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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 **E+W+S**

#### GENERAL PROVISIONS

##### *Preliminary*

#### **Citation and commencement** **E+W+S**

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** **E+W+S**

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

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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>M1</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) <sup>F1</sup>..., 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>M2</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—

- (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);

[<sup>F2</sup>“insurer” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of long-term insurance, or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance;]

“member” [<sup>F3</sup>shall be construed in accordance with regulation 3 and], 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));

[<sup>F4</sup>“relevant self-administered scheme” means an approved scheme which is—

- (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, or
- (b) a scheme which [<sup>F5</sup>satisfies paragraphs (b) and (c)] of that definition and, if it satisfied paragraph (a) of that definition, would be a scheme which the Commissioners of Inland Revenue would not be prohibited by those regulations from approving under section 591 of the Taxes Act][<sup>F6</sup>, or]

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- (c) [<sup>F7</sup>a scheme which satisfies paragraphs (b) and (c) of that definition and, if it satisfied paragraph (a) of that definition, would be a scheme which the Commissioners of Inland Revenue would not have been prohibited from approving under section 591 of the Taxes Act before 7th April 1998;]

“relevant statutory scheme” has the meaning given in section 611A of the Taxes Act <sup>M3</sup>;

[<sup>F8</sup>“relevant wholly insured scheme” means a scheme under which all the benefits are secured by contracts of insurance or annuity contracts, some or all of which are with [<sup>F9</sup>an insurer] which—

- (a) is or is connected with the sole trustee of the scheme, but  
 (b) is not and is not connected with the employer;]

“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>M3</sup>.

[<sup>F10</sup>(1A) The definition of “insurer” in paragraph (1) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;  
 (b) any relevant order under that section; or  
 (c) Schedule 2 to that Act.]

(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>M4</sup>.

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

- (a) sections 249 and 435 of the Insolvency Act 1986 <sup>M5</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>M6</sup> (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 <sup>M7</sup>.

#### Textual Amendments

- F1** Words in reg. 2(1) omitted (6.4.1997) by virtue of [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, **Sch. 1 para. 5(2)(a)** (with [Sch. 1 para. 5\(15\)](#))
- F2** Words in reg. 2(1) inserted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **524(2)(a)**
- F3** Words in reg. 2(1) inserted (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, **Sch. 1 para. 5(2)(b)** (with [Sch. 1 para. 5\(15\)](#))
- F4** Words in reg. 2(1) substituted (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, **Sch. 1 para. 5(2)(c)** (with [Sch. 1 para. 5\(15\)](#))
- F5** Words in reg. 2(1) substituted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), regs. 1(1), **7(2)(a)(i)**
- F6** Word in reg. 2(1) inserted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), regs. 1(1), **7(2)(a)(ii)**
- F7** Words in reg. 2(1) inserted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), regs. 1(1), **7(2)(b)**
- F8** Words in reg. 2(1) inserted (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, **Sch. 1 para. 5(2)(d)** (with [Sch. 1 para. 5\(15\)](#))
- F9** Words in reg. 2(1) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **524(2)(b)**
- F10** Reg. 2(1A) inserted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\)](#), arts. 1, **524(3)**

#### Marginal Citations

- M1** 1989 c.26.

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- M2** 1970 c.10. Section 208 was repealed by the [Finance Act 1971 \(c.68\)](#) with effect from 6th April 1980.
- M3** 1988 c.1. Section 611A was inserted by Schedule 6 to the [Finance Act 1989 \(c.26\)](#).
- M4** 1995 c.26.
- M5** 1986 c.45.
- M6** 1985 c.66.
- M7** 1995 c.26.

### [<sup>F11</sup> Scheme membership **E+W+S**]

3.—(1) Subject to the following provisions of this regulation, in determining at any time after the first scheme year of the scheme for the purposes of sections 16 to 21 and these regulations (so far as those sections and these regulations relate to the number of members which a scheme comprises or to the statutory consultation procedure) whether or not a person is a member or whether he is a member of a specified description, a person shall be treated as becoming or ceasing to be a member or, as the case may be, a member of that description at the beginning of the scheme year following that in which he actually becomes or ceases to be a member or, as the case may be, a member of that description.

(2) If a member ceases to be a member before the statutory consultation procedure begins, he shall not be treated as a member by virtue of paragraph (1) for the purposes of that procedure (but this paragraph does not affect the application of paragraph (1) to persons who cease to be members of a specified description whilst remaining members).

(3) Where paragraph (1) applies and the statutory consultation procedure begins in one scheme year and ends in another, for the purposes of that procedure the question whether a person is a member or a member of a specified description at any time during that procedure shall be determined in accordance with that paragraph immediately before the start of that procedure.

(4) The trustees of a scheme may determine—

- (a) that paragraph (1) shall not apply in relation to the scheme at any time on or after the date of the determination; or
- (b) that, for the purposes of any statutory consultation procedure beginning on or after that date—
  - (i) the question whether a person is a member at any time during that procedure, or
  - (ii) the question whether a member is a member of a specified description at any such time, or
  - (iii) both those questions,

shall be determined at a time no more than two months before the start of that procedure.

(5) A determination under paragraph (4) may apply as respects all the provisions to which paragraph (1) refers or only to provisions specified in the determination, and may be revoked or amended by a further determination.

(6) Paragraphs (1) to (5) are without prejudice to paragraph 8(3) of Schedule 1.

(7) For the purposes of sections 16 to 21 and these regulations, “member”, in relation to a scheme, does not include any person whose service is only pensionable service by virtue of qualifying him for death benefits (unless by virtue of any of the previous provisions of this regulation he is at any time treated as a member by virtue of previous membership).]

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### Textual Amendments

- F11** [Reg. 3](#) substituted (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, **Sch. 1 para. 5(3)** (with [Sch. 1 para. 5\(15\)](#))

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**Changes and effects yet to be applied to :**

- [reg.20\(1\)\(g\)\( ii\) amended by S.I. 1996/1216 reg.19Sch.3 para.2\(5\)\(a\)\(b\)](#)
- [reg.16\(2\)\(b\)\( i\) applied by S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- [Sch.4 para.3\(1\)\(5\) amended by S.I. 1996/1216 reg.19Sch.3 para.2\(7\)\(a\)](#)
- [Sch.4 para.3\(5\)\(e\) amended by S.I. 1996/1216 reg.19Sch.3 para.2\(7\)\(b\)](#)
- [reg.15\(2\)\(a\)\(i\)reg.15\(2\)\(a\)\(ii\)\(b\)\(i\) amended by S.I. 1996/1216 reg.19Sch.3 para.3\(3\)\(b\)\(i\)\(ii\)](#)
- [reg.13\(2\)\(d\) substituted by S.I. 1996/1216 reg.19Sch.3 para.3\(2\)](#)
- [reg.2 \(defns. of alternative arrangements and opt- out failure date\) applied by S.I. 1996/1216 reg.19Sch.3 para 2\(a\)](#)
- [reg.9\(2\)\(a\)\(i\)reg.9\(2\)\(a\)\(ii\)\(b\)\(i\) amended by S.I. 1996/1216 reg.19Sch.3 para.2\(3\)\(b\)\(i\)\(ii\)](#)