

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part II: Pensions

Commentary on Sections

Chapter II: Occupational and Personal Pension Schemes

Selection of trustees and of directors of corporate trustees

460. **Sections 43 to 46** amend sections 16, 18 and 21 of the Pensions Act 1995* (member-nominated trustees and directors); they further provide that sections 17, 19 and 20 shall cease to have effect and introduce a new section 18A. Under the current legislation, trustees are required to implement arrangements for at least one third of the scheme trustees to be member-nominated trustees, or where the trustee is a company, for one-third of the directors to be member-nominated directors. However, the employer has the right to implement alternative arrangements that do not include any member trustees, or directors, provided the members agree. Under the new provisions, all schemes will be required to have at least one third member-nominated trustees or directors, but there will be two ways to determine the nomination and selection arrangements: a flexible nomination and selection procedure laid out in regulations, or, alternatively, by the employer proposing nomination and selection arrangements which are subsequently approved by scheme members.
461. **Section 16**, as amended, will require trustees to ensure that arrangements are put in place for at least one-third of the trustees to be nominated and selected by scheme members. There will be two routes under which member-nominated trustees can be nominated and selected: a statutory route, the nature of which will be determined by reference to section 16 and regulations under section 16, where the trustees are responsible for the precise details of the arrangements and for their implementation; and an alternative route under section 18A (see section 45) where arrangements for the nomination and selection of the scheme trustees are proposed by the employer and implemented by the trustees. Section 16 and regulations made under section 16(9) will apply to both routes (but section 18A(3) allows provision different from that made by regulations under section 16(9) for the scheme specific route). Equivalent provisions apply in relation to trustee companies.

Section 43: Member-nominated trustees

462. This section amends section 16 to provide a revised statutory framework for appointing member-nominated trustees.
463. The revised provisions make no distinction between “arrangements” and “appropriate rules” so *subsections (2) to (4)* remove references to “appropriate rules” from section 16 of the Pensions Act.

464. *Subsection (5)* incorporates the substance of section 20(3) of the Pensions Act into section 16. Member-nominated trustees must serve a term of office of between three and six years and be eligible for reselection. The existing section 16(6), which provides for the determination of the minimum number of member-nominated trustees, and for this number to be exceeded only if the employer agrees, remains unchanged.
465. *Subsection (6)* incorporates the substance of section 20(5) of the Pensions Act by inserting a new subsection (6A) into section 16. An employer may require that a non-member can only stand for nomination as a member-nominated trustee if the employer approves.
466. *Section 16(7)*, which provides for all member-nominated trustees to have the same powers remains unchanged.
467. *Subsection (7)* amends section 16(8) to enable arrangements under section 16 to provide for a trustee who changes category of membership (for example, from active to deferred) to cease to be a trustee. The requirement for a member-nominated trustee to stand down if they cease to be a member remains unchanged.
468. *Subsection (8)* introduces two new subsections to section 16. The new section 16(9) is a regulation-making power that will be used to prescribe what is meant by “nominated and selected by members”, and to further stipulate details of the arrangements the trustees are required to make for nominating and selecting member-nominated trustees. The intention is to give trustees flexibility to adopt arrangements that best suit the circumstances of the scheme, for example by dividing the membership into separate constituencies. Regulations will provide that all active and pensioner members must be given the opportunity to make nominations. The new section 16(10) incorporates the provisions of section 17(4) of the Pensions Act into section 16. As now, the regulations will provide for exemptions for certain types of scheme. Schemes that are currently exempt will continue to be so.
469. *Subsection (9)* repeals section 17 of the Pensions Act (employer’s right to propose alternative arrangements).

Section 44: Corporate trustees

470. This section makes changes to section 18 of the Pensions Act for member-nominated directors in schemes where the trustee is a company similar to the changes in section 16 for individual trustees.
471. In addition, *subsection (2)(a)* extends the scope of section 18 to include all schemes where there is a trustee company and there is no trustee of the scheme who is not a company.
472. *Subsection (8)* modifies section 18(8) to ensure that the membership of different schemes will be aggregated where the trustee company is trustee for more than one scheme, unless the trustee company decides otherwise.
473. *Subsection (10)* repeals section 19 and 20 of the Pensions Act (employer’s right to propose alternative arrangements and meaning of appropriate rules).

Section 45: Employer’s proposals for selection of trustees or directors

474. This section introduces a new section 18A. The new section makes provision for the employer to propose arrangements for nominating and selecting trustees of the scheme or directors of a corporate trustee of the scheme.

New section 18A: Employer’s proposals for selection of trustees or directors

475. *New section 18A(1)(a)* gives employers the right to propose arrangements for nominating and selecting trustees. *Subsection (1)(b)* ensures the arrangements provide

for at least one third of the trustees to be member-nominated trustees, and that the other requirements of section 16(3) to (7) apply. *Subsection (1)(d)* requires that the proposal is approved by scheme members. Subsection (1)(d) also incorporates the regulation-making power similar to that contained in section 21(7) which will enable a statutory consultation procedure for seeking member approval for the proposal to be prescribed. This will be largely the same as the current procedure that is provided in Schedule 1 to the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996, although the procedure may be tightened to reduce any opportunity for abuse. Regulations made under *subsection (1)(e)* will impose additional conditions on employers, for example to give notice to the trustees of the intention to propose arrangements. *Section 18A(2)* makes the equivalent provision for trustee companies. Once approved, the trustees are charged with implementing the arrangements.

476. *New section 18A(3)* allows regulations governing arrangements under an employer's proposal to provide for different nomination and selection arrangements from those made under the statutory route. For example, the employer will be able to propose that nominations for trustees are made by organisations representing members (such as Trades Unions and pensioner organisations) as well as members themselves.
477. *New section 18A(4)(a)* provides the power to make regulations governing the manner and time in which trustees must implement approved arrangements. This is similar to the current power under section 21(4)(a). Trustees will be given six months following approval to ensure that the arrangements are made, and trustees appointed. Regulations under *subsection 18A(4)(b)* will determine when approval of section 18A arrangements cease to have effect. As now, approval will last for six years. They will also determine what happens when approval of arrangements ceases to have effect without the existing arrangements having been re-approved or fresh arrangements approved.
478. *New section 18A(5)* enables regulations to be made about approval of arrangements for the purpose of section 18A. Regulations under *subsection 18A(5)(a)* will give the Occupational Pensions Regulatory Authority (Opra) the discretion to treat proposals as approved in certain circumstances where there is a breach of the requirements of the approval process. Regulations under *subsection 18A(5)(b)* will provide for proposals to be treated as approved by persons who do not object. The existing section 21(8)(b) allows the approval process to operate in this way. Regulations will, as now, provide for proposals to be approved if not more than 10% of those consulted object.
479. *New section 18A(6)* permits nominations for a member-nominated trustee or director to be made by an organisation of a prescribed description that represents the interests of members of the scheme. It also permits nominations by such organisations to be the only nominations. It is intended that regulations will prescribe that recognised Trades Unions and pensioner organisations, for example, can make such nominations.
480. *New section 18A(7)* disapplies the section as far as it applies to member-nominated trustees in cases where all the trustees comprise all the members, or where there is only a corporate trustee (or trustees).
481. *New section 18A(8)* is a regulation-making power to disapply the section for schemes of a prescribed description. This provision is required in addition to the exemptions from sections 16 and 18 because those sections impose a mandatory requirement on all trustees, whereas this section only applies if the employer chooses to propose scheme-specific arrangements. In practice, section 18A will be disapplied for the same classes of scheme that are exempt from sections 16 and 18.
482. *Subsections (2) and (3) of section 45* are consequential amendments to, respectively, sections 68(2) and 117(2)(c) of the Pensions Act.

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Section 46: Non-compliance in relation to arrangements or proposals

483. This section contains various consequential amendments to section 21 of the Pensions Act 1995.
484. All references to appropriate rules are removed, as are references to sections 17 and 19 (which are repealed).
485. A new subsection (2A) has been added to section 21 to enable Opra to impose sanctions on an employer who fails to carry out the statutory consultation procedure properly. The equivalent provision is currently in sections 17(5) and 19(5). Opra already has the power under section 21 to impose sanctions on trustees who fail (without reasonable cause, in the case of individual trustees) to comply with the requirements. Opra can prohibit a trustee, or impose a financial penalty.