

**SELECTING**

***MEMBER***

***TRUSTEES***



An Bord Pinsean -  
**The Pensions Board**

Authority for Pensions

Verschoyle House  
28/30 Lower Mount Street  
Dublin 2  
Tel 01 613 1900  
Fax 01 631 8602  
Email [info@pensionsboard.ie](mailto:info@pensionsboard.ie)  
[www.pensionsboard.ie](http://www.pensionsboard.ie)

The Pension Board has prepared this booklet to assist members, employers and trustees understand the procedures for member participation in the selection of trustees. We have made every effort to ensure that it is correct, however no liability whatsoever is accepted by the Pensions Board, its servants or agents for any errors or omissions in the information contained in this booklet or for any loss occasioned to any person acting or refraining from acting as a result of any statement in this booklet.

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*In this booklet you will see certain terms in italics. These are words or expressions commonly used in relation to pensions or which have a specific definition under the Pensions Act, 1990. You will find an explanation of any of these terms in the Glossary of Terms at the end of this booklet.*

## Introduction

Since January 1994, many *members* of *occupational pension schemes*, approximately 200,000 people in all, have a right to participate in the selection of a number of *trustees* of their scheme.

*Trustees* have overall responsibility for safeguarding the *assets* of their schemes, for making sure that they are properly administered and that *member*' pension rights are fully protected.

Giving *members* the right to participate in the selection of *trustees* introduces an important additional protection for the pension rights of scheme *members*. Full advantage of this right can best be achieved by taking care to ensure that the people appointed are competent to carry out the duties of *trustees* and capable of winning the confidence of both *members* and employers.

Arrangements for *member* participation will usually be made following discussions between the employer and representatives of *members*. These discussions will cover such matters as the overall number of *trustees* and the arrangements for the selection of a proportion of this number by *members*. Specific rules on all these matters are set down in the regulations which can be invoked, as necessary.

*Members* may also opt to retain the existing arrangements if they are satisfied with them.

This booklet is a brief guide to how and why *occupational pension schemes* are set up as *trusts*, the role of *trustees*, eligibility to participate in their selection, the options for *members* and employers, and the procedures involved.

The booklet is only an introduction, however, and more detailed information is available from:

The Pensions Board,  
Verschoyle House,  
28/30 Lower Mount Street,  
Dublin 2  
Tel (01) 613 1900  
Fax (01) 631 8602  
E-mail: [info@pensionsboard.ie](mailto:info@pensionsboard.ie)  
Web: <http://www.pensionsboard.ie>

## 1. Occupational pension schemes Set Up As Trusts

The *occupational pension scheme* of most companies and commercial semi-state bodies is set up as a *trust*, the terms of which are contained in a legal document called the *trust deed* and rules. Under this arrangement, money is set aside in a *trust fund*, which is separate from the employer's business, to finance the benefits payable to scheme *members* and their dependants. These monies are the *assets* of the scheme.

The separation of the scheme's *assets* from the employer's business should ensure that they will be available to pay the benefits due to *members* and their dependants, whether or not the employer stays in business.

*Trustees* are appointed to hold and look after these *assets* for the benefit of *members* and their dependants.

## 2. Duties And Responsibilities Of Trustees

*Trustees* have duties and responsibilities under *trust law*, as well as under the Pensions Act, 1990. The Act sets down their main duties and responsibilities, which are to:

- arrange for the scheme's registration with the Pensions Board and payment of the annual fee
- ensure that the contributions due to the scheme are paid
- properly invest the *assets* of the scheme
- pay benefits as they become due
- keep proper *membership* and financial records
- arrange for *members'* pension rights to be secured, if a decision is taken to wind up a scheme, and ensure that the wind up is completed without undue delay.

*Trustees* are also responsible for ensuring that the scheme complies with the other requirements of the Pensions Act, which are to:

- preserve in the scheme, or transfer to a new scheme or to a life assurance company retirement bond, the benefits built up from 1 January 1991 of *members* who leave employment before they are due to retire e.g. a change of job
- comply with a funding standard, which requires a *defined benefit scheme* to have sufficient funds to protect *members'* benefits, should the scheme have to be wound up at any stage
- treat men and women equally under the rules of the scheme
- account to *members* by giving them basic information about the scheme, their personal entitlements, and how it is being administered.

### 3. Day-To-Day Administration Of Pension Schemes

In most pension schemes the *trustees* do not actually carry out the day-to-day business of the scheme themselves. Sometimes they appoint people within the company to look after the running of the scheme for them. More often they appoint a pensions consultant, insurance broker or life assurance company to do this on their behalf.

One of the most important responsibilities of *trustees* is to properly invest the *assets* of the scheme. In practice, most schemes appoint a life assurance company or other investment manager to carry out this task. *Trustees* have a duty to take great care in making this appointment and in monitoring the investment manager's performance.

*Trustees* may also avail of the services of a legal adviser, an accountant, and an actuary in the case of *defined benefit schemes*, to provide professional advice and assistance in relation to the administration of the scheme under the *trust* deed and rules and to ensure compliance with *trust law* and the Pensions Act.

### 4. Main Role Of the Trustees

Whether or not *trustees* delegate the day-to-day administration of their scheme, they still have overall responsibility for ensuring that it is administered strictly in accordance with the *trust* deed and rules, the Pensions Act and *trust law*. This requires them both to supervise any functions they have delegated and to seek professional advice as necessary.

In carrying out their duties, *trustees* should:

- be familiar with, and carry out the terms of the *trust* document
- be prudent and diligent, exercise care and act in the utmost good faith
- be particularly careful to ensure that information received as a *trustee* is treated in the strictest confidence and is used only for the purposes for which it is received
- not seek to make a profit from their *trusteeship*
- ensure at all times that the fund is kept separate from their own property and from the property and *assets* of the employer.

**If the employer or the members misunderstand the precise role and functions of the trustee, this may make it difficult for them to carry out their duties properly.**

Employers should be aware that the primary responsibility of *trustees* they appoint is to the scheme *members*. Such *trustees* must maintain, at all times, a proper balance between protecting *members*' interests and those of the employer financing the scheme.

*Members* may think that the people they have selected as *trustees* should negotiate improved benefits and entitlements generally under the scheme on their behalf. But *trustees* have no function in this area and *members* should be in no doubt about this.

Both employers and *members* should be fully aware of the *trustees'* duty to maintain strict confidence in relation to certain information, most especially on individual scheme *members*.

## **Penalties**

A *trustee* who is negligent, does not act in good faith, or breaches the rules of the *trust* can be sued under *trust law* by the *beneficiaries*. The *trustee* can be held to be personally liable for the whole amount of any loss which occurs.

Under the Pensions Act, the High Court can replace or suspend *trustees* to protect the interests of the *members*. There are also penalties if *trustees* are found by the Courts to have failed to carry out their duties properly. A person convicted of an offence can be fined or imprisoned, or both.

## **Training**

Given the scope and importance of their duties and responsibilities, appropriate and adequate training for *trustees* and, in particular, new *trustees*, is vital. When mismanagement occurs, it is usually not due to willful intent, but to *trustees'* lack of knowledge about their duties and responsibilities - which in turn is often simply due to lack of training.

The Pensions Board maintains a register of *trustee* training courses. A brief guide to the duties and responsibilities of *trustees* is also available free of charge. A more detailed *trustee* handbook, incorporating codes of practice and "best practice" guidelines, is available on a subscription basis.

## **5. Selecting Member Trustees - Eligibility To Participate**

The majority of *members* of schemes established under a *trust* are eligible to participate in the selection of *trustees*, subject to satisfying certain requirements.

A person must be a qualified *member* of a relevant scheme. A relevant scheme is one which has

- 50 or more qualified *members*, or
- 12 or more qualified *members*, if a directly invested scheme.

A directly invested scheme is one which has *assets* other than the following:

- insurance policies
- contracts of assurance
- managed funds
- unit *trusts*

- cash deposits.

For this purpose, unpaid contributions are not treated as *assets* of the scheme.

There are two categories of qualified *members*:

### **active members**

current employees accruing retirement benefits under the scheme.

### **pensioner members**

former employees receiving pensions under the scheme, including those for whom an annuity has been purchased.

Former employees who are entitled to deferred benefits under the scheme are not eligible to participate, but will be when their benefits become payable.

Pensioners who have not been *members* but are receiving benefits - widows or widowers of a scheme *member*, for example - are also ineligible.

The existing *trustees* of the scheme determine, in accordance with the regulations, whether the scheme is covered and which *members* are eligible to participate.

## **6. Consultations Between Members and Employer**

The employer and the *members* jointly have the right to select persons for appointment as *trustees* under the regulations. There are three options available and they may wish to have consultations to determine which of the options in the case of their particular scheme will

- best ensure that competent persons are selected as *trustees*, and
- be acceptable to a majority of *members*.

Such consultations will normally take place using the channels in operation in the company for dealing with such issues.

## **7. Selecting Trustees - The Options**

One option is not to start the process, in which case the existing *trustee* arrangement will be retained. This is most likely to be the option chosen if the existing arrangement already allows for *member* participation in the selection of *trustees*.

If the process is started, there are a further two options - the Standard Arrangement and the Alternative Arrangement.

### **Standard Arrangement**

*Members* may select persons for appointment as *trustees* from among their own nominees by means of an election. Under this arrangement

- the employer must state the number (but not necessarily the names) of the persons to be nominated for appointment as *trustees*
- the qualified *members* then select, by means of an election, an equivalent number (with a minimum of two) for appointment as *trustees*
- the chairperson is chosen by the persons selected for appointment as *trustees* (both by the employer and *members*); if a majority of those selected fail to agree on a nominee, the chairperson is chosen by the employer.

An election is held in accordance with the standard arrangement, if

- the employer decides to by-pass a preliminary poll i.e. an alternative arrangement is not being proposed, or
- a majority of qualified *members* voting in a preliminary poll has chosen the standard arrangement.

### **Alternative Arrangement**

The employer can put forward an alternative arrangement for the approval of qualified *members* in a preliminary poll.

In putting forward an alternative arrangement, which would have more than one *trustee*, the employer must specify

- the name or names of those person(s), if any, to be appointed as *member trustees*
- the number (but not necessarily the names) of others, if any, he or she proposes to appoint, and
- either the name of the chairperson, if any, or the procedure proposed for selecting the chairperson.

In a number of schemes, a corporate body is the sole *trustee*. The employer may, therefore, wish to propose the retention or adoption of such an arrangement, particularly where some of the directors have been chosen by the scheme *members*.

The regulations do not provide for the election of directors of a corporate *trustee* body by means of the standard arrangement. If the employer and representatives of the *members* were to agree that this is the preferred structure, it could still be put forward as an alternative arrangement. It could also be proposed as part of such arrangement to use the procedures set down in the regulations for the selection by *members* of a number of the

directors. The regulations, however, would not apply to such selection and the persons selected would not be “*member trustees*” and would not, therefore, be entitled automatically to remain in place for the statutory term of 6 years.

An alternative arrangement applies, if

- it is chosen by a majority of those voting in the preliminary poll, or
- if less than 25% of qualified *members* vote in that poll.

## 8. Selecting Member Trustees - The Procedures

Qualified *members* of a relevant scheme are free to choose whether to participate in the selection process and the extent to which they wish to participate. If the process is started, the provisions of the regulations override, where necessary, the provisions made in the *trust deed* and rules of the scheme for the appointment of *trustees*.

Employers are also free to choose the extent to which they wish to exercise their rights to be involved in the process, particularly in relation to the selection of *trustees* by way of consensus.

The following is a brief overview of the main procedures.

### Getting Started

Since 1 January 1994, the existing *trustees* can be requested to start the process by:

- (a) a trade union or trade unions which represent at least 50% of \*active *members*, or
- (b) at least 15% of \*qualified *members*, or
- (c) the employer.

If this request comes from either (a) or (b), the *trustees*, on receiving the request, must notify the employer, who then has 60 days to decide whether to propose an alternative arrangement. If he or she does so, a preliminary poll must be held. If an alternative arrangement is not proposed, an election will be held in accordance with the standard arrangement. This period of 60 days is designed to give employers time, should they wish to do so, to consult with *members* on the various options available.

In the case of (c), the employer simply asks the *trustees* either to hold a preliminary poll or to proceed directly to an election.

\* See page 9 for explanation of these terms.

### Returning Officer

Once the process is started, the *trustees* will appoint a returning officer who has full responsibility for such matters as the conduct of polls, nomination of candidates, counting

of votes, and arrangements for the appointment of new *trustees* and the chairperson. The regulations specify that the returning officer will generally be the company secretary, or the person in the company who performs these functions. The returning officer is not eligible to be nominated as, or to nominate a person for selection as, a *member trustee* in an election under the standard arrangement.

### **Preliminary Poll**

In a preliminary poll (with voting by secret ballot) *members* are asked whether they wish to opt for either:

- the standard arrangement, or
- the alternative arrangement.

This poll should be completed and the result notified not later than 30 days after the employer requests that the poll be held.

If 50% or more of the qualified *members* voting opt for the standard arrangement, the returning officer will hold an election in accordance with that arrangement.

If the majority vote for the alternative arrangement, or if less than 25% of the qualified *members* vote in the preliminary poll, the alternative arrangement is deemed to be the chosen option. The returning officer will then arrange for the appointment as *trustees* of the persons selected in accordance with that arrangement.

### **Election for Member Trustees**

If an election is to be held, the returning officer will notify the qualified *members* and invite them to nominate candidates for election.

### **Nominations**

Anyone over age 18 or a corporate body is eligible to be a candidate. This means that persons other than scheme *members* can be nominated. A corporate body is “one person” for these purposes.

To be accepted as a valid candidate for the election, a person must be nominated by at least

- 10 qualified *members*, or
- 10% of the qualified *members*, whichever is the lesser, and
- confirm to the returning officer that he or she accepts the nomination.

Each qualified *member* may nominate candidates up to the total number to be selected. Thus, if two *member trustees* are to be appointed, a *member* may nominate two candidates.

## **Candidates Selected**

If the number of candidates nominated is either equal to, or less than, the number of persons to be selected for appointment as *member trustees*, no poll is held and the persons nominated are deemed to be selected. If the number of candidates nominated is less than the number to be selected, the employer may nominate a person or persons for appointment as *member trustees* to make up the difference.

A poll will be held if the number of candidates nominated is greater than the number of persons to be selected for appointment as *trustees*.

Voting must be by secret ballot and in accordance with the principle of proportional representation, with each qualified *member* having a single transferable vote.

An election under the standard arrangement must normally be completed and the results notified not later than 90 days from the date the returning officer is required to hold an election in accordance with the regulations.

## **Selecting the Chairperson**

If an election has been held, those selected for appointment as *trustees* (by the *members* and by the employer) are entitled to select the chairperson. If they fail to agree on a nominee, the employer nominates a person for appointment as chairperson. Any person, including those already selected for appointment as *trustees*, is eligible to be chairperson - however, the chairperson may be nominated in addition to those already selected for appointment as *trustees*, and becomes a *trustee* by virtue of his or her nomination.

If an alternative arrangement has been chosen, the chairperson will be the person nominated by the employer, or selected in accordance with any other procedure set down under such arrangement.

A chairperson selected under the regulations will have a second (or casting) vote on any issue in the event of an equality of votes.

## **Term of Office**

The appointment of *member trustees* will take effect not later than the 60th day after the date on which the returning officer declares them to be selected under either the standard or alternative arrangement. This means that the employer has 60 days within which to appoint the *member trustees* by Deed and if he/she fails to do so on or before the 60th day, the *member trustees* will automatically be appointed on the expiry of the 60th day.

The term of office of *member trustees* will expire six years and 60 days after the date of declaration of election results, as will the term of office of the chairperson.

The regulations do not specify any term of office for the *trustees* (other than a chairperson) nominated by the employer.

### **Vesting Orders by Pensions Board**

In most cases, the *member trustees* will be appointed by Deed incorporating a Vesting Declaration. Where appointments are not made by Deed, it is expected that the existing *trustees* would normally co-operate in transferring the *trust* property into the names of all of the *trustees* including the *member trustees*. However, if this fails to happen, any *member trustee* can apply to the Pensions Board for a Vesting Declaration vesting legal ownership of the *trust* property in the names of all of the *trustees* of the scheme.

### **Failure of Employer to Act**

If the employer fails to take the necessary action to ensure that the regulations have full effect (by failing, for example, to remove some or all of the existing *trustees*), procedures are laid down in the regulations to increase the number of *member trustees* up to the number of the existing *trustees*.

### **Casual Vacancies**

If a *member trustee* resigns or dies over 12 months before his or her term of office expires, a replacement is chosen in the following order:

- the person eliminated in the election with the highest number of votes, provided he or she is willing to accept the appointment
- a person chosen by the remaining *member trustees*, in cases where no election has taken place, or there are no further candidates available to accept the appointment
- a person chosen by the chairperson, if the remaining *member trustees* fail to choose a replacement.

If the vacancy occurs within 12 months of the expiry of the term of office of the *trustee* concerned, the position is left vacant, unless the remaining *member trustees* decide to nominate a replacement.

If the chairperson dies or resigns, the employer selects his or her replacement.

The term of office of the replacement (*member trustee* or chairperson) will be the balance of the original term of office.

### **Re-Selection of Trustees**

If a preliminary poll or an election has taken place, a further poll or election cannot be held within a period of 5 years, unless 50% of the qualified *members* make a written request to the *trustees*.

Otherwise, the re-selection process must start between 12 months and 6 months before the expiry of the term of office of the *member trustees*. The *trustees* are required to start the process by notifying the employer, who will then indicate to them whether they are to hold a preliminary poll or to proceed directly to an election under the standard arrangement. The *trustees* appoint a returning officer and the above process is repeated.

### **Costs Incurred/Timescales**

The costs and expenses incurred by the *trustees* and the returning officer in relation to an election (including a preliminary poll) may be met from the resources of the scheme.

The timescales set for each stage of the selection process may, in exceptional circumstances, be extended on application to the Pensions Board.

## **9. The Pensions Board**

The Pensions Board was established by the Minister for Social Welfare under the terms of the Pensions Act, 1990. Its main functions are:

- to monitor and supervise the operation of the Pensions Act and pension developments generally
- to issue guidelines on the duties and responsibilities of the *trustees* of schemes and codes of practice on specific aspects of their responsibilities
- to encourage the provision of appropriate training for *trustees* of schemes, and to advise the Minister on standards for *trustees*
- to advise the Minister on the operation of the Pensions Act and on pension matters generally.

Pension schemes must register with the Board, and most schemes must pay an annual fee to meet the Board's administration costs. The Board can act on behalf of pension scheme *members* who are concerned about their scheme; it can investigate the operation of pension schemes; it has the power to prosecute for breaches of the Pensions Act.

The Pensions Board *members* include representatives of trade unions, employers, Government, pension scheme *trustees*, the pensions industry and the various professional groups involved with *occupational pension schemes*.

## 10. Further Information

The following booklets are also available free of charge from the Pensions Board

### So You're a Pension Scheme *Trustee*?

A brief guide to the duties and responsibilities of *trustees of occupational pension schemes*.

### What Do You Know About Your Pension Scheme?

An overview of the information which *occupational pension schemes* must give. This booklet is of use to scheme *members, trustees* and administrators of schemes.

### Is My Pension Secure?

A guide to the protections provided by the Pensions Act.

### The Pensions Board

An introduction to the Board, its functions and its *membership*.

### Securing *Member Trustees*

A guide to the preservation and transfer of benefits for early leavers under the Pensions Act.

### A Brief Guide to Pensions

A guide to help *members* understand their pension scheme and its benefits.

### A Guide to Your Scheme's Annual Report

A guide to pension scheme *members* to assist them in reading and understanding their scheme's annual report.

### What Happens When Your Pension Scheme is Wound Up or a Merger/Acquisition Takes Place

A guide to *trustees* and pension scheme *members* on the winding up of a pension scheme and on the effects of mergers/acquisitions on pension schemes.

### A Brief Guide to the Pension Provisions of the Family Law Acts

Guidance on the pension provisions of the Family Law Acts, 1995 and the Family Law (Divorce) Act, 1996.

## 11. Glossary Of Terms

**Assets:** what the scheme owns including, for example, equities, property, fixed interest stocks, cash or units in unit *trust fund*.

**Beneficiaries:** the people on whose behalf a *trust fund* is held.

**Defined benefit scheme:** schemes in which the pension and other benefits which will be paid to the *member* and/or the *member's* dependants are clearly stated. *Members* should note that the design of *defined benefit schemes* often takes into account the fact that a *member* will also be entitled to a pension under the State's Social Insurance Scheme and the benefits paid will reflect this.

**Defined contribution scheme:** schemes in which the principal benefits depend on the amount of contributions made and the returns those contributions have earned from investment.

**Member:** a person who has been admitted to *membership* of a pension scheme and who is entitled to benefits under the scheme. This will include active *members*, pensioners and deferred pensioners.

**Occupational pension schemes:** are arrangements to provide benefits to the *member* in retirement and to surviving dependants after the scheme *member's* death. These benefits can take the form of regular pension payments or a lump sum payment with a reduced regular payment.

**Trust:** an arrangement under which a person or a group of people hold and look after property on behalf of others.

**\*Trustee:** the person who holds and looks after the property or *Trust fund*.

**Trust fund:** the monies and *assets* for the time being held by the *trustees* subject to the *trusts* of the scheme.

**Trust law:** consists of a number of statutory provisions dating back to the *Trustee Act*, 1893 and principles of equity which have evolved over many years in cases decided in the Courts.

\* Certain pension schemes, mainly in the Public Sector, are not set up under *trusts*, but most of the duties of *trustees* as specified in the Act apply to the administrators of such schemes where appropriate

**SELECTING MEMBER TRUSTEES**  
An Overview of the Procedures

