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STATUTORY INSTRUMENTS

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**1996 No. 1216**

**PENSIONS**

**The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996**

<i>Made</i>	- - - -	<i>2nd May 1996</i>
<i>Laid before Parliament</i>		<i>10th May 1996</i>
<i>Coming into force in accordance with regulation 1(2)</i>	- -	<i>1996</i>

The Secretary of State for Social Security, in exercise of the powers conferred on him by sections 17(1)(c), (4)(b), 18(1), 19(1)(c), 19(4), 20(1)(b) and (4), 21(4)(a) and (b), (5), (6), (7) and (8)(b), 49(2)(b) and (3), 68(2)(e), 118(1)(a) and (b), 124(1), 125(3) and (4)(c) and 174(2) and (3) of the Pensions Act 1995(1) and of all other powers enabling him in that behalf, by this instrument, which is made before the end of the period of 6 months beginning with the coming into force of the provisions of Part I of that Act by virtue of which it is made(2), hereby makes the following regulations:—

**PART I**

**GENERAL PROVISIONS**

*Preliminary*

**Citation and commencement**

1.—(1) These regulations may be cited as the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996.

(2) This regulation and regulations 2, 11, 22 and 24 and paragraph 8 of Schedule 4 shall come into force on 6th October 1996 and the remaining provisions of these regulations shall come into force on 6th April 1997.

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(1) 1995 c. 26. Section 124(1) is cited for the meaning given to “prescribed” and “regulations”.  
(2) See section 120 of the Act which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions in Part I of that Act. This duty does not apply where regulations are made before the end of six months from the coming into force of the provisions under which they are made.

**General interpretation**

2.—(1) Unless the context otherwise requires, in these regulations—

“alternative arrangements”—

- (a) in relation to a scheme to which section 16 applies (or would apply apart from the approval of such arrangements), means arrangements proposed by the employer, as mentioned in section 17(1), as an alternative to those which the trustees of the scheme are otherwise required by section 16 to make for persons selected by members of the scheme to be trustees of the scheme (whether those arrangements are existing or new), and
- (b) in relation to a company to which section 18 applies (or would apply apart from the approval of such arrangements), means arrangements proposed by the employer, as mentioned in section 19(1), as an alternative to those which the company is otherwise required by section 18 to make for persons selected by members of the scheme to be its directors (whether those arrangements are existing or new);

“appropriate corresponding scheme” means an approved scheme—

- (a) which is treated by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for associated employers, and
- (b) none of the employers in relation to which is associated with another of those employers, and for the purposes of this definition—
  - (i) the fact that some employers in relation to a scheme are associated by virtue of controlling or being controlled by other employers shall be disregarded if the total number of active members of the scheme who are in pensionable service under the scheme with employers who are associated by virtue of being controlled by other employers is less than 1 per cent. of the total number of active members the scheme comprises, and
  - (ii) “associated” and “control” are to be construed in accordance with paragraph 28(3) and (4) of Schedule 6 to the Finance Act 1989(3) (centralised schemes);

“appropriate rules” has the meaning given in section 20;

“approval period” in relation to the approval of alternative arrangements—

- (a) in the case of arrangements proposed under section 17(1), has the meaning given in regulation 9(3), and
- (b) in the case of arrangements proposed under section 19(1), has the meaning given in regulation 15(3);

“approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act or in respect of which an application for such approval has been duly made which has not been determined; and, for the purposes of this definition, if only part of a scheme is an approved scheme the whole scheme shall be treated as if it were an approved scheme;

“associated” shall be construed in accordance with paragraph (3);

“the commencement date” means 6th April 1997;

“connected” shall be construed in accordance with paragraph (3);

“direct payment, paid-up insured scheme” means a scheme under which—

- (a) no further contributions are payable,
- (b) the benefits that may be provided in respect of an individual are determined by reference to the value of the whole or a specified part of the rights under a contract of insurance, and

- (c) the benefits in respect of any member are, in accordance with an agreement made between the insurer and the trustees of the scheme (or a subsequent agreement made with any person for the provision of those benefits by him), to be paid by the insurer (or that person) directly to the member or to a person entitled to benefits in respect of him;

“eligible members”, in relation to a scheme, means the members of the scheme by whom, in accordance with section 21(8)(a), approval of appropriate rules or, as the case may be, of alternative arrangements must be given (taking them as a whole) and, in a case where section 21(8) applies as mentioned in section 18(8) (aggregation) or in regulation 5(2), the references in this definition to the scheme are to the single scheme there mentioned;

“employer”, in relation to a scheme, means the employer of persons in the description or category of employment to which the scheme in question relates (but see paragraphs 1 and 4 of Schedule 3);

“former old code scheme” means an approved scheme which was formerly approved under section 208 of the Income and Corporation Taxes Act 1970(4) and under the provisions of which—

- (a) no further contributions are payable, and
- (b) the entitlement in respect of each member is to a benefit consisting of a specified fixed amount which may not be altered unless—
- (i) he retires otherwise than at his normal pension age, or
- (ii) another person becomes entitled to a benefit in respect of him;

“independently selected”, in relation to a trustee of a scheme or a director of a company which is a trustee of a scheme, means selected as a trustee or, as the case may be, a director—

- (a) by some or all of the members of the scheme (otherwise than wholly or mainly by members who are directors of companies which are employers in relation to the scheme), or
- (b) by an organisation which represents some or all of the members of the scheme (other than wholly or mainly members who are such directors);

“member”, in relation to a scheme to which regulation 18 applies, includes a member of any other scheme with which it is treated by that regulation as a single scheme;

“opt-out failure date”, in relation to a proposal by an employer for alternative arrangements, means—

- (a) if the employer gives the trustees notice in writing within the approval period that he is not proceeding with the proposals, the date of that notice, and
- (b) otherwise, the date with which the approval period expires;

“relevant benefits” has the meaning given in section 612(1) of the Taxes Act;

“relevant approved centralised scheme” means an approved scheme—

- (a) which has been categorised by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers (whether or not the employers are associated within the meaning of these regulations), or is an appropriate corresponding scheme,
- (b) under the provisions of which the power to appoint or remove all the trustees is not exercisable solely by one employer or by employers all of whom are connected with each other, and
- (c) which satisfies the independence conditions specified in paragraph (4);

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(4) 1970 c. 10. Section 208 was repealed by the Finance Act 1971 (c. 68) with effect from 6th April 1980.

“relevant executive pension scheme”, in relation to a company, means a scheme—

- (a) in relation to which the company is the only employer and the sole trustee, and
- (b) the members of which are either current or former directors of the company and include at least one-third of the current directors;

“relevant scheme”, in relation to any company to which section 18 applies (or would apply apart from section 19(1)), means a scheme by virtue of the trusteeship of which section 18 applies to the company (or would apply apart from section 19(1));

“relevant self-administered scheme” means—

- (a) a small self-administered scheme as defined in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991<sup>(5)</sup>, or
- (b) a scheme which would fall within that definition if paragraph (a) of the definition were omitted;

“relevant statutory scheme” has the meaning given in section 611A of the Taxes Act<sup>(6)</sup>;

“scheme”, in relation to a scheme to which regulation 18 applies, includes any other scheme with which it is treated by that regulation as a single scheme;

“scheme year”, in relation to a scheme, means—

- (a) a year specified for the purposes of the scheme in any document comprising the scheme or, if none is so specified, a period of 12 months commencing with 1st April or such other date as the trustees of the scheme select, or
- (b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees—
  - (i) in respect of the scheme year in which the scheme commences or terminates, or
  - (ii) in connection with a variation of the date on which the scheme year is to commence,

and, in relation to a scheme to which regulation 18 applies, references to the first scheme year are to the first scheme year of whichever of the schemes treated as a single scheme commences last;

“section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act;

“the statutory consultation procedure” has the meaning given in section 21(7) (and is prescribed in Schedule 1);

“the Taxes Act” means the Income and Corporation Taxes Act 1988<sup>(6)</sup>.

(2) Except as otherwise provided, expressions used in these regulations have the same meaning as if they were used in Part I of the Pensions Act 1995<sup>(7)</sup>.

(3) For the purposes of these regulations, unless the context otherwise requires—

- (a) sections 249 and 435 of the Insolvency Act 1986<sup>(8)</sup> (connected and associated persons) shall apply as they apply for the purposes of that Act; and
- (b) section 74 of the Bankruptcy (Scotland) Act 1985<sup>(9)</sup> (associated persons) shall apply as it applies for the purposes of that Act.

<sup>(5)</sup> S.I. 1991/1614.

<sup>(6)</sup> 1988 c. 1. Section 611A was inserted by Schedule 6 to the Finance Act 1989 (c. 26).

<sup>(6)</sup> 1988 c. 1. Section 611A was inserted by Schedule 6 to the Finance Act 1989 (c. 26).

<sup>(7)</sup> 1995 c. 26.

<sup>(8)</sup> 1986 c. 45.

<sup>(9)</sup> 1985 c. 66.

(4) The independence conditions referred to in paragraph (c) of the definition in paragraph (1) of “relevant approved centralised scheme” are—

- (a) in the case of a scheme each trustee of which is a company, that at least one-third of the total number of the directors of each of those companies are persons who are independent or independently selected; and
- (b) otherwise, that at least one-third of the total number of trustees are persons who—
  - (i) have no direct legal or beneficial interest in the assets of any of the employers or of the scheme (otherwise than as trustees), are neither connected with, nor associates of, any of the employers and, if they are companies, satisfy the condition mentioned in paragraph (a), or
  - (ii) have been independently selected.

(5) For the purposes of paragraph (4)(a), a director is independent in relation to a scheme only if he—

- (a) has no direct legal or beneficial interest in the assets of any of the employers or of the scheme, and
- (b) is neither connected with, nor an associate of, any of the employers.

(6) References to employers in paragraph (b) of the definition in paragraph (1) of “relevant approved centralised scheme” and in paragraphs (4)(b) and (5) do not include companies which carry on the business of acting as trustee of, or providing administrative services to, the scheme and no other business.

(7) Unless the context otherwise requires, in these regulations any reference to a section shall be construed as a reference to a section of the Pensions Act 1995(10).

### **Scheme membership**

**3.—**(1) In determining for the purposes of sections 16(6)(a) and 18(6)(a) (requirements as to numbers of member-nominated trustees and directors) and of these regulations the number of members which a scheme comprises, a person shall be treated as becoming or ceasing to be a member at the beginning of the scheme year following that in which he actually becomes or ceases to be a member.

(2) In determining for the purposes of these regulations the number of members of a specified description which a scheme comprises, a person shall be treated as becoming or ceasing to be a member of that description at the beginning of the scheme year following that in which he actually becomes or ceases to be such a member.

(3) Paragraphs (1) and (2) do not apply—

- (a) during the first scheme year of the scheme (but see paragraph 8(3) of Schedule 1); or
- (b) at any other time if the trustees of the scheme so determine before that time.

### *Application of sections 16 and 18*

### **Exceptions from member-nominated trustee requirements**

**4.—**(1) Section 16 (requirement for member-nominated trustees) does not apply to any trust scheme—

- (a) each trustee of which is a company;

- (b) which is a relevant scheme in relation to a company in respect of which alternative arrangements under section 19(1) are for the time being approved;
- (c) which has less than two members;
- (d) the only benefits provided by which are death benefits;
- (e) to which section 119 of the Pension Schemes Act 1993<sup>(11)</sup> (requirement for independent trustee where employer becomes insolvent etc.) or section 22 (circumstances for application of requirement for an independent trustee) applies;
- (f) which is an occupational pension scheme which provides relevant benefits, but is neither an approved scheme nor a relevant statutory scheme;
- (g) which is a relevant self-administered scheme;
- (h) which is a relevant approved centralised scheme;
- (i) which is a direct payment, paid-up insured scheme;
- (j) which is a former old code scheme;
- (k) which is a section 615(6) scheme;
- (l) which is made under section 2 of the Parliamentary and other Pensions Act 1987<sup>(12)</sup> (power to provide for pensions for Members of the House of Commons etc.); or
- (m) which has been modified under Schedule 5 to the Coal Industry Act 1994<sup>(13)</sup>.

(2) Where section 18(8) or regulation 5(2) treats two or more schemes as if they were a single scheme (or section 18(8) would do so apart from regulation 6(1)(a)), a scheme shall only be treated as falling within paragraph (1)(a) if each trustee of each of those schemes is a company.

### **Extension of section 18**

**5.**—(1) In addition to the case specified in subsection (1) of section 18 (which applies that section where a company which is connected with the employer is trustee of a scheme), that section also applies where a company is a trustee of a trust scheme and either—

- (a) it is the sole trustee of the scheme; or
- (b) all the other trustees are companies,

unless that section is disapplied by section 19 or regulation 6.

(2) Where a company to which section 18 only applies by virtue of paragraph (1) is the trustee of two or more trust schemes which are relevant schemes in relation to the company, then, subject to paragraph (3), sections 18, 20 and 21(8) apply as if those schemes were a single scheme and the members of each of those schemes were members of that scheme.

(3) Where—

- (a) apart from this paragraph, paragraph (2) would apply in relation to a company; and
- (b) there are only two schemes which are relevant schemes in relation to the company,

the company may determine that paragraph (2) shall not apply to those schemes.

### **Exceptions from member-nominated director requirements**

**6.**—(1) Section 18 (requirement for member-nominated directors for certain corporate trustees) does not apply to any company by virtue of its being a trustee of a trust scheme—

- (a) which has another trustee who is not a company;

<sup>(11)</sup> 1993 c. 48.

<sup>(12)</sup> 1987 c. 45.

<sup>(13)</sup> 1994 c. 21.

- (b) in respect of which alternative arrangements under section 17(1) are for the time being approved;
- (c) which has less than two members;
- (d) the only benefits provided by which are death benefits;
- (e) to which section 119 of the Pension Schemes Act 1993(14) (requirement for independent trustee where employer becomes insolvent etc.) or section 22 (circumstances for application of requirement for an independent trustee) applies;
- (f) which is an occupational pension scheme which provides relevant benefits, but is neither an approved scheme nor a relevant statutory scheme;
- (g) which is a relevant self-administered scheme;
- (h) which is a relevant approved centralised scheme;
- (i) which is a relevant executive pension scheme in relation to the company;
- (j) which is a direct payment, paid-up insured scheme;
- (k) which is a former old code scheme;
- (l) which is a section 615(6) scheme;
- (m) which is made under section 2 of the Parliamentary and other Pensions Act 1987 (power to provide for pensions for Members of the House of Commons etc.); or
- (n) which has been modified under Schedule 5 to the Coal Industry Act 1994.

(2) For the purposes of paragraph (1)(a), where (apart from that paragraph) section 18(8) or regulation 5(2) would treat two or more schemes as if they were a single scheme, each of those schemes shall be treated as having a trustee who is not a company if any of them has such a trustee.

## PART II

### MEMBER-NOMINATED TRUSTEES

#### *Section 16 arrangements and rules*

#### **Implementation of requirements as to member-nominated trustees: general**

7.—(1) Subject to the following provisions of this regulation, the trustees of a trust scheme to which section 16 (requirement for member-nominated trustees) applies must secure—

- (a) that such arrangements as are required by section 16(1) are made; and
- (b) that member-nominated trustees are required to be selected in pursuance of the appropriate rules,

by such times as to secure that the number of such trustees never falls below the number provided for by the arrangements in accordance with section 16(6).

(2) Paragraph (1) does not apply during the period of six months beginning—

- (a) in the case of a scheme to which section 16 applies on the commencement date, with that date;
- (b) in the case of a scheme to which section 16 first applies after the commencement date, with the date on which it first applies to the scheme;

- (c) in the case of a scheme to which section 16 has ceased to apply and then reapplies (otherwise than by virtue of section 17(1) ceasing to apply to it or its ceasing to be a relevant scheme), with the date on which section 16 reapplies to it; and
  - (d) if—
    - (i) before the expiry of the period of six months beginning with the date mentioned in paragraph (a), (b) or (c) the employer duly gives notice under regulation 9(1)(a) that he intends to propose alternative arrangements, but
    - (ii) the conditions imposed by regulation 9(1)(b) for the application of section 17(1) are not satisfied within the approval period,
      - with the opt-out failure date.
- (3) A deficiency in the number of member-nominated trustees provided for by the arrangements in accordance with section 16(6) is not a breach of the requirement in paragraph (1) during the appropriate excepted period—
- (a) if a vacancy for such a trustee has not been filled because insufficient nominations are received;
  - (b) if such a trustee has ceased to be a trustee otherwise than by virtue of the expiry of his period of office; or
  - (c) if the number of members a scheme comprises increases from less than 100 at the end of one scheme year to 100 or more at the end of the next scheme year (“the second year”).
- (4) In paragraph (3) “the appropriate excepted period” means—
- (a) where paragraph (3)(a) applies, the period during which, if there had been sufficient nominations for a member-nominated trustee to be selected by nomination, his selection would have had effect in accordance with the arrangements made under section 16(5) for the scheme;
  - (b) where paragraph (3)(b) applies, the period of six months beginning with the cessation or the remainder of the trustee’s period of office, if less; and
  - (c) where paragraph (3)(c) applies, the first six months of the year following the second year.

### **Appropriate rules as to the selection and eligibility of member-nominated trustees**

**8.—**(1) The trustees of a scheme to which section 16 applies, or to which it would apply apart from section 17(1) or regulation 4, may at any time propose appropriate rules in respect of the scheme.

(2) The statutory consultation procedure for such rules is set out in Schedule 1 (which also sets out the conditions which must be satisfied for the approval of such rules).

(3) In that Schedule “the proposer”, in relation to such rules, means the trustees of the scheme.

(4) The prescribed rules for the purposes of section 20(1)(b) (which are the appropriate rules for a scheme to which section 16 applies, if no other rules are for the time being approved) are the rules set out in Part I of Schedule 2.

### *Proposals by employers for alternative arrangements*

#### **Proposals by the employer for alternative arrangements under section 17**

**9.—**(1) Section 17(1) (by virtue of which the requirements in section 16 as to member-nominated trustees do not apply to a trust scheme in certain circumstances) only applies if—

- (a) the employer gives notice in writing to the trustees of the scheme at a permitted notice time that he intends to propose alternative arrangements; and



- (b) before the expiry of the approval period—
  - (i) alternative arrangements are approved; and
  - (ii) the employer gives notice in writing to the trustees of the scheme of their approval, stating in the notice what those arrangements are and specifying all such matters relating to them as are required to be specified in a notice under paragraph 5(3) of Schedule 1.
- (2) In paragraph (1)(a) “permitted notice time” means, subject to paragraph (4)—
  - (a) in the case of the first notice to be given in relation to a scheme under paragraph (1)(a)—
    - (i) any time during the period of one month beginning with the commencement date or, if section 16 does not apply to the scheme on that date, before or during the period of one month beginning with the date it first applies to it;
    - (ii) if the approval of appropriate rules under section 16 for the scheme is ceasing to have effect by virtue of paragraph (1)(g) of regulation 20, any time during the period of one month beginning with the date on which notice is given to the employer under paragraph (3) of that regulation; or
    - (iii) any time not less than six years after the date applicable under paragraph (i) or, if such a notice as is mentioned in paragraph (ii) has been given, after the date mentioned in that paragraph;
  - (b) in the case of a second or subsequent notice under paragraph (1)(a) which is given in respect of a scheme to which by virtue of section 17(1) section 16 does not apply—
    - (i) if the approval of alternative arrangements for the scheme is ceasing to have effect by virtue of paragraph (1)(g) of regulation 20, any time during the period of one month beginning with the date on which notice is given to the employer under paragraph (3) of that regulation; and
    - (ii) otherwise, any time not more than twelve nor less than six months before the date on which the approval of the alternative arrangements under section 17(1) ceases to have effect;
  - (c) in the case of a second or subsequent notice under paragraph (1)(a) which is given in respect of a scheme to which section 16 applies, any time after the expiry of the period of six years beginning with—
    - (i) the date on which the last such notice was given to the trustees of the scheme; or
    - (ii) the last permitted notice time falling within paragraph (b),  
whichever is the later.
- (3) In paragraph (1) the “approval period”, in relation to arrangements, means, subject to paragraph (4), the period of six months beginning—
  - (a) in a case where notice is given under paragraph (1)(a) within the period mentioned in paragraph (2)(a)(i), with the commencement date or, as the case may be, the date on which section 16 first applies to the scheme;
  - (b) in a case where such notice is given within the period mentioned in paragraph (2)(a)(ii) or (b)(i), with the date on which notice under regulation 20(3) is given to the employer; and
  - (c) otherwise, with the date on which notice is given under paragraph (1)(a).
- (4) In the case of a scheme to which section 16 has ceased to apply and then reapplies (otherwise than by virtue of section 17(1) ceasing to apply to it or its ceasing to be a relevant scheme) paragraphs (2) and (3) apply as if—
  - (a) section 16 first applied to the scheme at the time when that section reapplies to it; and
  - (b) no notices had been given in relation to the scheme under paragraph (1)(a) before that time.

(5) The statutory consultation procedure in respect of proposals under section 17(1) for the continuation of existing or adoption of new alternative arrangements is set out in Schedule 1 (which also sets out the conditions which must be satisfied for the approval of such arrangements).

(6) In that Schedule “the proposer”, in relation to such arrangements, means the employer.

### **Time limits for making alternative arrangements under section 17**

**10.**—(1) Where, by virtue of section 17(1) (alternative arrangements for selecting trustees), section 16 does not apply to a trust scheme, the trustees must secure that the alternative arrangements are made no later than is necessary to secure that trustees can be selected immediately in pursuance of the arrangements to fill any vacancy arising after the appropriate time.

(2) In paragraph (1), “the appropriate time” means—

- (a) in a case where, immediately before the approval of the alternative arrangements, section 16 applied to the scheme, the expiry of the period of six months beginning with the date on which the alternative arrangements are approved;
- (b) in a case where, immediately before the approval of the alternative arrangements, section 16 did not apply to the scheme—
  - (i) if the approval is for the continuation of existing alternative arrangements, the date on which the employer gives notice to the trustees under regulation 9(1)(b)(ii) in respect of the approval of the arrangements; and
  - (ii) otherwise, the expiry of the period of six months beginning with that date.

### *Power of trustees to modify schemes by resolution*

### **Modification of schemes affected by requirements**

**11.** Where a trust scheme to which section 16 applies provides for a maximum total number of trustees (or a maximum which applies in certain circumstances), the trustees may by resolution modify the scheme with a view to increasing that maximum by not more than the number of member-nominated trustees for which provision must be made in accordance with subsection (6) of that section (on the assumption that the total number of trustees is increased in accordance with the resolution).

### *Cessation of application of requirements*

### **Cessation of application of requirements**

**12.**—(1) Subject to any provision of a trust scheme, the fact that section 16 has ceased to apply to the scheme shall not terminate the trusteeship of any member-nominated trustee of the scheme but, if he is a member of the scheme, he shall cease to be a trustee if he ceases to be a member.

(2) Where, at the time when section 22 (requirement for an independent trustee in cases of insolvency etc.) first applies to a scheme, one or more of the scheme’s trustees are member-nominated trustees, then—

- (a) the period of office of any such trustee shall not expire on the date on which it would otherwise have done so but, if he is a member, it shall expire if he ceases to be one; and
- (b) if any such trustee ceases to be a trustee, the vacancy may be filled by a trustee appointed by a person who is an independent trustee for the purposes of section 23(1) (conditions for independence of a trustee in cases of insolvency etc.).

## PART III

### MEMBER-NOMINATED DIRECTORS

#### *Section 18 arrangements and rules*

#### **Implementation of requirements as to member-nominated directors: general**

**13.**—(1) Subject to the following provisions of this regulation, a company to which section 18 (requirement for member-nominated directors) applies must secure—

- (a) that such arrangements as are required by section 18(1) are made; and
- (b) that member-nominated directors are required to be selected in pursuance of the appropriate rules,

by such times as to secure that the number of such directors never falls below the number provided for by the arrangements in accordance with section 18(6).

(2) Paragraph (1) does not apply during the period of six months beginning—

- (a) in the case of a company to which section 18 applies on the commencement date, with that date;
- (b) in the case of a company to which section 18 first applies after the commencement date, with the date on which it first applies to the company;
- (c) in the case of a company to which section 18 has ceased to apply and then reappplies (otherwise than by virtue of section 19(1) ceasing to apply to it or section 16 or 17(1) ceasing to apply to any relevant scheme), with the date on which section 18 reappplies to it; and
- (d) if—
  - (i) before the expiry of the period of six months beginning with the date mentioned in paragraph (a), (b) or (c) the employer duly gives notice under regulation 15(1)(a) that he intends to propose alternative arrangements, but
  - (ii) the conditions imposed by regulation 15(1)(b) for the application of section 19(1) are not satisfied within the approval period, with the opt-out failure date.

(3) A deficiency in the number of member-nominated directors provided for by the arrangements in accordance with section 18(6) is not a breach of the requirement in paragraph (1) during the appropriate excepted period—

- (a) if a vacancy for such a director has not been filled because insufficient nominations are received;
- (b) if such a director has ceased to be a director otherwise than by virtue of the expiry of his period of office; or
- (c) if the number of members any relevant scheme comprises increases from less than 100 at the end of one scheme year to 100 or more at the end of the next scheme year (“the second year”).

(4) In paragraph (3) “the appropriate excepted period” means—

- (a) where paragraph (3)(a) applies, the period during which, if there had been sufficient nominations for a member-nominated director to be selected by nomination, his selection would have had effect in accordance with the arrangements made under section 18(5) (periods of office) for the company;

- (b) where paragraph (3)(b) applies, the period of six months beginning with the cessation or the remainder of the director's period of office, if less;
  - (c) where paragraph (3)(c) applies, the first six months of the year following the second year.
- (5) Where section 18 applies to a company by virtue of its being trustee of a relevant scheme and—
- (a) another company is also a trustee of the scheme; or
  - (b) the company became trustee in place of a company to which section 18 applied by virtue of its being trustee of the scheme,
- then paragraph (2) has effect—
- (i) with the omission of paragraphs (2)(b) and (c); and
  - (ii) with the substitution in paragraph (2)(d) for the words “any of the cases mentioned in paragraphs (a) to (c)” of the words “the case mentioned in paragraph (a)”.

#### **Appropriate rules as to the selection and eligibility of member-nominated directors**

- 14.—**(1) A company to which section 18 applies or to which it would apply apart from section 19(1) or regulation 6 may at any time propose appropriate rules in respect of the company.
- (2) The statutory consultation procedure for such rules is set out in Schedule 1 (which also sets out the conditions which must be satisfied for the approval of such rules).
- (3) In that Schedule “the proposer”, in relation to such rules, means the company.
- (4) The prescribed rules for the purposes of section 20(1)(b) (which are the appropriate rules for a company to which section 18 applies, if no other rules are for the time being approved) are the rules applicable by virtue of Part II of Schedule 2.

#### *Proposals by employers for alternative arrangements*

#### **Proposals by the employer for alternative arrangements under section 19**

- 15.—**(1) Section 19(1) (by virtue of which the requirements in section 18 as to member-nominated directors do not apply to a company in certain circumstances) only applies if—
- (a) the employer gives notice in writing to the company at a permitted notice time that he intends to propose alternative arrangements; and
  - (b) before the expiry of the approval period—
    - (i) alternative arrangements are approved; and
    - (ii) the employer gives notice in writing to the company of their approval, stating in the notice what those arrangements are and specifying all such matters relating to them as are required to be specified in a notice under paragraph 5(3) of Schedule 1.
- (2) In paragraph (1)(a) “permitted notice time” means, subject to paragraph (4)—
- (a) in the case of the first notice to be given in relation to a company under paragraph (1)(a)—
    - (i) any time during the period of one month beginning with the commencement date or, if section 18 does not apply to the company on that date, before or during the period of one month beginning with the date it first applies to it;
    - (ii) if the approval of appropriate rules under section 18 for the company is ceasing to have effect by virtue of paragraph (1)(h) of regulation 20, any time during the period of one month beginning with the date on which notice is given to the employer under paragraph (3) of that regulation; or

- (iii) any time not less than six years after the date applicable under paragraph (i) or, if such a notice as is mentioned in paragraph (ii) has been given, after the date mentioned in that paragraph;
- (b) in the case of a second or subsequent notice under paragraph (1)(a) which is given in respect of a company to which by virtue of section 19(1) section 18 does not apply—
  - (i) if the approval of alternative arrangements for the company is ceasing to have effect by virtue of paragraph (1)(h) of regulation 20, any time during the period of one month beginning with the date on which notice is given to the employer under paragraph (3) of that regulation; and
  - (ii) otherwise, any time not more than twelve nor less than six months before the date on which the approval of the alternative arrangements under section 19(1) ceases to have effect;
- (c) in the case of a second or subsequent notice under paragraph (1)(a) which is given in respect of a company to which section 18 applies, any time after the expiry of the period of six years beginning with—
  - (i) the date on which the last such notice was given to the company; or
  - (ii) the last permitted notice time falling within paragraph (b),  
whichever is the later.
- (3) In paragraph (1) the “approval period”, in relation to arrangements, means, subject to paragraph (4), the period of six months beginning—
  - (a) in a case where notice is given under paragraph (1)(a) within the period mentioned in paragraph (2)(a)(i), with the commencement date or, as the case may be, the date on which section 18 first applies to the company;
  - (b) in a case where such notice is given within the period mentioned in paragraph (2)(a)(ii) or (b)(i), with the date on which notice under regulation 20(3) is given to the employer; and
  - (c) otherwise, with the date on which notice is given under paragraph (1)(a).
- (4) In the case of a company to which section 18 has ceased to apply and then reapplies (otherwise than by virtue of section 19(1) ceasing to apply to it or section 16 or 17(1) ceasing to apply to any relevant scheme), paragraphs (2) and (3) apply as if—
  - (a) section 18 first applied to the company at the time when that section reapplies to it; and
  - (b) no notices had been given in relation to the company under paragraph (1)(a) before that time.
- (5) The statutory consultation procedure in respect of proposals under section 19(1) for the continuation of existing or adoption of new alternative arrangements is set out in Schedule 1 (which also sets out the conditions which must be satisfied for the approval of such arrangements).
- (6) In that Schedule “the proposer”, in relation to such arrangements, means the employer.

### **Time limits for making alternative arrangements under section 19**

**16.—(1)** Where, by virtue of section 19(1) (alternative arrangements for selecting directors), section 18 does not apply to a company, the company must secure that the alternative arrangements are made no later than is necessary to secure that directors can be selected immediately in pursuance of the arrangements to fill any vacancy arising after the appropriate time.

- (2) In paragraph (1), “the appropriate time” means—
  - (a) in a case where, immediately before the approval of the alternative arrangements, section 18 applied to the company, the expiry of the period of six months beginning with the date on which the alternative arrangements are approved;

- (b) in a case where, immediately before the approval of the alternative arrangements section 18 did not apply to the company—
- (i) if the approval is for the continuation of existing alternative arrangements, the date on which the employer gives notice to the company under regulation 15(1)(b)(ii) in respect of the approval of the arrangements; and
  - (ii) otherwise, the expiry of the period of six months beginning with that date.

*Cessation of application of requirements*

**Cessation of application of requirements**

17. Subject to any provision made by the articles of association of a company, the fact that section 18 has ceased to apply to the company shall not terminate the directorship of any member-nominated director of the company but, if he is a member of the scheme, he shall cease to be a director if he ceases to be a member.

*Aggregation of schemes*

**Aggregation of linked schemes**

18. Where a company is a trustee of two or more schemes which are treated as a single scheme by virtue of section 18(8) or regulation 5(2), this Part and all other provisions of these regulations as they have effect in relation to such a company and such schemes (except regulations 4 to 6) apply as if those schemes were a single scheme and the members of each of the schemes were members of that scheme.

**PART IV**

**GENERAL AND SUPPLEMENTARY PROVISIONS**

*Modifications for special cases*

**Modifications**

19. Schedule 3 has effect for the purpose of modifying the provisions there mentioned in their application to certain cases, including—
- (a) schemes with members in employments under different employers;
  - (b) schemes where the employer is sole trustee;
  - (c) companies to which section 18 applies which are the employer in relation to the relevant scheme;
  - (d) schemes without active members.

*General provisions about rules and arrangements*

**Cessation of approval of appropriate rules and alternative arrangements**

**20.**—(1) The approval of appropriate rules or alternative arrangements under the statutory consultation procedure ceases to have effect (but without prejudice to the validity or term of the appointment of any person selected in accordance with them)—

- (a) at the expiry of the period of six years beginning with the date on which the rules or arrangements were treated as approved under paragraph 8 or, as the case may be, paragraph 9 of Schedule 1;
- (b) in the case of an approval of rules, on the date on which fresh rules are treated as approved under paragraph 8 or, as the case may be, paragraph 9 of Schedule 1;
- (c) in the case of the approval of rules applying to a scheme to which section 16 ceases to apply, on its ceasing;
- (d) in the case of an approval of arrangements under section 17, on the date on which the employer gives notice under regulation 9(1)(b)(ii) in respect of the approval of new arrangements or the fresh approval of the existing arrangements;
- (e) in the case of the approval of rules applying to a company to which section 18 ceases to apply, on its ceasing;
- (f) in the case of an approval of arrangements under section 19, on the date on which the company gives notice under regulation 15(1)(b)(ii) in respect of the approval of new arrangements or the fresh approval of the existing arrangements;
- (g) in the case of rules applying to a scheme to which section 16 applies or arrangements under section 17, if—
  - (i) a relevant event has occurred in relation to the scheme to which the rules or arrangements apply; and
  - (ii) the trustees of the scheme have given notice to the employer under paragraph (3) that this paragraph is to apply,  
at the expiry of the period of six months beginning with the date on which that notice is given or, if paragraph (4) applies, with the opt-out failure date; or
- (h) in the case of rules applying to a company to which section 18 applies or arrangements under section 19, if—
  - (i) a relevant event has occurred in relation to a scheme which is a relevant scheme in relation to the company to which the rules or arrangements apply; and
  - (ii) the trustees of the scheme have given notice to the employer under paragraph (3) that this paragraph is to apply,  
at the expiry of the period of six months beginning with the date on which that notice is given or, if paragraph (5) applies, with the opt-out failure date, whichever occurs first.

(2) For the purposes of paragraph (1)(g) and (h), a relevant event occurs in relation to a scheme if, as a result of the event—

- (a) the accrued rights of a group of members have been or are to be transferred to or from the scheme in such circumstances as are mentioned in regulation 12(2) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(15) (transfers without consent);
- (b) any person becomes or ceases to be the employer in relation to the scheme; or

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(15) S.I. 1991/167. Regulation 12(2) was substituted by regulation 35 of the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (S.I. 1992/1531).

- (c) a company which is the employer in relation to the scheme becomes a wholly-owned subsidiary (within the meaning of section 736 of the Companies Act 1985(16)) of another company which is not the employer of persons in the description or category of employment to which the scheme relates.

(3) Where—

- (a) a relevant event has occurred in relation to a scheme; and
- (b) the trustees consider that as a result of that event it would be detrimental to the interests of the members of the scheme for the approval of the appropriate rules or, as the case may be, the alternative arrangements to continue to have effect,

they may give notice in writing to the employer and, in the case of rules, to the eligible members that paragraph (1)(g) or, as the case may be, paragraph (1)(h) applies.

(4) This paragraph applies where the employer duly gives notice under regulation 9(1)(a) during the period of one month beginning with the date on which the notice under paragraph (3) is given that he intends to propose alternative arrangements, but—

- (a) the employer gives the trustees notice in writing within the approval period that he is not proceeding with the proposals; or
- (b) the conditions imposed by regulation 9(1)(b) for the application of section 17(1) are not satisfied within the approval period.

(5) This paragraph applies where the employer duly gives notice under regulation 15(1)(a) during the period of one month beginning with the date on which the notice under paragraph (3) is given that he intends to propose alternative arrangements, but—

- (a) the employer gives the company notice in writing within the approval period that he is not proceeding with the proposals; or
- (b) the conditions imposed by regulation 15(1)(b) for the application of section 19(1) are not satisfied within the approval period.

#### **Appropriate rules in cases where insufficient nominations are received**

**21.** For the purposes of section 20(4) (by virtue of which where vacancies for member-nominated trustees or member-nominated directors are not filled because insufficient nominations are received, the next period in which persons may be nominated and selected as such trustees or directors is to be determined by the appropriate rules), the next period must end at the time when, if there had been sufficient nominations for a person to be selected by nomination, his selection would have ceased to have effect in accordance with the arrangements made under section 16(5) or, as the case may be, section 18(5).

#### *Miscellaneous and supplementary*

#### **Records**

**22.—(1)** All such records shall be kept by the trustees of a trust scheme of the steps taken by them to secure—

- (a) that such arrangements as are required to be made by section 16(1) or 17(2) are made; and
- (b) that such arrangements as are required by section 16(1) or 17(2) to be implemented, or the appropriate rules, are implemented,



as are adequate for enabling it to be determined whether all such steps as are reasonable to secure compliance have been taken by them.

- (2) All such records shall be kept by a company which is a trustee of a trust scheme as to—
- (a) the making of such arrangements as are required to be made by section 18(1) or 19(2); and
  - (b) the implementation of such arrangements as are required by section 18(1) or 19(2) to be implemented, or the appropriate rules,

as are adequate for enabling it to be determined whether they have been made or, as the case may be, implemented.

(3) All such records shall be kept by employers of the steps taken by them to comply with the statutory consultation procedure specified in Schedule 1 as are adequate for enabling it to be determined whether they have complied with that procedure.

### **Notices**

**23.**—(1) Subject to paragraph (2), any notice to be given to a person under these regulations may be given only by delivering it to him or by leaving it at his proper address or by sending it to him by post; and for the purposes of this regulation and section 7 of the Interpretation Act 1978(17) in its application to this regulation, the proper address of any member is his latest address known to the trustees of the scheme.

- (2) For the purposes of—
- (a) regulation 20(3),
  - (b) paragraph 2 of Schedule 1, as it applies in respect of proposals for appropriate rules, and
  - (c) paragraphs 1 and 2 of Schedule 2,

notice shall be deemed to have been given to a person if any procedure has been followed which appears to the trustees of the scheme to be adequate to draw his attention to it.

(3) For the purposes of paragraph 2 of Schedule 1, as it applies in respect of proposals for alternative arrangements, notice shall be deemed to have been given to a person if any procedure has been followed which appears to the proposer (within the meaning of that Schedule) and the trustees of the scheme to be adequate to draw his attention to it.

(4) Where, apart from this paragraph, any provision of these regulations would provide for any person acting in one capacity to give notice both to himself (acting in another capacity) and to another person, then he shall be deemed duly to have given notice if he duly gives notice to that other person.

### **Transitional provisions**

**24.** Schedule 4 has effect for the purpose of making transitional provision.

Signed by authority of the Secretary of State for Social Security.

Department of Social Security  
2nd May 1996

*Oliver Heald*  
Parliamentary Under-Secretary of State,

*Status: This is the original version (as it was originally made).*

SCHEDULE 1

Regulations 8(2), 9(5), 14(2) and 15(5).

THE STATUTORY CONSULTATION PROCEDURE

*“The proposer”*

1. In this Schedule—

“the proposer” has the meaning given in regulation 8(3), 9(6), 14(3) or 15(6), as appropriate;  
“the objection period”, in relation to proposals, means the period specified under paragraph 6(2)(b) as that before the end of which objections must be made to them.

*Notice to be given by the proposer*

2. The proposer must give each of the eligible members notice in writing which satisfies the requirements set out in paragraphs 3 to 7.

*The appropriate general statement*

3.—(1) The notice must contain the appropriate general statement.

(2) In sub-paragraph (1), “the appropriate general statement” means—

- (a) in the case of appropriate rules for the purposes of section 16, a statement that the trustees of the scheme are required to make such arrangements for persons selected by members of the scheme to be trustees of the scheme as are required by section 16 and to implement appropriate rules making such provision as is required or authorised by section 20;
- (b) in the case of alternative arrangements proposed under section 17(1), a statement that, unless alternative arrangements are proposed which are approved under the statutory consultation procedure set out in this Schedule, the trustees of the scheme are required to make such arrangements for persons selected by members of the scheme to be trustees of the scheme as are required by section 16;
- (c) in the case of appropriate rules for the purposes of section 18, a statement that the company is required to make such arrangements for persons selected by members of the scheme to be its directors as are required by section 18 and to implement appropriate rules making such provision as is required or authorised by section 20;
- (d) in the case of alternative arrangements proposed under section 19(1), a statement that, unless alternative arrangements are proposed which are approved under the statutory consultation procedure set out in this Schedule, the company is required to make such arrangements for persons selected by members of the scheme to be directors of the company as are required by section 18.

*Notices concerning appropriate rules: requirement for general information about arrangements*

4.—(1) A notice in respect of proposals for appropriate rules must specify in general terms the arrangements that the proposer is proposing to make to comply with the requirements of section 16 or, as the case may be, section 18.

(2) In particular, such a notice must specify—

- (a) the total number of trustees for the scheme or, as the case may be, directors of the company;
- (b) the number of trustees or, as the case may be, directors to be selected by members;

- (c) the number of trustees or, as the case may be, directors to be selected by the employer or any other person;
- (d) whether—
  - (i) if a vacancy for a member-nominated trustee or, as the case may be, a member-nominated director is not filled because insufficient nominations are received, the vacancy is to be filled or to remain; and
  - (ii) if it is to be filled, the procedure proposed to be followed;
- (e) in the case of appropriate rules for the purposes of section 16, the period for which selection as a member-nominated trustee is to have effect in accordance with section 16(5); and
- (f) in the case of appropriate rules for the purposes of section 18, the period for which selection as a member-nominated director is to have effect in accordance with section 18(5).

*Particulars of rules or arrangements proposed*

5.—(1) The notice must specify the appropriate rules or, as the case may be, alternative arrangements proposed.

(2) A notice relating to appropriate rules for the purposes of section 16 or 18 must include particulars as to—

- (a) whether any and, if so, what conditions are proposed for eligibility for nomination;
- (b) the number of members of the scheme proposed to be required to make a nomination;
- (c) in cases where a vacancy is not filled because insufficient nominations are received, the period proposed as the next period in which persons may be nominated and selected; and
- (d) the procedure proposed for selection where the number of persons nominated to fill vacancies exceeds the number of vacancies.

(3) A notice relating to alternative arrangements proposed under section 17(1) or 19(1) must include particulars as to—

- (a) the number proposed as the total number of trustees for the scheme or, as the case may be, directors for the company;
- (b) the procedure proposed to be adopted for the selection of trustees or, as the case may be, directors;
- (c) the period proposed as their period of office;
- (d) if it is proposed that the functions of any trustees or directors should differ from those of other trustees or, as the case may be, directors, the differences in those functions and, in the case of arrangements proposed under section 19(1), whether any special rules for decisions to be made by particular directors are proposed and, if so, what they are;
- (e) in the case of alternative arrangements proposed under section 17(1), whether it is proposed that, if at the time the arrangements come into force the trustees of the scheme include member-nominated trustees, they should continue or cease to be trustees and, if they are to cease, the time when they are to do so; and
- (f) in the case of alternative arrangements proposed under section 19(1), whether it is proposed that, if at the time the arrangements come into force the directors of the company include member-nominated directors, they should continue or cease to be directors and, if they are to cease, the time when they are to do so.

*Status: This is the original version (as it was originally made).*

*Statement as to approval procedure*

6.—(1) The notice must state that the proposed appropriate rules or, as the case may be, alternative arrangements must be approved by the eligible members and either—

- (a) that those members are being given a period within which they may object to the proposer about the proposed rules or arrangements and will be balloted only in the circumstances mentioned in paragraph 9(1)(b); or
- (b) that those members will be balloted directly in accordance with paragraph 9(1)(a).

(2) If sub-paragraph (1)(a) applies the notice must summarise the effect of paragraphs 8 and 9 and specify—

- (a) the manner in which objections may be made;
- (b) the objection period (being a period of not less than one month beginning with the date on which the notice is given); and
- (c) if that period will end before the end of the first scheme year, the number of eligible members for the purposes of paragraph 8(2)(b).

(3) If the eligible members are to be balloted directly in accordance with paragraph 9(1)(a), the notice must—

- (a) summarise the effect of paragraph 9;
- (b) specify the procedure to be used for the ballot (including whether it is to be conducted so as to secure that those voting do so in secret), and
- (c) the last date on which votes may be cast, being a date not less than one month after the date on which the notice is given.

7. In a case where the trustees have made a determination under section 21(8)(a)(ii) (by virtue of which the trustees may determine that the eligible members include such deferred members as they determine), the notice must specify the effect of that determination.

*Approval in absence of objections*

8.—(1) If the notice contains the statement mentioned in paragraph 6(1)(a), the eligible members must be given the opportunity of objecting to the proposed appropriate rules or alternative arrangements.

(2) If—

- (a) no objections are received within the objection period; or
- (b) objections to the proposed rules by eligible members totalling less in number than 10 per cent. of the total number of such members which the scheme comprises at the end of the objection period (or, if it is less, 10,000 eligible members) are received within that period,

the appropriate rules or, as the case may be, the alternative arrangements shall be treated as approved on the last day of the objection period.

(3) For the purposes of sub-paragraph (2)(b), where the objection period ends before the end of the first scheme year, the number of eligible members at the end of that period shall be taken to be such number as is specified in the notice under paragraph 6(2)(c).

*Approval by ballot*

9.—(1) This paragraph applies if—

- (a) the notice specifies that the direct ballot procedure is to be used; or

- (b) at least the number of objections mentioned in paragraph 8(2)(b) is received within the objection period.
- (2) Where this paragraph applies—
  - (a) the appropriate rules or, as the case may be, the alternative arrangements must be approved by a ballot of the eligible members by a majority of those voting; and
  - (b) the proposer must give the appropriate person notice of the result of the ballot as soon as it is determined by the proposer.
- (3) In sub-paragraph (2)(b) “appropriate person” means—
  - (a) if the proposer is the trustees, the employer;
  - (b) if the proposer is the employer, the trustees.
- (4) If approval is given by such a ballot, the appropriate rules or, as the case may be, the alternative arrangements shall be treated as approved on the date notice is given under sub-paragraph (2)(b).

*Immaterial omissions etc.*

- 10.**—(1) This paragraph applies where—
- (a) the proposer of appropriate rules or alternative arrangements for a scheme has taken such steps as are reasonably practicable to comply with the statutory consultation procedure in respect of them;
  - (b) they have been treated by the trustees of the scheme as being approved under this Schedule, on the assumption that its requirements have been met; and
  - (c) it is subsequently discovered that those requirements were not actually met.
- (2) Where this paragraph applies but, even on the most adverse assumptions, the rules or, as the case may be, arrangements would still have been treated as approved under this Schedule by the eligible members taken as a whole, they are to be so treated; and for the purposes of this sub-paragraph the most adverse assumptions are that the requirements had been met and had resulted in objections being made to the rules or, as the case may be, arrangements (whether by representation or voting) in every case where the failure to meet the requirements may have resulted in objections not being made.
- (3) Where this paragraph applies, things done by a person purporting to act as trustee by virtue of an appointment in accordance with the rules or, as the case may be, arrangements are not invalid merely because of the failure to meet the requirements of this Schedule.

SCHEDULE 2

Regulations 8 and 14.

THE PRESCRIBED APPROPRIATE RULES

PART I

MEMBER-NOMINATED TRUSTEES

*Eligibility and procedure for nomination*

1.—(1) The trustees of the scheme shall invite nominations to be made for the filling of vacancies by giving notice in writing to the active members specifying the last date on which nominations may be made (being a date not earlier than one month after the date on which the notice is given).

(2) Subject to sub-paragraph (3), any person may be nominated to be a member-nominated trustee (including a person already serving as such).

(3) A person who is not a member of the scheme may only be nominated if—

- (a) his nomination is approved in writing by the employer; or
- (b) the employer does not require his approval to be obtained.

(4) A nomination must be made by an active member of the scheme and be supported by at least one other active member.

(5) A nomination must be made—

- (a) by notice in writing to the trustees of the scheme; and
- (b) with the consent in writing of the person nominated.

(6) A notice under sub-paragraph (1) must specify in general terms the arrangements that the trustees are proposing to make to comply with the requirements of section 16, specifying in particular the matters which would be required by paragraph 4(2) of Schedule 1 to be specified in a notice given by the trustees under paragraph 2 of that Schedule if they were proposing appropriate rules.

*Selection of nominees*

2.—(1) If the number of persons duly nominated to fill vacancies for member-nominated trustees does not exceed the number of vacancies, those persons shall become member-nominated trustees.

(2) If the number of persons duly nominated to fill vacancies for member-nominated trustees exceeds the number of vacancies, those vacancies must be filled by those nominees elected by a ballot of the active members, conducted by the trustees of the scheme in accordance with sub-paragraph (3) and in the manner specified in the notice under sub-paragraph (4).

(3) Each member may vote only for one of the nominees and the vacancy or, as the case may be, vacancies shall be filled by the nominee or, as the case may be, the nominees for whom the most votes are cast (with a tie between nominees being resolved by those nominees drawing lots).

(4) Not later than 14 days after the last date on which nominations may be made the trustees of the scheme shall give notice in writing to the active members specifying—

- (a) the procedure to be used for the ballot (including whether it is to be conducted so as to secure that those voting do so in secret);
- (b) the last date on which votes may be cast (being a date not less than 14 days nor more than one month after the date on which the notice is given); and

- (c) the arrangements to be made for overseeing the conduct of the ballot, and for the counting of the votes and the declaration of the result.
- (5) If the arrangements provide that, where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the vacancy is to be filled—
  - (a) further nominations to fill that vacancy may be made at any time during the period beginning with the day after the last date specified in the notice under paragraph 1(1) originally inviting nominations in respect of the vacancy and ending with the time mentioned in regulation 21; and
  - (b) where a person is duly nominated in that period, he is selected to fill that vacancy on the date that nomination is made or, if there is more than one nomination, the first person nominated is selected.
- (6) If the arrangements provide that, where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the vacancy is to remain, the next period in which persons may be nominated and selected to fill that vacancy is—
  - (a) if the trustees of the scheme consent, the period—
    - (i) beginning with the day after the last date specified in the last notice under paragraph 1(1) inviting nominations for the vacancy; and
    - (ii) ending with the time mentioned in regulation 21;
  - (b) otherwise, the period—
    - (i) beginning with the period during which nominations could be made to select a new member-nominated trustee if the vacancy had been filled and the member-nominated trustee appointed had completed his period of office; and
    - (ii) ending with the time mentioned in regulation 21.

## PART II

### MEMBER-NOMINATED DIRECTORS

- 3.** The prescribed rules for the purposes of section 20(1)(b) in respect of a company to which section 18 applies are those set out in Part I but with the following modifications—
- (a) for references to member-nominated trustees there shall be substituted references to member-nominated directors;
  - (b) for the references in paragraphs 1(1), (5) and (6) and 2(2), (4) and (6) to the trustees of the scheme there shall be substituted references to the company to which section 18 applies; and
  - (c) for the reference in paragraph 1(6) to section 16 there shall be substituted a reference to section 18.

## SCHEDULE 3

Regulation 19.

## MODIFICATIONS OF PENSIONS ACT 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, sections 16 to 21 have effect with the following modifications—

- (a) in sections 16(6), 17(1)(a), (5), 18(6) and 19(1)(a) and (5) for the word “employer” substitute the words “appropriate person”;
- (b) in sections 17(2)(b) and 19(2)(b) for the word “employer's” substitute the words “appropriate person's”;
- (c) in section 18(1) for the words “the employer” substitute the words “any of the employers”;
- (d) in section 18(8) for paragraphs (a) and (b) substitute the words “a trustee of two or more trust schemes by virtue of the trusteeship of which this section applies to it, then, subject to subsection (9)”;
- (e) after section 18(8) insert—

“(9) Where—

- (a) apart from this subsection, subsection (8) would apply to a company; and
- (b) there are only two schemes by virtue of the trusteeship of which this section applies to the company,  
the company may determine that subsection (8) shall not apply to those schemes.”;
- (f) in section 20(5) for the words “the employer” and “the employer's” substitute respectively the words “any employer” and “all the employers”;
- (g) in section 21 at the end add—

“(9) In sections 16 to 19 “appropriate person” means the person whom the employers nominate to act for them for the purposes of this subsection 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, regulations 7(2)(d), 9, 10(2)(b)(i), 13(2)(d), 15, 16(2)(b)(i), 20(1), (3), (4) and (5), 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 section 21(9), as inserted by sub-paragraph (1)); and
- (b) paragraph 1(3) of Schedule 2 applies—
  - (i) with the substitution in paragraph (a) for the words “the employer” of the words “all the employers”, and
  - (ii) with the substitution for paragraph (b) of—
    - “(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 section 18 applies is the sole trustee of, and the sole employer in relation to, a trust scheme these regulations have effect with the following modifications.

(2) In regulation 7(2) for paragraph (d) substitute—

“(d) if before the expiry of the period of six months beginning with the date mentioned in 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 six months beginning with the date with which the approval period expires.”.

(3) In regulation 9—

(a) in paragraph (1)—

(i) in paragraph (a) for the words “to the trustees” onwards substitute the words “under Schedule 1 at a permitted notice time to the eligible members of the scheme of his proposals for alternative arrangements under section 17(1)”;

(ii) paragraph (b)(ii) and the word “and” immediately preceding it are omitted;

(b) in paragraph (2)—

(i) in paragraph (a)(i) for the words “one month” substitute the words “six months”;

(ii) in paragraph (a)(ii) and (b)(i) for the words “one month” substitute the words “six months” and for the words “to the employer” substitute the words “to the eligible members”;

(iii) in paragraph (c)(i) omit the words “to the trustees of the scheme”;

(c) for paragraph (3) substitute—

“(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 six 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 “the date” onwards substitute the words “the date on which the arrangements are approved”.

(5) In regulation 20—

(a) in paragraph (1)(d), for the words “the date” onwards substitute the words “the date following the date on which the arrangements are approved”;

(b) in paragraph (1)(g), in paragraph (ii) for the words “the employer” substitute the words “the eligible members”, and for the words “with the opt-out failure date” substitute the words “of the approval period”;

(c) in paragraph (3), omit the words “to the employer and, in the case of rules,”;

(d) in paragraph (4), omit paragraph (a).

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

(7) In Schedule 4—

(a) in paragraphs 3(1) and 5 for the words “to the trustees of a section 16 scheme” substitute the words “to the eligible members of the scheme”; and

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- (b) in paragraph 5(c) for the words “to the trustees” substitute the words “to the eligible members”.

*Cases where a section 18 company is the employer*

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

- (2) In regulation 13(2) for paragraph (d) substitute—

“(d) if before the expiry of the period of six months beginning with the date mentioned in 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 six months beginning with the date with which the approval period expires.”.

- (3) In regulation 15—

- (a) in paragraph (1)—

(i) in paragraph (a) for the words “to the company” onwards substitute the words “under Schedule 1 at a permitted notice time to the eligible members of the scheme of its proposals for alternative arrangements under section 19(1)”;

(ii) paragraph (b)(ii) and the word “and” immediately preceding it are omitted;

- (b) in paragraph (2)—

(i) in paragraph (a)(i) for the words “one month” substitute the words “six months”;

(ii) in paragraph (a)(ii) and (b)(i) for the words “one month” substitute the words “six months” and for the words “to the employer” substitute the words “to the eligible members”;

- (v) in paragraph (c)(i) omit the words “to the company”;

- (c) for paragraph (3) substitute—

“(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 six 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 “the date” onwards substitute the words “the date on which the arrangements are approved”.

- (5) In regulation 20—

(a) in paragraph (1)(f), for the words “the date” onwards substitute the words “the date following the date on which the arrangements are approved”;

(b) in paragraph (1)(h), in paragraph (ii) for the words “the employer” substitute the words “the eligible members”, and for the words “with the opt-out failure date” substitute the words “of the approval period”;

(c) in paragraph (3), omit the words “to the employer and, in the case of rules,”;

(d) in paragraph (5), omit paragraph (a).

- (6) In regulation 23(3) omit the words “and the trustees of the scheme”.

- (7) In Schedule 4—

- (a) in paragraphs 4(1) and 6 for the words “to a section 18 company” substitute the words “to the eligible members of the scheme”; and
- (b) in paragraph 6(c) for the words “to the company” substitute the words “to the eligible members”.

*Schemes with few or no active members*

4.—(1) Subject to sub-paragraph (2), in the application of sections 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 sections 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) section 21(8)(a) shall have effect with the substitution for paragraphs (i) and (ii) of the words “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) Section 16 has effect with the substitution for subsection (5) of the following subsections in its application in the cases specified in subsection (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 subsection (5), the minimum period is three years or (if less)—

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- (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;
- (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 subsection (6), as respects any trustee whose trusteeship is to terminate in those circumstances, his period of office at that time.”.

(2) Section 18 shall have effect with the substitution for subsection (5) of the following subsections in the cases specified in subsection (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 subsection (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 subsection (6), as respects any director whose office is to terminate in those circumstances, his period of office at that time.”.

*Schemes requiring amendment: disapplication of s.591B of the Taxes Act*

**6.** In its application to a scheme which requires to be modified to enable it to comply with such arrangements or rules as are required by section 16(1) or 17(2), section 21(3) shall apply with the insertion after the word “implemented” of the words “nor any modification of a scheme for the purpose of enabling it to comply with any such arrangements or rules”.

*Removal of member-nominated directors*

**7.** In its application to a company which is not a wholly-owned subsidiary (within the meaning of section 736 of the Companies Act 1985<sup>(18)</sup>) of a company which is the sole employer in relation to a relevant scheme, section 18(3)(b) has effect with the insertion after the word “person” of the words “(otherwise than under section 303 of the Companies Act 1985)”.

*Companies which are trustees of relevant and other schemes*

**8.** 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, section 18(8) has effect with the insertion at the end of

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(18) 1985 c. 6.

paragraph (a) of the words “which are schemes by virtue of the trusteeship of which this section applies to it”.

## SCHEDULE 4

Regulation 24.

### TRANSITIONAL PROVISIONS

#### *Preliminary*

**1.** In this Schedule—

“the pre-commencement period” means the period beginning with 6th October 1996 and ending with the day before the commencement date;

“section 16 scheme” means a trust scheme to which section 16 applies or would apply if sections 16 to 21 and all these regulations were in force;

“section 18 company” means a company to which section 18 applies or would apply if sections 16 to 21 and all these regulations were in force.

#### *General disregard of action taken before commencement date*

**2.** Except as provided in this Schedule, anything done before the commencement date shall not be treated as done under or in compliance with any requirements imposed by or under sections 16 to 21.

#### *Waiver of employer’s rights under sections 17 and 19*

**3.—(1)** If at any time during the pre-commencement period the employer gave notice in writing to the trustees of a section 16 scheme that he did not intend to propose alternative arrangements under section 17(1) in respect of the scheme before 6th May 1997, no such proposals may be made in respect of the scheme by him or any other person before that date (and paragraph 5 does not apply to any notice given in respect of the scheme in the pre-commencement period).

(2) Where such a notice was given, regulation 9(2)(a) (permitted notice time for first notice of proposals of alternative arrangements) shall have effect in relation to the scheme with the omission of paragraph (i) and the substitution in paragraph (iii) for the words “the date applicable under paragraph (i)” of the words “the commencement date”.

**4.—(1)** If at any time during the pre-commencement period the employer gave notice in writing to a section 18 company that he did not intend to propose alternative arrangements under section 19(1) in respect of the company before 6th May 1997, no such proposals may be made in respect of the company by him or any other person before that date (and paragraph 6 does not apply to any notice given in respect of the company in the pre-commencement period).

(2) Where such a notice was given, regulation 15(2)(a) (permitted notice time for first notice of proposals of alternative arrangements) shall have effect in relation to the company with the omission of paragraph (i) and the substitution in paragraph (iii) for the words “the date applicable under paragraph (i)” of the words “the commencement date”.

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*Pre-commencement period proposals by the employer*

5. If during the pre-commencement period the employer gave notice in writing to the trustees of a section 16 scheme that he intended to propose alternative arrangements in respect of the scheme, then these regulations shall apply—

- (a) as if that notice had been given under regulation 9(1)(a) at a permitted notice time (within the meaning of that regulation);
- (b) as if the approval period for the purposes of regulation 9(1)(b) were the period of six months beginning with the date on which the notice was given; and
- (c) in any case where the employer gave notice in writing to the trustees before the commencement date that he was not proceeding with those proposals, as if regulation 7(2) (d) were omitted.

6. If during the pre-commencement period the employer gave notice in writing to a section 18 company that he intended to propose alternative arrangements in respect of the company, then these regulations shall apply—

- (a) as if that notice had been given under regulation 15(1)(a) at a permitted notice time (within the meaning of that regulation);
- (b) as if the approval period for the purposes of regulation 15(1)(b) were the period of six months beginning with the date on which the notice was given; and
- (c) in any case where the employer gave notice in writing to the company before the commencement date that he was not proceeding with those proposals, as if regulation 13(2) (d) were omitted.

*Pre-commencement period action*

7.—(1) Where such a notice as is mentioned in paragraph 3(1), 4(1), 5 or 6 was given, then for the purposes of determining whether the requirements of sections 16 to 21 and these regulations have been complied with in respect of the section 16 scheme or, as the case may be, the section 18 company in question, things done on or after the date that notice was given have the same effect as if sections 16, 17(1) to (4), 18, 19(1) to (4), 20 and 21(3) to (8) and all these regulations had come into force on that date.

(2) Nothing in paragraph (1) shall be taken to imply—

- (a) that section 10 (civil penalties) applies to any act or omission occurring before the commencement date; or
- (b) that the meaning of “the commencement date” in these regulations is altered.

*Scheme alterations, overriding provisions and records*

8.—(1) Where such a notice as is mentioned in paragraph 3(1) or 5 is given, sections 21(3), 68 and 117 and regulations 11 and 22 have effect, in relation to the section 16 scheme and to the employer in relation to that scheme, as if sections 16 to 21 and the remainder of these regulations were in force.

(2) Where such a notice as is mentioned in paragraph 4(1), or 6 is given, regulation 22 has effect in relation—

- (a) to the section 18 company; and
- (b) to the person who is the employer in relation to the scheme which is the relevant scheme in relation to the section 18 company,

as if sections 16 to 21 and the remainder of these regulations were in force.

(3) This paragraph shall be construed before 6th April 1997 as it is construed on and after that date.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations concern the selection and appointment of member-nominated trustees and directors under sections 16 to 21 of the Pensions Act 1995 (c. 26) (“the Act”) and are made before the expiry of the period of six months beginning with the coming into force of the provisions of Part I of the Act by virtue of which they are made. They are accordingly exempt from the requirement in section 120 of the Act for the Secretary of State to consult such persons as he considers appropriate.

Regulations 1 and 2 provide for citation, commencement and interpretation.

Regulation 3 provides for determining the number of members which a scheme comprises.

Regulations 4 and 6 provide for exceptions to the requirement to make arrangements for member-nominated trustees or directors.

Regulation 5 makes provision for extending the provisions of section 18 of the Act to schemes where all the trustees are corporate bodies.

Regulation 7 makes provision as to the timing of the implementation of the member-nominated trustee requirement.

Regulation 8 and Schedule 1 make provision as to approval by scheme members of the appropriate rules for selecting member-nominated trustees. Regulation 8 and Part I of Schedule 2 provide rules for selecting member-nominated trustees where there are no such approved rules under the scheme.

Regulation 9 and Schedule 1 make provision as to the circumstances in which the requirement to make arrangements for member-nominated trustees will not apply if alternative arrangements are proposed and as to the procedure on such a proposal.

Regulation 10 makes provision as to the time limits for making such alternative arrangements.

Regulation 11 makes provision as to the circumstances in which trustees may modify schemes by resolution to increase the overall number of trustees.

Regulation 12 makes provision as to the continuation in office of a member-nominated trustee notwithstanding that the requirements have ceased to apply.

Regulations 13 to 17 make similar provision to regulations 6 to 11 but in relation to member-nominated directors.

Regulation 18 provides for two or more schemes sponsored by the same employer or a subsidiary of the employer’s company to be aggregated if the trustee is one or more companies.

Regulation 19 and Schedule 3 make provision for modification of the legislation for multi-employer schemes; for schemes where the employer is sole trustee; for schemes where a company is sole trustee of and sole employer in relation to a scheme; to deal with schemes with few or no active or no pensioner members; to allow the minimum period of office for a member-nominated trustee or director to be reduced in certain circumstances; to disapply section 591B of the Income and Corporation Taxes Act 1988 as respects amendments implementing these regulations; to take account of section 303 of the Companies Act 1985 in relation to the removal of member-nominated directors

**Status:** This is the original version (as it was originally made).

and to cater for companies which are trustees of schemes some of which are and some of which are not schemes to which the requirements as to member-nominated directors apply.

Regulation 20 sets out the circumstances in which appropriate rules and alternative arrangements cease to have effect.

Regulation 21 provides rules in the case where there are insufficient nominations for member-nominated trustees or directors.

Regulation 22 provides for trustees and employers to keep records in relation to the statutory consultation procedure.

Regulation 23 makes provision in relation to notices to be given under these regulations.

Regulation 24 and Schedule 4 make transitional provision so that where the employer gives certain notices on or after 6 October 1996, things done on or after that date have a similar effect to that they would have if sections 16 to 21 and these regulations were in force.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Private Pensions, 11th Floor, Adelphi, 1—11 John Adam Street, London, WC2N 6HT.