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STATUTORY INSTRUMENTS

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**2006 No. 349**

**The Occupational and Personal Pension  
Schemes (Consultation by Employers and  
Miscellaneous Amendment) Regulations 2006**

*Information provision and consultation*

**Requirement to provide information**

**11.**—(1) In relation to a proposal to make a listed change affecting an occupational or personal pension scheme, each relevant employer to whom regulation 7(3) applies must provide information about the proposal to—

- (a) such of his employees as appear to him to be affected members of the scheme, and
- (b) any representatives of such members who are to be consulted under regulation 12(2)(a) or (3) or 13(2).

(2) The information provided under paragraph (1) must—

- (a) be in writing,
- (b) be provided before the start of consultation under regulation 12 or 13,
- (c) describe the listed change and state what effects it would (or would be likely to) have on the scheme and its members,
- (d) be accompanied by any relevant background information,
- (e) indicate the timescale on which measures giving effect to the change are proposed to be introduced, and
- (f) be given in such fashion and with such content as are appropriate to enable, in particular, representatives of affected members to consider, conduct a study of, and give their views to the employer on, the impact of the listed change on such members.

**Consultation under existing arrangements**

**12.**—(1) If arrangements specified in paragraph (2) or (3) exist in relation to his employees, each relevant employer to whom regulation 7(3) applies must consult about a listed change in accordance with such one or more of those arrangements as he may choose.

(2) The specified arrangements are arrangements under which employees appearing to the employer to be affected members—

- (a) are represented by—
  - (i) in the case of employees of a description in respect of which an independent trade union is recognised by the employer, the representatives of the trade union,
  - (ii) in the case of employees of a description which has elected or appointed information and consultation representatives, those representatives, or

- (iii) where there exists one or more pre-existing agreements which apply to any of the employees, any representatives identified in accordance with such agreement or agreements; or
  - (b) are to be consulted directly in accordance with the terms of a negotiated agreement or a pre-existing agreement.
- (3) In any case where—
- (a) an election of representatives as described in regulation 13(2) has taken place before any arrangements referred to in paragraph (2) are made, and
  - (b) the interests of affected members are represented by such representatives,
- the specified arrangements also include arrangements for consultation of those representatives.
- (4) “Independent trade union” and “recognised”, in relation to an independent trade union, have the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992(1).
- (5) “Information and consultation representatives” and “negotiated agreement” have the same meaning as in the Information and Consultation of Employees Regulations 2004(2).
- (6) “Pre-existing agreement”—
- (a) means an agreement between an employer and his employees or their representatives which satisfies the conditions set out in regulation 8(1)(a) to (d) of the Information and Consultation of Employees Regulations 2004 and which has not been superseded, but
  - (b) does not include an agreement concluded in accordance with regulations 17 or 42 to 45 of the Transnational Information and Consultation of Employees Regulations 1999(3) or a negotiated agreement.

### **Consultation in cases not covered by regulation 12**

**13.**—(1) This regulation applies to a relevant employer to whom regulation 7(3) applies if (and only if) any of the employees who appear to the employer to be affected members are not covered by consultation arrangements referred to in regulation 12.

(2) Where, for the purposes of engaging in consultations under these Regulations, representatives of any affected members have been elected in an election which satisfies the requirements of regulation 14(1), the relevant employer must consult with those representatives about a listed change.

(3) If the interests of any affected members are not represented by representatives who are consulted under paragraph (2), the relevant employer must also consult directly with those members.

(4) If no representatives have been elected as described in paragraph (2), the relevant employer must consult directly with the affected members about a listed change.

(5) Consultation under this regulation—

- (a) is required only in relation to the affected members falling within paragraph (1), and
- (b) is additional to any consultation in relation to other affected members which is required by regulation 12.

### **Election of representatives**

**14.**—(1) The requirements of this paragraph are that—

- (a) the employer must make such arrangements as are reasonably practical to ensure that the election is fair;

(1) 1992 c. 52; see sections 5 and 178(3) of that Act.

(2) S.I.2004/3426.

(3) S.I. 1999/3323.

- (b) the employer must determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of active members and the interests of prospective members;
  - (c) the employer must determine whether the active and prospective members should be represented by representatives of all such members or by representatives of particular descriptions of such members;
  - (d) before the election the employer must determine the term of office as representative of active and prospective members;
  - (e) the candidates for election must be active or prospective members of the scheme on the date of the election;
  - (f) no active or prospective member may unreasonably be excluded from standing for election;
  - (g) all active or prospective members on the date of the election are entitled to vote for member representatives;
  - (h) the members entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be classes of representative for particular descriptions of member, may vote for as many candidates as there are representatives to be elected to represent their particular description of member;
  - (i) the election is conducted so as to secure that—
    - (i) so far as is reasonably practicable, those voting do so in secret, and
    - (ii) the votes given at the election are accurately counted.
- (2) Where, after an election of representatives satisfying the requirements of paragraph (1) has been held—
- (a) one of those elected ceases to act as a representative, and
  - (b) the active or prospective members (or any description of them) are no longer represented,
- those members must elect another representative by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i).
- (3) The relevant employer must from time to time review the number of representatives determined under paragraph (1)(b) and the number of representatives elected must be adjusted accordingly (whether by members electing one or more other representatives by an election satisfying the requirements of paragraph (1)(a), (e), (f) and (i), by not holding an election under paragraph (2) or otherwise).

### **Conduct of consultation**

**15.—**(1) Each relevant employer who carries out a consultation must make such arrangements with respect to the persons to be consulted as appear to him to secure that, so far as is reasonably practicable, the consultation covers all affected members.

(2) In the course of consultation, the relevant employer and any person consulted are under a duty to work in a spirit of co-operation, taking into account the interests of both sides.

(3) At the start of any consultation required by these Regulations, the relevant employer must notify the persons to be consulted of any date set for the end of the consultation or for the submission of written comments.

(4) An appropriate period must be allowed for carrying out the consultation which in any event must not be less than 60 days.

(5) If no responses to the consultation are received before the end of the period allowed for the consultation in accordance with paragraphs (3) and (4), the consultation is to be regarded as complete.

**End of consultation**

**16.—(1)** Where the relevant employer who carries out a consultation is not the person who proposed the listed change (“P”), the relevant employer must, as soon as reasonably practicable after the consultation is complete—

- (a) report to P on the views (if any) which were expressed to the relevant employer otherwise than in writing,
- (b) where the responses include written comments, forward those comments to P, and
- (c) in any case where no responses were received, notify P accordingly.

(2) In a case falling within paragraph (1), P must take reasonable steps to satisfy himself that each consultation required by these Regulations in relation to the scheme was carried out in accordance with regulations 11 to 15.

(3) After the end of the period allowed for the consultation, the person who proposed the listed change must consider the responses (if any) received in the course of consultation before making his decision as to whether or not to make a listed change.