

Technical Briefing

No.22



Member-Nominated Trustees and Directors Opt Out Exemption Lapse Deadline 31 October 2007

End of Opt Out

This Technical Brief covers the loss of the Member Nominated Trustee or Director (MNT) opt out. Any current opt out lapses at the latest by 31 October 2007 as previously reported in our Guide to the Pensions Act 2004.

Since the introduction of the Pensions Act 2004 ("the Act") and the related Occupational Pension Schemes (Member-Nominated Trustees and Directors) Regulations 2006, there is significantly less scope for a scheme to opt out of the requirements to have MNTs. Previously, under the Pensions Act 2005, a scheme could propose alternative arrangements in order to secure an opt out from the requirements. Any such opt out lapses at the end of the existing opt out period, or by 31 October 2007, whichever comes first. Thereafter, there are only very limited circumstances where an opt out can be secured and, in the vast majority of cases, MNTs will be required.

The requirement for MNTs

MNTs of a trust based scheme are trustees (or directors of sole trustee companies) who have been selected by some or all of the members of the relevant scheme. The new regulations require that, after 6 April 2006, at least one-third of a scheme's trustees (or trustee directors), must be MNTs (although there is scope in the Act to increase the requirement to one-half). Where an opt out was in place, schemes have a transitional period until 31 October 2007 to comply.

There is no numerical minimum, and there can be more than one-third MNT representation where an employer agrees. There is no specified term of

appointment for an MNT, and there is also no requirement (as there was previously) for an MNT to continue as a member of a scheme in order to remain in office, as the employer can approve continuance in the role.

Process for nominating and selecting MNTs

The process for selecting MNTs is significantly less onerous than under the previous rules. There is no specified period for a selection process, arrangements simply having to be made within a "reasonable period".

As a minimum, all active and pensioner members must be permitted to nominate candidates and, normally, the same group would be involved in the subsequent selection process. Alternatively, the rules allow a representative group to act as selectors to simplify administration. Further, where the number of nominations is less than or equal to the number of vacancies, then all nominees can be deemed appointed.

Further details and required actions

Trustees should urgently review their MNT arrangements to ensure they are keeping up to date with the requirements of the Act. Further information can be found in the Pensions Regulator's guidance at <http://www.thepensionsregulator.gov.uk/pdf/codeMntMndFinal.pdf>

If you have any questions, or require assistance in ensuring you are compliant with the Act, please contact your **cprm** consultant.

