

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 the case may be;

“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 Article 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 Article 16 and to implement appropriate rules making such provision as is required or authorised by Article 20;
- (b) in the case of alternative arrangements proposed under Article 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 Article 16;
- (c) in the case of appropriate rules for the purposes of Article 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 Article 18 and to implement appropriate rules making such provision as is required or authorised by Article 20;
- (d) in the case of alternative arrangements proposed under Article 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 Article 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 Article 16 or, as the case may be, Article 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;

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- (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 Article 16, the period for which selection as a member-nominated trustee is to have effect in accordance with Article 16(5), and
- (f) in the case of appropriate rules for the purposes of Article 18, the period for which selection as a member-nominated director is to have effect in accordance with Article 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 Article 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 Article 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 Article 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 Article 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 Article 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.

*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 the case where the trustees have made a determination under Article 21(7)(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

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- (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.