

Technical Briefing

No.17



The new member-nominated trustees / directors regime

The Pensions Regulator's Code of Practice on this subject came into effect on 22nd November and supplements the new regulations that applied from 6th April earlier this year. There are several important differences to the previous regime for which affected schemes should start immediate planning if they are to comply with the new measures.

The Old Regime

The Pensions Act 1995 brought in the requirement for occupational pension schemes to elect member-nominated trustees ('MNTs') to the trustee board, or if the case to elect member-nominated directors to trustee companies.

However, the old regime allowed employers to propose alternative arrangements, which if passed by a ballot of scheme members, meant the MNT/Ds need not be appointed.

The regulations laid down specific deadlines for nominating and electing MNTs, and also when undergoing the opt-out procedure. They also set out the minimum number of MNT/Ds based on the size of the scheme's membership.

The New Measures

- MNTs must make up at least 1/3 of a trustee board. For trustee companies, MNDs must represent at least 1/3 of the board of directors.
- Unlike the Pensions Act 1995, the 1/3 ratio applies for schemes with less than 100 members.
- Scheme rules that stipulate a ratio bigger than 1/3 are not over-riden by the 1/3 ratio.
- The company opt-out provisions are no longer available.
- MNTs are to be nominated in a process involving

at least the active and pensioner members and selected in a process that involves some or all of the scheme members.

- The nomination and selection process must take place within a reasonable time (no longer than 6 months according to the Code of Practice)
- Nomination processes should be repeated no less frequently than every three years where a vacancy has remained unfilled.
- Employer approval is required for an MNT who is not a scheme member.
- MNTs can only be removed with the approval of all the other trustees.

The regs contain a provision (which is as yet untriggered) to increase the MNT (or MND) ratio from 1/3 to 1/2, and the government has indicated it might trigger this in 2009.

When must this happen?

Existing opt-out arrangements can continue until the date they are due to cease (usually 10 years from the date they were introduced for pre-October 2002 opt-outs, and 4 years otherwise) or 31 October 2007 if earlier. The regulations require schemes to comply within a reasonable period from the time they apply to that scheme (a period which is no longer than 6 months according to the Code of Practice).

Nomination / selection considerations

The Code of Practice states that trustees should decide on nomination and selection arrangements that are proportional, transparent and fair.





No.17

Prospective candidates for nomination can be drawn from just the active and pensioner memberships although this must be extended to include deferred pensioner members if none of the former categories exist. In any event, trustees can decide to include deferred pensioner members and pension credit members within the nomination process. Subject to employer approval, nominations can include representative organisations such as recognised trade unions, staff committees and so on.

The law prevents (i) under 18s, (ii) undischarged bankrupts, (iii) disqualified directors and (iv) anyone convicted of dishonesty or deception from being appointed as a trustee.

The selection process can be limited to just active and pensioner members unless either (i) the trustees decide to include other membership groups / representative organisations or (ii) no active or pensioner members exist. The selection process can be made by a panel or group, but this must include some scheme members. Selection can be made by (i) ballots (ii) selection panels (iii) member representative committees (iv) pension management committees (v) trade unions and (vi) existing trustees or (vii) some other method that is proportional, transparent and fair.

Flow Chart

A flow chart summarising the new measures can be viewed on the Pensions Regulator's website at:

<http://www.thepensionregulator.gov.uk/trustees/membernominated/membernominated-10.aspx>

Further information

Regulations:

<http://www.opsi.gov.uk/si/si2006/20060714.htm>

Code of Practice:

<http://www.thepensionsregulator.gov.uk/pdf/codeMntMndFinal.pdf>

CPRM Commentary

The new regime is much more flexible and clear, especially with regards to deadlines. The removal of the employer opt-out will upset some but is very much in line with the government's policy of separating trustees and their interests from those of the sponsoring company. The potential to increase the MNT/D ratio to 50% will accelerate this process.

If you would like further advice on this or other pension issues, please contact either Walker Yule or Philip Wheeler in Edinburgh (0131 220 8247) or Simon Chrystal in Newcastle (0191 233 9408).