward. In the boxes underneath the box marked 'B', you should sign and date the trust and your signature must be witnessed by an individual who is neither your spouse or civil partner, nor a beneficiary under the trust.

You must send the original trust form to EISL once it has been completed. We will note the trust in our records and then return it to you for safekeeping. EISL cannot accept responsibility for death benefits being paid to someone other than your trustees if EISL is not aware of the trust when a claim is received.

Box 'B' – Default beneficiaries

These are the people who will benefit in the unlikely event of the trust still existing after the 125 year trust period.

You must enter the full names of the default beneficiaries of the trust fund and the share each is to take (expressed as a percentage) in this box. Please ensure that the shares add up to 100%. The reason you should specify the amount of each beneficiary's share is so that it is clear how much each beneficiary should have if the trust fund has not been fully distributed by the time the trust must end – i.e. 125 years after it was set up. You or, after your death, your trustees can change these beneficiaries at any time during the trust period provided no irrevocable appointments have already been made which relate to the whole of the trust fund. **Do not leave box B blank.**

Box 'C' – Additional trustees

We recommend that at least two additional trustees are appointed. You should enter the full name, address and date of birth of each additional trustee and each trustee should sign in the box and date it.

You can appoint up to four additional trustees in the boxes provided. You, the settlor, are automatically a trustee and so you should not be included in this box.

If you make a mistake when completing the trust, please put a line through the error and then have all signatories to the trust initial it. Please note, correction fluid must not be used on a legal document.

Trustees and trustee bank account

As EISL will make payment to all of the trustees, consideration should be given to setting up a trustee bank account.

Inheritance tax (IHT)

These notes are not comprehensive, IHT is a complex subject and so these notes are intended only to give a broad outline of our understanding of the tax position as at 6 April 2022.

What are the IHT consequences of setting up the trust?

Declaring a Pension Discretionary Trust will not (except in extreme cases, see later) give rise to a transfer of value for IHT purposes. However, if you are in serious ill health when you declare the trust, there may be a measurable loss to your estate and this will give rise to a more significant transfer of value for IHT purposes. A return of this will need to be made to HMRC if you die within 2 years of declaring the trust.

The payment of lump sum death benefits to your trustees will not give rise to an IHT charge. Also, if death benefits are paid out of the trust to, or appointed absolutely in favour of, a beneficiary within 2 years of your death (or the date your trustees learn of your death), there will be no IHT charge.

What charges can arise on the trust after the death benefits are paid?

Broadly the full discretionary trust IHT settled property charging regime (i.e. 10 yearly and exit charges) will apply to the trust if the lump sum death benefit is not distributed from the trust within 2 years of your death.

How does the 10 yearly (or periodic) charge work?

Once the death benefits have remained in the discretionary trust for more than two years, a 10 yearly (or periodic) charge can arise on the trust. The first periodic charge will arise on the first 10 year anniversary of the settlor taking out a Retirement account that falls after the two year anniversary of the settlor's death. A periodic charge can arise every 10 years after that.

The calculation can be quite complicated but, in very general terms, the amount that is charged to tax is based on the value of the trust fund immediately before the 10 year anniversary. If this amount does not exceed the nil rate band at available to the trustees that time, there will be no IHT due. However, if this amount is more than the available nil rate band at that time, IHT will be payable at a maximum of 6% of the excess. If IHT does arise, it will frequently be charged at much less than this.

In calculating whether the value of the trust fund exceeds the nil rate band at the 10 year anniversary, the trustees also need to take account of the settlor's cumulative total of chargeable transfers made in the seven years before he took out a Retirement account, as well as any related settlements, and property that has already left the trust.

How does the exit (or proportionate) charge work?

There are a number of exceptions but this charge generally arises when some or all of the trust property leaves the trust, for example, when the trustees make an absolute appointment of benefits. It is normally based on the rate of tax paid at the last 10 year anniversary. The charge is measured by the amount of the loss to the trust. If the trustees pay the tax, the amount charged to IHT is increased to take account of that tax.

Where the property leaves the trust before the first 10 year anniversary, if the value of the trust fund when the trust was set up, plus the value of any related trusts and the total amount of the chargeable lifetime transfers made in the seven years before the settlor took out a Retirement account is less than the nil rate band at the time, there will be no exit charge. In general terms, if no IHT was paid when the trust was set up, there will be no IHT charge in the first 10 years.

If property leaves the trust after the first 10 year anniversary, it is the rate of IHT that was paid at the last 10 year anniversary that will form the basis of calculating the exit charge. If no IHT charge was paid at the last 10 year anniversary which is very likely to be the case if you were then alive, there would be no exit charge.

Where a tax charge arises, that charge can be reduced by the number of quarters (3 month periods) still to go before the next ten-year anniversary. So, for example, if an exit charge arose 4 years after the last ten-year anniversary, any calculated tax on the exit charge can be reduced by 60%.

If further amounts over and above the death benefits (called added property) have been paid to the trust, the position is more complicated and you should consult your adviser.

The position may be slightly more complicated where the Personal Pension was set up as a result of a transfer from a previous personal pension or occupational scheme. In those circumstances, the date of periodic charge will be on the 10 year anniversary of when the member joined the original pension scheme. The position can become even more complicated where the Retirement account includes transfers from several other pension schemes. If you are in this position you should seek advice on the tax position from your adviser.

Important note

Creating a trust is an important matter and has lasting legal and tax consequences. These notes are provided for your information only and cannot cover every situation.

The trust is provided in draft form for the approval of your legal and tax advisers. This should be obtained before proceeding to ensure the trust meets your needs, as EISL cannot give legal or tax advice.

Taxation law and HMRC practice is subject to change. These notes and draft trust are based on our understanding of the current position. Future changes in law, in tax practice or in your personal circumstances could affect taxation.

Although every care has been taken in the preparation of these notes and draft trust, EISL cannot accept responsibility for the operation of the trust.

SCOTTISH WIDOWS PLATFORM PENSION DISCRETIONARY TRUST

Discretionary trust for use with Scottish Widows Personal Pensions issued under the Embark Personal Pension scheme.

Scottish Widows Personal Pension Account Number: _____

The settlor: _____

Potential Beneficiaries – box ‘A’

1. The spouse or civil partner of the settlor,
2. Any former spouse or civil partner of the settlor,
3. Any child of the settlor,
4. Any lawful or adoptive parent or grandparent of the settlor or of their spouse or civil partner,
5. Any such parents’ and grandparents’ widows, widowers, children and their descendents and their spouse or civil partner,
6. Any person who was financially dependent on the settlor immediately before their death, or was dependent on the settlor because of disability, or had a relationship of mutual financial dependence with the settlor at that time,
7. Any person (other than the settlor, or their legal personal representatives in that capacity) whom the settlor has notified to the trustees in writing,
8. Any charity.
9. The persons named in box ‘B’.

Default beneficiaries – box ‘B’

Please enter the full name(s) of the person(s) you want to benefit in the event that part or all of the trust fund has not been appointed at the end of the trust period. If there are two or more, use percentages to show the shares you want them to have. The shares must add up to 100%. **Do not leave blank.**

Full name	Share %

Full name	Share %

To create a trust you need to sign here. Your signatures must be witnessed.

Signed and delivered as a deed by the settlor:

Signed:  _____

Date: | D | D | M | M | Y | Y | Y | Y |

In the presence of:

Signature of witness:  _____

Date: | D | D | M | M | Y | Y | Y | Y |

Full name of witness: _____


Address of witness: _____

Additional Trustees – Box 'C'

Title: _____ Surname: _____

First names: _____

Address: _____
 Postcode: _____


Signature in acceptance of appointment as Trustee: 

Date: | D | D | M | M | Y | Y | Y | Y |

Title: _____ Surname: _____

First names: _____

Address: _____
 Postcode: _____


Signature in acceptance of appointment as Trustee: 

Date: | D | D | M | M | Y | Y | Y | Y |

Title: _____ Surname: _____

First names: _____

Address: _____
 Postcode: _____


Signature in acceptance of appointment as Trustee: 

Date: | D | D | M | M | Y | Y | Y | Y |

Title: _____ Surname: _____

First names: _____

Address: _____
 Postcode: _____

Signature in acceptance of appointment as Trustee: 

Date: | D | D | M | M | Y | Y | Y | Y |

1 Definitions

In this trust the following words have the following meanings:

‘**Child**’ includes illegitimate, legitimated, adopted and/or step children, and any children whom the settlor stood in loco parentis, and grandchild/great grandchild are to be interpreted in the same way.

‘**Civil partner**’ means someone who has formed a civil partnership with the person referred to in accordance with the Civil Partnership Act 2004. It includes surviving civil partners but it does not include former civil partners if the civil partnership has been ended.

‘**Company**’ means Embark Investment Services Limited.

‘**Lump sum death benefit**’ means any lump sum payable under the account by reason of the settlor’s death (but excludes any lump sum which, under the terms of the account must be paid, other than to the trust).

‘**Account**’ means the retirement account identified above.

‘**Settlor**’ means the person declaring this trust.

‘**Spouse**’ means husband or wife or widow or widower of the person referred to at the relevant time. It does not include divorced persons who were previously married to each other.

‘**Trustee(s)**’ means the settlor and the additional trustee(s) named in box ‘C’ or the trustee(s) for the time being of this trust.

‘**Trust fund**’ means

- (a) the lump sum death benefit; and
- (b) any money, investments and property for the time being representing the lump sum death benefit, and any income from the same.

‘**Trust period**’ means the period of 125 years from the trust’s commencement. This is the perpetuity period of the trust.

In this deed unless the context indicates otherwise, words in the singular will be deemed to include the plural and vice versa and words importing a gender shall include all genders.

2 Creation of the trust

The trust will commence on the date shown immediately below the settlor’s signature. The settlor declares that he or she hold the lump sum death benefit as trustee for the persons in box ‘A’ above upon the trusts and subject to the powers set out below. The settlor wishes to appoint the additional trustees specified in box ‘C’ above as additional trustees of the trust and declares that they hold the lump sum death benefit in trust as set out above and appoints the additional trustees as trustees of the trust jointly with the settlor and assigns the trust fund to the additional trustees and him or her jointly.

3 Exclusion of settlor from benefit

The trust fund must always be enjoyed to the absolute exclusion of the settlor and of any benefit to him or her, whether under a contract or in any other way. The trust fund shall be held to the entire exclusion of the settlor, and no part of the trust fund shall be paid to, lent to, or applied for his or her direct or indirect benefit. For the purposes of this clause references to the settlor include the settlor’s legal personal representatives in that capacity as well as their estate.

4 The trusts

- (1) The trustees hold the capital and income of the trust fund upon the trusts with and subject to the powers and provisions set out below for whoever the ‘appointor’ (defined in 5(1) below) in his absolute discretion chooses from amongst the person(s) in box ‘A’ on such terms as the appointor thinks fit and in the shares and subject to the trusts powers discretions and conditions as the appointor appoints. The conditions for ‘appointments’ are set out in 5(2) below.
- (2) Subject to 4(1) above, the trustees also have absolute discretion to accumulate the whole or part of the income of the trust fund during the trust period and that income shall be added to the capital of the trust fund. The trustees shall pay or apply the remainder of the income to or for the benefit of any of the person(s) in box ‘A’ as the appointor thinks fit.
- (3) Subject as above and if and so far as not wholly disposed of for any reason whatsoever by the above provisions, at the end of the trust period, the trustees shall hold the capital and income of the trust fund on trust at the expiry of the trust period absolutely for the person(s) in box ‘B’ in the shares specified in box ‘B’ and if no such shares are specified and there is more than one beneficiary, in equal shares absolutely.

5 Power of appointment

- (1) The appointor is the settlor unless either he or she have released their power of appointment, or have died, or the appointment is in favour of his or her spouse or civil partner. In these cases appointments have to be made by the trustees. If the appointment is in favour of the settlor’s spouse or civil partner, then, unless the only trustee is a trust corporation, to make the appointment, there must be at least two trustees and one of them must be neither the settlor nor the settlor’s spouse or civil partner.
- (2) Appointments have to be made by deed. The appointor can make them irrevocable, but otherwise they can be changed during the trust period. If the terms of any revocable appointment have not been revoked at the end of the trust period, the appointment will become irrevocable at that time. Appointments can be subject to conditions and give powers and discretions.

6 Appointment and removal of trustees

- (1) The settlor has the power to appoint new trustees. After the death of the settlor the trustees for the time being may appoint new trustees.
- (2) During the settlor’s lifetime the settlor has the power to remove any trustee provided that there are at least two trustees remaining after the removal and one of the remaining trustees is neither the settlor nor the settlor’s spouse or civil partner.
- (3) As long as there are at least two other trustees, if a trustee cannot be found, after reasonable efforts have been made to find him or her, the remaining trustees can discharge the missing trustee. It is up to the remaining trustees to decide whether reasonable efforts have been made to find the missing trustee and no other person shall be under any duty to ensure that it was proper for the trustees to have exercised their power to discharge the missing trustee.

7 Power and rights under the account

The settlor's power under 6(1) above ends if he or she ceases to be a trustee, dies or releases that power by deed.

8 Exclusion of beneficiaries

The trustees can exclude anybody who is listed as a potential beneficiary in box 'A' at the relevant time from benefit under the trust. The consent of the relevant beneficiary is needed. This must be done by deed. There must be at least one beneficiary remaining in box 'B' after the relevant beneficiary has been excluded.

9 General powers

- (1) The trustees have all powers conferred by the law. In addition, they have the powers in 9(3) below. However, the company cannot be held accountable for, and is under no duty to investigate, the exercise of any of their powers by the trustees, or how they apply any part of the trust fund.
- (2) Subject to 10 below, section 32 of the Trustee Act 1925 will apply, but will be modified so that the trustees can advance all, rather than half, of a beneficiary's prospective share of capital.
- (3) The trustees can:
 - (a) borrow for the purposes of the trust on whatever terms they think appropriate. The lender is under no duty to check that they use the money properly;
 - (b) sell any part of the trust fund subject to any prohibitions on the same imposed by law from time to time;
 - (c) subject to 10 below release any powers or discretions which can be exercised by the trustees (including this power). The trustees can do this wholly or partly and impose whatever conditions they think are appropriate;
 - (d) invest the trust fund as though they owned it beneficially and absolutely. The trustees can invest in income producing or non-income producing assets (including life assurance policies);
 - (e) subject to 10 below, lend to any person in box 'A' on whatever terms as regards interest and repayment as they think fit. To avoid any doubt, it is made clear that this includes the power to make interest-free loans;
 - (f) delegate the exercise of any of their investment or management powers, in relation to the trust fund, to any person they think fit, even if the delegate is resident or situated abroad. The trustees can transfer the ownership of any of the trust fund for these purposes;
 - (g) accept as a valid discharge any receipt for any payment made by the trustees, given by a parent or guardian of a beneficiary who is a minor. The trustees do not have any duty to ensure that the payment is paid to, or applied for the benefit of, the relevant beneficiary.

10 Limiting exercise of powers

Unless the trustee is a trust corporation the powers in 9(3)(c) and (e) can only be exercised if there are at least two trustees, and at least one of them is neither the settlor nor their spouse or civil partner.

11 Administration of the trust outside the UK

All or part of the administration of the trust can be transferred outside the United Kingdom and persons resident outside the United Kingdom can be trustees.

12 Settlor's incapacity

If the settlor becomes mentally incapable as defined by the Mental Capacity Act 2005 or any act of parliament which supersedes that act, their rights and powers under the trust will be exercisable as if they are dead at that time.

13 Charging by trustees

Apart from the settlor and the settlor's spouse or civil partner, any trustee who is in a profession, business, or trade can charge their usual fees and charges for work done on behalf of the trust. This applies even where a trustee who is not in the relevant profession, business or trade could have done the work personally.

14 Liability of trustees

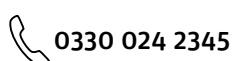
A trustee shall not be liable for a loss to the trust fund, unless that loss was caused by their own fraud or negligence. The duty of reasonable care set out in section 1, Trustee Act 2000, or any act of parliament which supersedes that act and which sets out a trustee's duty of care, applies to all functions of the trustees.

15 No duty to investigate exercise of power

Where the agreement or consent of any person is needed for the exercising of a power by the trustees, no person dealing with the trustees needs to be concerned whether that agreement or consent has been obtained.

16 Choice of law and jurisdiction

The trust is subject to the law of England. The parties are subject to the jurisdiction of the English courts.



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