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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 III**

**MEMBER-NOMINATED DIRECTORS**

*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; <sup>F1</sup>...
  - <sup>F2</sup>(iii) except where paragraph (iv) applies, any time not less than ten 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; or
  - (iv) any time not less than four years after—
    - (aa) the date section 18 first applies to the company, where this occurs on or after 6th October 2002; or
    - (bb) the date mentioned in paragraph (ii) if such a notice as is mentioned in that paragraph is given on or after 6th October 2002;]

(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—

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- (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) <sup>F3</sup>in any other case (except where the approval of alternative arrangements ceases to have effect by virtue of paragraph (1)(f)(ii) of regulation 20)], 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;
- <sup>F4</sup>(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—
- (i) except where paragraph (ii) applies, any time after the expiry of the period of ten years beginning with—
    - (aa) the date on which the last such notice was given to the company;
    - (bb) the date which is the last permitted notice time falling within subparagraph (b)(i), or
    - (cc) in a case where the approval of alternative arrangements for the scheme has ceased to have effect by virtue of paragraph (1)(f)(ii) of regulation 20, the date on which it did so,

whichever is the latest; or
  - (ii) where the latest of the following dates—
    - (aa) the date on which the last such notice was given to the company;
    - (bb) the date which is the last permitted notice time falling within subparagraph (b)(i), or
    - (cc) in a case where the approval of alternative arrangements for the scheme has ceased to have effect by virtue of paragraph (1)(f)(ii) of regulation 20, the date on which it did so,

occurs on or after 6th October 2002, any time after the expiry of the period of four years beginning with that latest date;
  - (d) at any other time provided that the company has consented to the employer giving the notice under paragraph (1)(a) at that time.]
- (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.

- F1** Word in reg. 15(2)(a)(ii) omitted (6.10.2002) by virtue of [The Occupational Pension Schemes \(Member-nominated Trustees and Directors\) Amendment Regulations 2002 \(S.I. 2002/2327\)](#), regs. 1(1), [4\(a\)\(i\)](#)
- F2** Reg. 15(2)(a)(iii)(iv) substituted for reg. 15(2)(a)(iii) (6.10.2002) by [The Occupational Pension Schemes \(Member-nominated Trustees and Directors\) Amendment Regulations 2002 \(S.I. 2002/2327\)](#), regs. 1(1), [4\(a\)\(ii\)](#)
- F3** Words in reg. 15(2)(b)(ii) 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\(9\)\(a\)](#) (with [Sch. 1 para. 5\(15\)](#))
- F4** Reg. 15(2)(c)(d) substituted for reg. 15(2)(c) (6.10.2002) by [The Occupational Pension Schemes \(Member-nominated Trustees and Directors\) Amendment Regulations 2002 \(S.I. 2002/2327\)](#), regs. 1(1), [4\(b\)](#)

### 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 [<sup>F5</sup>the employer gives notice to the company under regulation 15(1)(b)(ii) in respect of the approval of the arrangements];
- (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.

- F5** Words in reg. 16(2)(a) substituted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), regs. 1(1), [7\(4\)](#)

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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\(3\)\(b\)\(i\)\(ii\)](#)