



An tÚdarás Pinsean
The Pensions Authority

MEMBER PARTICIPATION IN THE SELECTION OF PERSONS FOR APPOINTMENT AS TRUSTEES

GUIDANCE NOTES

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Introduction

s62 1. Section 62 of the Pensions Act 1990, as amended (the Act) stipulates that the Minister for Social Protection shall provide by regulations for the selection by members of certain funded schemes of persons for appointment (or retention, as the case may be) as trustees. The regulations to give effect to section 62 are entitled

SI 376/96 'Occupational Pension Schemes (Member Participation in the Selection of Persons for Appointment as Trustees) (No. 3) Regulations, 1996 (SI No. 376 of 1996).'

The regulations are effective from 20 November 1996. The following abbreviated references used in the notes 'r' - 'regulation', 'Sch' - 'Schedule' and 'p' - 'paragraph' refer to the provisions of S.I. No. 376 of 1996, unless otherwise specified.

References to the appointment of person(s) as trustee(s) in the remainder of these notes also means their retention as trustee(s), as the case may be, unless otherwise specified.

2. The regulations prescribe the schemes covered, the members entitled to participate, how the process may be initiated, the procedures for selection and the number of persons who may be selected for appointment as trustees. They also provide for such matters as the selection of the Chairperson of the trustees, the term of office of the *member trustees* and the Chairperson, the filling of casual vacancies, and the procedures for re-selection of *member trustees* at the end of their term of office.

Giving effect to member participation

r4 3. *Qualified members* of schemes covered are free to choose whether to exercise their rights to participate in the selection of the trustees of their scheme, in accordance with the regulations, and the extent to which they wish to participate. If the process is initiated, the provisions of the regulations override, where necessary, the provisions made in the Trust Deed and Rules of the scheme for the appointment of trustees.

r4 4. The *principal employer* associated with the scheme has specific rights to be involved in the process, including its initiation. Employers are



also free to choose the extent to which they wish to exercise these rights, particularly in relation to the selection of trustees by way of consensus.

Some employers may decide, following consultation with the members, that it would suit the particular circumstances of that employment to introduce an arrangement for member participation other than on the basis provided for in the regulations.

5. The existing trustees of the scheme have overall responsibility for ensuring that the necessary arrangements for member participation in the selection of trustees are made, where the process is initiated in the manner prescribed.

r6(1) 6. Once the process is initiated the trustees must appoint a *returning officer* with full responsibility for conducting polls/election, as appropriate, and arranging for the appointment of the *member trustees* and the Chairperson selected, in accordance with the regulations.

Guidance notes

7. These notes are a guide to the rights of members to participate in the selection of trustees and to how effect is given to member participation, in accordance with the regulations, S.I. No. 376 of 1996, by the various parties referred to above – *qualified members*, *principal employer*, existing trustees and, where appropriate, a *returning officer*.

Special reference is included to the scope for selecting trustees by way of consensus between the *principal employer* and the *qualified members*.



Part I - Guide to responsibilities of existing trustees to give effect to member participation

The existing trustees of an occupational pension scheme have overall responsibility for ensuring that effect is given, where appropriate, to member participation in the selection of trustees, in accordance with the regulations. This part of the notes is a guide to these responsibilities.

Eligibility for participation in the selection of member trustees

- r3(1) 8. The regulations prescribe:
- the pension schemes covered; and
 - the members of such schemes entitled to participate in the selection of *member trustees*.

It is the responsibility of the existing trustees of the scheme to determine these matters, in accordance with the appropriate provisions of the Act and the regulations (S.I. No. 376 of 1996).

Schemes covered - criteria

- r3(1) 9. The schemes covered are referred to as *relevant schemes* in the regulations. An explanation of each of these criteria for determining if your scheme is a *relevant scheme* for the purposes of the regulations follows.

Schemes established under a trust

10. It must be an occupational pension scheme which has been established under a trust and which has been approved for tax purposes or has applied for such approval from Revenue.

Schemes with a specified number of qualified members

11. It must have not less than 50 *qualified members* or, if it is a *directly invested scheme*, not less than 12 *qualified members*. (See paragraphs 14 to 16 for criteria for scheme members entitled to participate).

Directly invested schemes

12. A *directly invested scheme* is a scheme which, at the commencement of the scheme year, has assets other than the following:

- (a) insurance policies;
- (b) contracts of insurance;
- (c) managed funds;
- (d) unit trusts;
- (e) cash deposits with authorised deposit taking institutions.

For this purpose, unpaid contributions are not treated as assets of the scheme.

If a scheme has 12 or more *qualified members* but less than 50, the trustees should examine the disposition of the assets at the beginning of the scheme year to see if it meets the criteria for being a *directly invested scheme*. This involves examining whether the scheme has assets on that date other than those listed in (a) to (e) above. If, for example, the assets are invested directly by the scheme in Government securities on that date, then it is a *directly invested scheme*.

Exclusion of '20% external schemes'

- r3(1) 13. Schemes which are established under the legislation of another State and have external members accounting for at least 20% of the membership are excluded.

Scheme members qualified to participate - criteria

- r3(1) 14. There are two categories of members of *relevant schemes* entitled to participate:
- *active members*, and

- *pensioner members,*

provided they belong to these categories on a *specified date*.

Active members

r3(1) **15.** A scheme member is an *active member* for this purpose, if he/she is a current employee in reckonable service.

Certain categories of scheme members are excluded from participation, as follows:

- early leavers: scheme members who have left the employment to which the scheme relates e.g. change of job, but who may have entitlements to preserved benefits under the scheme (these members will be eligible to participate when such benefits become payable – see paragraph 16);
- members currently in employment to which the scheme relates where either:
 - (i) the employment is in another State; or
 - (ii) the only benefits for which they are covered under the scheme are death benefits i.e. benefits payable in the event of the death of the scheme member prior to *normal pensionable age*; or
 - (iii) the members have been notified in writing by the trustees that current service does not entitle them to long service benefits (this usually occurs when the scheme becomes a *frozen scheme*).

Pensioner members

r3(1) **16.** *Pensioner members* are those former employees who are in receipt of benefits under the scheme.

Annuitants i.e. former employees in respect of whom an annuity has been purchased are generally '*pensioner members*' for this purpose. There is an exception - an annuitant for whom a buy-out bond has been

purchased and in respect of whom the trustees have been totally discharged from further obligations under the rules of the scheme.

Persons in receipt of benefits under the scheme are excluded, if either:

- (a) the total benefits payable relate to scheme service whilst employed outside the State; or
- (b) they have not been members of the scheme e.g. persons receiving benefits as surviving dependants of a scheme member.

Specified date - criteria

r3(1) 17. The date for determining membership of the above categories is any previous date to be decided by the trustees. Such date must not be earlier than the beginning of the scheme year in which the process is initiated.

Application of the relevant provisions involves determining the following:

- (i) whether there are 50 or more *qualified members* or, in the case of a *directly invested scheme*, 12 or more *qualified members*, for the purposes of establishing if the scheme is a *relevant scheme* (see paragraphs 9 to 12);
- (ii) whether a request received from *qualified members* or a trade union or unions representing *active members* to initiate the process of member participation is a *valid request* (see paragraphs 19 to 21);
- r8 (iii) those entitled to vote in a *preliminary poll* (see paragraph 42);
- r10 (iv) those entitled to nominate candidates for election as *member trustees* (see paragraph 62);
- r8(6)(a) (v) those entitled to vote in a poll in an election for *member trustees*
r9 (see paragraph 47).



NOTE:

It is important that the existing trustees are in a position to respond without undue delay to enquiries from scheme members, authorised trade unions, and the employer(s) associated with the scheme, on

- (a) whether the scheme is covered for the purposes of member participation in the selection of trustees; and**
- (b) the number of members entitled to participate.**



Initiation of the process for member participation in the selection of trustees

18. Member participation in the selection of persons for appointment as trustees can be initiated either by:

- r3(1)
r6(1) • a *valid request* for a *preliminary poll* being submitted in writing to the trustees by *qualified members* or a trade union or unions representing *active members*; or by
- r6(2)(b) • *the employer*.

It is the responsibility of the existing trustees to determine whether a request to initiate the process is valid.

They are also responsible for:

- r6(1)
r7(1)&r8 • the appointment of a *returning officer* to conduct a *preliminary poll* and/or an election in accordance with the *standard arrangement*;
- r6(2)&(3) • obtaining the necessary direction on these matters from the *employer*;
- r6(1),(3)&(4) • furnishing the *returning officer* with a list of *qualified members* and copies of the direction from the employer and, if such direction cannot be obtained, issuing a trustee direction.

Valid request

- r3(1)
r8(6)&(7) 19. A request for a preliminary poll is a *valid request* if it has been submitted in writing by:
 - (a) one or more authorised trade union or unions representing not less than 50% of the *active members* of the scheme at the beginning of the scheme year in which the request is made; or
 - (b) not less than 15% of the *qualified members*;
- r18(1) provided a *preliminary poll* or an election for *member trustees* has not been held within a five year period prior to the date on which the request is made.



A request for a *preliminary poll* made on a date which is less than five years from the date of a previous *preliminary poll* or an election for *member trustees* is a *valid request* only if it is made in writing by not less than 50% of the *qualified members*.

r3(1) **20.** As previously specified (see paragraph 17), trustees can decide the date for the purposes of determining whether members are qualified, provided it is not earlier than the commencement date of the scheme year in which the process is initiated. In choosing the date, the trustees should normally endeavour to ensure that it is a date which maximises the number of members who are qualified. Otherwise, the process could be delayed unnecessarily, if other members who are qualified have to be asked to add their names to the list to render the request valid.

If the number of *qualified members* who submitted the request is less than the number required for the request to be valid, those who made the request should be notified of the position, as soon as possible. It would be in order at that stage to accept a request from such additional number of *qualified members* as is necessary to meet the requirements, provided the request is made within a reasonable period after the issue of the notification on the position concerning the original request. Six weeks would be a reasonable period in that regard. Thus, if, for example, a request must be made by at least 20 *qualified members* for it to be valid, and the original request is made by 15 *qualified members* only, a request received from a further five *qualified members*, not later than six weeks after the original request, would meet the requirement.

r3(1)
s54(6) **21.** A trade union is ‘authorised’ for this purpose, if it is a union to whom a negotiation licence has been issued in accordance with the terms of the Trade Union Act, 1941. The position on this requirement and on the proportion of *active members* represented by the trade union(s) should normally be established by consulting those responsible for personnel matters with the employer.

If necessary, the trade union(s) should be asked to supply a list of the employees they represent in the employment(s) to which the scheme applies, so that the trustees can have verified, from the scheme’s membership records, the percentage of *active members* they represent. However, to minimise unnecessary administration and its associated costs and delays, this procedure should only have to be resorted to in exceptional circumstances.



Role of the employer

r3(1) **22.** The ‘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 tax approval by Revenue. In cases where there is more than one employer associated with the scheme, the trustees must establish which is the *principal employer* in accordance with the above criterion.

References to ‘employer’ in these notes mean the *principal employer*.

The employer has the right to initiate the process by requesting the trustees to:

- r6(2) (a) hold a *preliminary poll*; or
- (b) proceed to the selection of *member trustees* by means of an election in accordance with the *standard arrangement*.

r6(1) If the employer has not already initiated the process when a *valid request* is made, the trustees must notify the employer of such request within 14 days. Confirmation of receipt of the notification by the employer, duly dated, should be obtained. Within a period of 60 days from receipt of the

r6(4) notification the employer must direct the trustees to proceed according to (a) or (b), as set out above.

Appointment of returning officer

r6(1) **23.** On receipt of a *valid request* (see paragraphs 19 to 21) or when the process has been initiated by the employer (see paragraph 22), the trustees are required to appoint a *returning officer* without undue delay.

r7(l)(a) &(b) The person to be appointed *returning officer* should be either the Secretary to the Employer i.e. the Company Secretary, or the officer of the employer who performs the functions of Company Secretary.

The trustees should establish who the appropriate person is and request that person, preferably in writing, to act as *returning officer*. If such person does not accept the appointment, the trustees should proceed to arrange for the appointment of another person who, in their opinion, is competent to perform the functions of *returning officer*.



- r7(3) The trustees may wish to inform the person accepting the appointment as *returning officer* that in the event of accepting such appointment he/she will not be entitled to be nominated as, or to nominate, a person for selection as *member trustee*.

List of qualified members

- r6(1) **24.** The trustees should also arrange at the same time to have prepared a list of the names and, where relevant, addresses of members of the scheme qualified to participate in the selection of trustees. This list should be given to the *returning officer* on his/her appointment, or as soon as possible thereafter, for the purposes of arranging a *preliminary poll* or an election as the case may be.

Direction from employer

- r6(2)&(3) **25.** The role of the employer in the initiation of the process is described above in paragraph 22. The trustees should obtain a clear direction from the employer, preferably in writing, as to whether a *preliminary poll* or an election is to be held and give such direction to the *returning officer*, without delay.
- r6(4) If within 60 days of the employer having received notification of a *valid request*, no direction is received from the employer, then the trustees are required to issue a *trustee direction* to the *returning officer* (see paragraph 28).

Employer direction for preliminary poll

- r6(2) **26.** *Qualified members* may, if a majority of such members so decide, approve of the selection by the employer of a person(s) for appointment as trustee(s). If the employer wishes to exercise this right to nominate, for the approval of members, person(s) for appointment as trustee(s), he/she must direct the trustees to hold a *preliminary poll*.

This poll enables *qualified members* to either:

- r8(1)&(2) (a) opt for an election by means of which they will select persons for appointment from their own nominees; or



- (b) approve the person(s) nominated by the employer.

The option under (a) is called the '*standard arrangement*' and the option under (b), the '*alternative arrangement*'.

To enable a *preliminary poll* to be held the trustees must receive the following information on an *alternative arrangement* from the employer.

r8(2)p(I) If the employer in his/her proposals for an *alternative arrangement* is proposing an arrangement involving more than one trustee, he/she must specify:

- (1) the name(s) of those person(s), if any, whose selection for appointment as trustee(s), *qualified members* are to be given the option of approving;
- (2) the number (but not necessarily the names) of other person(s), if any, the employer proposes to appoint as trustee(s);
- (3) the name of the Chairperson, if any, or the procedure for selecting the Chairperson.

In the case of (3), if a name is not provided, the employer should clearly specify how the Chairperson is to be appointed, for example:

- (a) directly by the employer; or
- (b) by agreement among persons selected for appointment as trustees or, failing such agreement, by the employer; or
- (c) in accordance with the Trust Deed.

r8(2)p(II) If the arrangement proposed by the employer involves the appointment of a corporate body as the sole trustee the appropriate details should be given (see paragraph 45 below).

r8(3)(d) It would be important that in the notification received from the employer, the information on the *alternative arrangement* is in such form that it can be sent by the *returning officer* directly to *qualified members*, with the *standard notification* (see paragraph 98).



r8(3)(c) In addition to the information for the purpose of the ‘*alternative arrangement*’, the employer must also indicate the number of persons he/she proposes to appoint as trustee(s), should members opt for the ‘*standard arrangement*’ (see paragraph 27 following).

Employer direction for standard arrangement

r6(2) **27.** The employer on receipt of a *valid request*, or on his/her own initiative, may direct the trustees to proceed directly to hold an election for the selection of *member trustees* under the *standard arrangement*. In such case, he/she must notify the existing trustees of the number of persons he/she will appoint as trustees.

Qualified members then have a right by means of an election to select an equivalent number, not being less than two.

Trustee direction

r6(4) **28.** The employer has 60 days from receipt of the notification issued by the trustees after a *valid request* is made to issue a direction to the trustees as to whether he/she wishes a *preliminary poll* or an election in accordance with the standard arrangement to be held.

The deadline should be clearly explained in the notification issued to the employer.

If no response is received from the employer after a period of 40 days, a reminder should be issued. A further reminder should be issued within 10 days of the deadline and, if necessary, a meeting sought with the employer.

Should the employer inform the trustees before the 60 day period expires that he/she has sought an extension of this period from the Pensions Authority (the Authority), a *trustee direction* should not be issued to the *returning officer*, pending a reply being received from the Authority.

r20 If no direction is received from the employer after the 60 day period has expired, and no extension of this period has been sought, the trustees must issue a direction to the *returning officer* to the effect that:

- an election for ‘*member trustees*’ should be arranged; and



- the number of persons to be selected for appointment as *member trustees* should equal the number of existing trustees.

Thus, if, for example, there are five existing trustees, *qualified members* would have the right to select a further five persons for appointment as *member trustees*.

Selection and appointment of member trustees and Chairperson

- r6(1) **29.** The *returning officer* appointed by the *existing trustees* has the direct responsibility for implementing the procedures laid down in the regulations for the selection and appointment of *member trustees* and the Chairperson. However, should the *returning officer* fail to discharge this responsibility, the trustees are required, subject to the approval of
- r7(5) the Authority, to appoint a replacement (see paragraph 31).

In view of this, it is important that the trustees monitor implementation of the process on the part of the *returning officer*. This will mainly involve checking that the various tasks are carried out within the timescales laid down in the regulations and, if any extensions of such periods are required, that the *returning officer* obtains the necessary approval from the Authority.

The trustees can also facilitate the process by establishing in good time whether any of their number may have to step down to make way for new appointees.

Timescales

30. The trustees should arrange with the *returning officer*, when the appointment is being made, that he/she will keep them informed of progress within each stage of the process. The following is an outline of the timescales laid down.

Preliminary poll

- r6(3)(a) Where a *preliminary poll* is to be held it should be completed, and the employer and trustees notified of the result, within 30 days of the employer issuing the direction for a *preliminary poll* to the trustees (see paragraph 26).

Election in accordance with standard arrangement

- r8(6)(a) The election should be completed and the employer and trustees notified of the result within 90 days of:



- result of *preliminary poll* being notified; or
- r6(2)&(3) - employer's direction for *standard arrangement* being issued (see paragraph 27); or
- r6(4) - trustee direction being issued (see paragraph 28).
- r20 If in exceptional circumstances it is not possible for the *returning officer* to have these tasks completed within the timescale laid down, application for extensions should be made to the Authority and the trustees notified accordingly.

Stages in appointment of trustees

- r12(1) The appointment of the trustees selected, including the Chairperson, shall take effect not later than 60 days after the date the *returning officer* declares that the *member trustees* have been selected or notifies that their selection has been approved, and the following steps must be taken within that period.
 - **Notification of employer nominations**
- r12(3) The *returning officer* must arrange to obtain from the employer the names of the other person or persons to be appointed as trustees. These names must be furnished to the *returning officer* within 14 days of the *member trustees* being selected.
 - **Selection of Chairperson in accordance with *standard arrangement***
- r13(1)&(2) Where the persons to be appointed *member trustees* have been selected in accordance with the *standard arrangement*, then within 30 days of their selection, the *returning officer* must convene a meeting of those persons and those selected by the employer for appointment as trustees, or make such other arrangements as he/she considers appropriate, for the purposes of enabling them to select a Chairperson. If the majority of the persons concerned fail to agree on a nominee for appointment as Chairperson, the *returning officer* must notify the employer immediately.
- r13(3)
- r13(4) The employer is required within 14 days of receiving such notification from the *returning officer* to nominate a person to be



appointed as Chairperson and to notify the *returning officer* accordingly.

- **Appointment of trustees – procedures**

r15(1)

The *returning officer* is required without undue delay, and in any event within a period of 14 days of the Chairperson, if any, being selected or nominated, to:

- notify in writing to the employer and the existing trustees the persons (including the Chairperson) selected or nominated for appointment as trustees and request the employer at the same time to arrange to have deed(s) of appointment/removal drawn up, without undue delay, to enable full effect to be given to these appointments and to notify him/her (the *returning officer*) when this is done;

r15(2)

- furnish to the person to be appointed Chairperson the full result of an election, if any, in accordance with the *standard arrangement*.

Replacement of returning officer

r7(5)

31. If the *returning officer* fails, for whatever reason, to carry out his/her duties in accordance with the regulations, the existing trustees of the *relevant scheme* are required to appoint another person, as they shall decide, as *returning officer*. However, they must obtain the approval of the Authority for any such appointment.

To obtain approval they should explain to the Authority in writing how the *returning officer*, originally appointed, has failed to carry out his/her duties. The trustees should also name the person they propose to appoint as a replacement, explain why this person, in their opinion, is a fit and proper person to act as *returning officer* and forward a declaration from the nominee that he/she is prepared to accept the appointment.

If the Authority approval for the appointment is obtained, a copy of the letter from the Authority granting such approval should be given to the new *returning officer*, together with the list of *qualified members* and the direction from the employer or trustees, as appropriate.



Replacement of existing trustees

32. The selection of persons for appointment as *member trustees* may require the replacement of some or all of the existing trustees. In such a situation, it would be important that the existing trustees clarify with the employer at the earliest opportunity which of their number he/she intends to replace as trustees, with a view to ensuring that the necessary arrangements are made for their replacement, when the new appointees become known.

r16 If, for whatever reason, the required number of existing trustees are not removed and this results in the number of employer appointed trustees exceeding the number of *member trustees* appointed, then arrangements will have to be made immediately for the appointment of an additional number of *member trustees* to bring their number up to the number of employer appointed trustees. The selection of the additional *member trustees* for appointment must be in accordance with the procedures for the filling of casual vacancies for *member trustees* (see paragraph 37). Thus, for example, if there are five existing trustees and none is removed on the appointment of two *member trustees* a further three *member trustees* would then have to be appointed.

Costs incurred

r19 **33.** The costs and expenses incurred by the trustees and the *returning officer* in relation to:

- the election; and
- the taking of a *preliminary poll*

may be met from the resources of the relevant scheme. The employer may wish to meet some or all of these costs and expenses. The trustees should clarify the position with the employer. If they fail to get a response, or if the employer indicates that the expenses should be met from the resources of the scheme, the trustees should make the necessary arrangements to meet these expenses.

The trustees should, in particular, have arranged with the *returning officer* how the expenses he/she incurs in the conduct of an election and/or *preliminary poll*, as appropriate, are to be accounted for.



Term of office of member trustees, Chairperson and procedures for filling casual vacancies and for re-selection

r12(2) **34.** The term of office as trustee shall expire six years and 60 days after the date on which the *returning officer* declares that he/she has been selected or notifies that his/her selection has been approved in the case of persons appointed as *member trustees* following their selection in accordance with *either*:

- the *standard arrangement*, or
- the *alternative arrangement*.

r14(2) The term of office of the person selected as Chairperson also shall expire six years and 60 days after the date on which the *returning officer* makes the declaration or notification. There is no specific term of office for other trustees appointed by the employer.

r17 There are procedures laid down in the regulations for the resignation of *member trustees*, the filling of casual vacancies before the term of office expires and in relation to re-selection.

The Chairperson and, where appropriate, the other trustees have responsibility for the proper implementation of these procedures.

It should be noted that a *member trustee* may not be removed by the employer or his/her fellow trustees.

Resignation of member trustees before term of office expires

r17(1) **35.** A *member trustee* may resign as trustee before his/her term of office expires by notifying the Chairperson in writing. Such notification shall take effect from a date not later than 30 days from the date the Chairperson receives such notification.

Casual vacancies for member trustees

r17(2) **36.** Vacancies may occur in the appropriate number of *member trustees* by reason of resignation or death.



r16 Vacancies would also occur should the number of employer appointed trustees exceed the number of *member trustees*, after the persons selected as *member trustees* have been appointed (see paragraph 32).

Filling of casual vacancies

r17(2)&(3) **37.** If a vacancy occurs more than 12 months before the expiry of the term of office of the *member trustee* concerned, arrangements must be made to fill that vacancy. If a vacancy occurs less than 12 months before the expiry of the term of office, the position is left vacant, unless the remaining *member trustees* decide that it should be filled, and notify the Chairperson of their decision within 30 days of the vacancy arising.

The procedures for selecting persons to fill casual vacancies for *member trustees* are as follows.

Procedure following selection in accordance with standard arrangement

r15(2) The Chairperson of the trustees must receive from the *returning officer* the full results of an election for *member trustees* conducted in accordance with the *standard arrangement* (see paragraph 30). Should a casual vacancy arise, the Chairperson must inform the person eliminated in that election with the highest number of votes of the vacancy and ask that person to indicate in writing within 14 days whether he/she will accept appointment as a *member trustee*. If the person concerned notifies the Chairperson of his/her acceptance of the appointment, the necessary arrangements must be made to have such appointment take effect from a date not later than 30 days from the date the Chairperson receives the notification.

r17(2)(a)

If the person concerned notifies the Chairperson that he/she does not accept the appointment, this procedure should then be followed with other persons who contested the election in the order of the highest number of votes they received.

The procedure described above should continue to be adopted for the filling of further casual vacancies, which may arise. Even if a person eligible to fill a casual vacancy for *member trustee* refuses to accept such appointment when a particular vacancy arises, he/she should continue

to be notified of any subsequent casual vacancies, should he/she remain eligible on the basis of votes received.

Selection by member trustees

r17(2)(b) The *member trustees* are entitled to select a person for appointment to fill a casual vacancy in cases where either:

- there are no valid candidates from an election held under the *standard arrangement* available for appointment; or
- no such election had taken place.

The Chairperson should notify the *member trustees*, preferably in writing, that they are entitled to select a person to fill the casual vacancy. The *member trustees* have 30 days from the receipt of such notification from the Chairperson to nominate a person for appointment.

The Chairperson should make clear reference to this 30 days' timescale in his/her notification to the *member trustees*. Should it not be possible for them to select a person within that period, an extension of the period may, in exceptional circumstances, be granted by the Authority. An application for an extension should be made by the *member trustees* to the Authority in writing and the reasons given for the application. The Chairperson should also be notified in writing that an application has been made.

A person selected by the *member trustees* must notify the Chairperson, preferably in writing, of his/her acceptance of the appointment. The appointment should be made not later than 30 days from the date of such notification.

Selection by the Chairperson

r17(3) The Chairperson is entitled to select a person for appointment to fill a casual vacancy for *member trustees* in cases where the remaining *member trustees* fail to select a person for appointment within the 30 days timescale or within such additional period sanctioned by the Authority.



It would be advisable for the Chairperson to issue a reminder to the *member trustees* 20 days after the issue of his/her notification to them on the casual vacancy, if no response has been received by that stage. It may also be advisable then for the Chairperson to seek a meeting with the *member trustees* to discuss the matter, with a view to agreement being reached on a suitable nominee. If an application has been made to the Authority for an extension of the 30 day period the Chairperson should await the response from the Authority before making arrangements to select a person to fill the vacancy.

A person selected by the Chairperson to fill a casual vacancy must notify the Chairperson, preferably in writing, of his/her acceptance of the appointment. The appointment should then be made not later than 30 days from the date of such notification.

Vacancy for Chairperson

r17(4) **38.** A vacancy for the Chairperson may also arise by reason of resignation or death. If the Chairperson wishes to resign, it would be advisable that he/she notify the employer and his/her fellow trustees.

The employer is obliged to appoint a person to fill the post of Chairperson and such appointment has immediate effect.

Term of office of persons appointed to fill casual vacancies

r17(6) **39.** The term of office of persons appointed to fill a casual vacancy for a *member trustee* or Chairperson is that of the remainder of the term of office of the trustee or Chairperson being replaced.

It would be important that this is clearly notified to the persons concerned when the appointment is being made.

Procedures for re-selection

r18(2) **40.** The trustees are required to notify the employer of the date the term of office of the *member trustees* is due to expire and such notification should be issued not earlier than 12 months and not later than six months before such date of expiry.



r6(2) The employer should also be asked by the trustees in this notification for a direction as to whether they are to:

- hold a *preliminary poll*; or
- proceed to the selection of *member trustees* by means of an election in accordance with the *standard arrangement*.

r6(1) The trustees are required to appoint a *returning officer*, without undue delay, and furnish him/her with a list of *qualified members*.

Guidance on the full procedures involved is given above in paragraphs 18 to 28.

The trustees should ensure that the necessary action is taken by them in good time to enable persons to be selected for appointment as *member trustees* with effect from the date of the expiry of the term of office of the previous incumbents.

Part II - Guide to the options for members and the employer

The members and the employer jointly have the right to select persons for appointment as trustees under the regulations. There are three options available and the employer and representatives of the members may wish to have consultations to determine which of the options in the case of their particular scheme will:

- ensure that competent persons are selected as trustees;
and
- be acceptable to a majority of members.

Such consultations will normally take place using the channels in operation in the company for dealing with such issues.

This part of the notes is a guide to each of the options.

Selection of trustees – options for members and employer

Option I - Retention of existing arrangements

41. One option is not to start the process, in which case the existing trustee arrangements will be retained. If it emerges from consultations between the employer and representatives of members that the members are satisfied with the existing trustees and the existing arrangements for their appointment, then this option could be chosen. This outcome is most likely to occur if the existing arrangement already allows for member participation in the selection of persons for appointment as trustees.

As no *preliminary poll* or election will have been held, the process can still be initiated at some future date by 15% of *qualified members* or trade union(s) representing 50% of *active members* submitting a request in writing to the trustees.

In view of this, both the employer and representatives of members may consider that it would be preferable at the outset to consult directly with all *qualified members* by means of a *preliminary poll* and/or election.



Option 2 - Alternative arrangement/preliminary poll

- r6(2) **42.** A *preliminary poll* is held if the employer decides to propose for the approval of members an *alternative arrangement* for the appointment of *member trustees*. Such arrangement is in effect an alternative to the *standard arrangement* which is described below in paragraph 47.
- r8(6)(a)
&(7) The *alternative arrangement* applies if it is chosen by a majority of those voting (i.e. more than 50%), or if less than 25% of *qualified members* vote in the *preliminary poll*.
- r8(2)(I)
r8(2)(i), (ii)
&(iii) If the employer in his/her proposals for an *alternative arrangement* is proposing an arrangement involving more than one trustee, he/she must specify:
- (1) the name(s) of those person(s), if any, whose selection for appointment as trustee(s), *qualified members* are to be given the option of approving;
 - (2) the number (but not necessarily the names) of other person(s), if any, the employer proposes to appoint as trustee(s);
 - (3) the name of the Chairperson, if any, or the procedure for selecting the Chairperson.
- r8(2)(II) If the arrangement proposed by the employer involves the appointment of a corporate body as the sole trustee the appropriate details should be given (see paragraph 45).

Consultations on alternative arrangement

- r6(4) **43.** Employers are likely to opt for a *preliminary poll*, if they consider that a majority of scheme members will vote for their proposal for an *alternative arrangement*. In order to establish whether this will be the likely outcome, the employer may wish to consult on the matter with scheme members and/or their representatives. It is mainly to facilitate such discussions that employers are given 60 days from the date they receive a notification from the trustees that a *valid request* has been made to hold a *preliminary poll*, to indicate to the trustees whether they wish to propose an *alternative arrangement* for the approval of members in a *preliminary poll*.



r20

An extension of this 60 day period may be granted by the Authority in exceptional circumstances, if an application is made by the employer before the period expires. Accordingly, an employer who wishes to obtain an extension of such period should make the application in good time giving the reasons why the extension is being sought. The employer should also notify the trustees that the application is being made.

44. The following are examples of some situations where an employer might consider that it would be appropriate to propose an *alternative arrangement*.

A number of *existing trustees* had been selected for appointment following an earlier consultation with members and/or their representatives, which may have included an election. Both the employer and members may wish to retain this arrangement and, therefore, *qualified members* would be given an opportunity to endorse it in a *preliminary poll*.

The employer and representatives of members may, following consultations, agree on a new arrangement whereby specified persons would be proposed for appointment as *member trustees*. The persons concerned could be chosen on the grounds of being particularly suitable for the post of *member trustee*, and/or being drawn from various categories of the *qualified members*.

Corporate trustee body

45. The trustee of the scheme may be a corporate trustee body, where some of the directors have been chosen directly by the members, or following consultations with them and/or their representatives. Alternatively, the employer may wish to introduce such an arrangement or, if it exists and the directors until now have all been appointed by the employer, he/she may now wish to propose the appointment of a number of the directors chosen directly by members or following consultations with them and/or their representatives.

As part of such an arrangement it could be proposed to use the procedures set down in the regulations for the selection by members of a number of the directors. It should be noted, however, that the regulations would not apply to such selection and the persons selected would not be *member trustees*.

Notification of alternative arrangement

- r6(2) **46.** Where an employer issues a direction to the trustees to hold a *preliminary poll* a clear description of the *alternative arrangement* should be given in a separate notification. It should be in such form as to enable the *returning officer* to circulate copies of the notification directly to *qualified members* for the purposes of the *preliminary poll*.
- r8(3)(d)

The notification must contain the information referred to above in paragraph 42, but could also include additional information that would assist the members in coming to a decision. This could include the following.

The reasons why the *alternative arrangement* is being proposed and reference to any consultations with members and/or their representatives which have taken place on the arrangement generally and in relation to persons being nominated as *member trustees* or directors of a corporate trustee body.

Relevant details on the persons being nominated as *member trustees* and in addition to the number, the names and details of the other persons the employer intends to appoint as trustees/directors of the corporate trustee body.

The name of the proposed Chairperson may be provided. However, if a name is not provided it would be advisable to clearly specify whether the Chairperson is to be appointed:

- (a) directly by the employer; or
- (b) by agreement among the persons selected for appointment as trustees or, failing such agreement, by the employer; or
- (c) in accordance with the Trust Deed.

Option 3 - Election under a standard arrangement

47. An election is held in accordance with the *standard arrangement*, if:



- r6(2) - the employer decides to by-pass a *preliminary poll*, i.e. an *alternative arrangement* is not being proposed, or
- r8(6)(a)&(7) - a majority of *qualified members* voting (i.e. 50% or more) in a *preliminary poll* has chosen the *standard arrangement* (provided at least 25% of *qualified members* voted in the poll).

Under the *standard arrangement*:

- r8(2) (a) the employer must notify the trustees of the number (but not necessarily the names) of the persons he/she intends to nominate for appointment as trustees;
- (b) the *qualified members* by means of an election then select an equivalent number of persons for appointment as *member trustees*, being not less than two;
- r13 (c) the Chairperson is chosen by the persons selected for appointment as *trustees* (both by employer and members) or, if a majority of those selected fail to agree on a nominee, is chosen by the employer.

r6(2) The information under (a) must also be given to the trustees, where the employer opts for a *preliminary poll*, so that *qualified members* can be informed of the number of persons they will have a right to select as *member trustees*, should a majority opt for the *standard arrangement* in the *preliminary poll*.

48. The employer may wish to consult with *qualified members* and/or their representatives in relation to the *standard arrangement* in order to establish the overall number of trustees both the employer and members consider appropriate. The minimum normally would be two selected by members and two selected by the employer, with the Chairperson selected being either one of this four or a fifth trustee. In either case the Chairperson will have a second vote in the event of an equality of votes on any issue for determination by the trustees.

r5(1)

r14(3)

r5(1) A number of trustees greater than this minimum may be selected under the *standard arrangement* with the agreement of the employer and subject to both the employer and members selecting an equal number, excluding the Chairperson.

Thus, for example, if the employer decides to nominate three persons for appointment as trustees, the members will have a right to select a further three persons for appointment. The members, however, do not have a right to select a number greater than two, unless the employer agrees to nominate an equivalent number.

Among the considerations likely to apply in determining the overall number of trustees are:

- the categories of members represented within the scheme;
- the *active members/pensioner members* balance;
- the number of different locations; and
- the maximum number of trustees considered desirable.

r11(1)

49. It should also be borne in mind that a poll under the *standard arrangement* will only be required where the number of candidates nominated by members is greater than the number of *member trustees* to be selected. Thus, if, for example, there are two *member trustees* to be selected and members agree to nominate just two candidates, or just one candidate, no poll would have to be held, and the candidate(s) nominated would be deemed to be selected for appointment.

Accordingly, an election under the *standard arrangement* could result in existing trustees, who had previously been appointed following consultations with members, being nominated and returned unopposed.

The employer and representatives of members may wish to take this into account in deciding whether a *preliminary poll* should be held to obtain members' approval for an *alternative arrangement* or to proceed directly to an election under a *standard arrangement*.

Part III - Guide for members and authorised trade unions

The majority of members of schemes which are established under a Trust are eligible to participate in the selection of persons for appointment as trustees. Eligibility to participate is, however, subject to satisfying certain requirements. The scheme must be a relevant scheme, and the members must be qualified in accordance with the regulations.

Where members are eligible to participate they are free to choose whether and the extent to which they wish to participate. The options provided for members are also designed to facilitate the selection of trustees by way of consensus among the members themselves and, where appropriate, with the employer(s) associated with the scheme.

An authorised trade union or unions representing members can also be involved in the process, including its initiation.

This part of the notes is a guide for members and authorised trade unions on how they may participate in the process.

Members and trade unions eligible to participate

50. The issue of whether individual members of an occupational pension scheme are eligible to participate in the selection of persons for appointment as trustees will depend on whether:

- r3
- (a) the scheme, of which they are members, comes within the scope of the regulations; and
 - (b) they are qualified under the regulations to participate.

Coverage of schemes

- r3
- 51.** The vast majority of members of funded schemes are in schemes which come within the scope of the regulations on member participation. The existing trustees of a scheme will confirm whether it is covered (see paragraphs 9 to 13).

If the scheme is *not* covered, the trustees should explain why. It will generally be because:



- (1) it is an unfunded scheme in the public sector - such schemes are not established under a trust; or
- (2) it has less than 50 *qualified members* or, if a *directly invested scheme*, it has less than 12 *qualified members*; or
- (3) the scheme is established under the legislation of another State.

Employer consent to member participation

52. The fact that a scheme may *not* be covered by the regulations on member participation does not preclude the *employer* associated with the scheme on a voluntary basis from permitting scheme members to participate in the selection of a proportion of the trustees. Many employers will welcome member participation in the process as it can have a positive effect on industrial relations and on employee satisfaction and commitment generally.

Accordingly, if scheme members either directly or through their representatives indicate that they wish to participate an employer may agree to such participation, even though there is no legal requirement to do so.

In such cases, member participation does not come within the scope of the regulations, although employers may choose to follow the procedures set down.

Scheme members qualified to participate

- r3 **53.** Most scheme members are qualified to participate in the process and the trustees will confirm those who are qualified (see paragraphs 14 to 16).

Those who are not qualified are generally excluded on the grounds that:

- (a) they have left the employment associated with the scheme and are not receiving benefits from the scheme;
- (b) they are not covered for retirement pensions e.g. coverage for these pensions during current employment may have ceased and/or coverage may be for death in service benefits only;



- (c) they have never been members of the scheme e.g. persons receiving benefits as the surviving dependants of a scheme member;
- (d) they are not currently employed in this State, although a member of the scheme.



Getting started

54. The provisions on member participation allow for three options. A guide to each of the options is given above in Part II.

One option is for the members or employer not to start the process, in which case the existing trustee arrangements will be retained.

Either the employer or members can start the process. The procedures, thereafter, are the same regardless of who starts it.

r3 The process can be started directly by the members or through their
trade union. It can be started by submitting a *valid request* in writing for
r6(1) a *preliminary poll* to the existing trustees. Such a request is valid if it is
submitted by:

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

(b) not less than 15% of the *qualified members*.

r18(1) There is one exception. Where a *preliminary poll* or an election for
member trustees has been held within the previous five years, the
request must be made in writing by at least 50% of the *qualified
members*.

55. If the members and/or their trade union(s) wish to start the process it would be advisable to check first with the trustees as to whether the process has already been started by the employer.

r3 If it has not, and it is then decided that members should directly start the
process, it may be necessary to obtain from the trustees the number
r6(1) of *qualified members*, so that 15% of the total can be determined.

Should the number of *qualified members* who submit a request be less than the number required for the request to be valid, e.g. some of the members who make the request may not be qualified, the trustees should notify the members concerned of the position. It would normally be in order at that stage to have a further request submitted by the additional number of *qualified members* provided the request is made



within six weeks of the trustees notifying members of the position on the original request.

- r3** If the process is to be started by an authorised trade union or unions, they should normally be in a position to establish whether they represent at least 50% of *active members* i.e. members currently in employment.
- r6(1)**

If the trade union or unions are unsure, the position could be checked with those responsible for personnel matters in the Company. The trustees may, in exceptional circumstances, request a list of the trade union(s) members in the Company to check the position.



Selection of persons for appointment as member trustees

56. The persons selected for appointment as *member trustees* can be either:

r6(2)&
r8(6)(b)&(7) (a) those nominated by the employer and approved by a majority of *qualified members* voting in a *preliminary poll*; or

r8(2) (b) those selected by *qualified members* from among their own nominees in an election under the *standard arrangement*.

r8(2)p(II) An *alternative arrangement* in which a corporate body is sole trustee may also be approved by a majority of *qualified members* voting in a *preliminary poll*.

Preliminary poll

r6(2) 57. It is a matter for the employer to decide whether a *preliminary poll* should be held. However, employers are unlikely to opt for a *preliminary poll*, unless they consider that the *alternative arrangement* to be put forward will win the approval of a majority of members. This is most likely to be achieved if the *alternative arrangement* is agreed following discussions between the employer and representatives of members (see paragraphs 42 to 46).

Details on standard arrangement

r8(1)
r6(2) 58. Members are also given the option in a *preliminary poll* of choosing an election under the *standard arrangement* (see paragraphs 47 to 49). Details of the *standard arrangement* must be given and, in particular, the number of persons the members may select for appointment as trustees, should they opt for an election from among their own nominees.

r4 Should members wish to select more than two persons for appointment as trustees they must obtain the agreement of the employer. If the employer agrees, he/she can also select an equivalent number for appointment. Similarly, should the employer wish to appoint more than two persons as trustees (excluding the Chairperson), members will also have a right to select an equivalent number. The considerations likely to apply in determining the overall number of trustees are referred to above in paragraph 48.



r6(2)&
r8(3)(e) If a *preliminary poll* is to be held, the number of trustees to be appointed under the *standard arrangement* should be agreed beforehand, if the number is to be greater than two, so that members are given this information in the notification issued for the *preliminary poll*.

Election under the standard arrangement

59. An election is held in accordance with the *standard arrangement* if:

- r6(2) • the employer decides to by-pass a *preliminary poll* i.e. an *alternative arrangement* is not being proposed; or
- r8(6)(a)&(7) • a majority of *qualified members* voting (i.e. 50% or more) in a *preliminary poll* has chosen the *standard arrangement* (provided at least 25% of *qualified members* voted in the poll).

r6(1)&
r8(6)(a)
r9 60. The *returning officer* appointed by the trustees has full responsibility for the arrangements. *Qualified members* must be notified of these arrangements and, in particular, the arrangements for the nomination of candidates and the closing date for such nominations.

Nomination of candidates for an election

r3&
r10(1) 61. Any person over 18 years of age or a corporate body can be nominated as a candidate for appointment as a *member trustee*. This means that persons other than scheme members can be nominated. A corporate body would be 'one person' for these purposes.

r10(2)&(3) 62. Persons whose nomination as candidates is accepted by the *returning officer* are called *valid candidates* in the regulations.

To be a *valid candidate* a nominee must, in addition to being over 18 years of age or a corporate body, be nominated by either:

- (a) not less than 10 *qualified members*; or
- (b) not less than 10% of the *qualified member*;

whichever is the lesser, and

- (c) confirm to the *returning officer* that he/she accepts the nomination.

Each *qualified member* may nominate candidates up to the number to be selected. Thus, if two *member trustees* are to be appointed, each such member may nominate two candidates.

Candidates selected

r11(1) **63.** If the number of candidates nominated is equal to or less than the number of persons to be selected for appointment as *member trustees*, then no poll has to be held. The *returning officer* will declare the persons nominated to be selected.

This is likely to arise if members agree beforehand on suitable persons for selection.

r11(3) It should be noted that if the number nominated is **less** than the number to be selected, the employer may nominate a person or persons for appointment as *member trustees* to make up the difference.

r11(2) **64.** If the number of candidates nominated is **greater** than the number of persons to be selected for appointment as trustees, then a poll has to be held.

r10(3) Voting in such poll is by secret ballot and in accordance with the principle of proportional representation and each *qualified member* has a single transferable vote.



Part IV - Guide to the role of the employer

The *principal employer* associated with an occupational pension scheme has specific rights to be involved in this process, including its initiation. Employers are free to choose the extent to which they wish to exercise these rights, which are designed to facilitate the selection of trustees by way of consensus with members and among the members themselves.

This part of the notes is a guide to the role which the employer may wish to exercise in the process.

Is employer required to participate?

65. The issue of whether an employer associated with an occupational pension scheme is required to be involved in the process of member participation in the selection of trustees depends on whether:

- r3
- he/she is the *principal employer* for the purposes of the regulations;
 - the scheme with which the employer is associated comes within the scope of the regulations; and

- r3&r6(1)
- a *valid request* has been made (see paragraphs 69 to 70).

- r6(2)
- An employer may also initiate the process or may voluntarily allow member participation where the request is not a *valid request*.

Principal employer

- r3
- 66.** The ‘employer’ in relation to a scheme means the employer who undertakes the role of *principal employer* for the purposes of the scheme’s tax approval by Revenue.

The *principal employer* should consider to what extent an employer associated with the scheme who is not the *principal employer* should be consulted in relation to and involved in the process.

Schemes covered

r3 67. The existing trustees of a scheme will confirm whether it comes within the scope of the regulations on member participation (see paragraphs 9 to 13).

The fact that a scheme is not covered by the regulations on member participation does not preclude the *employer* associated with a scheme from allowing the scheme members to participate in the selection of a number of the trustees.

Member participation in the selection of persons for appointment as trustees can contribute to:

- greater awareness among members of the value of the pension arrangements which have been put in place for them; and a
- greater degree of reassurance that their entitlements under the scheme will be safeguarded on an ongoing basis.

From the point of view of the employer, this can have a positive effect on industrial relations and on employee satisfaction and commitment generally.

For these reasons some employers may choose to allow member participation in the process, irrespective of the legal requirements.



Getting started

68. The provisions on member participation allow for three options. A guide to each of the options is given above in Part II.

One option is for the employer or the members not to start the process, in which case the existing trustee arrangements will be retained.

r6(1)&(2) Either the employer or the members can start the process. The procedures thereafter are the same regardless of who starts it.

r6(2) The employer can start the process by directing the trustees to:

- (a) hold a *preliminary poll*, if he/she wishes to put forward an *alternative arrangement* (option 2 - see paragraphs 42 to 46); or
- (b) proceed to the selection of *member trustees* by means of an election in accordance with the *standard arrangement* (option 3 - see paragraphs 47 to 49).

Response to valid request

r6(1) **69.** If the employer has not already started the process, when a *valid request* to hold a *preliminary poll* is made to the trustees by *qualified members* or their trade union(s) (paragraphs 9 to 21 above), the trustees must notify the employer of such request within 14 days. The employer should immediately confirm to the trustees in writing that the notification has been received.

r6(4) Within a period of 60 days from receipt of the notification the employer must direct the trustees to proceed according to (a) or (b), as set out above in paragraph 68. This period is designed to give employers time, should they wish to do so, to consult with members on the various options available.

r20 Authorisation for an extension of this period may be obtained on application to the Authority. If an employer considers that such an extension will be necessary, it would be important that the application be made at least 14 days before the 60 days period is due to expire. The reasons why the extension is being sought and the length of the period involved e.g. a further 10 or 20 days, should be clearly stated. The

trustees should be notified at the same time that such application is being made and the period involved.

No employer direction to trustees - consequences

r6(4) 70. If the employer does not give a direction to the trustees regarding:

- a *preliminary poll*; and/or
- the number of persons to be appointed as trustees by the employer,

r20 within a period of 60 days of receiving notification from the trustees of a *valid request for a preliminary poll*, or such longer period as is granted by the Authority, then the trustees are required to issue a direction to the *returning officer*. Such direction must be to the effect that:

- an election for *member trustees* should be arranged; and
- the number of persons to be selected for appointment as *member trustees*, should equal the number of *existing trustees*.

Thus, if, for example, there are five existing trustees, *qualified members* would have the right to select a further five persons for appointment as *member trustees*.

It is important, therefore, that the employer respond to the trustees within the period specified.



Appointment of member trustees, Chairperson and their replacement

71. Where persons are selected for appointment as *member trustees* following a *preliminary poll* or an election in accordance with the *standard arrangement*, the employer has a role in relation to their appointment, and that of the Chairperson, which can involve

- r12(3) • notifying the *returning officer* of the names of the persons the employer wishes to appoint or, as the case may be, retain as trustees;
- r13(3)&(4) • selecting a person for appointment as Chairperson, should a majority of those selected for appointment as trustees fail to agree on a nominee for appointment to that post;
- r15(1) • arranging to have deed(s) of appointment for new trustee(s)/ removal of some or all of existing trustee(s) drawn up;
- r17(4) • selecting and appointing a new Chairperson should that post subsequently become vacant as a result of resignation, death or otherwise.
- r18(2) The employer will also be asked to direct the trustees as to the procedures to be adopted for the re-selection of *member trustees*, when their term of office expires.

Notification of names of trustees selected for appointment by employer

- r8(6)(b) &r(7) 72. The *returning officer* must notify the employer of the names of the persons selected as *member trustees* following a *preliminary poll* or an election under the *standard arrangement*, as appropriate. The *returning officer* will at the same time ask the employer to provide him/her with the names of the trustees the employer has selected for appointment, if he/she has not already provided these names.
- r8(6)(a)&r12(3)
- r12(3) The names must be furnished to the *returning officer* within 14 days of the *member trustees* being selected.



r13(2) Failure on the part of the employer to provide these names could result in the Chairperson being chosen by the persons selected for appointment as *member trustees* only (see paragraph 73).

It is important, therefore, that the employer respond to the *returning officer* within the period specified.

Selection of Chairperson

r13(2) **73.** Within a period of 30 days the *returning officer* must convene a meeting of the persons selected for appointment as *member trustees* and those selected by the employer for appointment as trustees, or make such other arrangements as he/she considers appropriate, for the purpose of selecting a Chairperson. If a majority of these persons fail to

r13(3) agree on a nominee for appointment as Chairperson, the *returning officer* must notify the employer immediately

r13(4) The employer is then required to nominate a person to be appointed as Chairperson. He/she has 14 days from receiving the notification from the *returning officer* to select a person for appointment and notify the *returning officer*.

The employer has a number of options in this regard.

He/she can choose to select for appointment as trustee and Chairperson a person other than one of those already selected for appointment as trustees.

r14(3) As the Chairperson will have a second vote in the event of an equality of votes on any issue for determination by the trustees, the employer may decide not to appoint a further trustee, and to choose as Chairperson one of the persons already selected.

Person to be selected as Chairperson

74. The role of Chairperson of the trustees is of particular importance and the person appointed should have the capacity to assist the trustees in working together in a cohesive and harmonious manner. He/she can also make a significant contribution to enabling them to properly discharge their duties and responsibilities as trustees in a way that, as

far as possible, is satisfactory from the point of view of all the trustees. It would be important, therefore, that the person chosen can fulfil this role.

Replacement of existing trustees

r12(1) **75.** It is important that during the period after the process is initiated, the existing trustees remain to deal with any scheme business that may arise, until the appointment of persons to replace some or all of these trustees takes effect. As soon as the *returning officer* notifies the employer of the names of the persons selected for appointment as trustees (including the Chairperson), arrangements should be made by the employer to have a deed for the appointment of trustees/removal of some or all of existing trustees, as appropriate, drawn up. This will ensure, in particular, that the trust property is transferred from the existing trustees to the new trustees by the time the appointment of the *member trustees* takes effect in accordance with the regulations i.e. 60 days from the date the *returning officer* declares that the *member trustees* have been selected or notifies that their selection has been approved.

76. The selection of persons for appointment as *member trustees* may require the replacement of *existing trustees*, particularly when *member trustees* are being appointed for the first time. For example, a scheme has five trustees at the time member participation in the selection of trustees commences. The employer indicates that he/intends to appoint two trustees and as a result two *member trustees* are selected. If the employer does not arrange to have some of the *existing trustees* resign there will be seven trustees when the appointment of the *member trustees* takes effect - five employer appointed trustees and two *member trustees*.

r16 Arrangements will then have to be made for the appointment of an additional number of *member trustees* to bring their number up to the number of employer appointed trustees. The selection of additional *member trustees* for appointment must be in accordance with the
r17 procedures for the filling of casual vacancies (see paragraph 37).

It would be important to avoid this type of situation arising and, therefore, the employer should ensure in good time that, where appropriate, the necessary arrangements are made to have existing trustees replaced by new appointees.



Resignation of Chairperson and replacement

- r17(4) 77. Should a vacancy for Chairperson arise, the employer is required to appoint a person to fill the post and such appointment has immediate effect. The same considerations will apply in appointing a replacement as in making an original appointment (see paragraphs 73 and 74).
- r17(6) The term of office of a person appointed to fill a casual vacancy for Chairperson is that of the remainder of the term of office of the person being replaced (see paragraph 78 following). It would be important that this is clearly notified to the person concerned when the appointment is being made.

Term of office of member trustees and Chairperson

- r12(2) 78. A person who has been selected as a *member trustee* following a:
- *preliminary poll*; or
 - an election in accordance with the *standard arrangement*
- r14(2) has a term of office that expires six years and sixty days after the date on which the *returning officer* declares that he has been selected or notifies that his selection has been approved. The term of office of a Chairperson is also six years

Procedures for re-selection

- r18(2) 79. The employer must be notified by the trustees of the date on which the term of office of the *member trustees* is due to expire and such notification should be issued not earlier than 12 months and not later than six months before such date of expiry. The employer should also
- r6(1)&(2) be asked by the trustees in this notification for a direction as to whether they are to:
- hold a *preliminary poll*; or
 - proceed to the selection of *member trustees* by means of an election in accordance with the *standard arrangement*.



Guidance for employers on the full implications of each option is given above in paragraphs 42 to 49.

Part V - Guide for returning officers

The existing trustees of the scheme must appoint a *returning officer* when the process is initiated.

The *returning officer* is responsible for the conduct of a *preliminary poll* and/or an election under the *standard arrangement*, arranging for the selection of a Chairperson of the trustees, where appropriate, and the appointment of the trustees and the Chairperson selected.

This part of the notes is a guide to these responsibilities.

Appointment of returning officer

r6(1) **80.** The trustees of the scheme are required to appoint a *returning officer* without undue delay after they receive a request to initiate the process of member participation in the selection of trustees.

r7(1) The person to be appointed must be:

(a) the Secretary to the *principal employer* associated with the scheme, more commonly known as the Company Secretary;

or where there is no such Secretary,

(b) the officer of the employer who performs the functions of Company Secretary;

or in lieu of such Secretary or officer,

(c) any other person who in the opinion of the trustees is competent to perform the functions of Secretary.

81. The trustees are, in effect, required to request the person under (a) or (b) above to accept appointment as *returning officer*. It would be important that the person concerned accept such appointment, where possible, as persons holding such post clearly have the credentials necessary to be a *returning officer* in relation to the scheme with which their employer is associated.



There are, however, a number of matters to be considered before accepting the appointment which are as follows.

Disbarment from being a candidate for member trustee or from nominating a candidate

r7(3) *A returning officer is not eligible to be nominated as, or to nominate a person for selection as, member trustee in an election under the standard arrangement. Accordingly, before accepting the appointment, the person concerned should be clear that it will not be possible to remain as returning officer and become a candidate in an election under the standard arrangement or nominate another person as a candidate.*

There is nothing in the regulations which would prevent the employer appointing as trustee a person who is *returning officer*.

Availability

There are specific timescales set down in the regulations within which the various tasks must be completed (see paragraph 30). It would be important that the *returning officer* be available, as necessary, to meet the deadlines set down.

r6(3)(a) *For example, a preliminary poll must be completed and the employer and trustees notified of the result within 30 days of the employer issuing the direction for such a poll to be held.*

r6(3)(b)
r8(6)(a) *An election under the standard arrangement must be completed and the employer and trustees notified of the result within 90 days of the employer issuing a direction for such poll to be held or the results of a preliminary poll being notified, as appropriate. It would be important that the returning officer be available to oversee such matters as issue of notices of election, acceptance of nominations, issue of ballot papers, counting of votes and notification of results.*

r13
r15(1) *The returning officer should also be available to oversee arrangements for the selection of the Chairperson and the appointment of new trustees and the Chairperson.*



Delegation of functions

- r7(2) **82.** While it would be important that the *returning officer* be available to oversee the various arrangements referred to above, he/she can delegate any of these functions to another employee of his/her employer or to any other person, by giving written authorisation to the persons concerned. The *returning officer* should, in particular, authorise a person to act as his/her alternate should he/she be unavailable at critical stages of the process due to unforeseen circumstances.



List of qualified members

r6(1) **83.** The *returning officer* on appointment should immediately arrange with the trustees to obtain a list of the *qualified members*.

r3 There are two categories of *qualified members*:

- *active members*; and
- *pensioner members*;

provided they belong to these categories on a specified date.

A scheme member is an *active member* for this purpose, if he/she is a current employee and is accruing long service benefits.

Pensioner members are those former employees who are in receipt of benefits under the scheme.

r3 The date for determining membership of the above categories is any previous date to be decided by the trustees. Such date must not be earlier than the beginning of the scheme year in which the process is initiated (see paragraph 86).

Addresses of members for purposes of sending notifications

84. It would be important to decide in the case of *active members* whether the documentation is to be forwarded to their home address or given/sent to them at their workplace. It is likely that documentation will be forwarded to *pensioner members* at their home address.

When this is decided the appropriate address for each member can then be inserted on the list.

Format of list for purposes of conducting polls

85. It would also be necessary to decide in this context on how polls are to be conducted. If all polls are to be conducted by means of a postal ballot then a list of *qualified members* in alphabetical order with the appropriate addresses should suffice.



If, however, polls are to be conducted at the members' workplace a different format may be required. This could involve separate lists for members in different locations and/or for members who belong to different categories of employees. A postal ballot will be necessary for *pensioner members* and a separate list with home addresses would be required in their case. If other scheme members are permitted to vote by means of a postal ballot their names would also need to be added to the list of postal voters (see paragraphs 91 to 93).

Changes to list of qualified members

86. Where the system for maintaining membership records enables the trustees to update the list of *qualified members* at each stage of the process by deleting the names of members who have left service and adding the names of new members, ideally this should be done.

The relevant stages of the process for which the *returning officer* has responsibility are:

- r8 • the *preliminary poll*
- r10 • the nomination of candidates for election as *member trustees* under the *standard arrangement*, and
- r9 • the taking of a poll under the *standard arrangement*

The alternative is to draw up a list at the commencement of the process and use it throughout.

List in alphabetical order

87. The names on the list of *qualified members* should be arranged alphabetically in order of surnames, of other names or initials, and should be numbered consecutively.

It may also be advisable to arrange the list in such a manner that will facilitate identification of the *qualified members*. This could involve categorisation as follows:

- *pensioner members*; and



- *active members* listed, where appropriate, on basis of grade, branch, location.

Availability of list

88. The list of *qualified members* must be made available for inspection by *qualified members*, by candidates for election, by the employer and an authorised trade union, as appropriate.

Accordingly, the *returning officer* should decide on the following:

- the hours during which; and
- the place or places at which

the list of *qualified members* may be inspected.

This information should be included in the notifications of a *preliminary poll* and/or an election under the *standard arrangement* issued to members.



Arrangements for polls

89. An outline of the initial arrangements to be made for taking polls, either by means of postal ballot, workplace ballot or a combination of both follows.

Postal ballots

r9(2)(c) **90.** This involves sending *ballot papers* for the purposes of a *preliminary poll* and/or a poll under the *standard arrangement*:

- by registered post to *qualified members* at their last known home address, or
- in the case of *active members*, by internal delivery at their workplace, in the same way for example, as a person's wages/ salary slip.

r8(3)
r9(2)(e) **91.** It should be noted that a *preliminary poll* must be conducted by means of a postal ballot. Should it be decided to have a workplace ballot, in the case of a poll under the *standard arrangement* (see paragraph 95), a postal ballot will be required in addition for *pensioner members*, if any, and for *active members* who would be unable to, or could only with inconvenience or difficulty, vote in the workplace ballot.

In these circumstances, the *returning officer* should make it clear in notices of the poll that *pensioner members* will automatically be entitled to vote by post and that *active members* will be entitled to apply to vote by post.

The *pensioner members* should be advised in the notice of the election that the *ballot paper* will be sent to them at their home address.

The details necessary for *active members* to apply to vote by post, should be clearly spelled out in a notice accompanying a notice of the election.

Application to vote by post

92. The notice on application to vote by post should contain the necessary information on the following:



- the criteria for determining whether applications to vote by post will be accepted;
- the times and places at which forms for use in such applications may be obtained;
- the manner in which, and the time before which, applications to vote by post should be made.

r9(2)(c)

A *returning officer* should normally issue a *ballot paper* by post if he/she is of the opinion that a person would be unable or could only with inconvenience or difficulty, vote at a polling place by reason of:

- (a) the circumstances of the person's occupation, service or employment;
- (b) holidays;
- (c) such other circumstances as the *returning officer* considers adequate.

93. To facilitate applications to vote by post the *returning officer* may wish to make special application forms available. The *returning officer* should determine applications to vote by post as soon as may be after each application is received. If the *returning officer* is satisfied that an applicant is entitled to a postal ballot and that the application is properly completed and certified, he/she should allow the application and mark it accordingly.

If the *returning officer* is not satisfied that the applicant is entitled to a postal ballot or that the application is properly completed and certified, he/she should refuse the application and mark it accordingly. The applicant should be notified that his/her application has been refused and the reasons for the refusal should be given.

Applications received after the closing date for receipt of such applications should be disregarded and the applicant notified by the *returning officer* accordingly.

List of postal voters

94. The *returning officer* should prepare a list of postal voters containing the list of those entitled to vote by post i.e., *pensioner members*, and those *active members* whose application to vote by post has been allowed. This should be made available in the same manner as the list of *qualified members*, as described above in paragraph 88.

The *returning officer* may also consider it necessary to arrange that copies of the list of *qualified members* to be provided at a polling place should be marked to denote the names of the members on such list whose names are also on the list of postal voters.

Polling places

95. If it is considered that a workplace ballot should be arranged for the *active members*, the *returning officer* must arrange to have a polling place(s) prepared. The number of polling places would normally be determined having regard to the hours of attendance and location of the persons entitled to vote and other considerations relevant to the particular employment. The following should normally be provided at each polling place:

- the furniture considered necessary for the conduct of the poll and, in particular, to ensure privacy when voting;
- such number of *ballot papers* as is considered necessary;
- copies of the list of *qualified members* or, where appropriate, such part thereof as contains the list of the *qualified members* allotted to vote at the polling place;
- a sufficient number of ballot boxes.

Presiding officers/poll clerks

96. The *returning officer* should appoint a *presiding officer* at each polling place and may also appoint a poll clerk to assist each *presiding officer*.



If there is just one polling place, the *returning officer* may decide not to appoint a *presiding officer*, but to carry out these functions himself/herself.

The functions of a *presiding officer* would normally include:

- keeping order at the polling place;
- regulating the number of persons to be admitted at a time;
- excluding from the polling place all persons other than the persons authorised to be present in the polling place.

See paragraphs 135 to 142 for full details on procedures at workplace ballots.



Conduct of preliminary poll

- r6(2) 97. The *returning officer* must arrange a *preliminary poll* if the employer
r7(4) decides to propose for the approval of members an *alternative arrangement* for the appointment of *member trustees*, and issues a direction to the existing trustees that a *preliminary poll* will be held.
- r6(3)(a) The *returning officer* must arrange to have the poll completed and the result notified in writing to the employer and the trustees *within 30 days* of receiving the employer's direction.

Notification from employer

- r6(3) 98. The *returning officer* should receive from the trustees a copy of the employer's notification which should contain:
- r6(2) (a) details of the *alternative arrangement* being proposed; and
- (b) the number of the trustees (but not necessarily the names) of the persons the employer intends to nominate under the *standard arrangement*, should the *qualified members* in the *preliminary poll* opt for that arrangement.

It should be noted that the employer's direction should not be regarded as having been received by the *returning officer* for the purposes of holding a *preliminary poll*, until he/she receives a notification containing the information specified under (a) and (b) above.

Details on alternative arrangement

- r6(2) 99. If the employer in his/her proposals for an *alternative arrangement* is proposing an arrangement involving more than one trustee, he/she must specify:
- r8(l) (1) the name(s) of the person(s), if any, whose selection for appointment as trustee(s) *qualified members* are to be given the option of approving;
- (2) the number (but not necessarily the names) of other person(s), if any, the employer proposes to appoint as trustees;

- (3) the name of the Chairperson, if any, or the procedure for selecting the Chairperson.

The notification could also include additional information that would assist the members in coming to a decision (see paragraph 46).

- r8(II)** If the arrangement proposed by the employer involves the appointment of a corporate body as the sole trustee, the appropriate details should be given by the employer (see paragraph 45).

The *returning officer* should check that the notification received from the employer contains the necessary information as set out above. If any of the information required is missing, the *returning officer* should immediately arrange to obtain the missing information.

Ballot paper

- r8(3)(a) & Sch A** **100.** On receipt of the direction from the employer, the *returning officer* should arrange straightaway to have *ballot papers* for the poll printed. These *ballot papers* must be in the form set out in Schedule A to the regulations or in a form substantially to the like effect.

Standard notification

- r8(3) & Sch B** **101.** A notification outlining the rights which the *qualified members* have in relation to the selection of persons for appointment as trustees, in accordance with section 62 of the Act and the regulations thereunder, must also be made available for circulation to the *qualified members* as part of a standard notification (see paragraph 102 following). This notification must be in the form set out in Schedule B to the regulations or in a form substantially to the like effect.

- r8(3)** **102.** The *returning officer* must issue to each *qualified member* entitled to vote in a *preliminary poll* a *standard notification* which shall include the following:

- (a) a *ballot paper* (see paragraph 100);
- (b) a notification on the rights of *qualified members* to participate in the selection of persons for appointment as trustees (see paragraph 101);



- (c) a note of the number of persons to be selected by *qualified members* for appointment as *member trustees* in accordance with the *standard arrangement* (see paragraph 98(b));
- (d) a note from the employer with relevant details of the *alternative arrangement* (see paragraph 99); and
- (e) such other documents on the *returning officer* considers necessary for the taking of the poll (see below).

r8(4)

Voting in the *preliminary poll* must be by secret ballot. To ensure that the secrecy of the ballot is maintained, the *returning officer* should also arrange to have circulated with the standard notification

- (i) an envelope (in these notes referred to as a 'covering envelope') addressed to the *returning officer*, and
- (ii) a smaller envelope marked '*Ballot paper Envelope*'.

A note from the *returning officer* should be also enclosed with clear instructions on how to use these envelopes to return completed *ballot papers* to the *returning officer* and on the latest date and time on which the covering envelopes must be received by the *returning officer*.

Issue of Standard Notification

103. The *returning officer* may wish to arrange to have witnesses present when the *standard notifications* are being issued. These normally should include representatives of the employer, the *qualified members* and an authorised trade union. At least 24 hours notice of the time and place at which the *standard notifications* will be issued should be given to the persons concerned.

At the issue of the *standard notification*, the number and name of the *qualified member* should be called out and a mark placed in a copy of the list against the name of the person to denote that a *standard notification* has been issued to him/her.

At the end of this process the *returning officer* should seal up in separate packets:

- (a) any unused *ballot papers*;
- (b) the marked copies of the lists of *qualified members*;
- (c) the *ballot paper* account made out by him/her.

The *returning officer* should arrange for the safe custody of these papers.

r8(3) **104.** The *returning officer* should then arrange to have the envelopes containing the *standard notification* delivered to each *qualified member* or sent by post in a registered letter addressed to such *qualified member* at his/her last known address. In the case of *active members*, delivery of the *standard notifications* would normally be arranged by means of internal delivery at their workplace in the same way, for example, as a person's wages/salary slip.

105. The *returning officer* should also provide a ballot box for the receipt of covering envelopes returned by the voters. He/she should show each such ballot box open and empty to those present at the time of the issue of the *standard notification* and should then close and seal it. The *returning officer* should make provision for the safe custody of every such box.

Receipt of votes in preliminary poll

106. The *returning officer* should arrange to have each covering envelope received, and immediately placed in the ballot boxes provided for this purpose. Where after the close of the poll, the *returning officer* receives any covering envelopes or any envelopes addressed to *qualified members* returned undelivered, he/she should not open them but put them aside in a separate packet along with such covering envelopes, if any, which did not contain *ballot paper* envelopes (see paragraph 108), and such items should be disregarded for counting purposes.

Arrangements for counting of votes

r8(5) **107.** The *returning officer* should appoint a place at which the votes will be counted and arrange to provide at that place suitable accommodation and all the furniture and equipment necessary for counting the votes.



Not less than two days before the ballot is due to close, the *returning officer* should give notice by whatever method he/she considers appropriate of the time, date and place at which the counting of votes should take place. Normally, this would take place not later than the day after the ballot closes.

As in the case of the issue of the *standard notifications* (see paragraph 103), the *returning officer* may wish to arrange to have witnesses present and ensure that they are given adequate notice of the arrangement for the counting of votes.

Opening the ballot boxes

108. On the date and time appointed, the *returning officer* in the presence of appropriate witnesses should arrange for the ballot boxes to be opened. The covering envelopes should be extracted therefrom and the number counted and noted.

Each covering envelope should then be opened separately, the *ballot paper* envelope extracted and opened, and the *ballot paper* extracted. In the event of a covering envelope not containing a *ballot paper* envelope and a *ballot paper* envelope not containing a *ballot paper*, a suitable note should be made for counting purposes.

Counting the votes

r8(5) **109.** The *ballot papers* extracted by the *returning officer* from each ballot box should be counted. Their total number should firstly be compared, with the number shown on the appropriate *ballot paper* account (see paragraph 103). The *returning officer* should then prepare a statement showing the result of this comparison and have it witnessed, as considered appropriate.

Determining proportion of qualified members who voted

110. The next stage is to determine whether 25% or over of the *qualified members* voted in the *preliminary poll*. This number should be determined by reference to the total number of *qualified members* to whom *standard notifications* were issued.



r8(7) If the total number of votes cast is less than 25% of the *qualified members* to whom *standard notifications* have been issued, then the *returning officer* shall deem the *alternative arrangement* to be the option chosen (see paragraph 114).

No further checking or counting of the votes should then be required unless the *returning officer* considers it necessary to confirm this outcome.

Checking votes cast

r8(5) **111.** If 25% or more of the *qualified members* have cast a vote, then the *returning officer* should have the votes for the *standard arrangement* and the votes for the *alternative arrangement* counted.

Before commencing this count, the *ballot papers* should be checked. Any *ballot paper* on which:

- (a) no 'x' or other mark deemed acceptable by the *returning officer* is placed in a box opposite either of the 'arrangements'; or
- (b) an 'x' or other such mark is placed in both boxes; or
- (c) anything is written or marked by which a voter can be identified;

should be declared invalid and not counted. A *ballot paper* should not be declared invalid by reason only of carrying the figures/mark '1' or 'one' or any other mark which, in the opinion of the *returning officer*, clearly indicates a preference.

The *returning officer* should endorse 'rejected' on any *ballot paper* which he/she declares to be invalid and, accordingly, is not to be counted. He/she should prepare a statement showing the number of *ballot papers* rejected under each of sub-paragraphs (a) or (b) or (c) above and should, on request, allow any representative of the employer or *qualified members* or an authorised trade union to copy such statement.

Counting valid ballot papers

r8(5) **112.** The *returning officer* should then arrange the valid papers in two parcels, according to the preferences for the *standard arrangement* and



the *alternative arrangement*. The number of papers in each parcel should then be counted and each 'arrangement' credited with a number of votes equal to the number of valid papers.

Standard arrangement chosen

r8(6)(a) **113.** Where the preference of 50% or more of the *qualified members* who cast a valid vote is for the *standard arrangement*, the *returning officer* should declare that arrangement to be the chosen option. He/she should then immediately notify the employer and trustees in writing of the result (see paragraph 115) and commence preparations for an election under the *standard arrangement*.

Alternative arrangement chosen

r8(6)(b) **114.** Where more than 50% of the *qualified members* who cast a valid vote opt for the *alternative arrangement* then the *returning officer* should notify the employer and the trustees in writing (see paragraph 115).

r8(7) If less than 25% of the *qualified members* voted in the *preliminary poll* the *returning officer* must also declare that the *alternative arrangement* is the option chosen (see paragraph 110).

r12(1) & r15(1) The *returning officer* should then proceed, where appropriate, to make the necessary arrangements for the appointment of any persons approved for appointment as *member trustees* under the *alternative arrangement* (see paragraphs 160 to 166 below).

Notification in writing

115. The result of the *preliminary poll* should be given in an appropriate statement to the trustees and to the employer (see paragraphs 113 and 114).

The *returning officer* may also wish to make the statement available to representatives of the *qualified members* and authorised trade unions.

Timetable

r6(3)(a) **116.** The *returning officer* has 30 days from the date he/she receives the employer direction that such a poll is to be held to have the poll completed and the results notified in writing to the employer and trustees.

Qualified members should be given at least 21 days from the date the *standard notifications* are issued to return the *ballot papers*. Allowing for a minimum of two days at the end of the 30 day period for the counting of votes and notification of trustees/employer of the result, this would mean that the *returning officer* should be in a position to issue the *standard notifications* not later than seven days after receiving the employer's direction.

An extension of this 30 day period may, in exceptional circumstances, be granted on application to the Authority.

Such application should be made as soon as the *returning officer* considers an extension is necessary and the reasons given as to why the extension is being sought. The *returning officer* should also notify the trustees that the application is being made.



Election under the standard arrangement – preliminary stages

117. An election is held in accordance with the *standard arrangement* if:

- r6(2) (a) the employer decides to by-pass a *preliminary poll* i.e., an *alternative arrangement* is not being proposed, or
- r8(6)(a)&(7) (b) a majority of *qualified members* (i.e. 50% or more) voting in a *preliminary poll* has chosen the *standard arrangement* (provided at least 25% of *qualified members* voted in the poll).

r6(3)(b) & r8(6)(a) The *returning officer* must arrange to have the election completed and the result notified in writing to the employer and the trustees within 90 days of either receiving the employer's direction, (a) above, or of issuing the notification of the result of the *preliminary poll*, (b) above.

Timetable

118. One of the first tasks of the *returning officer* in relation to the election should be to work out a timetable. He/she should allow at least 30 days for a poll, counting of votes and the notification of the result. At least five days at the beginning of the period may be required to arrange for the notice of election to be prepared and circularised and nomination forms printed. A further five days at least may be required after close of nominations to print *ballot papers* and circulate them to members, if a postal ballot of some or all of the *qualified members* is being held. In the light of these considerations, the following is a suggested timetable.

	Stage	Completed Within
r9(1)&(2)(c)	1. Prepare Notice of Election and circulate to members; print nomination papers	5 days
r9(2)(a)&(d)	2. Close of nominations	55 days of completing stage 1
r9(2)(b)&(d)	3. Print <i>ballot papers</i> , circulate to members, if postal ballot is being held	5 days of completing stage 2



r9(2)(d)	4.	Closing date for return of ballot papers/date of polls at workplace (if any)	21 days of completing stage 3
r9(2)(f),(g) &(h) r8(6)(a)	5.	Counting of votes/notification of results	4 days of completing stage 4

It may be possible in the cases of many schemes to complete each of the above stages in a shorter period. Others may take longer, particularly stages 1 and 3. However, it is important to allow sufficient time for the whole process as a rushed timetable can lead to errors, etc.

r20 An extension of the 90 day period may be granted, in exceptional circumstances, on application to the Authority. Such application should be made as soon as the *returning officer* considers an extension is necessary and the reasons given as to why the extension is being sought. The *returning officer* should also notify the trustees that the extension is being sought.

Notice of election

- r9(1)** **119.** The *returning officer* should issue a notice of the election to all *qualified members* as soon as practicable. This notice should include details on the following:
- r5(1)&r6(2)** (a) the number of persons which members have a right to select for appointment as *member trustees* (see paragraph 120); the
- r3&r10(1)** persons who can be nominated as candidates and the minimum number of *qualified members* who must nominate a candidate for
- r10(3)** him/her to be accepted as a valid candidate (see paragraph 121);
- r9(2)(a)** (b) the nomination day i.e. the date on which nominations for the election will be received;
- r9(2)(c)** (c) the times, manner in which and places at which nomination papers are available;
- r9(2)(d)** (d) the place or places and times at which the *returning officer* or his/her representative will be available on nomination day to receive completed nomination papers;



- r9(2)(i) (e) the hours during which and the place or places at which the list of *qualified members* may be inspected;
- r9(2)(c) (f) the manner in which and time within which applications to vote by post should be made to the *returning officer* (where applicable), should a poll be necessary, and the circumstances in which the applications will be allowed (see paragraphs 91 to 93);
- (g) any other particulars which the *returning officer* considers appropriate.

A pension guide entitled '[Selecting Member Trustees](#)' published by the Authority is a guide to the whole process designed specifically for members and employers. The *returning officer* may wish to give a copy to each member with the notice of election, if this has not already been done in the context of a *preliminary poll*.



Nomination of candidates

r6(3) **120.** The existing trustees of the scheme must inform the *returning officer* of the number of persons to be selected for appointment as *member trustees* before the election can get under way. (This number may already have been provided, if a *preliminary poll* had been held).

Valid candidates

121. The *returning officer* determines whether the nominees are valid candidates for the purposes of the election. The following are the criteria:

r3&r10(1) (i) any person over 18 years or a corporate body can be nominated for appointment as a *member trustee*. This means that persons other than scheme members can be nominated. A corporate body would be 'one person' for these purposes;

r10(2)&(3) (ii) a nominee must, in addition, be nominated by either:

(a) not less than 10 *qualified members*;

(b) not less than 10% of the *qualified members*;

whichever is lesser, and

r10(3) (c) confirm to the *returning officer* that he/she accepts the nomination;

r10(2) (iii) each *qualified member* may nominate candidates up to the number to be selected. Thus, if two *member trustees* are to be selected, each member may nominate two candidates.

Notice of election - inclusion of information on nomination criteria

r9(1) **122.** The *returning officer* should arrange to have information on the above criteria included in the Notice of Election.

In the case of (ii) and (iii) in the preceding paragraph, the actual numbers should be given. Thus, if there are a 100 or more *qualified members* in the scheme each candidate will have to be nominated by at least 10 such members. If there are less than 100, each candidate will have to be nominated by not less than 10% of that number.

r10(3)



r10(2) In the case of (iii), if, for example, two persons are to be selected for appointment as *member trustees*, it should be stated in the Notice of Election that each *qualified member* is entitled to nominate two candidates.

Nomination forms

r9(2)(a) &(c) **123.** Nomination forms should be readily available. These normally should include spaces for the following:

- full name of candidate and relevant details;
- signature of candidate to indicate his/her acceptance of nomination;
- signature of *qualifying members* nominating the candidate;
- section for *returning officer* to indicate that nomination is valid/invalid.

Receipt of completed nominations

r9(2)(d) **124.** The *returning officer* should attend at the place and on the date/time specified in the Notice of Election in that regard.

r9(2)(a) Each person nominated as a candidate and any of the *qualified members* who have nominated that candidate should be entitled to attend, while the validity of the nominations is being ruled on by the *returning officer*. No other person should be entitled to attend except with the permission of the *returning officer*.

Ruling on the validity of the nominations

r9(2)(a)&(d) **125.** The *returning officer* should number the nomination forms in the order in which they are received by him/her and should then rule on the validity of the nominations in that order.

He/she should first check that each nomination meets the criteria, as set out in paragraph 121 above. If, for example, the candidate has been nominated by less than the number of *qualified members* required, or some of those who did nominate the candidate either have already



nominated candidates up to the maximum number permissible or are not *qualified members*, this should be indicated straightaway. The *returning officer* may then wish to specify a time period within which an amended nomination form to which the names of other *qualified members* are added will be accepted.

The *returning officer* may also object to the description of a candidate in a nomination paper if, in his/her opinion, the description is incorrect, insufficient to identify the candidate or unnecessarily long. Where the *returning officer* so objects, he/she should allow the candidate or one of the *qualified members* who nominated the candidate to amend or delete the description. If it is not amended to the *returning officer's* satisfaction, the *returning officer* may amend or delete it, as he/she thinks fit, after consultation with the candidate or with one of the *qualified members* concerned.

When the *returning officer* has ruled on the validity of a nomination, he/she should put a note of his/her decision on the nomination paper and sign the note. Where a nomination paper is ruled to be invalid, the *returning officer* should include in such note a statement of the reasons for his/her decision.

As soon as practicable after ruling on the validity of a nomination paper, the *returning officer* should give notice of his/her ruling in such manner as he/she considers appropriate.

Death of candidate

126. Where, after receipt of nominations at an election, the *returning officer* becomes aware that a candidate standing nominated has died, he/she should give notice to that effect immediately in such manner as he/she considers appropriate. If a poll is being taken, the candidate's name should, if circumstances permit, be removed from the *ballot paper*.

Selection of candidates

r11(1) **127.** If the number of valid candidates is equal to or less than the number of persons to be selected as *member trustees*, the *returning officer* should then declare these persons to be selected for appointment as *member trustees*. He/she should issue a notice to that effect to the

r15(1) employer and the existing trustees. The *returning officer* may also wish



to arrange to have a similar notice sent or otherwise brought to the attention of the *qualified members*.

- r13 &
r15(1) Arrangements should then be made for the selection of the Chairperson and the appointment as trustees of all the persons selected (see paragraphs 160 to 166).
- r11(2) If the number of valid candidates is greater than the number of persons to be selected for appointment as trustees, the *returning officer* should then arrange for the taking of a poll.
- r7(4) Guidance on the arrangements to be made for such a poll is given in the next section of these notes.



Conduct of poll in an election under the standard arrangement

- r9(1) **128.** Where a poll is being taken, the *returning officer* should, as soon as practicable, and in such manner as he/she considers appropriate, give notice of the arrangements for the poll. Such notice should normally include the following:
- (a) the list of valid candidates;
- r9(2)(c) (b) the manner in which and the times at which *ballot papers* are to be issued for the purpose of a postal ballot, if such procedure is to be followed for balloting some or all of the *qualified members*;
- r7(1)(4) (c) who may be admitted to such place when the postal *ballot papers* are being issued;
- r7(1)(4) (d) the dates, times and locations at which workplace ballots are to be held, where such procedure is being followed either on its own or in conjunction with a postal ballot;
- (e) the place and time for the counting of votes; and
 - (f) any other particulars considered appropriate.

This notice should be delivered to all the *qualified members*.

Ballot papers

- r9(2)(b) **129.** Arrangements for the printing of the *ballot papers* should be made as soon as practicable. *Ballot papers* should be prepared in accordance with the following directions:
- (a) each *ballot paper* should contain the names and descriptions of the candidates standing nominated, as shown in their respective nomination papers. The names should be arranged alphabetically in the order of the surnames, or if there are two or more candidates bearing the same surname, in the alphabetical order of their other names or if their surnames and other names are the same, in such order as determined by lot by the *returning officer*,



- (b) the surname of each candidate should be printed in large characters and his/her other names and the description of the candidate as appearing on his/her nomination paper in smaller characters;
- (c) where the surnames of two or more candidates at an election are the same, there should also be printed in large characters on the *ballot papers* the other names of such candidates and so much of the descriptions of such candidates appearing in their respective nomination papers as will, in the opinion of the *returning officer*, distinguish such candidates;
- (d) the list of candidates should be arranged either in one continuous column or in two or more columns in such manner (without departing from the alphabetical order) as the *returning officer* considers is most convenient;
- (e) the *ballot papers* should be numbered consecutively on the back. The numbers on the *ballot paper* should be printed in the smallest characters compatible with legibility and should be printed on or about the centre of the paper.

Postal ballot - papers to be sent

- r9(2)(c) **130.** If a postal ballot is being held the *returning officer* should issue the following:
- (a) *ballot paper*;
 - (b) covering envelope;
 - (c) *ballot paper* envelope;
 - (d) guidance note on the ballot;
 - (e) note with candidate details, if considered appropriate.

The covering envelope addressed to the *returning officer* and smaller envelopes marked '*Ballot paper* Envelope' should be prepared at the same time as the '*Ballot papers*'.



- r9(2)(d)
&(e) In the guidance note on the ballot, *qualified members* should be advised to:
- (a) complete their *ballot papers*, in accordance with the instructions on that paper;
 - (b) fold the completed *ballot paper*, insert it in the envelope marked '*Ballot paper envelope*' and seal it; and then
 - (c) insert the '*Ballot paper envelope*' in the covering envelope addressed to the *returning officer* and arrange to have it sent without delay.

- r9(2)(d) The guidance note should also provide clear instructions on the latest date and time on that date the completed *ballot papers* should be received by the *returning officer*. It should be made clear that the date and time is that for the receipt of the completed *ballot papers*.

The *returning officer* may also wish to arrange with the candidates to have an information note prepared, giving more details on each of the candidates, if it is considered that the details on the *ballot paper* are not sufficient to enable *qualified members* to identify all the candidates and make an informed choice. The candidates could be listed in the order in which they appear on the *ballot paper* and the details agreed with each candidate, subject to the length of each description being the same for each candidate. This may avoid candidates having to circulate such information themselves and/or to have to canvass each *qualified member*.

Postal ballot - issue of ballot papers

131. Each valid candidate should be entitled to be present and/or to appoint a person to represent him/her at the issue of the *ballot papers*, for the purposes of a postal ballot.

- r9(2)(c) The issue of the *ballot papers* and the envelopes/other papers to be sent should be arranged as follows. The number and name of each *qualified member* participating in the postal ballot should be called out and a mark placed in a copy of the list of *qualified members* against the name of that person to denote that a *ballot paper* has been issued to him/her, but without identifying the *ballot paper*.



Where an envelope issued to a *qualified member* is returned to the *returning officer* before the polling day as not having been delivered to the *qualified member* concerned, the *returning officer* may re-address the envelope and have it delivered to that member.

Ballot boxes for postal votes

r9(2)(e) **132.** The *returning officer* should provide a ballot box for the reception of covering envelopes returned by *qualified members*. He/she should show each such ballot box open and empty to such candidates and/or their agents as are present at the time of issue of the postal *ballot papers* and should then close and seal it. The *returning officer* should make provision for the safe custody of every box.

The *returning officer*, and/or a person or person appointed by him/her for this purpose, should on receipt of a covering envelope immediately place it unopened in the ballot box provided.

Opening of postal ballot boxes

r9(2)(c) **133.** The postal ballot boxes should normally be opened at the place
&(g) where the counting of votes is to take place (see paragraph 144).

When a postal ballot box has been opened, the *returning officer* should arrange to have all the covering envelopes in each box counted and the number noted.

The covering envelopes should then be opened and the *ballot paper* envelopes extracted, counted and the number noted.

The *ballot paper* envelopes should then be opened. In the event of a *ballot paper* envelope not containing a *ballot paper*, a suitable note should be made for counting purposes.

Postal votes received late

r9(2)(c) **134.** Where, after the close of the poll at an election, the *returning*
r7(4) *officer* receives any covering envelopes or any envelopes addressed to postal voters returned undelivered, he/she should not open them, but put them aside in a separate packet along with such covering envelopes, if any, which did not contain *ballot paper* envelopes, and such items should



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be disregarded for counting purposes. He/she should endorse on each packet a description of its contents.

Workplace ballots – procedures

r7(4) **135.** Guidance on the general arrangements to be made for workplace ballots is given above in paragraphs 95 and 96. The following is an outline of the procedures that a *returning officer* should ensure are adhered to during the poll.

Opening of poll

r9(2)(e) **136.** Immediately before the commencement of the poll, the *presiding officer* at each polling place should show each ballot box in his/her charge to such persons as are present, so that they may see that it is empty. He/she should then seal it in such manner as will prevent it being opened without breaking the seal. It should then be placed in the view of the *presiding officer* for the receipt of *ballot papers* and kept so sealed and in view during the poll.

Admission to polling place

r7(4) **137.** No person should be admitted to a polling place at an election other than:

- (a) the *returning officer*;
- (b) the *presiding officer* and poll clerk (if any) for the polling place;
- (c) such other persons as the *presiding officer* may authorise to be present.

Subject to paragraph 138 below a person should not be admitted to vote at any polling place other than that to which he/she is allotted.

Voting by certain persons employed by the returning officer

r7(4) **138.** Where a person entitled to vote at an election is employed at the election by the *returning officer* during the election and if in the opinion of the *returning officer* the circumstances of his/her employment prevent him/her from voting either by post or at the polling place to which he/she is allotted, the *returning officer* may issue a certificate to the effect that he/she is of that opinion and authorise the person to vote at any other polling place and the person may vote accordingly. Where a *returning*



officer authorises a person to vote at a polling place other than that to which he/she is allotted, the person when voting at such place should surrender the certificate to the *presiding officer* who should not deliver to the person a *ballot paper*, until such surrender is made.

Procedure for voting

- r7(4) & r9(2)(e) **139.** Subject to paragraph 138, the *presiding officer* should deliver a *ballot paper* to a person entitled to vote at the election (other than a person whose name is on the relevant list of postal voters) who applies therefore and declares his/her name and such other form of identification as the *presiding officer* considers appropriate.
- r9(2)(c)&(d) Immediately before a *ballot paper* is delivered, a mark should be placed on the appropriate list of *qualified members* against the number of the person receiving the *ballot paper* to denote that a *ballot paper* has been issued to that person, but without showing the number of the *ballot paper* so issued. A person on receiving the *ballot paper* should secretly record his/her vote on the *ballot paper* and fold the paper so that his/her vote is concealed. He/she should then return to the *presiding officer's* table and put the folded paper into the ballot box. He/she should vote without undue delay and leave the polling place as soon as his/her *ballot paper* has been put into the box.
- r9(2)(e)

Spoilt ballot papers

- r7(4) **140.** At an election a voter who has inadvertently spoilt his/her *ballot paper* may, on returning it to the *presiding officer*, be given another *ballot paper*. The *presiding officer* should immediately mark 'Spoilt' on the spoilt *ballot paper*. He/she should retain the spoilt *ballot paper* and deal with them as set out in paragraph 142.

Questions to voters at election

- r7(4) **141.** At an election a *presiding officer* may, and if required by a candidate or a person representing a candidate present in the polling place should, put to any person applying for a *ballot paper* at the time of his/her application, but not afterwards, the following questions or any one of them:
- (a) Are you the same person whose name appears as AB and in respect of whom the following particulars appear on the list of

qualified members entitled to vote at the election for *member trustees* of (scheme to which the election relates)?

- (b) Have you already voted at this election by postal ballot or otherwise?

Unless such of those questions as are put to the person are answered, in the case of the first question, in the affirmative and, in the case of the second, in the negative, a *ballot paper* should not be delivered to him/her.

Close of poll

r7(4) **142.** At the time fixed for the close of the poll at an election the *presiding officer* should take steps to ensure that no further persons are admitted to the *polling place* to vote, but any *qualified member* in the place at that time who had not voted should be entitled to receive a *ballot paper* and to vote. As soon as practicable after the close of the poll, the *presiding officer* should seal each ballot box in his/her charge so that no further *ballot papers* can be inserted therein. He/she should also seal up in separate packets:

- (a) the unused and spoilt *ballot papers*, placed together;
- (b) the marked copies of the list of *qualified members* entitled to vote at that *polling place*;
- (c) a *ballot paper* account made out by the *presiding officer*;
- (d) any certificates given by the *returning officer* in accordance with paragraph 138, authorising persons to vote at the polling place;
- (e) the unused stationery and other documents and materials relating to the election.

He/she should then deliver all such ballot boxes and packets to the *returning officer* in such manner as the *returning officer* may stipulate.

The *returning officer* should make adequate arrangements for the safe custody of the ballot boxes and of all documents connected with the poll.



Counting of votes- procedures

r7(4)&
r9(2)(g) **143.** The *returning officer* should arrange, as soon as practicable, a suitable place where the votes will be counted. Not less than two days before close of polling, the *returning officer* should give notice to the candidates, by whatever method he/she considers appropriate, of the time and place at which he/she will begin to count the votes.

No persons other than the candidates and the *returning officer's* assistants and clerks should be present at the count, except with the permission of the *returning officer*.

The *returning officer* should give such persons as are present all reasonable facilities for observing the proceedings at the count (including, in particular, facilities for satisfying themselves that the *ballot papers* are correctly sorted). He/she should also give them information with respect to the count as can be given, consistent with the orderly conduct of the proceedings.

Preliminary proceedings

r9(2)(g) **144.** At the time set for the beginning of the count, the *returning officer* should open the ballot boxes including postal ballot boxes, if any, (see paragraph 133) and extract the *ballot papers*.

The *ballot papers* should then be counted and their total number compared with the number shown in the appropriate *ballot paper* account. The *returning officer* should prepare a statement showing the result of this comparison in respect of all the ballot boxes. He/she should, on request, allow any candidate present to copy the statement.

The *returning officer* should then mix together the whole of the *ballot papers* and proceed to count the votes in accordance with the Rules set out in paragraphs 148 to 157.

Conduct of the count

r9(2)(f),
(g)&(h) **145.** The *returning officer* should arrange for the ballot papers to be scrutinised for the purpose of discovering any papers liable to be rejected as invalid and in accordance with the rules set out below (paragraphs



148 to 157) record the number of votes given to each candidate at the election.

While counting and recording the number of *ballot papers* the papers should be kept face upwards and due precautions taken to prevent any person from seeing the numbers printed on the backs of these papers.

In counting the votes the *returning officer* should credit the candidates with votes in accordance with the rules set out below.

Notification of result

146. When the result of the election has been ascertained the *returning officer* should as soon as practicable prepare a statement giving the result of the election.

r6(3)(b) &
r8(6)(b) This should be forwarded to the employer, the trustees and the person appointed Chairperson of the trustees, when he/she assumes that post.

Retention and disposal of documents

147. On the completion of the counting of the votes at an election, the *returning officer* should arrange to have all documents relating to the election retained for one year at the expiration of which they shall be disposed of in such manner as he/she considers appropriate.



Rules for counting votes

Introduction

r9(3) **148.** The regulations provide that when an election is contested the poll shall be taken according to the principle of proportional representation. Each *qualified member* has a single transferable vote and the *ballot papers* must be set out in such way that he/she can state his/her preferences for the candidates.

r9(2) The *returning officer* is responsible for the manner of counting the votes and is required to have regard to such guidance notes as may from time to time be issued by the Authority.

In accordance with the provisions of the regulations, a *returning officer* in an election for *member trustees* under the *standard arrangement* should adhere to the rules for the counting of votes which now follow.

Definitions

149. In these rules:

'continuing candidate' means any candidate not deemed to be elected and not excluded;

'count' means:

- (a) all the operations involved in the counting of the first preferences recorded for candidates; or
- (b) all the operations involved in the transfer of the surplus of an elected candidate;
- (c) all the operations involved in the transfer of the votes of an excluded candidate;

'deemed to be elected' means deemed to be elected for the purpose of the counting of the votes but without prejudice to the declaration of the result of the poll;

'determine by lot' means determine in accordance with the following directions, namely, the names of the candidates concerned having been written on similar slips of paper, and the slips having been folded so as to prevent identification and mixed and drawn at random, the candidate or candidates shall in cases of exclusion be excluded in the order in which their names are drawn, and in cases of surpluses, the surpluses shall be transferred in the order in which the names are drawn;

'mark' means a figure, a word or a mark such as 'X';

'non-transferable paper' means a *ballot paper* on which no second or subsequent preference is recorded for a continuing candidate; provided that a paper shall be deemed to have become a non-transferable paper whenever:

- (a) the names of two or more candidates (whether continuing candidates or not) are marked with marks which, in the opinion of the *returning officer*, indicate the same order of preference and are next in order of preference, or
- (b) the name of the candidate next in order of preference (whether a continuing candidate or not) is marked with a mark which, in the opinion of the *returning officer*, does not follow consecutively after some other mark on the *ballot paper*, or with two or more marks; or
- (c) it is void for uncertainty;

'original vote' in regard to any candidate means a vote derived from a *ballot paper* on which a first preference is recorded for that candidate;

'preference' shall be interpreted as follows:

- (a) 'first preference' means any mark which, in the opinion of the *returning officer*, clearly indicates a first preference; 'second preference' means any mark, which in the opinion of the *returning officer*, clearly indicates a second preference standing in succession to a first preference; 'third preference' means any mark which, in the opinion of the *returning officer*, clearly indicates a third preference standing in succession to a second preference; and so on;



- (b) 'next available preference' means a preference which, in the opinion of the *returning officer*, is a second or subsequent preference recorded in consecutive order for a continuing candidate, the preferences next in order on the *ballot paper* for candidates already deemed to be elected or excluded being ignored;

'surplus' means the number of votes by which the total number of the votes, original and transferred, credited to any candidate, exceeds the quota;

'transferable paper' means a *ballot paper* on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate;

'transferred vote' in regard to any candidate means a vote derived from a *ballot paper* on which a second or subsequent preference is recorded for that candidate.

Invalid ballot papers

r9(2)(h) **150.** Any *ballot paper*:

- (a) on which the figure 1 standing alone is not placed at all or is not so placed as to indicate a first preference for some candidate, or
- (b) on which the figure 1 standing alone indicating a first preference is set opposite the name of more than 1 candidate, or
- (c) on which anything is written or marked by which the voter can be identified,

shall be invalid and not counted, but the *ballot paper* shall not be invalid by reason only of carrying the words 'one', 'two', 'three' (and so on) or any other mark which, in the opinion of the *returning officer*, clearly indicates a preference or preferences.

The *returning officer* shall endorse 'Rejected' on any *ballot paper* which he/she deems to be invalid. The *returning officer* shall prepare a statement showing the number of *ballot papers* rejected by him/her under each of the sub-paragraphs (a), (b) and (c) of the preceding



paragraph and shall, on request, allow any candidate to copy such statement.

First count

r9(2)(f) &(g) **151.** After the *ballot papers* have been mixed in accordance with paragraph 144 the *returning officer* shall, having rejected any that are invalid, arrange them in parcels according to the first preferences recorded for each candidate. The *returning officer* shall then count the number of papers in each parcel and credit each candidate with a number of votes equal to the number of valid papers on which a first preference has been recorded for such candidate and he/she shall ascertain the number of all valid papers.

The quota

152. The *returning officer* shall then divide the number of all valid papers by a number exceeding by one the number of members to be elected. The result increased by one, any fractional remainder being disregarded, shall be the number of votes sufficient to secure the election of a candidate. This number is referred to in these rules as 'the quota'.

For example, there are 500 valid papers and the number of candidates to be selected as *member trustees* is 3. The quota is arrived at by dividing 500 by 4 (3+1) which equals 125 and then adding 1. The quota in this case would be 126. Where at the end of any count the number of any votes credited to a candidate is equal to or greater than the quota, that candidate shall be deemed to be elected.

Transfer of surplus

153.

- (1) Where at the end of any count the number of votes credited to a candidate is greater than the quota, the surplus shall be transferred in accordance with this Rule to the continuing candidate or candidates indicated on the *ballot papers* in the parcel or sub-parcel of the candidate deemed to be elected, according to the next available preferences recorded thereon.
- (2) Where the votes credited to a candidate deemed to be elected whose surplus is to be transferred consist of original votes only, the



returning officer shall examine all the papers in the parcel of that candidate and shall arrange the transferable papers in sub-parcels according to the next available preferences recorded thereon.

- (3) Where the votes credited to a candidate deemed to be elected whose surplus is to be transferred consist of original and transferred votes, or of transferred votes only, the *returning officer* shall examine the papers contained in the sub-parcel last received by that candidate and shall arrange the transferable papers therein in further sub-parcels according to the next available preferences recorded thereon.
- (4) In either of the cases referred to in sub-paragraphs (2) and (3) of this paragraph the *returning officer* shall make a separate sub-parcel of the non-transferable papers and shall ascertain the number of papers in each sub-parcel of transferable papers and in the sub-parcel of non-transferable papers.
- (5) If the surplus is equal to or greater than the total number of papers in the sub-parcels of transferable papers, the *returning officer* shall transfer each sub-parcel of transferable papers to the continuing candidate indicated thereon as the voter's next available preference. Where, however, the surplus is greater than such total number, a sub-parcel shall be made of a number of non-transferable papers equal to the difference between such total number and the surplus and the papers in such sub-parcel shall be set aside and not further taken into account and, shall be described as non-transferable papers not effective and the remaining non-transferable papers, also arranged as a sub-parcel, shall be placed with the papers of the candidate deemed to be elected.
- (6) Where the surplus is less than the total number of transferable papers, the *returning officer* shall transfer from each sub-parcel of transferable papers to the continuing candidate indicated thereon as the voter's next available preference that number of papers which bears the same proportion to the number of papers in the sub-parcel as the surplus bears to the total number of transferable papers. The number of papers to be transferred from each sub-parcel shall be ascertained by multiplying the number of papers in the sub-parcel by the surplus and dividing the result by the total number of transferable papers. A note shall be made of the



fractions, if any, in each quotient ascertained in respect of each candidate. If, owing to the existence of such fractions, the number of papers to be transferred is less than the surplus, so many of these fractions taken in the order of their magnitude (beginning with the largest) as are necessary to make the total number of papers to be transferred equal to the surplus shall be reckoned as of the value of unity and the remaining fractions shall be ignored. Where two or more fractions are of equal magnitude, that fraction shall be deemed to be the largest which arises from the largest sub-parcel, and if such sub-parcels are equal in size, the *returning officer* shall determine by lot which fraction shall be deemed to be the largest.

- (7) The papers to be transferred from each sub-parcel shall be those last filed in the sub-parcel, and each paper so transferred shall be marked to indicate the number of the count at which the transfer took place.
- (8) The *returning officer* need not necessarily transfer the surplus of a candidate deemed to be elected when that surplus, together with any other surplus not transferred is less than both:
 - (a) the difference between the quota and the number of votes credited to the highest continuing candidate, and
 - (b) the difference between the numbers of the votes credited to the two lowest continuing candidates.
- (9) Where at any time there are two or more surpluses, the greater or greatest of such surpluses shall first be transferred and the remaining surplus or surpluses shall then be transferred and, where appropriate, in the order of their descending magnitude.
- (10) Where two or more candidates have each an equal surplus, the surplus which arose at the earliest count shall first be transferred, but if the surpluses arose at the same count, the *returning officer* shall determine by lot which of those surpluses shall be first transferred.



Exclusion of candidate

r9(2)(j) **154.** If at any time no candidate has a surplus (or when under paragraph 153 an existing surplus need not be and is not transferred), and one or more vacancies remain unfilled, the *returning officer* shall exclude the candidate credited with the lowest number of votes and shall examine all the papers of that candidate, and shall arrange the transferable papers in sub-parcels according to the next available preferences recorded thereon for continuing candidates, and shall transfer each sub-parcel to the candidate for whom that preference is recorded, and shall make a separate sub-parcel of the non-transferable papers. The non-transferable papers shall be set aside and not further taken into account and, shall be described as non-transferable papers not effective.

Where the total of the votes of the two or more lowest candidates together with any surplus not transferred is less than the number of votes credited to the next highest candidate, the *returning officer* may in one operation exclude such two or more lowest candidates.

If, when a candidate has to be excluded under this paragraph, two or more candidates have each the same number of votes and are lowest, regard shall be had to the number of original votes credited to each of those candidates, and the candidate with the smallest number of original votes shall be excluded and where the numbers of original votes are equal, the *returning officer* shall determine by lot which shall be excluded.

Transfer of votes

155. Where a transfer of votes is made under paragraphs 153 or 154 each sub-parcel of papers transferred shall be placed on top of the parcel, if any, of papers of the candidate to whom the transfer is made, and that candidate shall be credited with a number of votes equal to the number of papers transferred to him/her.

If after any transfer a candidate has a surplus, that surplus shall be dealt with in accordance with and subject to the provisions of paragraph 153 before any other candidate is excluded.



Filling of last vacancies

r9(2)(j) **156.** When the number of continuing candidates is equal to the number of vacancies remaining unfilled, the continuing candidates shall be deemed to be elected.

When only one vacancy remains unfilled, and the votes of some one continuing candidate exceed the total of all the votes of the other continuing candidates together with any surplus not transferred, that candidate shall thereupon be deemed to be elected.

Recount

157. Any candidate may, at the conclusion of any count, request the *returning officer* to re-examine and recount all or any of the papers dealt with during that count, and the *returning officer* shall forthwith re-examine and recount such papers accordingly without making any alterations in the arrangement of the papers in the various parcels, except where such alterations may be necessary in consequence of any error discovered in the recount. The *returning officer* may also at his/her discretion recount papers either once or more often in any case in which he/she is not satisfied as to the accuracy of any count; but nothing shall make it obligatory on the *returning officer* to recount the same parcel or papers more than once.

The power under the foregoing paragraph of a *returning officer* to recount at his/her discretion papers in any case in which he/she is not satisfied as to the accuracy of any count shall extend to papers dealt with at an earlier count than the immediately preceding one.

As respects each candidate, one request (and not more) may be made by him/her for a complete re-examination and recount of all parcels of *ballot papers*, and the *returning officer* shall re-examine and recount the parcels of *ballot papers* accordingly. In the re-examination and recount, the number or order of *ballot papers* in any parcel shall not be disturbed. Nothing in the foregoing provisions of this paragraph shall make it obligatory on the *returning officer* to re-examine or recount the same parcel of papers more than once, but if an error is discovered which is, in the opinion of the *returning officer*, a significant error likely to affect the result of the election, the *returning officer* shall count all the papers afresh from the point at which the error occurred.



Where an error is discovered, the *returning officer* shall, where necessary, amend any results previously announced by him/her.

Declaration of the result of the poll

r9(2)(j) **158.** On the completion of the counting of the votes the *returning officer* shall determine and declare the result of the poll and notify the employer and the trustees accordingly. The candidates deemed to be elected shall stand selected for appointment as *member trustees*.

Decisions of returning officer

r9(4) **159.** The decision of the *returning officer*, whether expressed or implied by his/her acts, on any question which arises in relation to the exclusion of any candidate under these Rules or to any *ballot paper* or transfer of votes shall be final.



Appointment of member trustees and Chairperson

r12(1) **160.** The *returning officer* has responsibility under the regulations for ensuring that the necessary steps are taken to effect the:

- appointment of *member trustees*, selected under the *standard arrangement*, or under an *alternative arrangement* approved by members in a *preliminary poll*;
- selection of the Chairperson under the *standard arrangement* and his/her appointment, where *member trustees* have been selected under that arrangement; and
- appointment of the Chairperson, if any, under an *alternative arrangement*.

r12(1) The appointment of the trustees selected, including the Chairperson shall take effect 60 days from the date the *returning officer* declares that the *member trustees* have been selected (*standard arrangement*) or notifies that their selection has been approved (*alternative arrangement*).

The following are the steps that must be taken in that period.

Notification of employer nominations

r12(3) **161.** The *returning officer* must arrange to obtain from the employer the names of the other person or persons, if any, to be appointed as trustees, if they have not already been supplied to him/her. These names must be furnished to the *returning officer* within 14 days of the *member trustees* being selected.

It would be important that the employer be asked to supply these names, if he/she has not already done so, at the same time as he/she is being notified of the results of the *preliminary poll* (where members have opted for the *alternative arrangement*), or of the results of an election under the *standard arrangement*. The deadline for furnishing the names should also be clearly stated.

Selection of Chairperson in accordance with standard arrangement

r13(2) **162.** Where the persons to be appointed as *member trustees* have been selected in accordance with the *standard arrangement*, then within 30 days of their selection, the *returning officer* must convene a meeting of those persons, and of those selected by the employer for appointment as trustees (see paragraph 161), or make such other arrangements as he/she considers appropriate, for the purposes of enabling them to select a Chairperson.

A meeting of the persons concerned would clearly be the best way of enabling them to select a person for appointment as Chairperson.

Persons to be selected as Chairperson

163. The *returning officer* should ensure that the persons selected as trustees are fully aware of the provisions made in the regulations for the selection of the Chairperson and the specific role that the Chairperson will have. The following is an outline of the main points in this regard.

The person chosen as Chairperson must be appointed trustee (or retained as trustee, as the case may be).

He/she will have a second vote in the event of an equality of votes on any issue for determination by the trustees. This means that one of the persons already selected as trustee could be chosen as Chairperson.

It would also be open to the persons concerned to choose someone other than one of their number for appointment as trustee (or retention as the case may be), and as Chairperson.

In making their choice, the persons selected for appointment as trustees should be asked to bear in mind that the person chosen should have the capacity to assist them in working together in a cohesive and harmonious manner. He/she can also make a significant contribution to enabling them to properly discharge their duties and responsibilities as trustees in a way that, as far as possible, is satisfactory from the point of view of all the trustees. It would be important, therefore, that the person chosen can fulfil this role.



If a majority of the persons concerned fail to agree on a nominee for appointment as Chairperson, the employer is then required to nominate a person for appointment to the post.

Chairperson selected

164. If a majority of persons selected for appointment as trustees agree on an nominee for Chairperson, the *returning officer* must notify the person concerned, and confirm that he/she will accept the appointment. If that person accepts the appointment, then the *returning officer* should set the procedures in train for the appointment of all the persons selected (including the Chairperson) as trustees (see paragraph 165 below).

Should the nominee refuse the appointment, then the *returning officer* should immediately notify the persons selected for appointment as trustees, with a view to another person being nominated for the post.

r13(3) If a majority of the persons selected for appointment as trustees fail to agree on a nominee for appointment as Chairperson, the *returning officer* must notify the employer immediately.

r13(4) The employer is required within 14 days of receiving such notification from the *returning officer* to nominate a person to be appointed as Chairperson and to notify the *returning officer* accordingly. This deadline should be clearly stated in the notification sent to the employer in this regard.

Appointment of trustees - procedures

r15(1) **165.** Within a period of 14 days of the Chairperson being selected or nominated, the *returning officer* is required to formally notify in writing to the employer and the existing trustees the persons (including the Chairperson) selected or nominated for appointment as trustees.

The *returning officer* should request the employer at the same time to arrange to have deed(s) of appointment/removal drawn up, without undue delay, to enable full effect to be given to these appointments and to notify him/her when this has been done. The aim should be to have the deeds drawn up not later than 60 days after the date the persons are selected for appointment as *member trustees*, on which date these



persons become trustees of the scheme in accordance with the regulations.

Failure of employer to act

r16 **166.** There are special procedures laid down to deal with situations where by virtue of the actions of the employer, or his/her failure to act, the regulations fail to have full effect.

This will mainly arise where the employer fails to take the necessary action to reduce the number of existing trustees to the number selected for appointment as *member trustees*. As a result, this number of *member trustees* would be less than the number of other trustees appointed directly by the employer.

The position in this regard should become clear 60 days after the persons have been selected for appointment as *member trustees*, on which date they become trustees in accordance with the regulations. If on that date the *returning officer* establishes that the number of *member trustees* is less than the number of other trustees (excluding the Chairperson), he/she should immediately notify the employer and request him/her to arrange for the necessary number of other trustees to resign.

If the employer fails to take the action required within a period of 30 days then the *returning officer* should notify the Chairperson of the trustees that there are vacancies for *member trustees*, equal to the number by which the other trustees (excluding the Chairperson) exceed the number of existing *member trustees*. Thus, if there are five other trustees and two *member trustees*, the *returning officer* would notify the Chairperson that there are vacancies for three *member trustees*.

The Chairperson would then be required to arrange for the filling of these vacancies in accordance with the procedures laid down for the filling of casual vacancies (see paragraph 37).

Notification of election results to Chairperson

r15(2) **167.** Where a poll has been held in an election under the *standard arrangement*, the *returning officer* should forward a statement with the final results of that poll to the Chairperson of the trustees who has been



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appointed in accordance with the *standard arrangement*. This statement should give a full breakdown of the votes cast for each candidate and all the preferences he/she received.



Specimen Forms

PRELIMINARY POLL/ELECTION FOR MEMBER TRUSTEES

The specimen forms following are designed to assist the returning officer in the conduct of a preliminary poll and/or an election for member trustees under the standard arrangement. The forms included are

1. Preliminary Poll - Ballot paper
2. Result of Preliminary Poll
3. Application for Postal Voting facilities
4. Ruling on Application for Postal Voting facilities
5. Nomination Paper for election for member trustees
6. Ballot paper for election for member trustees
7. Result of Election for member trustees

All these forms are in A4 size to correspond with the rest of the guidance notes. However, the following forms as listed above - 1, 3, 4, 6 and 7 could be reduced to a smaller size, e.g. A5, when being printed for use in the preliminary poll/election, as appropriate.



Member Participation in the Selection of Persons for Appointment as Trustees of Occupational Pension Schemes

Pensions Act, 1990, as amended (Section 62); Regulations, S.I. No. 376 of 1996
(Regulation 8)

PRELIMINARY POLL

BALLOT PAPER

Pension Scheme to which Preliminary Poll relates

Under section 62 of the Pensions Act, 1990 and the Regulations made thereunder, qualified members of the scheme may

1. select, or
2. approve of the selection by the employer concerned

of a person or a specified number of persons who shall be appointed as trustees of the scheme.

Option 1 above is called the *standard arrangement* and Option 2 is called the *alternative arrangement*. These are explained in the standard notification, which you will have received with the ballot paper.

Please indicate your preferred option by marking an X in one of the following boxes

Standard Arrangement

Alternative arrangement

Fold the paper and place it in the envelope marked 'Ballot paper' and return it in the covering envelope to the returning officer.



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Ballot paper No.....



Member Participation in the Selection of Persons for Appointment as Trustees of Occupational Pension Schemes

Pensions Act, 1990, as amended (Section 62);
Regulations, S.I. No. 376 of 1996

RESULT OF PRELIMINARY POLL

Pension Scheme to which Preliminary Poll relates.....
.....

Section 1

Total No. of Qualified Members Total Votes Cast

- A. 25% or over of qualified members have voted
- B. Less than 25% of qualified members have voted

If less than 25% of qualified members have voted, the alternative arrangement is deemed to be selected. Accordingly, tick (✓) whichever box is applicable. If A, proceed to complete Sections 2 and 3. If B, proceed to complete Section 3 only.

Section 2

Invalid Votes Total Valid Poll

<i>Standard Arrangement</i>	<i>Votes</i>	<i>Alternative Arrangement</i>	<i>Votes</i>

Section 3

Arrangement Selected.....

Certified Correct:

Signature of Returning officer: _____

Date: _____



Election for Member Trustees

Pensions Act, 1990, as amended (Section 62),
Regulations, S.I. No. 376 of 1996 (Regulation 9)

Application for Postal Voting Facilities

Pension Scheme to which election relates

.....

1. To the returning officer -
I, did undersigned, being a member of the above scheme, qualified to vote in the election for member trustees of that scheme under the Pensions Act, 1990, as amended, hereby state that I will be unable, or will not without inconvenience or difficulty be able, to vote on the polling day at a polling place for the following reason(s):

.....

.....

.....

2. I hereby apply to vote by post and to have my name included in the list of postal voters to be prepared in relation to the aforesaid election.

3. Name(Block Capitals)
Employment Address (Block Capitals).....

.....

Signature: _____

Date: _____

Address to which postal ballot paper should (if issued) be sent

.....

.....



Election for Member Trustees

Pensions Act, 1990, as amended (Section 62);
Regulations, S.I. No. 376 of 1996 (Regulation 9)

Ruling on Application for Postal Voting Facilities

This form should be sent to the applicant, after completion by the returning officer.

With reference to the application from¹
Dated²for postal voting facilities in the election for member
trustees of³
under the Pensions Act, 1990, as amended, I hereby give notice that the said
application is

allowed⁴

refused, because⁵

Signature: _____
Returning officer

Date: _____

Instructions

1. Insert name of applicant
2. Insert date on which application was made
3. Insert name of pension scheme to which election relates
4. If application is being allowed, place tick (√) in this box
5. If application is being refused, place tick (√) in this box and give the reasons why it is being refused in the space following



ELECTION FOR MEMBER TRUSTEES

Pensions Act, 1990 (Section 62);
Regulations, S.I. No. 376 of 1996 - (Regulation 10)

NOMINATION PAPER

(NOTE: Part 1 and Part 2 to be completed in respect of candidate.
Part 3 to be completed by returning officer)

Pension Scheme to which election relates

.....

PART 1

To the Returning officer:-

We, the undersigned, being members of the above scheme qualified to nominate candidates for election as member trustees of that scheme under the Pensions Act, 1990, as amended, propose for nomination as a candidate at the election under the said Act:

NAME OF CANDIDATE (Please use Block Capitals)	
<i>Surname</i>	<i>Other Name(s)</i>
CANDIDATE DETAILS	
.....	
.....	
.....	

Signature of Candidate: _____

Date: _____



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Ballot paper No.



Election for Member Trustees

Pensions Act, 1990, as amended (Section 62);
Regulations, S.I. No. 376 of 1996.

Pension Scheme to which election relates

.....

BALLOT PAPER

<i>Mark order of preference in spaces below</i>	
	AHERN, John Supervisor, Maintenance Section, Naas Road, Dublin.
	BURKE, Mary Machinist, Production Unit, Naas Road, Dublin.
	CURRAN, Patrick Gerard Manager, Sales Division, Merrion Square, Dublin 2.
	CURRAN, Patrick Joseph Retired - Formerly Machinist, Production Unit, Naas Road, Dublin.
	LYNCH, Catherine Retired - Formerly Manager, Sales Division, Merrion Square, Dublin 2.
	MURPHY, Sarah Supervisor, Computer Division, Naas Road, Dublin.

Instructions:

1. Write 1 beside the name of the candidate of your first choice, 2 beside your second choice, and so on.
2. Fold the paper to conceal your vote and put in the ballot box.

(If postal vote, Instruction 2 could read as follows

2. Fold the paper and place it in the envelope marked 'Ballot paper' and return it in the covering envelope to the Returning officer.)



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Ballot paper No



Election for Member Trustees

Pensions Act, 1990, as amended (Section 62);
Regulations S.I. No. 376 of 1996

RESULT OF ELECTION

Pension Scheme to which election relates

Total Votes Cast	Postal Votes	Other Votes
Total No. of Qualified Members		Invalid Votes
Date of Count		Total Valid Poll
		Number of Seats
		Quota

NAMES OF CANDIDATES	First Count	Second Count		Third Count		Fourth Count		Fifth Count	
	Votes	Transfer of BURKE Votes/ Surplus Votes	Result	Transfer of AHERN Votes/ Surplus Votes	Result	Transfer of MURPHY'S Votes/ Surplus Votes	Result	Transfer of CURRAN P J'S Votes/ Surplus Votes	Result
AHERN, John									
BURKE, Mary									
CURRAN, Patrick									
CURRAN, Patrick									
LYNCH, Catherine									
MURPHY, Sarah									
Non-transferable papers not effective									
Total									

Names of Candidates Elected

Certified Correct:

Signature of Returning officer _____ Date: _____

Note: If there are more counts than five, particulars of the transfers and the result of each count should be given on a continuance sheet in similar format.



Part VI – Vesting order by the Authority

- r21(1) **168.** The Authority may, if it considers it desirable to do so, on application to it by a *member trustee* of a *relevant scheme* or a sole corporate trustee of a *relevant scheme*, make an order under its seal to the effect that any estate or interest in any land subject to the trusts of the *relevant scheme*, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who are the trustees for performing the trusts of the *relevant scheme*, and that order shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trusts of the *relevant scheme*, that estate, interest or right.
- r21(2) **169.** This does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trusts of the *relevant scheme*, or to any such share, stock, annuity or property as is only transferable in books kept by a company or other body, or in manner directed by or under statute.
- r21(3) **170.** Where any land of which the ownership is registered under the Registration of Title Act, 1964 becomes vested, by a *vesting order*, in any person or persons, the registering authority under that Act shall, upon production of a copy of the order sealed with the seal of the Authority, and upon payment of the appropriate fee, register that person or those persons in the appropriate register as owner of the land.
- r21(4) **171.** Before making a *vesting order* the Authority may require payment of such fee as may from time to time be prescribed by the Minister.



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