

SCHEDULE 3

Regulation 19.

MODIFICATIONS OF PENSIONS ACT 1995 AND THESE REGULATIONS

Multi-employer schemes

1.—(1) In their application to any scheme which applies to earners in employments under different employers or, as the case may be, to a company which is the trustee of a relevant scheme which so applies, sections 16 to 21 have effect with the following modifications—

- (a) in sections 16(6), 17(1)(a), (5), 18(6) and 19(1)(a) and (5) for the word “employer” substitute the words “appropriate person”;
 - (b) in sections 17(2)(b) and 19(2)(b) for the word “employer’s” substitute the words “appropriate person’s”;
 - (c) in section 18(1) for the words “the employer” substitute the words “any of the employers”;
 - (d) in section 18(8) for paragraphs (a) and (b) substitute the words “a trustee of two or more trust schemes by virtue of the trusteeship of which this section applies to it, then, subject to subsection (9)”;
 - [^{F1}(e) after section 18(8) insert—

“(9) Where, apart from this subsection, subsection (8) would apply in relation to a company, the company may determine that one or more of the provisions mentioned in that subsection shall not apply as mentioned in that subsection or shall so apply only in relation to some of the schemes to which they would otherwise apply.”];
 - (f) in section 20(5) for the words “the employer” and “the employer’s” substitute respectively the words “any employer” and “all the employers”;
 - [^{F2}(g) in section 21 at the end add—

“(9) In sections 16 to 19 “appropriate person” means—

 - (a) in a case where any employers have notified the trustees in writing that they wish to be consulted as to the nomination of the appropriate person, the person nominated by those employers to act for the employers for the purposes of this subsection, and
 - (b) otherwise, the person nominated by the trustees so to act.”].
- (2) In their application to any such scheme or, as the case may be, company—
- (a) the definitions of “alternative arrangements” and “opt-out failure date” in regulation 2, regulations 7(2)(d), 9, 10(2)(b)(i), 13(2)(d), 15, 16(2)(b)(i), 20(1), (3), (4) and (5), 22(3), paragraph 9(3) of Schedule 1 and Schedule 4 apply with the substitution for references to the employer of references to the appropriate person (as defined in section 21(9), as inserted by sub-paragraph (1));
 - [^{F3}(aa) the definition of “relevant wholly insured scheme” in regulation 2(1) applies with the substitution in paragraph (b) for the word “the employer” of the words “any of the employers”]; and
 - (b) paragraph 1(3) of Schedule 2 applies—
 - (i) with the substitution in paragraph (a) for the words “the employer” of the words “all the employers”, and
 - (ii) with the substitution for paragraph (b) of—

“(b) none of the employers requires his approval to be obtained”.

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- F1** Sch. 3 para. 1(1)(e) 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(14)(a)** (with Sch. 1 para. 5(15))
- F2** Sch. 3 para. 1(1)(g) 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(14)(b)** (with Sch. 1 para. 5(15))
- F3** Sch. 3 para. 1(2)(aa) 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(14)(c)** (with Sch. 1 para. 5(15))

Cases where the employer is sole trustee

2.—(1) Where a person who is not a company to which section 18 applies is the sole trustee of, and the sole employer in relation to, a trust scheme these regulations have effect with the following modifications.

(2) In regulation 7(2) for paragraph (d) substitute—

“(d) if 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 paragraph 2 of Schedule 1 that he is proposing alternative arrangements, but the alternative arrangements are not approved, during the period of six months beginning with the date with which the approval period expires.”.

(3) In regulation 9—

(a) in paragraph (1)—

- (i) in paragraph (a) for the words “to the trustees” onwards substitute the words “ under Schedule 1 at a permitted notice time to the eligible members of the scheme of his proposals for alternative arrangements under section 17(1) ”;
- (ii) paragraph (b)(ii) and the word “and” immediately preceding it are omitted;

(b) in paragraph (2)—

- (i) in paragraph (a)(i) for the words “one month” substitute the words “ six months ”;
- (ii) in paragraph (a)(ii) and (b)(i) for the words “one month” substitute the words “ six months ” and for the words “to the employer” substitute the words “ to the eligible members ”;
- (iii) in paragraph (c)(i) omit the words “to the trustees of the scheme”;

(c) for paragraph (3) substitute—

“(3) In paragraph (1) the “approval period”, in relation to alternative arrangements, means—

- (a) where notice of those arrangements is given under paragraph (2)(a)(iii) or (c), the period of six months beginning with the date on which that notice is given, and
- (b) otherwise, the period within which notice of those arrangements may be given under paragraph (1)(a).”.

(4) In ^{F4}regulation 10(2)(a) and (b)(i) for the words “the date” onwards substitute the words “ the date on which the arrangements are approved ”.

(5) In regulation 20—

^{F5}(a) in paragraph (1)(d)—

- (i) in paragraph (i) for the words “the date” onwards substitute the words “the date following the next date on which arrangements under that section are approved”; and
- (ii) in paragraph (ii) for the words “the trustees” substitute the words “the eligible members”];
- (b) in paragraph (1)(g), in paragraph (ii) for the words “the employer” substitute the words “the eligible members”, and for the words “with the opt-out failure date” substitute the words “of the approval period”;
- (c) in paragraph (3), omit the words “to the employer and, in the case of rules,”;
- (d) in paragraph (4), omit paragraph (a).
- (6) In regulation 23(3) omit the words “and the trustees of the scheme”.
- (7) In Schedule 4—
 - (a) in paragraphs 3(1) and 5 for the words “to the trustees of a section 16 scheme” substitute the words “to the eligible members of the scheme”; and
 - (b) in paragraph 5(c) for the words “to the trustees” substitute the words “to the eligible members”.

- F4** Words in [Sch. 3 para. 2\(4\)](#) substituted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), reg. 1(1), **7(5)(a)**
- F5** [Sch. 3 para. 2\(5\)\(a\)](#) 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(14)(d)** (with [Sch. 1 para. 5\(15\)](#))

Cases where a section 18 company is the employer

3.—(1) Where a company to which section 18 applies is the sole trustee of and sole employer in relation to the relevant scheme these regulations have effect with the following modifications.

- (2) In regulation 13(2) for paragraph (d) substitute—
 - “(d) if before the expiry of the period of six months beginning with the date mentioned in paragraph (a), (b) or (c) the company duly gives notice under paragraph 2 of Schedule 1 that it is proposing alternative arrangements, but the alternative arrangements are not approved, during the period of six months beginning with the date with which the approval period expires.”.
- (3) In regulation 15—
 - (a) in paragraph (1)—
 - (i) in paragraph (a) for the words “to the company” onwards substitute the words “under Schedule 1 at [^{F6}any] time to the eligible members of the scheme of its proposals for alternative arrangements under section 19(1) ”;
 - (ii) paragraph (b)(ii) and the word “and” immediately preceding it are omitted;
 - [^{F7}(b) paragraph (2) is omitted;
 - (c) for paragraph (3) substitute—
 - “(3) In paragraph (1) the “approval period”, in relation to alternative arrangements, means, the period of six months beginning with the date on which notice is given under Schedule 1.”;
 - (d) paragraph (4) is omitted.]

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(4) In [^{F8}regulation 16(2)(a) and (b)(i)] for the words “the date” onwards substitute the words “the date on which the arrangements are approved”.

(5) In regulation 20—

[^{F9}(a) in paragraph (1)(f)—

(i) in paragraph (i) for the words “the date” onwards substitute the words “the date following the next date on which arrangements under that section are approved”; and

(ii) in paragraph (ii) for the words “the company” substitute the words “the eligible members of the scheme”];

(b) in paragraph (1)(h), in paragraph (ii) for the words “the employer” substitute the words “the eligible members”, and for the words “with the opt-out failure date” substitute the words “of the approval period”;

(c) in paragraph (3), omit the words “to the employer and, in the case of rules,”;

(d) in paragraph (5), omit paragraph (a).

(6) In regulation 23(3) omit the words “and the trustees of the scheme”.

(7) In Schedule 4—

(a) in paragraphs 4(1) and 6 for the words “to a section 18 company” substitute the words “to the eligible members of the scheme”;

(b) in paragraph 6(c) for the words “to the company” substitute the words “to the eligible members”.

F6	Words in Sch. 3 para. 3(3)(a)(i) substituted (6.10.2002) by The Occupational Pension Schemes (Member-nominated Trustees and Directors) Amendment Regulations 2002 (S.I. 2002/2327) , regs. 1(1), 6(a)
F7	Sch. 3 para. 3(3)(b)(c)(d) substituted for Sch. 3 para. 3(3)(b)(c) (6.10.2002) by The Occupational Pension Schemes (Member-nominated Trustees and Directors) Amendment Regulations 2002 (S.I. 2002/2327) , regs. 1(1), 6(b)
F8	Words in Sch. 3 para. 3(4) substituted (30.12.1999) by The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1999 (S.I. 1999/3198) , regs. 1(1), 7(5)(b)
F9	Sch. 3 para. 3(5)(a) 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(14)(e) (with Sch. 1 para. 5(15))

Schemes with few or no active members

4.—(1) Subject to sub-paragraph (2), in the application of sections 16 to 21 and these regulations to a scheme in respect of which there are no active members or, as the case may be, to a company which is the trustee of such a relevant scheme, references to the employer are references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have any such members.

(2) Where—

(a) every such person who was an employer at that time is—

(i) an individual who has died;

(ii) a company which has been dissolved or is in the course of winding up; or

(iii) a partnership which is in the course of winding up; or

(b) the trustees of the scheme are unable after all such enquiries as are reasonable to find any such person who was an employer at that time,

the trustees may exercise the functions of an employer under sections 16 to 21 and these regulations, and these regulations shall have effect with the same modifications as if the trustees were an employer who was the sole trustee of the scheme or, as the case may be, a company which is the sole trustee of and the sole employer in relation to the scheme.

(3) In their application to a scheme which has no active or pensioner members—

- (a) section 21(8)(a) shall have effect with the substitution for paragraphs (i) and (ii) of the words “such deferred members of the scheme as the trustees may determine”; and
- (b) Part I of Schedule 2 shall have effect with the substitution for references to active members of references to such deferred members of the scheme as the trustees may determine.

(4) In its application to a scheme which has pensioner members but no active members, Part I of Schedule 2 shall have effect with the substitution for references to active members of references to pensioner members.

(5) In the application of Schedule 2 in a case where the scheme has active members, but the number of such members does not exceed the number of vacancies, references to active members include—

- (a) if the scheme has pensioner members, references to them; and
- (b) otherwise, references to such deferred members of the scheme as the trustees may determine.

Shorter periods of office: casual vacancies etc.

5.—(1) Section 16 has effect with the substitution for subsection (5) of the following subsections in its application in the cases specified in subsection (5A) as so substituted—

“(5) The arrangements must provide for the selection of a person to have effect for not less than the minimum period and not more than six years.

(5A) For the purposes of subsection (5), the minimum period is three years or (if less)—

- (a) in the case of a member-nominated trustee who is selected to fill a vacancy for such a trustee which has arisen on another such trustee ceasing to be a trustee, otherwise than by virtue of the expiry of his period of office, the remainder of that period;
- (b) in the case of a member-nominated trustee who is selected to fill a vacancy which has previously been unfilled because insufficient nominations have been received, the remainder of the period of office for which the selection of a person to fill that vacancy would have had effect if sufficient nominations had been received; and
- (c) in a case where the arrangements provide that the number of member-nominated trustees shall be reduced if a lower number would satisfy the requirement under subsection (6), as respects any trustee whose trusteeship is to terminate in those circumstances, his period of office at that time.”.

(2) Section 18 shall have effect with the substitution for subsection (5) of the following subsections in the cases specified in subsection (5A) as so substituted—

“(5) The arrangements must provide for the selection of a person to have effect for not less than the minimum period and not more than six years.

(5A) For the purposes of subsection (5), the minimum period is three years or (if less)—

- (a) in the case of a member-nominated director who is selected to fill a vacancy for such a director which has arisen on another such director ceasing to be a director, otherwise than by virtue of the expiry of his period of office, the remainder of that period;

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- (b) in the case of a member-nominated director who is selected to fill a vacancy which has previously been unfilled because insufficient nominations have been received, the remainder of the period of office for which the selection of a person to fill that vacancy would have had effect if sufficient nominations had been received; and
- (c) in a case where the arrangements provide that the number of member-nominated directors shall be reduced if a lower number would satisfy the requirement under subsection (6), as respects any director whose office is to terminate in those circumstances, his period of office at that time.”.

Schemes requiring amendment: disapplication of s.591B of the Taxes Act

6. In its application to a scheme which requires to be modified to enable it to comply with such arrangements or rules as are required by section 16(1) or 17(2), section 21(3) shall apply with the insertion after the word “implemented” of the words “ nor any modification of a scheme for the purpose of enabling it to comply with any such arrangements or rules ”.

Removal of member-nominated directors

7. In its application to a company which is not a wholly-owned subsidiary (within the meaning of section 736 of the Companies Act 1985^{M1}) of a company which is the sole employer in relation to a relevant scheme, section 18(3)(b) has effect with the insertion after the word “person” of the words “ (otherwise than under section 303 of the Companies Act 1985) ”.

Marginal Citations

M1 1985 c.6.

^{F10} Modifications of section 18: aggregation

F10 Sch. 3 para. 8 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(14)(f)** (with Sch. 1 para. 5(15))

8.—(1) Where, apart from this paragraph, in its application to a company to which sub-paragraph (2) applies, section 18 would not have effect with the modifications mentioned in paragraph 1(1)(d) and (e), it shall have effect with those modifications.

(2) This sub-paragraph applies to a company—

- (a) to which section 18 applies by virtue of regulation 5(1); or
- (b) which is—
 - (i) the trustee of two or more schemes which are relevant schemes in relation to the company, and
 - (ii) connected with a person who is the employer in relation to one or more of those schemes otherwise than by virtue of being that employer’s wholly-owned subsidiary (within the meaning of section 736 of the Companies Act 1985); or
- (c) which is the trustee of a trust scheme which is not a relevant scheme in relation to that company.]

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