
STATUTORY INSTRUMENTS

1996 No. 1216

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

PART II

MEMBER-NOMINATED TRUSTEES

Section 16 arrangements and rules

Implementation of requirements as to member-nominated trustees: general

7.—(1) Subject to the following provisions of this regulation, the trustees of a trust scheme to which section 16 (requirement for member-nominated trustees) applies must secure—

- (a) that such arrangements as are required by section 16(1) are made; and
- (b) that member-nominated trustees are required to be selected in pursuance of the appropriate rules,

by such times as to secure that the number of such trustees never falls below the number provided for by the arrangements in accordance with section 16(6).

(2) Paragraph (1) does not apply during the period of six months beginning—

- (a) in the case of a scheme to which section 16 applies on the commencement date, with that date;
- (b) in the case of a scheme to which section 16 first applies after the commencement date, with the date on which it first applies to the scheme;
- (c) in the case of a scheme to which section 16 has ceased to apply and then reapplies (otherwise than by virtue of section 17(1) ceasing to apply to it or its ceasing to be a relevant scheme), with the date on which section 16 reapplies 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 9(1)(a) that he intends to propose alternative arrangements, but

- (ii) the conditions imposed by regulation 9(1)(b) for the application of section 17(1) are not satisfied within the approval period,

with the opt-out failure date.

(3) A deficiency in the number of member-nominated trustees provided for by the arrangements in accordance with section 16(6) is not a breach of the requirement in paragraph (1) during the appropriate excepted period—

- (a) if a vacancy for such a trustee has not been filled because insufficient nominations are received;

- (b) if such a trustee has ceased to be a trustee otherwise than by virtue of the expiry of his period of office; or
 - (c) if the number of members a 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 trustee to be selected by nomination, his selection would have had effect in accordance with the arrangements made under section 16(5) for the scheme;
 - (b) where paragraph (3)(b) applies, the period of six months beginning with the cessation or the remainder of the trustee’s period of office, if less; and
 - (c) where paragraph (3)(c) applies, the first six months of the year following the second year.

Appropriate rules as to the selection and eligibility of member-nominated trustees

8.—(1) The trustees of a scheme to which section 16 applies, or to which it would apply apart from section 17(1) or regulation 4, may at any time propose appropriate rules in respect of the scheme.

(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 trustees of the scheme.

(4) The prescribed rules for the purposes of section 20(1)(b) (which are the appropriate rules for a scheme to which section 16 applies, if no other rules are for the time being approved) are the rules set out in Part I of Schedule 2.

Proposals by employers for alternative arrangements

Proposals by the employer for alternative arrangements under section 17

9.—(1) Section 17(1) (by virtue of which the requirements in section 16 as to member-nominated trustees do not apply to a trust scheme in certain circumstances) only applies if—

- (a) the employer gives notice in writing to the trustees of the scheme 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 trustees of the scheme 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 scheme under paragraph (1)(a)—
 - (i) any time during the period of one month beginning with the commencement date or, if section 16 does not apply to the scheme 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 16 for the scheme is ceasing to have effect by virtue of paragraph (1)(g) 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 scheme to which by virtue of section 17(1) section 16 does not apply—
 - (i) if the approval of alternative arrangements for the scheme is ceasing to have effect by virtue of paragraph (1)(g) 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 17(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 scheme to which section 16 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 trustees of the scheme; 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 16 first applies to the scheme;
 - (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 scheme to which section 16 has ceased to apply and then reapplies (otherwise than by virtue of section 17(1) ceasing to apply to it or its ceasing to be a relevant scheme) paragraphs (2) and (3) apply as if—
- (a) section 16 first applied to the scheme at the time when that section reapplies to it; and
 - (b) no notices had been given in relation to the scheme under paragraph (1)(a) before that time.
- (5) The statutory consultation procedure in respect of proposals under section 17(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 17

10.—(1) Where, by virtue of section 17(1) (alternative arrangements for selecting trustees), section 16 does not apply to a trust scheme, the trustees must secure that the alternative arrangements are made no later than is necessary to secure that trustees 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 16 applied to the scheme, 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 16 did not apply to the scheme—
 - (i) if the approval is for the continuation of existing alternative arrangements, the date on which the employer gives notice to the trustees under regulation 9(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.

Power of trustees to modify schemes by resolution

Modification of schemes affected by requirements

11. Where a trust scheme to which section 16 applies provides for a maximum total number of trustees (or a maximum which applies in certain circumstances), the trustees may by resolution modify the scheme with a view to increasing that maximum by not more than the number of member-nominated trustees for which provision must be made in accordance with subsection (6) of that section (on the assumption that the total number of trustees is increased in accordance with the resolution).

Cessation of application of requirements

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12.—(1) Subject to any provision of a trust scheme, the fact that section 16 has ceased to apply to the scheme shall not terminate the trusteeship of any member-nominated trustee of the scheme but, if he is a member of the scheme, he shall cease to be a trustee if he ceases to be a member.

(2) Where, at the time when section 22 (requirement for an independent trustee in cases of insolvency etc.) first applies to a scheme, one or more of the scheme's trustees are member-nominated trustees, then—

- (a) the period of office of any such trustee shall not expire on the date on which it would otherwise have done so but, if he is a member, it shall expire if he ceases to be one; and
- (b) if any such trustee ceases to be a trustee, the vacancy may be filled by a trustee appointed by a person who is an independent trustee for the purposes of section 23(1) (conditions for independence of a trustee in cases of insolvency etc.).