

Member Nominated Trustees

Background

Since 1997 members of pension schemes have been able to nominate and select at least one third of the trustee body responsible for managing their pension arrangement. This follows the introduction of member nominated trustees (MNTs) and member nominated directors* under the Pensions Act 1995. However, the Pensions Act 1995 also gave sponsoring employers the choice to 'opt out' of these requirements, and to agree alternative arrangements. Under the new Pensions Act 2004 regulations, which came into effect on 6 April 2006, employers can no longer 'opt-out', and in future, at least one third of trustee body must be nominated and selected by members.

New MNT Requirements

The Pensions Act 2004 does not set out prescriptive requirements for nominating and selecting MNTs. Instead, the Pensions Regulator has issued a Code of Practice to help trustees agree a suitable process. The Code encourages trustees to agree and adopt a process which is fair, transparent and proportionate for their scheme. A summary of the main requirements and guidance is detailed below:

- **Constitution of Trustee Body** – Agreement must be reached on the number of employer nominated and member nominated trustees required for the trustee body, taking into consideration any current scheme specific rules. It is important to note that MNTs cannot be excluded from any decision-making and must have the same trustee functions as all other trustees.
- **Nominations** – At least one third of trustees should now be nominated by active and pensioner members. It is possible to also include deferred members in this process, however many trustee bodies are keen to avoid this due to potential conflicts of interest and confidentiality issues. Where trustees wish to include non-scheme members in the nomination process, employer approval will be required.

Trustees may also wish to consider introducing 'constituencies' if the membership is split over more than one category or location. This will help ensure fair and proportionate representation for all scheme members.

- **Selection** – Where the number of nominations received is more than the number of vacancies, the trustees must agree how the MNTs will be selected. This may be done in a variety of ways, for example by:
 - ballot of members
 - selection panel
 - trade union
 - existing trustee board
 - member representative committee
 - pensions management committee

Where the number of nominations received is equal or less than the number of vacancies, the trustees may decide that nominees are automatically selected as MNTs. Alternatively, they may prefer to still run a full selection process, using one of the options shown above.

* Any reference to member nominated trustees applies equally to member nominated directors, unless explicitly stated.

- **Term of Office** – The regulations do not specify a minimum or maximum period of office, however the Code of Practice suggests a term of between three and six years.
- **Timescales** – Trustees must ensure that arrangements for the nomination and selection processes are put in place within a reasonable period of time. The Code of Practice indicates that a ‘reasonable period’ is six months for agreeing the new MNT arrangements, and a further six months to implement the process.
- **Vacancies** – The Code of Practice suggests that where unfilled vacancies exist, the nomination process should be repeated at least every three years.
- **Removal/Resignation** – Removal of an MNT requires the agreement of all other trustees, unless it is by vote of the membership under the scheme rules.
- **Frequency of Review** – Once new MNT arrangements are in place, the Regulator will expect the trustees to review them periodically. The Code of Practice recommends that a review is carried out every three to five years, or in the event of a significant event in the scheme, e.g. merger of two schemes or a redundancy exercise.
- **Member Communication** – Key to the MNT process is transparency which can be achieved through clear member communication at each stage of the process. The trustees must ensure that they implement a process which is appropriate to the size and membership profile of their own scheme.

Exemption from the MNT requirements

The following arrangements are exempt from the MNT requirements:

- schemes with fewer than two members
- schemes with a statutory independent trustee
- schemes which are not registered pension schemes
- schemes with fewer than twelve members where all members are trustees
- centralised schemes
- stakeholder schemes
- wholly insured schemes
- executive pension schemes

Any trustee bodies which did not comply with the new one third MNT requirements had until 31 October 2007 to implement new procedures. Failure to comply with the MNT requirements is likely lead to an investigation and possible fine by the Regulator.

What next?

The Government has stated its intention to increase the minimum proportion of MNT’s from one third to one half at some point in the future, possibly as early as 2009.

The information in this note should not be relied upon or taken as an authoritative statement of the law.