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STATUTORY INSTRUMENTS

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**1996 No. 1216**

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

**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.

**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<sup>(1)</sup> (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<sup>(2)</sup> 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—

(1) 1989 c. 26.

(2) 1970 c. 10. Section 208 was repealed by the Finance Act 1971 (c. 68) with effect from 6th April 1980.

- (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);

“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>(3)</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>(4)</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

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<sup>(3)</sup> S.I. 1991/1614.

<sup>(4)</sup> 1988 c. 1. Section 611A was inserted by Schedule 6 to the Finance Act 1989 (c. 26).

- (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(4).

(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(5).

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

- (a) sections 249 and 435 of the Insolvency Act 1986(6) (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(7) (associated persons) shall apply as it applies for the purposes of that Act.

(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(8).

(4) 1988 c. 1. Section 611A was inserted by Schedule 6 to the Finance Act 1989 (c. 26).

(5) 1995 c. 26.

(6) 1986 c. 45.

(7) 1985 c. 66.

(8) 1995 c. 26.

### **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>(9)</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>(10)</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>(11)</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.

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<sup>(9)</sup> 1993 c. 48.

<sup>(10)</sup> 1987 c. 45.

<sup>(11)</sup> 1994 c. 21.

**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;
- (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(12) (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.

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(12) 1993 c. 48.

