

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 appropriate;
“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 section 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 section 16 and to implement appropriate rules making such provision as is required or authorised by section 20;
- (b) in the case of alternative arrangements proposed under section 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 section 16;
- (c) in the case of appropriate rules for the purposes of section 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 section 18 and to implement appropriate rules making such provision as is required or authorised by section 20;
- (d) in the case of alternative arrangements proposed under section 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 section 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 section 16 or, as the case may be, section 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;
- (c) the number of trustees or, as the case may be, directors to be selected by the employer or any other person;
- (d) whether—

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- (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 section 16, the period for which selection as a member-nominated trustee is to have effect in accordance with section 16(5); and
- (f) in the case of appropriate rules for the purposes of section 18, the period for which selection as a member-nominated director is to have effect in accordance with section 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 section 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 section 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 section 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 section 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 section 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 [F1 may be balloted] 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 [^{F2}begin] 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 ^{F3}..., 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.

Textual Amendments

- F1** Words in Sch. 1 para. 6(1)(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(12)(a)(i)** (with Sch. 1 para. 5(15))
- F2** Word in Sch. 1 para. 6(2)(c) 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(12)(a)(ii)** (with Sch. 1 para. 5(15))
- F3** Words in Sch. 1 para. 6(3) revoked (6.4.1997) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1997 \(S.I. 1997/786\)](#), reg. 1, Sch. 1 para. 5(12)(a)(iii), **Sch. 2** (with Sch. 1 para. 5(15))

7. In a case where the trustees have made a determination under section 21(8)(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 [^{F4}or arrangements] by eligible members totalling less in number than 10 per cent. of the total number of such members which the scheme comprises at the [^{F5}beginning] 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.

[^{F6}(3) Where the objection period will begin before the end of the first scheme year, the trustees must determine for the purposes of paragraph 6(2)(c) and sub-paragraph (2)(b) the number which is to be taken as the number of eligible members at the beginning of the objection period.]

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Textual Amendments

- F4** Words in Sch. 1 para. 8(2)(b) 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(12)(b)(i)** (with Sch. 1 para. 5(15))
- F5** Word in Sch. 1 para. 8(2)(b) 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(12)(b)(ii)** (with Sch. 1 para. 5(15))
- F6** Sch. 1 para. 8(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(12)(c)** (with Sch. 1 para. 5(15))

Approval by ballot

- 9.—**(1) This paragraph applies if—
- (a) the notice specifies that the direct ballot procedure is to be used; or
 - (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.

SCHEDULE 2

Regulations 8 and 14.

THE PRESCRIBED APPROPRIATE RULES

PART I

MEMBER-NOMINATED TRUSTEES

Eligibility and procedure for nomination

1.—(1) The trustees of the scheme shall invite nominations to be made for the filling of vacancies by giving notice in writing to the active members specifying the last date on which nominations may be made (being a date not earlier than one month after the date on which the notice is given).

(2) Subject to sub-paragraph (3), any person may be nominated to be a member-nominated trustee (including a person already serving as such).

(3) A person who is not a member of the scheme may only be nominated if—

- (a) his nomination is approved in writing by the employer; or
- (b) the employer does not require his approval to be obtained.

(4) A nomination must be made by an active member of the scheme and be supported by at least one other active member.

(5) A nomination must be made—

- (a) by notice in writing to the trustees of the scheme; and
- (b) with the consent in writing of the person nominated.

(6) A notice under sub-paragraph (1) must specify in general terms the arrangements that the trustees are proposing to make to comply with the requirements of section 16, specifying in particular the matters which would be required by paragraph 4(2) of Schedule 1 to be specified in a notice given by the trustees under paragraph 2 of that Schedule if they were proposing appropriate rules.

Selection of nominees

2.—(1) If the number of persons duly nominated to fill vacancies for member-nominated trustees does not exceed the number of vacancies, those persons shall become member-nominated trustees.

(2) If the number of persons duly nominated to fill vacancies for member-nominated trustees exceeds the number of vacancies, those vacancies must be filled by those nominees elected by a ballot of the active members, conducted by the trustees of the scheme in accordance with sub-paragraph (3) and in the manner specified in the notice under sub-paragraph (4).

(3) Each member may vote only for [^{F7}one nominee in respect of each vacancy] and the vacancy or, as the case may be, vacancies shall be filled by the nominee or, as the case may be, the nominees for whom the most votes are cast (with a tie between nominees being resolved by those nominees drawing lots).

(4) Not later than 14 days after the last date on which nominations may be made the trustees of the scheme shall give notice in writing to the active members specifying—

- (a) 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);
- (b) the last date on which votes may be cast (being a date not less than 14 days nor more than one month after the date on which the notice is given); and

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- (c) the arrangements to be made for overseeing the conduct of the ballot, and for the counting of the votes and the declaration of the result.
- (5) If the arrangements provide that, where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the vacancy is to be filled—
 - (a) further nominations to fill that vacancy may be made at any time during the period beginning with the day after the last date specified in the notice under paragraph 1(1) originally inviting nominations in respect of the vacancy and ending with the time mentioned in regulation 21; and
 - (b) where a person is duly nominated in that period, he is selected to fill that vacancy on the date that nomination is made or, if there is more than one nomination, the first person nominated is selected.
- (6) If the arrangements provide that, where a vacancy for a member-nominated trustee is not filled because insufficient nominations are received, the vacancy is to remain, the next period in which persons may be nominated and selected to fill that vacancy is—
 - (a) if the trustees of the scheme consent, the period—
 - (i) beginning with the day after the last date specified in the last notice under paragraph 1(1) inviting nominations for the vacancy; and
 - (ii) ending with the time mentioned in regulation 21;
 - (b) otherwise, the period—
 - (i) beginning with the period during which nominations could be made to select a new member-nominated trustee if the vacancy had been filled and the member-nominated trustee appointed had completed his period of office; and
 - (ii) ending with the time mentioned in regulation 21.

Textual Amendments

- F7** Words in Sch. 2 para. 2(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(13) (with Sch. 1 para. 5(15))

PART II

MEMBER-NOMINATED DIRECTORS

- 3.** The prescribed rules for the purposes of section 20(1)(b) in respect of a company to which section 18 applies are those set out in Part I but with the following modifications—
- (a) for references to member-nominated trustees there shall be substituted references to member-nominated directors;
 - (b) for the references in paragraphs 1(1), (5) and (6) and 2(2), (4) and (6) to the trustees of the scheme there shall be substituted references to the company to which section 18 applies; and
 - (c) for the reference in paragraph 1(6) to section 16 there shall be substituted a reference to section 18.

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)”;

[^{F8}(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”;

[^{F9}(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));

[^{F10}(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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Textual Amendments

- F8** 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))
- F9** 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))
- F10** 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 ^{F11}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—

- [^{F12}(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”.

Textual Amendments

- F11** Words in [Sch. 3 para. 2\(4\)](#) substituted (30.12.1999) by [The Personal and Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 1999 \(S.I. 1999/3198\)](#), regs. 1(1), **7(5)(a)**
- F12** [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 [^{F13}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;
- [^{F14}(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.”;

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(d) paragraph (4) is omitted.]

(4) In ^{F15}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—

^{F16}(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”; and

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

Textual Amendments

F13 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)**

F14 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)**

F15 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)**

F16 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,

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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 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.

^{F17} Modifications of section 18: aggregation

Textual Amendments

F17 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.]

SCHEDULE 4

Regulation 24.

TRANSITIONAL PROVISIONS

Preliminary

1. In this Schedule—

“the pre-commencement period” means the period beginning with 6th October 1996 and ending with the day before the commencement date;

“section 16 scheme” means a trust scheme to which section 16 applies or would apply if sections 16 to 21 and all these regulations were in force;

“section 18 company” means a company to which section 18 applies or would apply if sections 16 to 21 and all these regulations were in force.

General disregard of action taken before commencement date

2. Except as provided in this Schedule, anything done before the commencement date shall not be treated as done under or in compliance with any requirements imposed by or under sections 16 to 21.

Waiver of employer’s rights under sections 17 and 19

3.—(1) If at any time during the pre-commencement period the employer gave notice in writing to the trustees of a section 16 scheme that he did not intend to propose alternative arrangements under section 17(1) in respect of the scheme before 6th May 1997, no such proposals may be made in respect of the scheme by him or any other person before that date (and paragraph 5 does not apply to any notice given in respect of the scheme in the pre-commencement period).

(2) Where such a notice was given, regulation 9(2)(a) (permitted notice time for first notice of proposals of alternative arrangements) shall have effect in relation to the scheme with the omission of paragraph (i) and the substitution in paragraph (iii) for the words “the date applicable under paragraph (i)” of the words “the commencement date”.

4.—(1) If at any time during the pre-commencement period the employer gave notice in writing to a section 18 company that he did not intend to propose alternative arrangements under section 19(1) in respect of the company before 6th May 1997, no such proposals may be made in respect of the company by him or any other person before that date (and paragraph 6 does not apply to any notice given in respect of the company in the pre-commencement period).

(2) Where such a notice was given, regulation 15(2)(a) (permitted notice time for first notice of proposals of alternative arrangements) shall have effect in relation to the company with the omission of paragraph (i) and the substitution in paragraph (iii) for the words “the date applicable under paragraph (i)” of the words “the commencement date”.

Pre-commencement period proposals by the employer

5. If during the pre-commencement period the employer gave notice in writing to the trustees of a section 16 scheme that he intended to propose alternative arrangements in respect of the scheme, then these regulations shall apply—

(a) as if that notice had been given under regulation 9(1)(a) at a permitted notice time (within the meaning of that regulation);

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- (b) as if the approval period for the purposes of regulation 9(1)(b) were the period of six months beginning with the date on which the notice was given; and
- (c) in any case where the employer gave notice in writing to the trustees before the commencement date that he was not proceeding with those proposals, as if regulation 7(2)
- (d) were omitted.

6. If during the pre-commencement period the employer gave notice in writing to a section 18 company that he intended to propose alternative arrangements in respect of the company, then these regulations shall apply—

- (a) as if that notice had been given under regulation 15(1)(a) at a permitted notice time (within the meaning of that regulation);
- (b) as if the approval period for the purposes of regulation 15(1)(b) were the period of six months beginning with the date on which the notice was given; and
- (c) in any case where the employer gave notice in writing to the company before the commencement date that he was not proceeding with those proposals, as if regulation 13(2)
- (d) were omitted.

Pre-commencement period action

7.—(1) Where such a notice as is mentioned in paragraph 3(1), 4(1), 5 or 6 was given, then for the purposes of determining whether the requirements of sections 16 to 21 and these regulations have been complied with in respect of the section 16 scheme or, as the case may be, the section 18 company in question, things done on or after the date that notice was given have the same effect as if sections 16, 17(1) to (4), 18, 19(1) to (4), 20 and 21(3) to (8) and all these regulations had come into force on that date.

(2) Nothing in paragraph (1) shall be taken to imply—

- (a) that section 10 (civil penalties) applies to any act or omission occurring before the commencement date; or
- (b) that the meaning of “the commencement date” in these regulations is altered.

Scheme alterations, overriding provisions and records

8.—(1) Where such a notice as is mentioned in paragraph 3(1) or 5 is given, sections 21(3), 68 and 117 and regulations 11 and 22 have effect, in relation to the section 16 scheme and to the employer in relation to that scheme, as if sections 16 to 21 and the remainder of these regulations were in force.

(2) Where such a notice as is mentioned in paragraph 4(1), or 6 is given, regulation 22 has effect in relation—

- (a) to the section 18 company; and
- (b) to the person who is the employer in relation to the scheme which is the relevant scheme in relation to the section 18 company,

as if sections 16 to 21 and the remainder of these regulations were in force.

(3) This paragraph shall be construed before 6th April 1997 as it is construed on and after that date.

Changes to legislation:

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Changes and effects yet to be applied to :

- Sch.1 para.9(3) applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- Sch.2 para.1(3)(a) amended by [S.I. 1996/1216 reg.19Sch.3 para.2\(b\)\(i\)](#)
- Sch.2 para.1(3)(b) substituted by [S.I. 1996/1216 reg.19Sch.3 para.2\(b\)\(ii\)](#)
- Sch.4 paras.4(1)6 amended by [S.I. 1996/1216 reg.19Sch.3 para.3\(7\)\(a\)](#)
- Sch.4 para.6(c) amended by [S.I. 1996/1216 reg.19Sch.3 para.3\(7\)\(b\)](#)
- Sch.4 applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- 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\(a\)](#)
- reg.9 applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.9(1)(a) amended by [S.I. 1996/1216 reg.19Sch.3 para.2\(3\)\(a\)\(i\)](#)
- reg.9(1)(b)(ii) rep.in pt. by [S.I. 1996/1216 reg.19Sch.3 para.2\(3\)\(a\)\(ii\)](#)
- reg.9(2)(c)(i) rev.in pt. by [S.I. 1996/1216 reg.19Sch.3 para.2\(3\)\(b\)\(i\) m](#)
- reg.9(3) substituted by [S.I. 1996/1216 reg.19Sch.3 para.2\(3\)\(c\)](#)
- reg.10(2)(b)(i) amended by [S.I. 1996/1216 reg.19Sch.3 para.2\(4\)](#)
- reg.10(2)(b)(i) applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.13(2)(d) applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.15 applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.15(1)(a) amended by [S.I. 1996/1216 reg.19Sch.3 para.3\(3\)\(a\)\(i\)](#)
- reg.15(1)(b)(ii) revoked by [S.I. 1996/1216 reg.19Sch.3 para.3\(3\)\(a\)\(i\) 0](#)
- reg.15(2)(c)(i) rev.in pt. by [S.I. 1996/1216 reg.19Sch.3 para.3\(3\)\(b\)\(i\) ii](#)
- reg.15(3) substituted by [S.I. 1996/1216 reg.19Sch.3 para.3\(3\)\(c\)](#)
- reg.16(2)(b)(i) amended by [S.I. 1996/1216 reg.19Sch.3 para.3\(4\)](#)
- reg.20(1) applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.20(1)(d) amended by [S.I. 1996/1216 reg.19Sch.3 para.2\(5\)\(a\)\(b\)](#)
- reg.20(1)(f) amended by [S.I. 1996/1216 reg.19Sch.3 para.3\(5\)\(a\)](#)
- reg.20(1)(h)(ii) amended by [S.I. 1996/1216 reg.19Sch.3 para.3\(5\)\(b\)](#)
- reg.20(3) applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.20(3) rep.in pt. by [S.I. 1996/1216 reg.19Sch.3 para.2\(5\)\(c\)](#)
- reg.20(3) rev.in pt. by [S.I. 1996/1216 reg.19Sch.3 para.3\(5\)\(c\)](#)
- reg.20(4) applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.20(4)(a) revoked by [S.I. 1996/1216 reg.19Sch.3 para.2\(5\)\(d\)](#)
- reg.20(5) applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.20(5)(a) revoked by [S.I. 1996/1216 reg.19Sch.3 para.3\(5\)\(d\)](#)
- reg.22(3) applied by [S.I. 1996/1216 reg.19Sch.3 para.2\(a\)](#)
- reg.23(3) rev.in pt. by [S.I. 1996/1216 reg.19Sch.3 para.2\(6\)](#)

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)