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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 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(1) (transfers without consent);
  - (b) any person becomes or ceases to be the employer in relation to the scheme; or
  - (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(2)) 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

(1) [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](#)).

(2) [1985 c. 6](#).

(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(3) 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.