

Students' Union Superannuation Scheme ("SUSS")

2021 Incorporations

1. Introduction

- 1.1 This briefing note is provided to the affiliated institutions (the "**Unions**") of the National Union of Students (United Kingdom) ("**NUS**") who are participating employers in SUSS ("**SUSS Employers**") and who have yet to change legal structure from an unincorporated Union to an incorporated Union.
- 1.2 Detailed Guidance on the important and potentially complex pensions issues that arise when SUSS Employers incorporate was issued in March 2011 (the "**Guidance**") and updated on 29 March 2012.
- 1.3 Standard documentation is appended to the Guidance which is intended to streamline the process and make it less administratively onerous. Osborne Clarke LLP will issue the Guidance to those Unions who confirm to the SUSS Trustees that they will incorporate in 2021. The standard documentation will be updated.
- 1.4 SUSS will re-open for a temporary period from **5 July 2021 and 1 October 2021** (the "**Relevant Period**"). This will enable SUSS Employers to incorporate without a significant debt becoming due to SUSS. The Guidance sets out a number of conditions and prescriptive steps that must be satisfied in order to incorporate during the Relevant Period and avoid a debt falling due.
- 1.5 This briefing note contains important information as to how the incorporations will be conducted during the Relevant Period. Drawing on experiences from previous years it further sets out some practical suggestions to ensure that the 2021 incorporations are as smooth and cost efficient for SUSS Employers as possible.
- 1.6 This Briefing Note has been prepared by the NUS and the SUSS Trustees in conjunction with SUSS' legal advisers, Osborne Clarke LLP. It is not designed as a substitute for a Union obtaining its own independent legal advice, which is strongly recommended to ensure compliance with the process.

2. 2021 Incorporations

- 2.1 SUSS will re-open for the Relevant Period to permit incorporations subject to the following conditions:
 - (a) the unincorporated Union and the incorporated Union will each employ one active member of SUSS;
 - (b) the employees should, so far as possible, be deferred members of SUSS who are still employed by the unincorporated Union;
 - (c) the unincorporated Union and the incorporated Union must pay the cost of the additional nominal benefits to be earned by the two active members during the Relevant Period being £33 per month for the Relevant Period;
 - (d) there must be no requirement on the two active members of SUSS to contribute to SUSS;
 - (e) SUSS will provide benefits on a non-contracted out basis as SUSS' contracting out certificate has been surrendered;
 - (f) if one of the active members dies in this period, only death in deferment benefits will be payable.

- 2.2 In addition, the prescriptive steps set out in the Guidance must be complied with, without undue delay, in order for SUSS Employers to take advantage of the general easement and avoid a section 75 debt arising in relation to SUSS.
- 2.3 As a small number of SUSS Employers are expected to incorporate during the Relevant Period it is essential that their respective incorporated Unions remain participating employers in SUSS for the duration of the Relevant Period. They must not cease to employ active members (as set out at paragraph 2.1 above) at a time when another incorporated Union continues to employ active members. Cessation in these circumstances would trigger a significant section 75 debt from the incorporated Union to SUSS. However, incorporated Unions may join SUSS at any time between 5 July 2021 and 2 August 2021.
- 2.4 A debt will not become due to SUSS if all incorporated Unions cease to participate at exactly the same time. This will occur when SUSS re-closes to new members and the future accrual of benefits at the end of the Relevant Period i.e. on 1 October 2021.
- 2.5 It is not essential for the transfer of assets and liabilities from the unincorporated Unions to the incorporated Unions to occur necessarily at the same time in compliance with the general easement. However, to reiterate, it is essential that all incorporated Unions cease to participate at the same time on 1 October 2021.
3. **2021 Timetable**
- 3.1 In view of the above, and the necessity for the prescriptive steps of the general easement to be conducted in strict succession and without undue delay, it is vital that 2021 incorporations are tightly coordinated due to the limited time that SUSS is re-opened.
- 3.2 SUSS Employers wishing to incorporate in 2021 must therefore organise themselves as follows:
- (a) Unincorporated Unions wishing to incorporate must write to the NUS and the SUSS Trustees by **no later than 18 June 2021** requesting that SUSS re-opens using the template letter 1AZ at Appendix A;
 - (b) Incorporated Unions must be established at the very latest **by 2 July 2021**. Failure to ensure that an incorporated Union is registered at Companies House by this time could cause significant delays and increased costs for the SUSS Employer wishing to incorporate;
 - (c) All incorporated Unions must participate in SUSS for the duration of the Relevant Period. They must not cease to participate prior to the closure of SUSS on 1 October 2021. To this effect, the unincorporated Union and the incorporated Union will be responsible to pay the costs of the additional benefits to be earned by the two active members for potentially the duration of the Relevant Period.
- 3.3 A detailed revised suggested timetable of the 2021 incorporation process is appended to this note for clarity at Appendix B.
- 3.4 SUSS Employers will note that the Guidance originally refers to the re-opening of SUSS from the period of **1 June to 31 August**. This has been modified so that the Relevant Period falls between **5 July 2021 and 1 October 2021**. Due to the impact that annual leave may have on the availability of key signatories and the smooth running of the process, the re-opening of SUSS during the Relevant Period ensures that the process runs more efficiently.

4. Further practical suggestions

- 4.1 To ensure that the 2021 incorporations run as smoothly as possible, SUSS Employers wishing to incorporate are further asked to adhere to a number of practical suggestions based on extensive previous experience.
- 4.2 There are a considerable number of legal documents that are executed in compliance with the general easement. Precedent documents are set out in the Guidance. These documents require a number of signatures from trustees of the unincorporated Union and directors of the incorporated Union. SUSS Employers should therefore organise themselves to ensure that:
- (a) Appropriate signatories are available to sign the documents during the Relevant Period. Any potential absences should be notified to SUSS Trustees as a priority;
 - (b) Where there are a large number of trustees on the board of the unincorporated Union, delegated authority to a lesser number should be considered either under section 333 Charities Act 2011 or pursuant to a power in the constitution of the unincorporated Union to avoid delays from the need to obtain a large number of signatures. Any trustees with delegated authority must be notified to the SUSS Trustees;
 - (c) Any changes to the board of trustees of the unincorporated Union and the directors of the incorporated Union during the Relevant Period must be notified to SUSS Trustees as soon as reasonably practicable.
- 4.3 Under step 2 of the general easement process (as set out in the Guidance) the SUSS Trustees request detailed information to be provided in hard copy format from the unincorporated Union to enable them to form a view as to whether the restructuring test is satisfied. The process is considerably easier if this information is collated quickly in advance and shared with the SUSS Trustees as soon as possible.
- 4.4 The information is further used to draft legal documents such as the Deed of Admission which formally permits the incorporated Union to participate in SUSS. If there are inaccuracies in the information provided to SUSS Trustees then there will be inaccuracies in the legal documentation. This could cause further delay and increased costs.
- 4.5 SUSS Employers should therefore be mindful that information provided to SUSS Trustees is accurate and satisfies the SUSS Trustees' information request in full.

5. Costs

- 5.1 Unless otherwise instructed, the SUSS Trustees can allocate the costs they incur in relation to the general easement to the incorporated Union.
- 5.2 The SUSS Trustees' legal costs for dealing with incorporations in 2021 is **estimated to be £5,500 per Union including VAT**. This assumes that the unincorporated Union and the incorporated Union adopt the prescribed procedure set out in the Guidance and this Briefing Note and no substantial amendment is made to the precedent documentation. Further work incurred by the SUSS Trustees' solicitors, Osborne Clarke LLP, will be charged at the prevailing hourly rate and this will be charged in addition to the basic cost.
- 5.3 SUSS Employers will also be responsible for their own solicitors' costs in advising on this issue. Osborne Clarke LLP may also be able to act for the unincorporated Union and the incorporated Union in this process if there is no conflict of interest between the interests of the SUSS Trustees, the unincorporated Union and the incorporated Union

and the unincorporated Union and the incorporated Union perform a straightforward one to one restructuring by strict adherence to the legislative steps. Contact details and details of Osborne Clarke's charging structure can be provided separately.

- 5.4 The unincorporated Union and incorporated Union will also need to agree to pay the cost of the accrual of future benefits in SUSS earned by the two active members for the duration of the Relevant Period. The SUSS Actuary has indicated that for 2021 this will be £33 per month for each £1 of pension so the cost for the whole of the Relevant Period will be £495 for each member.

APPENDIX A
TEMPLATE LETTER TO NUS AND SUSS TRUSTEES

STEP 1AZ - APPLICATION

To be typed on the headed note-paper of the unincorporated Union

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| National Union of Students (United Kingdom) c/o Davina Keen Membership Director Ian King House Snape Road Macclesfield Cheshire SK10 2NZ | The trustees of the Students' Union Superannuation Scheme c/o Clare Kember Ross Trustees Limited 25 Southampton Buildings London WC2A 1AL |
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[insert date] 2021

Dear Sirs

Proposed incorporation of [insert name of unincorporated Union]

For the purposes of this letter, the following terms have the following meanings:

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| incorporated Union | [insert name of new corporate body] |
| incorporation date | [insert scheduled incorporation date] |
| NUS | National Union of Students (United Kingdom) |
| SUSS | Students' Union Superannuation Scheme |
| SUSS Rules | Definitive Trust Deed and Rules made between NUS and the trustees named therein dated 31 March 2008 (as amended) |
| unincorporated Union | [insert name of unincorporated association] |

Please be advised that the unincorporated Union intends to incorporate by transferring all of its assets and liabilities to the incorporated Union. The unincorporated Union will then be wound up. The incorporation is scheduled to take effect from the incorporation date.

We request that pursuant to rule 1 of the SUSS Rules, NUS (with the consent of the SUSS trustees) re-opens SUSS temporarily to the future accrual of benefits between 5 July 2021 and 1 October 2021.

We look forward to hearing from you.

Yours faithfully

For and on behalf of the [insert name of unincorporated Union]

APPENDIX B

**STEPS TO BE TAKEN
AND
TIMETABLE**

**(Replaces Appendix 2 of the "Incorporation before and after proposed SUSS
Closure" Guidance dated 24 March 2011 and updated on 29 March 2012)**

| Step | Summary | Timing ¹ | Description of steps | Responsibility |
|----------|--|--|--|--|
| Step 1AZ | Application to re-open SUSS | No later than 18 June 2021 Step 1AZ letter to be received by NUS and SUSS Trustees | Unincorporated Union asks NUS and SUSS Trustees to re-open SUSS to the future accrual of benefits on a temporary basis between 5 July 2021 and 1 October 2021. Step 1AZ letter to be submitted in the form attached at Appendix A. | Unincorporated Union |
| Step 1A | Direction from NUS | No later than 21 June 2021 | NUS directs SUSS Trustees to re-open SUSS to the future accrual of benefits on a temporary basis for 13 weeks from 5 July 2021 and 1 October 2021 to allow unincorporated Union to employ one active member and incorporated Union to join SUSS as a participating employer and employ another active member . SUSS Trustees subsequently consent to NUS' direction to re-open SUSS on 5 July 2021 and to permit the relevant Unincorporated Unions to participate in SUSS for the relevant period. | NUS |
| Step 1 | Application to join SUSS, agreement to meet SUSS Trustees' costs and to ask whether restructuring | No later than 2 July 2021 | Incorporated Union to be in existence and formally registered at Companies House. SUSS Trustees will <u>not</u> be able to confirm any decision until the | Unincorporated Union Incorporated Union |

¹ Assumes an incorporation date by 1 October 2021

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| | test is satisfied. | | <p>incorporated Union is in place.</p> <p>Unincorporated Union applies to NUS and SUSS Trustees for incorporated Union to join SUSS as a participating employer and asks whether restructuring test would be met on incorporation.</p> <p>Unincorporated Union agrees that either it or the incorporated Union will meet SUSS Trustees' costs incurred in incorporation.</p> <p>Unincorporated Union to compile information in anticipation of SUSS Trustees' information request (by reference to precedent in Step 2 of the Guidance).</p> | |
| Step 2 | Request for information | No later than 16 July 2021 | SUSS Trustees ask unincorporated Union and incorporated Union to provide information to them and indicate in principle agreement to give certain warranties regarding the incorporation | SUSS Trustees |
| Step 3 | Participation | No earlier than 5 July 2021 and no later than 2 August 2021 | <p>Incorporated Union becomes a participating employer in SUSS and starts to employ one active member.</p> <p>SUSS Trustees must notify the Pensions Regulator of the admission of the incorporated Union</p> | <p>NUS</p> <p>SUSS Trustees</p> <p>Incorporated Union</p> <p>One active member</p> |

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| | | | to SUSS via Exchange, the Pensions Regulator's on-line data submission system. | |
| Step 3A | Employment of active members | <p>With effect from 5 July 2021 (Unincorporated Union)</p> <p>No earlier than 5 July 2021 and no later than 2 August 2021 (Incorporated Union)</p> | <p>Unincorporated Union and incorporated Union must employ at least one active member each for remainder of Relevant Period.</p> <p>No cessation of active membership for both active members employed by the unincorporated union and the incorporated union must occur until SUSS Trustees formally re-close SUSS on 1 October 2021 (refer to step 10A overleaf).</p> | <p>Incorporated Union</p> <p>Unincorporated Union</p> <p>Two active members</p> |
| Step 4 | Provision of information | <p>ASAP after SUSS Trustees' request for information (Step 2) and in any event no later than 2 August 2021</p> | <p>Unincorporated Union and incorporated Union provide requested information to SUSS Trustees.</p> <p>Unincorporated Union and incorporated Union must ensure that all information on the form is accurate and information requested is provided in full.</p> <p>If there are any changes to the trustees of unincorporated Union or directors of incorporated Union these must be notified to SUSS Trustees.</p> | <p>Unincorporated Union</p> <p>Incorporated Union</p> |

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| | | | Trustees of the unincorporated Union who have received delegated authority under section 333 Charities Act 2011 must be notified to SUSS Trustees. | |
| Step 5 | Consultation | Between 4 August 2021 and 18 August 2021 | SUSS Trustees consult with unincorporated Union and incorporated Union regarding the restructuring test and request any further information required. | SUSS Trustees Unincorporated Union Incorporated Union |
| Step 6 | Resolution | No later than 23 August 2021 | SUSS Trustees decide whether they are satisfied that the restructuring test is met – the decision is delegated to two of the SUSS Trustees who have also received delegated authority to review the Step 2 information. | SUSS Trustees |
| Step 7 | Notification of SUSS Trustees' decision | No later than 23 August 2021 | SUSS Trustees notify unincorporated Union and incorporated Union of their decision | SUSS Trustees |
| Step 8 | Notification to Pensions Regulator | No later than 25 August 2021 | Unincorporated Union notifies the Pensions Regulator that it will shortly cease to carry on business in the UK because of its proposed incorporation | Unincorporated Union |
| Step 9 | Incorporation and transfer | No later than 3 September 2021 | Incorporated Union takes over responsibility for <u>all</u> of the unincorporated Union's assets, employees (excluding one active member who is already employed by | Unincorporated Union Incorporated union |

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| | | | <p>incorporated Union), SUSS members and SUSS liabilities under a legally enforceable agreement.</p> <p>A draft agreement must be provided for SUSS Trustees' review as part of the information request at Step 2.</p> | |
| Step 10 | Notification of completion | No later than 17 September 2021 | <p>Unincorporated Union and incorporated Union notify SUSS Trustees that incorporation and transfer is completed and date of completion</p> | <p>Unincorporated Union Incorporated Union</p> |
| Step 10A | SUSS re-closes | 1 October 2021 | SUSS re-closes to the future accrual of benefits after the expiry of 13 weeks | SUSS Trustees |