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STATUTORY INSTRUMENTS

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**1995 No. 3213**

**The Pensions (Northern Ireland) Order 1995**

**PART II**

**OCCUPATIONAL PENSIONS**

*Member-nominated trustees and directors*

**Requirement for member-nominated trustees**

- 16.**—(1) The trustees of a trust scheme must (subject to Article 17) secure—
- (a) that such arrangements for persons selected by members of the scheme to be trustees of the scheme as are required by this Article are made, and
  - (b) that those arrangements, and the appropriate rules, are implemented.
- (2) Persons who become trustees under the arrangements required by paragraph (1) are referred to in this Part as “member-nominated trustees”.
- (3) The arrangements must provide—
- (a) for any person who has been nominated and selected in accordance with the appropriate rules to become a trustee by virtue of his selection, and
  - (b) for the removal of such a person to require the agreement of all the other trustees.
- (4) Where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the arrangements must provide for the filling of the vacancy, or for the vacancy to remain, until the expiry of the next period in which persons may be nominated and selected in accordance with the appropriate rules.
- (5) The arrangements must provide for the selection of a person as a member-nominated trustee to have effect for a period of not less than three nor more than six years.
- (6) The arrangements must provide for the number of member-nominated trustees to be—
- (a) at least two or (if the scheme comprises less than 100 members) at least one, and
  - (b) at least one-third of the total number of trustees;
- but the arrangements must not provide for a greater number of member-nominated trustees than that required to satisfy that minimum unless the employer has given his approval to the greater number.
- (7) The arrangements must not provide for the functions of member-nominated trustees to differ from those of any other trustee but, for the purposes of this paragraph—
- (a) any provision made by an order under Article 8(4), and
  - (b) Article 25(2),
- shall be disregarded.

(8) The arrangements must provide that, if a member-nominated trustee who was a member of the scheme when he was appointed ceases to be a member of the scheme, he ceases to be a trustee by virtue of that fact.

### **Exceptions**

17.—(1) Article 16 does not apply to a trust scheme if—

- (a) a proposal has been made by the employer for the continuation of existing arrangements, or the adoption of new arrangements, for selecting the trustees of the scheme,
- (b) the arrangements referred to in the proposal are for the time being approved under the statutory consultation procedure, and
- (c) such other requirements as may be prescribed are satisfied.

(2) Where—

- (a) by virtue of paragraph (1), Article 16 does not apply to a trust scheme, and
- (b) the employer's proposal was for the adoption of new arrangements which, in consequence of paragraph (1)(b), are adopted,

the trustees shall secure that the proposed arrangements are made and implemented.

(3) For the purposes of this Article, the arrangements for selecting the trustees of a scheme include all matters relating to the continuation in office of the existing trustees, the selection or appointment of new trustees and the terms of their appointments and any special rules for decisions to be made by particular trustees.

(4) Article 16 does not apply to a trust scheme if—

- (a) the trustees of the scheme consist of all the members, or
- (b) it falls within a prescribed class.

(5) Article 10 applies to any employer who—

- (a) makes such a proposal as is referred to in paragraph (1)(a), but
- (b) fails to give effect to the statutory consultation procedure.

### **Corporate trustees: member-nominated directors**

18.—(1) Where a company is a trustee of a trust scheme and the employer is connected with the company or prescribed conditions are satisfied, the company must, subject to Article 19 secure—

- (a) that such arrangements for persons selected by the members of the scheme to be directors of the company as are required by this Article are made, and
- (b) that those arrangements, and the appropriate rules, are implemented.

(2) Persons who become directors under the arrangements required by paragraph (1) are referred to in this Part as “member-nominated directors”.

(3) The arrangements must provide—

- (a) for any person who has been nominated and selected in accordance with the appropriate rules to become a director by virtue of his selection, and
- (b) for the removal of such a person to require the agreement of all the other directors.

(4) Where a vacancy for a member-nominated director is not filled because insufficient nominations are received, the arrangements must provide for the filling of the vacancy, or for the vacancy to remain, until the expiry of the next period in which persons may be nominated and selected in accordance with the appropriate rules.

(5) The arrangements must provide for the selection of a person as a member-nominated director to have effect for a period of not less than three nor more than six years.

(6) The arrangements must provide for the number of member-nominated directors to be—

- (a) at least two or (if the scheme comprises less than 100 members) at least one, and
- (b) at least one-third of the total number of directors;

but the arrangements must not provide for a greater number of member-nominated directors than that required to satisfy that minimum unless the employer has given his approval to the greater number.

(7) The arrangements must provide that, if a member-nominated director who was a member of the scheme when he was appointed ceases to be a member of the scheme, he ceases to be a director by virtue of that fact.

(8) Where this Article applies to a company which is—

- (a) a trustee of two or more trust schemes, and
- (b) a wholly-owned subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986(1)) of a company which is the employer in relation to those schemes,

the following provisions apply as if those schemes were a single scheme and the members of each of the schemes were members of that scheme, that is: the preceding provisions of this Article, Article 20 and Article 21(7).

### **Corporate trustees: exceptions**

**19.**—(1) Article 18 does not apply to a company which is a trustee of a trust scheme if—

- (a) a proposal has been made by the employer for the continuation of existing arrangements, or the adoption of new arrangements, for selecting the directors of the company,
- (b) the arrangements referred to in the proposal are for the time being approved under the statutory consultation procedure, and
- (c) such other requirements as may be prescribed are satisfied.

(2) Where—

- (a) by virtue of paragraph (1), Article 18 does not apply to a company which is a trustee of a trust scheme; and
- (b) the employer's proposal was for the adoption of new arrangements which, in consequence of paragraph (1)(b), are adopted,

the company must secure that the proposed arrangements are made and implemented.

(3) For the purposes of this Article, the arrangements for selecting the directors of a company include all matters relating to the continuation in office of the existing directors, the selection or appointment of new directors and the terms of their appointments and any special rules for decisions to be made by particular directors.

(4) Article 18 does not apply to a company which is a trustee of a trust scheme if the scheme falls within a prescribed class.

(5) Article 10 applies to any employer who—

- (a) makes such a proposal as is referred to in paragraph (1)(a), but
- (b) fails to give effect to the statutory consultation procedure.

**Selection, and eligibility, of member-nominated trustees and directors**

**20.**—(1) For the purposes of Articles 16 to 21, the appropriate rules are rules which—

- (a) make the provision required or authorised by this Article, and no other provision, and
- (b) are for the time being approved under the statutory consultation procedure or, if no rules are for the time being so approved, are prescribed rules;

and the arrangements required by Article 16 or 18 to be made must not make any provision which is required or authorised to be made by the rules.

(2) The appropriate rules—

- (a) must determine the procedure for the nomination and selection of a person to fill a vacancy as a member-nominated trustee, and
- (b) may determine, or provide for the determination of, the conditions required of a person for filling such a vacancy.

(3) The appropriate rules must provide for a member-nominated trustee to be eligible for re-selection at the end of his period of service.

(4) Where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the appropriate rules must provide for determining the next period in which persons may be nominated and selected in accordance with the rules, being a period ending at a prescribed time.

(5) The appropriate rules must provide that, where the employer so requires, a person who is not a member of the scheme must have the employer's approval to qualify for selection as a member-nominated trustee.

(6) Where Article 18 applies to a trust scheme, references in this Article to a member-nominated trustee include a member-nominated director.

**Member-nominated trustees and directors: supplementary**

**21.**—(1) If, in the case of a trust scheme—

- (a) such arrangements as are required by Article 16(1) or 17(2) to be made have not been made, or
- (b) arrangements required by Article 16(1) or 17(2) to be implemented, or the appropriate rules, are not being implemented,

Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(2) If, in the case of a company which is a trustee of a trust scheme—

- (a) such arrangements as are required by Article 18(1) or 19(2) to be made have not been made, or
- (b) arrangements required by Article 18(1) or 19(2) to be implemented, or the appropriate rules, are not being implemented,

Articles 3 and 10 apply to the company.

(3) Regulations may make provision for determining the time by which—

- (a) such arrangements (or further arrangements) as are referred to in Article 16(1), 17(2), 18(1) or 19(2) are required to be made, and
- (b) trustees or directors are required to be selected in pursuance of the appropriate rules.

(4) Regulations may make provision for determining when any approval under the statutory consultation procedure—

- (a) of the appropriate rules, or
- (b) of arrangements for selecting the trustees of a scheme, or the directors of a company, given on a proposal by the employer

is to cease to have effect.

(5) The Department may by regulations modify Articles 16 to 20 and this Article in their application to prescribed cases.

(6) In Articles 17 to 20 and this Article, “the statutory consultation procedure” means the prescribed procedure for obtaining the views of members of schemes.

(7) For the purposes of this and those Articles—

- (a) approval of the appropriate rules, or of arrangements, under the statutory consultation procedure must be given by—

- (i) the active and pensioner members of the scheme, and

- (ii) if the trustees so determine, such deferred members of the scheme as the trustees may determine,

taken as a whole, and

- (b) references to the approval of the appropriate rules, or of arrangements under Article 17 or 19, by any persons under the statutory consultation procedure are to prescribed conditions in respect of those rules or, as the case may be, arrangements being satisfied in the case of those persons in pursuance of the procedure, and those conditions may relate to the extent to which those persons have either endorsed, or not objected to, the rules or, as the case may be, arrangements.