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STATUTORY INSTRUMENTS

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**2005 No. 255**

**The Pensions (Northern Ireland) Order 2005**

**PART VI**

**OCCUPATIONAL AND PERSONAL PENSION  
SCHEMES: MISCELLANEOUS PROVISIONS**

*Requirements for member-nominated trustees and directors*

**Requirement for member-nominated trustees**

- 218.**—(1) The trustees of an occupational trust scheme must secure—
- (a) that, within a reasonable period of the commencement date, arrangements are in place which provide for at least one-third of the total number of trustees to be member-nominated trustees, and
  - (b) that those arrangements are implemented.
- (2) “Member-nominated trustees” are trustees of an occupational trust scheme who—
- (a) are nominated as the result of a process in which at least the following are eligible to participate—
    - (i) all the active members of the scheme or an organisation which adequately represents the active members, and
    - (ii) all the pensioner members of the scheme or an organisation which adequately represents the pensioner members, and
  - (b) are selected as a result of a process which involves some or all of the members of the scheme.
- (3) The “commencement date”, in relation to a scheme, is—
- (a) the date upon which this Article first applies in relation to the scheme, or
  - (b) in the case of a scheme to which this Article has ceased to apply and then reapplies, the date on which the Article reapplies to it.
- (4) The arrangements may provide for a greater number of member-nominated trustees than that required to satisfy the one-third minimum mentioned in paragraph (1)(a) only if the employer has approved the greater number.
- (5) The arrangements—
- (a) must provide for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated trustee,
  - (b) must provide, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled,

- (c) 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, and
  - (d) subject to sub-paragraph (c), may provide that, where the number of nominations received is equal to or less than the number of appointments required, the nominees are deemed to be selected.
- (6) The arrangements must provide that the removal of a member-nominated trustee requires the agreement of all the other trustees.
- (7) Nothing in the arrangements or in the provisions of the scheme may exclude member-nominated trustees from the exercise of functions exercisable by other trustees by reason only of the fact that they are member-nominated trustees.
- (8) This Article does not apply in relation to an occupational trust scheme if—
- (a) every member of the scheme is a trustee of the scheme and no other person is such a trustee,
  - (b) every trustee of the scheme is a company, or
  - (c) the scheme is of a prescribed description.
- (9) If, in the case of an occupational trust scheme, the arrangements required by paragraph (1)—
- (a) are not in place as required by paragraph (1)(a), or
  - (b) are not being implemented,
- Article 10 of the 1995 Order (civil penalties) applies to any trustee who has failed to take all reasonable steps to secure compliance.

### **Requirement for member-nominated directors of corporate trustees**

- 219.**—(1) Where a company is a trustee of an occupational trust scheme and every trustee of the scheme is a company, the company must secure—
- (a) that, within a reasonable period of the commencement date, arrangements are in place which provide for at least one-third of the total number of directors of the company to be member-nominated directors, and
  - (b) that those arrangements are implemented.
- (2) “Member-nominated directors” are directors of the company in question who—
- (a) are nominated as the result of a process in which at least the following are eligible to participate—
    - (i) all the active members of the occupational trust scheme or an organisation which adequately represents the active members, and
    - (ii) all the pensioner members of the occupational trust scheme or an organisation which adequately represents the pensioner members, and
  - (b) are selected as a result of a process which involves some or all of the members of that scheme.
- (3) The “commencement date”, in relation to a company, is—
- (a) the date upon which this Article first applies in relation to the company, or
  - (b) in the case of a company to which this Article has ceased to apply and then reapplies, the date on which the Article reapplies to it.
- (4) The arrangements may provide for a greater number of member-nominated directors than that required to satisfy the one-third minimum mentioned in paragraph (1)(a) only if the employer has approved the greater number.

(5) The arrangements—

- (a) must provide for the nomination and selection process to take place within a reasonable period of any requirement arising under the arrangements to appoint a member-nominated director,
- (b) must provide, where a vacancy is not filled because insufficient nominations are received, for the nomination and selection process to be repeated at reasonable intervals until the vacancy is filled,
- (c) 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 director, and
- (d) subject to sub-paragraph (c), may provide that, where the number of nominations received is equal to or less than the number of appointments required, the nominees are deemed to be selected.

(6) The arrangements must provide that the removal of a member-nominated director requires the agreement of all the other directors.

(7) Nothing in the arrangements may exclude member-nominated directors from the exercise of functions exercisable by other directors by reason only of the fact that they are member-nominated directors.

(8) Where the same company is a trustee of two or more occupational trust schemes by reference to each of which this Article applies to the company, then subject to paragraph (9), the preceding provisions of this Article have effect as if—

- (a) the schemes were a single scheme,
- (b) the members of each of the schemes were members of that single scheme, and
- (c) the references to “the employer” were references to all the employers in relation to the schemes.

(9) Where, apart from this paragraph, paragraph (8) would apply in relation to a company, the company may elect that paragraph (8)—

- (a) is not to apply as mentioned in that paragraph, or
- (b) is to apply but only in relation to some of the schemes to which it would otherwise apply.

(10) This Article does not apply in relation to an occupational trust scheme if the scheme is of a prescribed description.

(11) If, in the case of a company which is a trustee of an occupational trust scheme, the arrangements required by paragraph (1)—

- (a) are not in place as required by paragraph (1)(a), or
- (b) are not being implemented,

Article 10 of the 1995 Order (civil penalties) applies to the company.

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

**220.**—(1) The Department may, by order, amend Articles 218(1)(a) and (4) and 219(1)(a) and (4) by substituting, in each of those provisions, “one-half” for “one-third”.

(2) Regulations may modify Articles 218 and 219 (including any of the provisions mentioned in paragraph (1)) in their application to prescribed cases.

(3) In Articles 218 and 219—

“company” means a company within the meaning given by Article 3(1) of the Companies Order or a company which may be wound up under Part VI of the Insolvency Order (unregistered companies);

“occupational trust scheme” means an occupational pension scheme established under a trust.