
STATUTORY INSTRUMENTS

1996 No. 1216

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

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.