STATUTORY RULES OF NORTHERN IRELAND

1996 No. 431

PENSIONS

The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 1996

Made - - - - 16th September 1996
Coming into operation in accordance with regulation 1(2)

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 17(1)(*c*) and (4)(*b*), 18(1), 19(1)(*c*) and (4), 20(1)(*b*) and (2) to (5), 21(3) to (6) and (7)(*b*), 49(2)(*b*) and (3), 68(2)(*e*), 115(1)(*a*) and (*b*) and 122(3) and (4) and 166(3) of the Pensions (Northern Ireland) Order 1995(**1**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Part I

General Provisions

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 1996.

(2) This regulation and regulations 2, 11, 22 and 24 and paragraphs 1 and 8 of Schedule 4 shall come into operation on 13th October 1996 and the remaining provisions of these Regulations shall come into operation on 6th April 1997.

Interpretation

2.—(1) In these Regulations—

"alternative arrangements"—

(a) in relation to a scheme to which Article 16 applies (or would apply apart from the approval of such arrangements), means arrangements proposed by the employer, as

(**1**) S.I.1995/3213 (N.I. 22)

mentioned in Article 17(1), as an alternative to those which the trustees of the scheme are otherwise required by Article 16 to make for persons selected by members of the scheme to be trustees of the scheme (whether those arrangements are existing or new), and

(b) in relation to a company to which Article 18 applies (or would apply apart from the approval of such arrangements), means arrangements proposed by the employer, as mentioned in Article 19(1), as an alternative to those which the company is otherwise required by Article 18 to make for persons selected by members of the scheme to be its directors (whether those arrangements are existing or new);

"appropriate corresponding scheme" means an approved scheme—

(a) which is treated by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for associated employers, and

(b) none of the employers in relation to which is associated with another of those employers,

and for the purposes of this definition—

(i) the fact that some employers in relation to a scheme are associated by virtue of controlling or being controlled by other employers shall be disregarded if the total number of active members of the scheme who are in pensionable service under the scheme with employers who are associated by virtue of being controlled by other employers is less than 1 per cent. of the total number of active members the scheme comprises, and

(ii) "associated" and "control" are to be construed in accordance with paragraph 28(3) and (4) of Schedule 6 to the Finance Act 1989(**2**) (centralised schemes);

"appropriate rules" has the meaning given in Article 20;

"approval period" in relation to the approval of alternative arrangements—

(a) in the case of arrangements proposed under Article 17(1), has the meaning given in regulation 9(3), and

(b) in the case of arrangements proposed under Article 19(1), has the meaning given in regulation 15(3);

"approved scheme" means a scheme which is approved or was formerly approved under section 590 or 591 of the Taxes Act or in respect of which an application for such approval has been duly made which has not been determined; and, for the purposes of this definition, if only part of a scheme is an approved scheme the whole scheme shall be treated as if it were an approved scheme;

"associated" shall be construed in accordance with paragraph (2);

"the commencement date" means 6th April 1997;

"connected" shall be construed in accordance with paragraph (2);

"direct payment, paid-up insured scheme" means a scheme under which—

(a) no further contributions are payable;

(b) the benefits that may be provided in respect of an individual are determined by reference to the value of the whole or a specified part of the rights under a contract of insurance, and

(c) the benefits in respect of any member are, in accordance with an agreement made between the insurer and the trustees of the scheme (or a subsequent agreement made with any person for the provision of those benefits by him), to be paid by the insurer (or that person) directly to the member or to a person entitled to benefits in respect of him;

"eligible members", in relation to a scheme, means the members of the scheme by whom, in accordance with Article 21(7)(*a*), approval of appropriate rules or, as the case may be, of

(**2**) 1989 c. 26

alternative arrangements must be given (taking them as a whole) and, in a case where Article 21(7) applies as mentioned in Article 18(8) (aggregation) or in regulation 5(2), the references in this definition to the scheme are to the single scheme there mentioned;

"employer", in relation to a scheme, means the employer of persons in the description or category of employment to which the scheme in question relates (but see paragraphs 1 and 4 of Schedule 3);

"former old code scheme" means an approved scheme which was formerly approved under section 208 of the Income and Corporation Taxes Act 1970(**3**) and under the provisions of which—

(a) no further contributions are payable, and

(b) the entitlement in respect of each member is to a benefit consisting of a specified fixed amount which may not be altered unless—

(i) he retires otherwise than at his normal pension age, or

(ii) another person becomes entitled to a benefit in respect of him;

"independently selected", in relation to a trustee of a scheme or a director of a company which is a trustee of a scheme, means selected as a trustee or, as the case may be, a director—

(a) by some or all of the members of the scheme (otherwise than wholly or mainly by members who are directors of companies which are employers in relation to the scheme), or

(b) by an organisation which represents some or all of the members of the scheme (other than wholly or mainly members who are such directors);

"member", in relation to a scheme to which regulation 18 applies, includes a member of any other scheme with which it is treated by that regulation as a single scheme;

"opt-out failure date", in relation to a proposal by an employer for alternative arrangements, means—

(a) if the employer gives the trustees notice in writing within the approval period that he is not proceeding with the proposals, the date of that notice, and

(b) otherwise, the date with which the approval period expires;

"relevant approved centralised scheme" means an approved scheme—

(a) which has been categorised by the Commissioners of Inland Revenue for the purposes of its approval as a centralised scheme for non-associated employers (whether or not the employers are associated within the meaning of these Regulations), or is an appropriate corresponding scheme;

(b) under the provisions of which the power to appoint or remove all the trustees is not exercisable solely by one employer or by employers all of whom are connected with each other, and

(c) which satisfies the independence conditions specified in paragraph (3);

"relevant benefits" has the meaning given in section 612(1) of the Taxes Act;

"relevant executive pension scheme", in relation to a company, means a scheme—

(a) in relation to which the company is the only employer and the sole trustee, and

(b) the members of which are either current or former directors of the company and include at least one-third of the current directors;

(**3**) 1970 c. 10; section 208 was repealed by Schedule 14 to the Finance Act 1971 (c. 68) with effect from 6th April 1980

"relevant scheme", in relation to any company to which Article 18 applies (or would apply apart from Article 19(1)), means a scheme by virtue of the trusteeship of which Article 18 applies to the company (or would apply apart from Article 19(1));

"relevant self-administered scheme" means—

(a) a small self-administered scheme as defined in regulation 2(1) of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991(**4**), or

(b) a scheme which would fall within that definition if paragraph (*a*) of that definition were omitted;

"relevant statutory scheme" has the meaning given in section 611A of the Taxes Act(**5**);

"scheme", in relation to a scheme to which regulation 18 applies, includes any other scheme with which it is treated by that regulation as a single scheme;

"scheme year", in relation to a scheme, means—

(a) a year specified for the purposes of the scheme in any document comprising the scheme or, if none is so specified, a period of 12 months commencing with 1st April or such other date as the trustees of the scheme select, or

(b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustees—

(i) in respect of the scheme year in which the scheme commences or terminates, or

(ii) in connection with a variation of the date on which the scheme year is to commence,

and, in relation to a scheme to which regulation 18 applies, references to the first scheme year are to the first scheme year of whichever of the schemes treated as a single scheme commences last;

"section 615(6) scheme" means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act;

"the statutory consultation procedure" has the meaning given in Article 21(6) (and is prescribed in Schedule 1);

"the Taxes Act" means the Income and Corporation Taxes Act 1988(**6**).

(2) For the purposes of these Regulations Articles 4 and 7 of the Insolvency (Northern Ireland) Order 1989(**7**) (associated and connected persons) shall apply as they apply for the purposes of any provision of that Order.

(3) The independence conditions referred to in paragraph (*c*) of the definition in paragraph (1) of "relevant approved centralised scheme" are—

(a) in the case of a scheme each trustee of which is a company, that at least one-third of the total number of the directors of each of those companies are persons who are independent or independently selected, and

(b) otherwise, that at least one-third of the total number of trustees are persons who—

(i) have no direct legal or beneficial interest in the assets of any of the employers or of the scheme (otherwise than as trustees), are neither connected with, nor associates of, any of the employers and, if they are companies, satisfy the condition mentioned in sub-paragraph (*a*), or

(ii) have been independently selected.

(**4**) S.I. 1991/1614
(**5**) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989
(**6**) 1988 c. 1
(**7**) S.I. 1989/2405 (N.I. 19)

(4) For the purposes of paragraph (3)(*a*), a director is independent in relation to a scheme only if he—

(a) has no direct legal or beneficial interest in the assets of any of the employers or of the scheme, and

(b) is neither connected with, nor an associate of, any of the employers.

(5) References to employers in paragraph (*b*) of the definition in paragraph (1) of "relevant approved centralised scheme" and in paragraphs (3)(*b*) and (4) do not include companies which carry on the business of acting as trustee of, or providing administrative services to, the scheme and no other business.

(6) In these Regulations any reference to an Article shall be construed as a reference to an Article of the Pensions (Northern Ireland) Order 1995.

(7) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**8**), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

Scheme membership

3.—(1) In determining for the purposes of Articles 16(6)(*a*) and 18(6)(*a*) (requirements as to numbers of member-nominated trustees and directors) and of these Regulations the number of members which a scheme comprises, a person shall be treated as becoming, or ceasing to be, a member at the beginning of the scheme year following that in which he actually becomes or ceases to be a member.

(2) In determining for the purposes of these Regulations the number of members of a specified description which a scheme comprises, a person shall be treated as becoming, or ceasing to be, a member of that description at the beginning of the scheme year following that in which he actually becomes or ceases to be such a member.

(3) Paragraphs (1) and (2) do not apply—

(a) during the first scheme year of the scheme (but see paragraph 8(3) of Schedule 1), or

(b) at any other time if the trustees of the scheme so determine before that time.

Application of Articles 16 and 18

Exceptions from member-nominated trustee requirements

4.—(1) Article 16 (requirement for member-nominated trustees) does not apply to any trust scheme—

(a) each trustee of which is a company;

(b) which is a relevant scheme in relation to a company in respect of which alternative arrangements under Article 19(1) are for the time being approved;

(c) which has less than 2 members;

(d) the only benefits provided by which are death benefits;

(e) to which section 115 of the Pension Schemes (Northern Ireland) Act 1993(**9**) (requirement for independent trustee where employer becomes insolvent, etc.) or Article 22 (circumstances for application of requirement for an independent trustee) applies;

(**8**) 1954 c. 33 (N.I.)
(**9**) 1993 c. 49