

SCHEDULE 3

Regulation 19

Modifications of the Pensions (Northern Ireland) Order 1995 and These Regulations

Multi-employer schemes

1.—(1) In their application to any scheme which applies to earners in employments under different employers or, as the case may be, to a company which is the trustee of a relevant scheme which so applies, Articles 16 to 21 shall have effect with the following modifications—

- (a) in Articles 16(6), 17(1)(a) and (5), 18(6) and 19(1)(a) and (5) for “employer” there shall be substituted “appropriate person”;
- (b) in Articles 17(2)(b) and 19(2)(b) for “employer’s” there shall be substituted “appropriate person’s”;
- (c) in Article 18(1) for “the employer” there shall be substituted “any of the employers”;
- (d) in Article 18(8) for sub-paragraphs (a) and (b) there shall be substituted “a trustee of two or more trust schemes by virtue of the trusteeship of which this Article applies to it, then, subject to paragraph (9)”;
- (e) after Article 18(8) there shall be added the following paragraph—

“(9) Where—

- (a) apart from this paragraph, paragraph (8) would apply to a company, and
- (b) there are only two schemes by virtue of the trusteeship of which this Article applies to the company,

the company may determine that paragraph (8) shall not apply to those schemes.”;

- (f) in Article 20(5) for “the employer” and “the employer’s” there shall be substituted respectively “any employer” and “all the employers”;
- (g) after Article 21(7) there shall be added the following paragraph—

“(8) In Articles 16 to 19 “appropriate person” means the person whom the employers nominate to act for them for the purposes of this paragraph or, if no such nomination is made, all the employers.”.

(2) In their application to any such scheme or, as the case may be, company—

- (a) the definitions of “alternative arrangements” and “opt-out failure date” in regulation 2(1), regulations 7(2)(d), 9, 10(2)(b)(i), 13(2)(d), 15, 16(2)(b)(i), 20(1), (3), (4) and (5) and 22(3), paragraph 9(3) of Schedule 1 and Schedule 4 apply with the substitution for references to the employer of references to the appropriate person (as defined in Article 21(8), as added by sub-paragraph(1)(g)), and
- (b) paragraph 1(3) of Schedule 2 applies—

- (i) with the substitution in head (a) for “the employer” of “all the employers”, and
- (ii) with the substitution for head (b) of the following head—

“(b) none of the employers requires his approval to be obtained.”.

Cases where the employer is sole trustee

2.—(1) Where a person who is not a company to which Article 18 applies is the sole trustee of, and the sole employer in relation to, a trust scheme these Regulations shall have effect with the following modifications.

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(2) In regulation 7(2) for sub-paragraph (d) there shall be substituted the following sub-paragraph—

“(d) if before the expiry of the period of 6 months beginning with the date mentioned in sub-paragraph (a), (b) or (c) the employer duly gives notice under paragraph 2 of Schedule 1 that he is proposing alternative arrangements, but the alternative arrangements are not approved, during the period of 6 months beginning with the date with which the approval period expires.”.

(3) In regulation 9—

(a) in paragraph (1)—

(i) in sub-paragraph (a) for the words from “to the trustees” to the end there shall be substituted “under Schedule 1 at a permitted notice time to the eligible members of the scheme of his proposals for alternative arrangements under Article 17(1), and”, and

(ii) sub-paragraph (b)(ii) and the word “and” immediately preceding it shall be omitted;

(b) in paragraph (2)—

(i) in sub-paragraph (a)(i) for “one month” there shall be substituted “6 months”;

(ii) in sub-paragraph (a)(ii) and (b)(i) for “one month” there shall be substituted “6 months” and for “to the employer” there shall be substituted “to the eligible members”, and

(iii) in sub-paragraph (c)(i) the words “to the trustees of the scheme” shall be omitted, and

(c) for paragraph (3) there shall be substituted the following paragraph—

“(3) In paragraph (1) the “approval period”, in relation to alternative arrangements, means—

(a) where notice of those arrangements is given under paragraph (2)(a)(iii) or (c), the period of 6 months beginning with the date on which that notice is given, and

(b) otherwise, the period within which notice of those arrangements may be given under paragraph (1)(a).”.

(4) In regulation 10(2)(b)(i) for the words from “the date” to the end there shall be substituted “the date on which the arrangements are approved, and”.

(5) In regulation 20—

(a) in paragraph (1)(d), for the words from “the date” to the end there shall be substituted “the date following the date on which the arrangements are approved;”;

(b) in paragraph (1)(g), in head (ii) for “the employer” there shall be substituted “the eligible members”, and for “with the opt-out failure date” there shall be substituted “of the approval period”;

(c) in paragraph (3) the words “to the employer and, in the case of rules,” shall be omitted, and

(d) paragraph (4)(a) shall be omitted.

(6) In regulation 23(3) the words “and the trustees of the scheme” shall be omitted.

(7) In Schedule 4—

(a) in paragraphs 3(1) and 5 for “to the trustees of an Article 16 scheme” there shall be substituted “to the eligible members of the scheme”, and

(b) in paragraph 5(c) for “to the trustees” there shall be substituted “to the eligible members”.

Cases where an Article 18 company is the employer

3.—(1) Where a company to which Article 18 applies is the sole trustee of and sole employer in relation to the relevant scheme these Regulations shall have effect with the following modifications.

(2) In regulation 13(2) for sub-paragraph (d) there shall be substituted the following sub-paragraph—

“(d) if before the expiry of the period of 6 months beginning with the date mentioned in sub-paragraph (a), (b) or (c) the company duly gives notice under paragraph 2 of Schedule 1 that it is proposing alternative arrangements, but the alternative arrangements are not approved, during the period of 6 months beginning with the date with which the approval period expires.”.

(3) In regulation 15—

(a) in paragraph (1)—

(i) in sub-paragraph (a) for the words from “to the company” to the end there shall be substituted “under Schedule 1 at a permitted notice time to the eligible members of the scheme of its proposals for alternative arrangements under Article 19(1), and”, and

(ii) sub-paragraph (b)(ii) and the word “and” immediately preceding it shall be omitted;

(b) in paragraph (2)—

(i) in sub-paragraph (a)(i) for “one month” there shall be substituted “6 months”;

(ii) in sub-paragraphs (a)(ii) and (b)(i) for “one month” there shall be substituted “6 months” and for “to the employer” there shall be substituted “to the eligible members”, and

(iii) in sub-paragraph (c)(i) the words “to the company” shall be omitted, and

(c) for paragraph (3) there shall be substituted the following paragraph—

“(3) In paragraph (1) the “approval period”, in relation to alternative arrangements, means—

(a) where notice of those arrangements is given under paragraph (2)(a)(iii) or (c), the period of 6 months beginning with the date on which that notice is given, and

(b) otherwise, the period within which notice of those arrangements may be given under paragraph (1)(a).”.

(4) In regulation 16(2)(b)(i) for the words from “the date” to the end there shall be substituted “the date on which the arrangements are approved, and”.

(5) In regulation 20—

(a) in paragraph (1)(f), for the words from “the date” to the end there shall be substituted “the date following the date on which the arrangements are approved.”;

(b) in paragraph (1)(h), in head (ii) for “the employer” there shall be substituted “the eligible members”, and for “with the opt-out failure date” there shall be substituted “of the approval period”;

(c) in paragraph (3) the words “to the employer and, in the case of rules,” shall be omitted, and

(d) paragraph (5)(a) shall be omitted.

(6) In regulation 23(3) the words “and the trustees of the scheme” shall be omitted.

(7) In Schedule 4—

(a) in paragraphs 4(1) and 6 for “to an Article 18 company” there shall be substituted “to the eligible members of the scheme”, and

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- (b) in paragraph 6(c) for “to the company” there shall be substituted “to the eligible members”.

Schemes with few or no active members

4.—(1) Subject to sub-paragraph (2), in the application of Articles 16 to 21 and these Regulations to a scheme in respect of which there are no active members or, as the case may be, to a company which is the trustee of such a relevant scheme, references to the employer are references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any such members.

(2) Where—

- (a) every such person who was an employer at that time is—

- (i) an individual who has died;
- (ii) a company which has been dissolved or is in the course of winding up, or
- (iii) a partnership which is in the course of winding up, or

- (b) the trustees of the scheme are unable after all such enquiries as are reasonable to find any such person who was an employer at that time,

the trustees may exercise the functions of an employer under Articles 16 to 21 and these Regulations, and these Regulations shall have effect with the same modifications as if the trustees were an employer who was the sole trustee of the scheme or, as the case may be, a company which is the sole trustee of and the sole employer in relation to the scheme.

(3) In their application to a scheme which has no active or pensioner members—

- (a) Article 21(7)(a) shall have effect with the substitution for heads (i) and (ii) of “such deferred members of the scheme as the trustees may determine”, and
- (b) Part I of Schedule 2 shall have effect with the substitution for references to active members of references to such deferred members of the scheme as the trustees may determine.

(4) In its application to a scheme which has pensioner members but no active members, Part I of Schedule 2 shall have effect with the substitution for references to active members of references to pensioner members.

(5) In the application of Schedule 2 in a case where the scheme has active members, but the number of such members does not exceed the number of vacancies, references to active members include—

- (a) if the scheme has pensioner members, references to them, and
- (b) otherwise, references to such deferred members of the scheme as the trustees may determine.

Shorter periods of office: casual vacancies etc.

5.—(1) Article 16 has effect with the substitution for paragraph (5) of the following paragraphs in its application in the cases specified in paragraph (5A) as so substituted—

“(5) The arrangements must provide for the selection of a person to have effect for not less than the minimum period and not more than six years.

(5A) For the purposes of paragraph (5), the minimum period is three years or (if less)—

- (a) in the case of a member-nominated trustee who is selected to fill a vacancy for such a trustee which has arisen on another such trustee ceasing to be a trustee, otherwise than by virtue of the expiry of his period of office, the remainder of that period;

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- (b) in the case of a member-nominated trustee who is selected to fill a vacancy which has previously been unfilled because insufficient nominations have been received, the remainder of the period of office for which the selection of a person to fill that vacancy would have had effect if sufficient nominations had been received, and
- (c) in a case where the arrangements provide that the number of member-nominated trustees shall be reduced if a lower number would satisfy the requirement under paragraph (6), as respects any trustee whose trusteeship is to terminate in those circumstances, his period of office at that time.”.

(2) Article 18 shall have effect with the substitution for paragraph (5) of the following paragraphs in the cases specified in paragraph (5A) as so substituted—

“(5) The arrangements must provide for the selection of a person to have effect for not less than the minimum period and not more than six years.

(5a) For the purposes of paragraph (5), the minimum period is three years or (if less)—

- (a) in the case of a member-nominated director who is selected to fill a vacancy for such a director which has arisen on another such director ceasing to be a director, otherwise than by virtue of the expiry of his period of office, the remainder of that period;
- (b) in the case of a member-nominated director who is selected to fill a vacancy which has previously been unfilled because insufficient nominations have been received, the remainder of the period of office for which the selection of a person to fill that vacancy would have had effect if sufficient nominations had been received, and
- (c) in a case where the arrangements provide that the number of member-nominated directors shall be reduced if a lower number would satisfy the requirement under paragraph (6), as respects any director whose office is to terminate in those circumstances, his period of office at that time.”.

Removal of member-nominated directors

6. In its application to a company which is not a wholly-owned subsidiary (within the meaning of Article 4 of the Companies (Northern Ireland) Order 1986⁽¹⁾) of a company which is the sole employer in relation to a relevant scheme, Article 18(3)(b) has effect with the insertion after “person” of “(otherwise than under Article 311 of the Companies (Northern Ireland) Order 1986)”.

Companies which are trustees of relevant and other schemes

7. In its application to a company which is the trustee of a trust scheme which is not a relevant scheme in relation to that company, Article 18(8) has effect with the insertion after “schemes” in sub-paragraph (a) of “which are schemes by virtue of the trusteeship of which this Article applies to it”.

(1) S.I.1986/1032 (N.I. 6); Articles 4 and 4A were substituted for Article 4 by Article 62(1) of the Companies (No. 2)(Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10))