



MEMBER NOMINATED TRUSTEES – GUIDANCE NOTE

The Pensions Act 1995 introduced the requirement for company pension schemes to have member nominated trustees (MNTs). If the scheme's sole trustee is a company (including the employer) rather than individuals, scheme members will have the right to nominate directors of that company - member nominated directors (MNDs). In these circumstances references to MNTs apply equally to MNDs. Changes to the requirements introduced by the Pensions Act 1995 have been made by the Pensions Act 2004.

Under the conditions of the Pensions Act 2004, trustees must ensure that within a reasonable period at least one-third of the total number of trustees are:

- (a) nominated in a process in which at least all the active and pensioner members, or organisations which adequately represent them, could participate, and
- (b) selected as a result of a process which involves some or all of the scheme members.

APPLICATION

All company pension schemes set up under trust will have to comply with the MNT requirements, other than certain types of schemes and arrangements which are exempt. As a first step employers and trustees should establish whether the legislation applies to their scheme. The exemptions apply to the following types of schemes:

- non registered schemes
- schemes where the company is the only employer and the sole trustee, and all the members are, or have been, directors of the company and at least a third of the current directors are members
- schemes with only one member
- every trustee is a company
- direct payment paid-up insurance schemes
- stakeholder schemes
- schemes not set up under trust
- former old code schemes

- certain industry-wide or centralised schemes
- relevant small occupational schemes (basically SSAS)
- schemes with a statutory independent trustee
- schemes with only independent trustees
- every member of the scheme is a trustee, and there are no other trustees
- schemes with fewer than 12 members where all scheme benefits are secured with an insurer
- schemes which are independent of the employer as a result of the employer having been dissolved or liquidated prior to 06/04/2005.

OPTIONS

The trustees have to comply with the MNT requirements. They must decide upon how best to do so, bearing in mind that the legislation sets out minimum requirements for appointing MNTs (and their terms of office) which the trustees must comply with. Although they are designed to be implemented quickly and do not need the members' agreement, there are areas of flexibility which allow the trustees to determine aspects of the procedure. The minimum requirements are that active and pensioner members must be allowed to nominate MNTs, while some or all of the members must be involved in the selection process. Deferred members and members admitted for death in service benefits need not be consulted on the MNT provisions, although they can be if the trustees want.

Scheme trustees can design a more suitable procedure if they wish.

MNT REQUIREMENTS

The nomination process

Any individual may be nominated as a MNT. If the trustees wish to include nominees who are not members of the scheme, they must first obtain the employer's consent.

All active and pensioner members (or representative groups) must be eligible to participate in the nomination process. Deferred members need not be allowed to participate, but schemes may allow them to.

Neither the legislation or the Code of Practice prescribe the arrangements or procedures that must be put in place to comply with the MNT requirements, but there are a number of minimum requirements, and some recommendations.

The nomination process should be proportionate, fair and transparent and include effective communication to the members involved in the nomination process of:

- the MNT requirement
- the nomination process
- what happens if there are insufficient nominations
- selection process.

The method of communicating these matters to members is not prescribed and should be by whatever method the trustees deem appropriate for their scheme. This could include:

- staff noticeboard
- letter to home address
- notice to staff via payslips or internal post
- staff meetings
- e-mail
- intranet.

Members then nominate in accordance with the stated process. They must be given a reasonable period to consider the proposals and nominate.

After the nomination process

If the number of nominations matches the number of vacancies, the procedure may provide that the nominees will take office automatically (without the need to go through the selection process), but this need not be the case.

If too many nominations are received the selection process must be gone through (see below).

If there are insufficient nominations the nomination and selection process must be repeated at reasonable intervals until the vacancy is filled. When re-running the nomination process, trustees could consider the inclusion of deferred members if they have not been included in the first round. The Pensions Regulator has suggested that repeating the process after 12 months may be considered a reasonable period, or if already re-run, may wait until end of the MNT's 3-year term. This is not fixed, and should be reviewed if there are significant changes to scheme circumstances.

The outcome of the nomination process should also be communicated to those who were involved.

Trustees should also bear in mind that they may need to demonstrate at a later date to members or the Pensions Regulator that they have satisfied the member nominated trustees requirement. This may mean including some form of written communication in the nomination process or ensuring that minutes are taken of any meetings used to communicate the process.

THE SELECTION PROCESS

The selection process must involve some or all of the members. In deciding which members to involve in the selection process and the method of selection, again trustees should have regard to the principles of fairness, transparency and proportionality. A proportionate, fair and transparent selection process would include effective communication to those involved in the selection process of:

- the method of selection
- what the members have to do now.

The individual circumstances of each scheme will influence how the trustees decide to communicate the process and the method of selection. It may even be appropriate for trustees to use more than one means of communication. The suggested methods of communication are the same as for the nomination process, although the trustees may decide it is appropriate to use different methods for different communications.

The trustees may choose any method of selection which they deem appropriate, and can decide which members, or groups of members, should be involved in the selection. Suggested methods of selection include:

- a ballot
- selection panels
- selection by member representative committees
- selection by pension management committees
- selection by existing trustees.

After the selection process the outcome must be communicated to those involved in the nomination and selection process.

ADDITIONAL REQUIREMENTS RELATING TO MNTS

- A MNT can only be removed by the agreement of all other trustees.
- A MNT must not be excluded from the exercise of any functions in relation to the scheme merely because of their status as a MNT.
- Where a scheme has appointed a corporate trustee (i.e. a company), there are MND requirements which are broadly equivalent to those for MNTs. In such cases, rather than nominating individual trustees, the members must be given the opportunity to nominate directors of the corporate trustee.

PENALTIES FOR NON-COMPLIANCE WITH MNT REQUIREMENTS

It is essential that the trustees keep records of all the steps that are taken in order to show that they have complied with the legislation. If the trustees fail to comply with the regulations they can be fined up to £5,000 (individual) or £50,000 in other cases.

In addition, the Pensions Regulator may prohibit them from acting as trustees in the future.

MNT procedures should be reviewed every 3 to 5 years.

COMPLETION OF THE MNT REQUIREMENTS

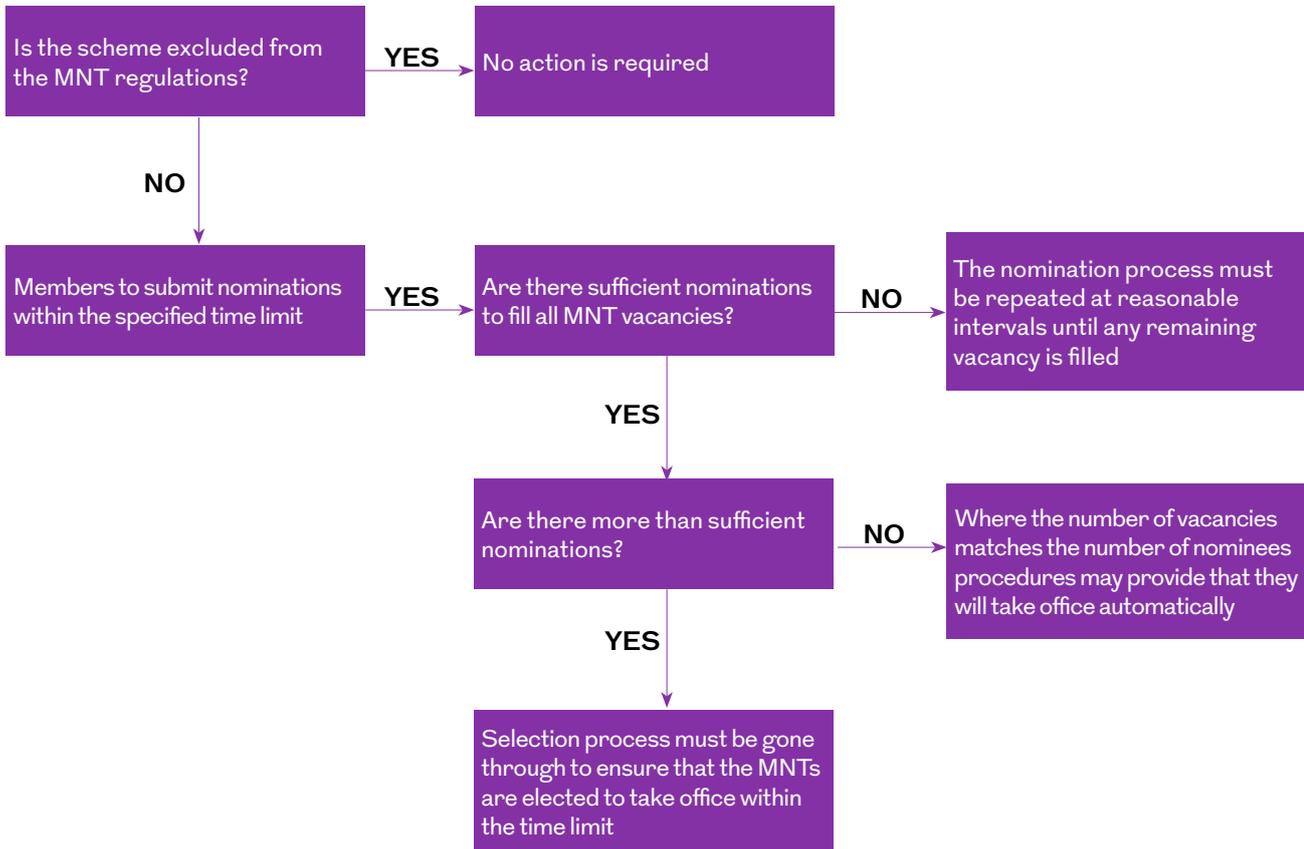
Royal London should be provided with copies of all relevant documentation. Any change in the trustees of the scheme should be detailed on the scheme trustee form (enclosed).

The flowchart and checklist should assist you with the requirements.

FURTHER INFORMATION

The Pensions Regulator guide providing additional information for selecting trustees is available from the Pensions Regulator's website - www.thepensionsregulator.gov.uk

THE MNT REQUIREMENT



CHECKLIST

Action point

Keep detailed records of all stages

Timescale

Ongoing

MNTs

Trustees' responsibility to have MNT procedures

Within 6 months of the scheme commencement date and then it should be available for use when the MNT situation needs to be re-addressed

Complete MNT procedures

Within a reasonable period of the requirement to have the procedures in place. The Pensions Regulator recommends a maximum of 6 months

Execution of deed of appointment of new trustees

Although the appointment is automatic, on completion of the relevant procedures, a deed of appointment may assist with record keeping. A specimen deed will be provided upon return of the Scheme Trustees Form

Advise members of changes

As soon as possible after the change

Provide us with copies of all relevant documentation including the scheme trustees form

As soon as possible after completion

SCHEME TRUSTEES FORM

To enable us to assist you with the provision of specimen documentation, and to ensure that the records are up to date, please complete this form and forward it to us at the address shown below, as soon as possible after completion of the Scheme's Member Nominated Trustee/Director elections.

Scheme Name	<input type="text"/>			
Scheme Number	<input type="text"/>			
Name(s) of Existing Trustee(s)	(1)	<input type="text"/>	(2)	<input type="text"/>
Name(s) of Existing Trustee(s)	(3)	<input type="text"/>	(4)	<input type="text"/>

Section A - Member Nominated Trustees

If the Scheme's current Trustees are individuals, and Member Nominated Trustees (MNTs) have been appointed please complete this section to provide details of the new Trustees. You will then be provided with a specimen Deed of Appointment to formalise the position in terms of the Rules.

Full Name of MNT	<input type="text"/>	Full Name of MNT	<input type="text"/>
Address	<input type="text"/> <input type="text"/>	Address	<input type="text"/> <input type="text"/>
Date of Appointment	<input type="text"/>	Date of Appointment	<input type="text"/>

Section B - Member Nominated Directors

If the Scheme's current Trustee is a company, and Member Nominated Directors have been appointed, please complete this section. You should note that, whilst the Company's Memorandum and Articles of Association may require amendment in relation to any Member Nominated Directors (MNDs) (you should consult your solicitor in this respect), it will not be necessary to have a Deed of Appointment signed in relation to the Scheme, although we can do so, if requested.

Full Name of MNT	<input type="text"/>	Full Name of MNT	<input type="text"/>
Address	<input type="text"/> <input type="text"/>	Address	<input type="text"/> <input type="text"/>
Date of Appointment	<input type="text"/>	Date of Appointment	<input type="text"/>

Returning this form

Royal London Consulting Actuaries
Royal London
PO Box 23811
57 Henderson Row
Edinburgh
EH3 5XJ

Returning this form: If you are using an A4 window envelope to return your completed application form then insert the completed form into the envelope, ensuring the address to the left is clearly visible in the envelope window.



Royal London
1 Thistle Street, Edinburgh EH2 1DG
royallondon.com

All literature about products that carry the Royal London brand is available in large print format on request to the Marketing Department at Royal London, St Andrew House, 1 Thistle Street, Edinburgh EH2 1DG.

All of our printed products are produced on stock which is from FSC® certified forests.

The Royal London Mutual Insurance Society Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. The firm is on the Financial Services Register, registration number 117672. It provides life assurance and pensions.

Registered in England and Wales number 99064. Registered office: 55 Gracechurch Street, London, EC3V 0RL. Royal London Marketing Limited is authorised and regulated by the Financial Conduct Authority and introduces Royal London's customers to other insurance companies. The firm is on the Financial Services Register, registration number 302391. Registered in England and Wales number 4414137. Registered office: 55 Gracechurch Street, London, EC3V 0RL. Royal London Corporate Pension Services Limited is authorised and regulated by the Financial Conduct Authority and provides pension services. The firm is on the Financial Services Register, registration number 460304. Registered in England and Wales number 5817049. Registered office: 55 Gracechurch Street, London, EC3V 0RL.