Please note

This legacy code of practice only applies in Northern Ireland.

To find the code of practice content for England, Scotland and Wales, see: **www.tpr.gov.uk/document-library/code-of-practice**

The Pensions Regulator

Regulatory code of practice no. 8

Member-nominated trustees and directors – putting in place and implementing arrangements

www.thepensionsregulator.gov.uk

Contents

Paragraph		Page
	Introduction	4
5	The status of codes of practice	4
6	Purpose of this code	4
9	To whom does this code apply?	5
11	Terms used in this code	5
13	Changes to the legislation and the code	6
	The legislation and code at a glance	7
	Application of the requirements	8
16	Determining whether the requirements apply	8
19	Determining which requirements apply	8
22	Determining when the requirements apply	9
23	Determining how many MNT's are required	9
	Compliance with the requirements	10
29	Principles-based approach	10
34	Putting arrangements in place	10
35	*Delegation and arrangements that are 'off the shelf'*	11
38	What is a reasonable period for putting in place arrangements?	11
41	Implementing arrangements	11
43	*What is a reasonable period for the nomination and selection process to take place?*	12
45	Recording compliance	12
	Arrangements	13
47	What are arrangements?	13
48	General considerations	14
	The nomination process	15
50	Who can be nominated as an MNT?	15
54	Whom to involve in the nomination process	15

56	*Schemes with no active or pensioner members*	16
57	*Involving organisations*	16
58	*Using only representative organisations*	16
60	*Examples of representative organisations*	16
61	*Using 'constituencies'*	17
	After nominations	18
62	Fewer nominations than vacancies	18
64	Re-running the nomination and selection process	18
	The selection process	19
69	Who can be selected as an MNT?	19
70	*Selection of a non-member*	19
71	Who to involve in the selection process	19
74	*Methods of selection*	19
76	*Examples of selection methods*	20
	Communication	21
	What should be communicated?	21
77	*Nomination*	21
78	*Selection*	21
79	*Outcomes*	21
80	How should trustees communicate?	22
	Reviewing the arrangements	23
	Corporate trustees	24
86	A scheme has more than one corporate trustee	24
87	A company is trustee of more than one scheme	24
	Appendix A: Corresponding Northern Ireland legislation	25

Introduction

1. This code of practice is issued by the Pensions Regulator (the regulator), the body that regulates work-based pension arrangements (occupational pension schemes and certain aspects of stakeholder and other personal pensions).

2. The regulator's statutory objectives are to protect the benefits of pension scheme members, to reduce the risk of situations arising which may lead to calls on the Pension Protection Fund, and to promote the good administration of work-based pension schemes.[1]

3. The regulator has a number of regulatory tools, including issuing codes of practice, to enable it to meet its statutory objectives. The regulator will target its resources on those areas where members' benefits are at greatest risk.

4. Codes of practice provide practical guidance on the requirements of pensions legislation and set out the standards of conduct and practice expected of those who must meet these requirements.[2] The intention is that the standards set out in the code are consistent with how a well-run pension scheme would choose to meet its legal obligations.

The status of codes of practice

5. Codes of practice are not statements of the law and there is no penalty for failing to comply with them.[3] It is not necessary for all the provisions of a code of practice to be followed in every circumstance. Any alternative approach to that appearing in the code of practice will nevertheless need to meet the underlying legal requirements, and a penalty may be imposed if these requirements are not met. When determining whether the legal requirements have been met, a court or tribunal must take any relevant provisions of a code of practice into account.[4]

Purpose of this code

6. The regulator is required to issue this code.[5] Its purpose is to assist trustees of occupational pension schemes to put in place and implement arrangements to provide that at least one-third of the trustees are member-nominated trustees (the requirements).[6]

---

[1] See section 5 and paragraph 12 below for an explanation of the legislative references used in this code and the footnotes.

[2] See section 90(1).

[3] See section 90(4).

[4] See section 90(5).

[5] See section 90(2)(e).

[6] See sections 241 to 243 and the Occupational Pensions Schemes (Member-nominated Trustees and Directors) Regulations 2006 (SI 2006/714).

7. This code also sets out what the regulator regards as reasonable periods within which[7]:

   (a) to put in place arrangements to provide that at least one-third of the trustees are member-nominated trustees; and

   (b) the nomination and selection process should take place.

8. The code does not cover the role and responsibilities of member-nominated trustees, member-nominated directors, or trustees in general.

To whom does this code apply?

9. This code applies to trustees (corporate and individual) who must comply with the requirements.[8]

10. Employers and advisers to trustees may also find this code useful. Employers in particular should note they no longer have the option of proposing alternative arrangements to the requirements ('opt-outs').[9]

Terms used in this code

11. In this code legislative requirements are indicated by 'must' and code guidelines by 'should'.

12. In this code (and its footnotes) unless stated otherwise all references to:

- 'member-nominated trustees' (MNTs) should be taken to include 'member-nominated directors' (MNDs);
- 'regulations' are to the Occupational Pensions Schemes (Member-nominated Trustees and Directors) Regulations 2006 (SI 2006/714);
- 'requirements' are to the requirements for trustees to put in place and implement arrangements to provide that at least one-third of the trustees are member-nominated trustees;
- 'schemes' are to occupational pension schemes established under trust;[10]
- 'sections' are to those from the Pensions Act 2004; and
- 'trustees' are to the trustees of an occupational pension scheme established under trust.

---

[7] See section 90(2)(a).

[8] See sections 241 to 243 and the Occupational Pensions Schemes (Member-nominated Trustees and Directors) Regulations 2006 (SI 2006/714).

[9] See sections 17(1) and 19(1) of the Pensions Act 1995.

[10] See section 243(3).

Changes to the legislation and the code

13. This code covers the requirements that started to apply from 6 April 2006. These requirements may be amended to require that at least one-half of the trustees are member-nominated trustees.[11] If so then references to one-third should be read as one-half.

[11] See section 243(1).

The legislation and code at a glance

Requirements

- Trustees must ensure that:
    - within a reasonable period arrangements are in place to provide for at least one-third of the trustees to be member-nominated trustees; and
    - those arrangements are implemented.

Trustees should comply with the requirements in accordance with the principles of proportionality, fairness and transparency.

Arrangements

- The arrangements must:
    - include a nomination process;
    - include a selection process; and
    - comply with other statutory requirements.

Reasonable periods and reasonable intervals

The regulator considers that:

- a reasonable period within which arrangements should be put in place is six months;
- a reasonable period for the nomination and selection process to take place under the arrangements is six months from any requirement arising;
- a reasonable interval for re-running a nomination process due to an unfilled vacancy because of insufficient nominations is no more than three years.

Application of the requirements

14. MNTs are trustees who:

    - are nominated as a result of a process which must involve at least:
        - all the active members of the scheme or an organisation that adequately represents them; and
        - all the pensioner members of the scheme or an organisation that adequately represents them; and
    - are selected by some or all of the members of the scheme.[12]

15. Trustees must ensure:

    - that, within a reasonable period, arrangements are in place for at least one-third of the trustees to be member-nominated trustees; and
    - that those arrangements are implemented.[13]

Determining whether the requirements apply

16. The requirements apply to all schemes, unless they are exempted,[14] in which case they will apply once relevant exemptions cease.[15]

17. Trustees should establish whether they are trustees of an occupational pension scheme and whether the requirements apply to their scheme. If so then the trustees must put in place and implement arrangements.

18. Trustees should keep a record of any exemptions which apply.

Determining which requirements apply

19. There are two distinct sorts of requirement: one for MNTs and one for MNDs. Which applies depends on the constitution of the trustee body. The requirements for MNDs are the same as MNTs other than where a company is a trustee of more than one scheme.[16]

20. For schemes where all the trustees are individuals or individuals and companies, the MNT requirements (rather than the MND requirements) apply. If

---

[12] See sections 241(2) and 242(2).

[13] See sections 241(1) and 242(1).

[14] The exemptions are set out in sections 241(8) and 242(10) and regulations 2 and 3. Among the exemptions are schemes where all the trustees or directors are independent as defined in section 23 of the Pensions Act 1995.

[15] See sections 241(3)(b) and 242(3)(b).

[16] See paragraphs [87] to [90].

a trustee body comprises both individuals and companies, each company counts as a single trustee for the purpose of determining the total number of trustees.

21. For schemes where all the trustees are companies, the MND requirements apply. If a company is the sole trustee then the MND requirements apply to the total number of company directors. If a trustee body has more than one company as trustee then the MND requirements apply separately to each company.

Determining when the requirements apply

22. The requirements apply from the commencement date for the scheme. The commencement date varies depending on the circumstances of the scheme.

Determining how many MNTs are required

23. Trustees should identify the correct number of MNTs for their scheme.[17] At least one-third of the total number of trustees must be MNTs. If, for example, there are ten trustees then four must be MNTs.

24. Trustees should check the rules of the scheme to establish whether they require more than one-third of trustees to be member-nominated trustees. For such schemes the proportion specified in the rules will apply.[18]

25. If the rules of the scheme make no such provision then trustees must have the employer's consent should they consider it desirable for more than one-third of trustees to be member-nominated trustees.

26. Having identified the number of MNTs for the scheme, the trustees should calculate the number of vacancies taking into account the number of MNTs already in post.

27. For the purposes of the Pensions Act 2004 MNTs already in post include those appointed under any arrangements that were in place under sections 16 or 18 of the Pensions Act 1995.[19]

[17] See paragraphs 22 and 23.

[18] See regulation 5(2).

[19] See regulation 5(4).

Compliance with the requirements

28. **Trustees must put arrangements in place within a reasonable period of the commencement date and implement those arrangements.**[20]

Principles-based approach

29. Trustees must comply with the requirements of the legislation. This code does not specify *how* trustees should do so. Instead the code identifies three principles which trustees should follow in deciding the arrangements for their scheme. The principles indicate the standard of conduct and practice expected by the regulator.

30. The principles for how trustees should decide on their arrangements are:

    i. proportionality;

    ii. fairness; and

    iii. transparency.

31. Proportionality means that trustees should select an approach the costs and nature of which are appropriate to the circumstances of their scheme. For example, in respect of the arrangements there are different methods of communicating with members about the nomination process. Paragraph 80 suggests a staff noticeboard as a means of communication for a small scheme with only active members on one site. Such an approach is proportionate for that scheme. Proportionate in this context does not refer to proportions of members.

32. The trustees should ensure that the arrangements treat all of the members fairly. Treating members fairly does not however mean that all classes of member have to be treated the same.

33. An example of transparency is at paragraph 79 which states that the outcomes of the nomination and selection processes, and the method of selection, should be communicated to all the members involved in both processes.

Putting arrangements in place

34. Putting arrangements in place means considering, designing and building arrangements which are capable of being implemented. These include the trustees:

    - deciding which requirements apply to their scheme;
    - determining the number of MNT vacancies;
    - considering whether any current arrangements are still appropriate or whether new ones are needed;

[20] See sections 241(1) and 242(2).

- allocating responsibilities under the arrangements; and

- putting systems in place to implement the arrangements (for example, to obtain necessary documentation and to check membership details).

Delegation and arrangements that are 'off the shelf'

35. Trustees may delegate some of their duties to a third party.

36. **Trustees cannot however delegate responsibility for compliance**. Trustees who decide to delegate any of their duties under the arrangements should satisfy themselves that those administering or operating the arrangements on their behalf are familiar with them and capable of carrying them out. Trustees should also have systems in place to tell them about any delay to completion of delegated matters.

37. Trustees may also utilise "off the shelf" arrangements obtained from a third party. If they do so, they should ensure that these are appropriate for the scheme having regard to the principles of proportionality, fairness and transparency.

What is a reasonable period for putting in place arrangements?

38. Trustees must put in place arrangements within a reasonable period from when the requirements apply.[21]

39. The regulator considers that a reasonable period is six months. This period may, however, vary according to the size, structure and circumstances of the scheme. The regulator would nevertheless expect most schemes to take less than six months. For example:

    - for a small scheme with only a few dozen members it should not take the trustees as long as six months to put the arrangements in place; and

    - where an existing 'opt-out' is coming to an end trustees should consider what new arrangements are needed before the 'opt-out' ceases[22].

40. On the other hand for a large scheme where members are based at more than one location and the trustees choose to consult with the membership and/or a representative organisation on the arrangements, it may take longer than six months to put the arrangements in place.

Implementing arrangements

41. The arrangements that the trustees put in place must be implemented.[23] The requirements distinguish between 'implementing' arrangements and putting them 'in place'. Implementation requires going beyond putting in place i.e. more than considering, designing and building arrangements.

---

[21] See sections 241(1) and 242(1).

[22] See regulation 4.

[23] See sections 241(1)(a) and 242(1)(a).

42. Implementation means that trustees should ensure that those arrangements that have been put in place are operated. Evidence of this would be that the nomination and selection process set out in the arrangements has taken place within a reasonable period of any requirement arising to appoint an MNT and that those MNTs selected have been appointed.

What is a reasonable period for the nomination and selection process to take place?

43. The regulator considers that a reasonable period when a requirement arises under the arrangements to appoint an MNT within which the nomination and selection process should take place is six months. What is reasonable may vary according to the size, structure and circumstances of the scheme.

44. The nomination and selection process should take place, but does not necessarily need to be completed, within six months.

Recording compliance

45. Trustees should keep a record of the steps they have taken to comply with the requirements. In addition to providing an audit trail, these records may save time during any future discussions of the requirements.

46. Trustees may also if they wish keep records of the material matters they took into account during their deliberations on complying with the requirements and their reasons for making these decisions.

Arrangements

What are arrangements?

47. The arrangements are the scheme's procedures for complying with the requirements and must provide:

- for a nomination process in which at least active and pensioner members or an organisation that adequately represents them are eligible to participate;[24]
- for a selection process in which some or all of the members are eligible to participate;[25]
- that the nomination and selection process must take place within a reasonable period of any requirement to appoint an MNT;[26]
- that where a vacancy is not filled because insufficient nominations are received, the nomination and selection process must be repeated at reasonable intervals until the vacancy is filled;[27]
- that, if approval is required by the employer, a non-member of the scheme must have the employer's approval to qualify for selection as an MNT;[28]
- that where the number of nominations received is equal to or less than the number of vacancies, the nominees may be deemed to be selected;[29]
- that, unless the removal of an MNT is by a vote of the membership under the scheme rules, the removal of an MNT requires the agreement of all the other trustees;[30]
- that an MNT cannot be excluded from the exercise of any trustee function only on the basis of being an MNT;[31] and
- that except where provided for in the rules of the scheme, the number of MNTs can only exceed one-third with the employer's approval.[32]

---

[24] See sections 241(2)(a) and 242(2)(a), but see the modification in regulation 5(b).

[25] See sections 241(2)(b) and 242(2)(b).

[26] See sections 241(5)(a) and 242(5)(a).

[27] See sections 241(5)(b) and 242(5)(b).

[28] See sections 241(5)(c) and 242(5)(c).

[29] See sections 241(5)(d) and 242(c)(d) and paragraphs [63].

[30] See sections 241(6) and 242(6) and regulation 5(3).

[31] See sections 241(7) and 242(7).

[32] See sections 241(4) and 242(4) and regulation 5(2)(c)

General considerations

48. As with any trustee appointment, trustees should consider other aspects of an MNT appointment and these may be reflected in the arrangements. Trustees should consider the scheme rules and should consider consulting with the employer on these matters such as:

    - eligibility criteria;[33]
    - term of office;
    - effect of resignation of a trustee; and
    - effect of a trustee ceasing to be a member of the scheme.

[33] See paragraph [52]

The nomination process

49. The nomination process identifies candidates for selection as MNTs. At least the active and pensioner members or organisations that adequately represent them must be eligible to participate.[34] Pensioner members do not include anyone in receipt of survivors' benefits.[35]

Who can be nominated as an MNT?

50. Any scheme member may be nominated; the arrangements should, however, ensure those nominated consent to being MNTs if selected or deemed to be selected.

51. Trustees may wish to consider eligibility criteria for prospective nominees. Any criteria should be considered with regard to the principles of proportionality, fairness and transparency.

52. Nomination and selection of non-members is considered at paragraph 70.

53. There are legislative provisions as to who cannot be appointed as a trustee and trustees should have regard to these when considering eligibility. Examples are:

    - anyone aged under 18;[36]
    - undischarged bankrupts;
    - anyone either disqualified from being a director or convicted of an offence involving dishonesty or deception. [37]

Whom to involve in the nomination process

54. When designing the arrangements the trustees should consider and decide who to involve in the nomination process. The process may comprise combinations of individuals and organisations. For example, a nomination process could involve the active members as individuals as well as an organisation which represents them and an organisation which represents the pensioner members.

55. Trustees may choose to include others, such as pension credit members and deferred members, in the nomination process. When making this decision the trustees should have regard to the principles of proportionality, fairness and transparency.

---

[34] See sections 241(2)(a) and 242(2)(a).

[35] See section 318(1) and section 124(1) of the Pensions Act 1995.

[36] See section 20 of the Law of Property Act 1925.

[37] See section 29(1) of the Pensions Act 1995.

Schemes with no active or pensioner members

56. The requirements are modified and in such cases the arrangements must include a nomination process in which at least such deferred members as the trustees determine are eligible to participate.[38]

Involving organisations

57. When considering whether an organisation adequately represents active or pensioner members (or both) the trustees should take into account the following factors:

    - whether the organisation has representation as one of its purposes;
    - whom the organisation represents and the proportion of the active or pensioner members which it covers;
    - whether the organisation has any limitations on membership;
    - the relationship of the organisation with the employer (i.e. how independent the organisation is of the employer);
    - whether individual members will also be involved in the nomination process, or representative organisations alone; and
    - whether the organisation is the only organisation that the trustees intend to involve.

Using only representative organisations

58. Trustees should recognise that due to the different priorities of the active and pensioner members it is unlikely that the trustees will find a single organisation which adequately represents both classes of member.

59. If trustees decide to use only representative organisations in the nomination process, they should consider notifying the members of their decision and their reasons.

Examples of representative organisations

60. These could be:

    - recognised trade unions;
    - staff committees;
    - member representative committees;
    - pension management committees; and
    - pensioner organisations.

[38] See regulation 5(6).

Using 'constituencies'

61. Trustees may decide to use constituencies in the nomination process (for example, by site, by category of member, or by section of the scheme). In considering the use of constituencies, trustees should have regard to the principles of proportionality, fairness and transparency. [39] For example it would not, in general, be fair for a constituency of 100 members to nominate two MNTs, and a constituency of 10,000 members to nominate only one.

[39] See paragraphs [30] to [34].

After nominations

Fewer nominations than vacancies

62. The trustees should set out in the arrangements what steps will be taken if the number of nominations is fewer than the number of vacancies. Trustees may decide that:

    - the nominees are deemed to be selected;[40] or
    - they will still run a selection process.

63. When deciding the trustees should particularly bear in mind the principle of proportionality in respect of the cost for the scheme of running the selection process as well as the principles of fairness and transparency.

Re-running the nomination and selection process

64. Where there are unfilled vacancies after the nomination process, then this process and any selection process must be re-run at reasonable intervals.[41] Trustees should consider this interval when they are designing the arrangements.

65. The regulator considers that a reasonable interval for re–running the nomination process and any selection process would be no more than three years from the end of an unsuccessful nomination process. However, if a significant change occurs to the scheme membership (for example, a bulk transfer in of new members), trustees should consider an earlier re-running of the nomination and selection processes.

66. Trustees may consider including deferred members when re-running the processes if they were not included when they were first run.

[40] See sections 241(5)(d) and 242(5)(d).

[41] See sections 241(5)(b) and 242(5)(b).

The selection process

67. The arrangements must provide for a selection process if:

    - there are more nominations than vacancies; or
    - the trustees decide to have one, even in the event there are fewer nominations than vacancies.

68. The arrangements should also provide for MNTs who are selected, or deemed to be selected, to be appointed.

Who can be selected as an MNT?

69. Scheme members can be selected as can non-members in certain circumstances.

Selection of a non-member

70. Where the employer requires it, a non-member must have the employer's approval to qualify for selection.[42] When designing the arrangements if trustees desire non-members to be eligible, they should, therefore, discuss with the employer whether it will require any non-members to be approved by them. If so this should be reflected in the arrangements as a criterion for eligibility for both nomination and selection.

Whom to involve in the selection process

71. The arrangements should specify who will be involved in the selection process. It must involve at least some or all of the members.[43] It may also involve representative organisations.

72. If selection is by a panel or group, trustees must ensure that these include some scheme members.

73. Trustees should also have regard to the principles of proportionality, fairness and transparency in considering who to involve in the selection process.

Methods of selection

74. The method of selection chosen may vary according to the circumstances of the scheme. The method is also likely to be affected by the number of scheme members trustees choose to involve in selection.

75. The arrangements should provide for a combination of methods to be used if this is more effective. For example, where a scheme has based its nomination process around constituencies it may be appropriate to have different selection methods for each constituency such as a member committee per site for active members and a ballot for pensioner members.

---

[42] See sections 241(5)(c) and 242(5)(c).

[43] See sections 241(2)(b) and 242(2)(b).

Examples of selection methods

76. These include:

- a ballot;
- selection panels;
- selection by member representative committees;
- selection by pension management committees;
- selection by trade unions; and
- selection by existing trustees.

Communication

What should be communicated?

Nomination

77. The nomination stage should include communication to the members and/or organisations involved of its essential details, including at least:

    - the number of MNTs the scheme should have;
    - the number of MNTs in place;
    - the number of MNT vacancies;
    - a short explanation of the role of a trustee and any available training;[44]
    - any eligibility criteria;
    - what will happen if the number of nominations is less than or equal to the number of vacancies;
    - details of the selection process to be used if there are more nominations than vacancies, or if the trustees have decided to hold one anyway;
    - how to nominate someone for selection as an MNT;
    - any time limits that apply; and
    - a contact for queries.

Selection

78. The selection stage should include the communication to the members and/or organisations involved of its essential details, including at least:

    - what those involved in the selection process need to do;
    - the outcome of the nomination process;
    - the method of selection.

Outcomes

79. The outcomes of the nomination and selection processes, and the method of selection, should be communicated to all of the members involved in both processes.

[44] Trustees may wish to direct a prospective trustee to the first module of the Pension Regulator's e-learning programme which covers trust law, and gives a flavour of what it is like to be a trustee and their duties.

How should trustees communicate?

80. This can vary according to the circumstances of the scheme. For example:

- a scheme of a large company may be able to place a prominent announcement in a staff magazine or in its regular pensions bulletin;
- a small scheme with only active staff members who are all on one site may be able to use a staff noticeboard; or
- a mature scheme with a large number of deferred and pensioner members may find the postal system more appropriate.

81. Members or representative organisations should be given sufficient time to consider whom they want to nominate.

82. Trustees should consider using their established means of communicating with members. These will often be effective and less expensive.

Reviewing the arrangements

83. The arrangements should include provision for their periodic review to establish whether they remain appropriate for the scheme. If the outcome is that they remain appropriate then there is no need for any changes.

84. Review of the arrangements should take place every three to five years.

85. Trustees should consider an earlier review if there is a material change to the scheme's circumstances and/or membership (for example, a bulk transfer in of new members or a large number of redundancies).

Corporate trustees

A scheme has more than one corporate trustee

86. If the MND requirements apply then the corporate trustees should co-operate when designing their arrangements with a view to avoiding unnecessary duplication and cost.

A company is trustee of more than one scheme

87. A company must decide whether the MND requirements are:

- to apply separately to it in respect of each scheme; or
- to apply to all schemes of which it is trustee as if they were a single scheme;[45] or
- to apply separately to some schemes and to other schemes as if they were a single scheme.[46]

88. A company may treat more than one group of schemes as if they were a single scheme.

89. Any corporate trustee which intends to treat as a single scheme some or all of the schemes of which it is trustee should consider seeking the views of the schemes' employers and, if appropriate, other trustee companies.

[45] See section 242(8).

[46] See section 242(9).

Appendix A: Corresponding Northern Ireland legislation

GB Legislation	NI Legislation
The Pensions Act 2004 (c.35)	The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))
Section 5	Article 4
Section 90	Article 85
Sections 241-243	Articles 218-220
Section 318	Article 2
The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 2006 (SI 2006/714)	The Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 148)
Regulation 4	Regulation 4
Regulation 5	Regulation 5
The Pensions Act 1995 (c. 26)	The Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))
Section 17	Article 17
Section 19	Article 19
Section 29	Article 29
Section 124	Article 121
Section 20 of the Law of Property Act 1925 (c. 20)	No corresponding legislation