

S.I. No. 399/1993 - Occupational Pension Schemes (Member Participation in The Selection of Persons For Appointment As Trustees) (No. 2) Regulations, 1993.

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OCCUPATIONAL PENSION SCHEMES (MEMBER PARTICIPATION IN THE SELECTION OF PERSONS FOR APPOINTMENT AS TRUSTEES) (NO. 2) REGULATIONS, 1993.

The Minister for Social Welfare, in exercise of the powers conferred on him by section 5 and section 62 (as amended by [section 15 of the Social Welfare \(No. 2\) Act, 1993](#) (No. 32 of 1993)) of the [Pensions Act, 1990](#) (No. 25 of 1990), hereby makes the following Regulations.

- 1 Citation. **1.** (1) These Regulations may be cited as the Occupational Pension Schemes (Member Participation in the Selection of Persons for Appointment as Trustees) (No. 2) Regulations, 1993.
- (2) These Regulations shall come into operation on the 1st day of January, 1994.
- 2 Revocation. **2.** The Occupational Pension Schemes (Member Participation in the Selection of Persons for Appointment as Trustees) Regulations, 1993 (No. 216 of 1993) are hereby revoked.
- 3 Definition. **3.** (1) In these Regulations—
- "the Act" means the [Pensions Act, 1990](#) (No. 25 of 1990);
- "the Board" has the meaning assigned to it by section 2 of the Act;
- "active member" in relation to a scheme, means a member who is in reckonable service;
- "authorised trade union" has the meaning assigned to it by section 54 (6) of the Act;
- "alternative arrangement" has the meaning specified in article 8 of these Regulations;
- "Chairperson" means a person selected or nominated for appointment as a trustee of the relevant scheme and as Chairperson of the trustees of the relevant scheme in accordance with these Regulations;

"directly invested scheme" means a scheme which, at the commencement of a scheme year, is a scheme other than a scheme which has resources comprised entirely of one or more of the following

(a) insurance policies,

(b) contracts of assurance,

(c) managed funds,

(d) unit trusts and

(e) cash deposits with authorised deposit taking institutions

provided that for the purposes of this definition resources shall exclude unpaid contributions which have accrued due to the scheme;

"election" means an election in accordance with the standard arrangement;

"employer" in relation to a relevant scheme means the employer who undertakes the role of principal employer for the purposes of the relevant scheme's approval by the Revenue Commissioners under Chapter II of Part I of the Finance Act 1972 ;

"member trustee" means a person selected by qualified members for appointment as a trustee of the relevant scheme in accordance with the standard arrangement or a person whose selection is approved by qualified members for appointment as a trustee of the relevant scheme in accordance with paragraph I of an alternative arrangement or a person selected to fill a vacancy in accordance with article 17 of these Regulations;

"pensioner member" in relation to a scheme means a member of the scheme who is in receipt of benefits under the scheme;

"person" means a person over 18 years or a corporate body;

"preliminary poll" means a poll held in accordance with article 8 of these Regulations;

"qualified member" in relation to any date means an active member or a pensioner member of the relevant scheme on that date or on such previous date to be decided by the trustees, in any event not earlier than the beginning of the scheme year in which the process is initiated in accordance with article 6, or in which (as the case may be) the procedure for reselection commences in accordance with article 18;

"relevant scheme" means a scheme, other than an external scheme, which is established under a trust and which has not less than 50 qualified members or is a directly invested scheme which has not less than 12 qualified members;

"scheme year", in relation to a scheme, means whichever of the periods specified in section 55 (1) of the Act the trustees select;

"sole corporate trustee" means a person (where such person is a corporate body) whose selection is approved by qualified members for appointment as sole trustee of the relevant scheme in accordance with paragraph (II) of an alternative arrangement;

"standard arrangement" has the meaning specified in article 8 of these Regulations;

"standard notification" has the meaning specified in article 8 of these Regulations;

"valid candidate" has the meaning specified in article 10 of these Regulations;

"valid nominee" has the meaning specified in article 10 of these Regulations;

"valid request" means (subject to subarticle (1) of article 18) a request in writing to the trustees of the relevant scheme by either:

(a) one or more authorised trade union or unions representing not less than 50 per cent of active members of the scheme at the beginning of the scheme year in which the request is made, or

(b) not less than 15 per cent of the qualified members

for a preliminary poll.

(2) In these Regulations any reference to the appointment of a trustee or a member trustee shall be construed as a reference to his appointment or retention as such trustee, as the case may be.

4
Participation
in the
selection of
trustees.

4. Qualified members may either,

(a) select, or

(b) approve of the selection by the employer of,

a person or a specified number of persons who shall be appointed to be a trustee or trustees of the relevant scheme in accordance with these Regulations.

5 Number of **5.** (1) The number of persons that may be selected by the qualified members for trustees to appointment as member trustees under a standard arrangement shall be two, or one half be selected the total number of trustees (excluding the Chairperson), whichever is the greater. or approved of.

(2) The number of persons the selection of whom may be approved by the qualified members for appointment as member trustees under an alternative arrangement shall be such number (if any) as is agreed by the qualified members in a preliminary poll.

6 Initiation of **6.** (1) Where the trustees of a relevant scheme receive a valid request they shall notify the process. employer within 14 days of receipt of such request and shall without undue delay appoint a returning officer in accordance with article 7 and shall supply to such returning officer a list of the qualified members.

(2) Where (subject to subarticle (1) of article 18) either the employer:

(a) receives a notification in accordance with subarticle

(1) of this article or in accordance with subarticle

(2) of article 18, or

(b) at any time so decides

he shall direct the trustees either:

(i) to hold a preliminary poll, or

(ii) to proceed to the selection by qualified members of persons for appointment as member trustees in accordance with the standard arrangement (as defined in article 8) by means of an election in accordance with these Regulations and shall specify the number of persons to be appointed as trustees of the relevant scheme by the employer and, where a preliminary poll is to be held, shall provide details of the alternative arrangement as defined in article 8.

(3) The trustees on receipt of the employer's direction under subarticle (2) of this article shall supply the returning officer with a copy of such direction and the returning officer in accordance with such direction shall, either

(a) proceed to hold a preliminary poll in accordance with article 8 and he shall notify the employer and the trustees in writing of the result of such poll within 30 days of the receipt of the employer's direction, or

(b) arrange for an election in accordance with these Regulations and shall notify the employer and the trustees in writing of the result of such election within 90 days of the receipt of the employer's direction.

(4) Where the employer has received notification in accordance with subarticle (1) of this article or in accordance with subarticle (2) of article 18 and fails to direct the trustees under subarticle (2) of this article within a period of 60 days the trustees shall instruct the returning officer to proceed directly to an election to select a number of persons for appointment as member trustees, such number to be equal to the number of existing trustees of the relevant scheme (excluding any member trustees), in accordance with these Regulations and shall notify the employer and the trustees in writing of the result of such election within 90 days of the receipt of the trustee's instruction.

7 Returning Officer. **7.** (1) The person to be appointed as returning officer for the purposes of these Regulations shall be:

(a) the secretary of the employer, or in case there is no such secretary, the officer of the employer who performs the functions of secretary, or

(b) in lieu of such secretary or officer, any other person who in the opinion of the trustees of the relevant scheme is competent to perform the functions of returning officer.

(2) A returning officer may perform any of his functions, through or by any other employee of the employer or through or by any other person who, in either case, is duly authorised by him in writing in that behalf.

(3) The returning officer shall not be entitled to be nominated as, or to nominate, a person for selection as a member trustee in accordance with article 10.