

**EXPLANATORY MEMORANDUM TO THE
OCCUPATIONAL PENSION SCHEMES (INDEPENDENT TRUSTEE)
REGULATIONS 2005**

2005 No.703

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2 Description

- 2.1 The Pensions Act 2004 provides for a new Pensions Regulator to replace the Occupational Pensions Regulatory Authority (Opra) in April 2005. The Regulator's statutory objectives and functions, set out in the Act, establish a framework for its regulatory activity. It will inherit Opra's existing powers and will, in addition, have a number of new ones.
- 2.2 The Act states that Regulations must provide for the Regulator to compile and maintain a register of persons who satisfy prescribed conditions for registration as a trustee.
- 2.3 As well as the above, the Regulations:
 - Set out the conditions to be met to be eligible to be on the register.
 - Prescribe the function of refusing to register a person in the trustee register as a regulatory function, as set out in section 93(2) of the 2004 Act.
 - Amend Schedule 2 of the 2004 Act by adding the function of removing a trustee from the register to the list of reserved regulatory functions, that is, those functions which are exercisable only by the Determinations Panel.
 - Add the function of removing trustees from the register to the list of regulatory functions which are eligible to be carried out under the special procedure in cases of urgency.
 - Ensure that an independent trustee's appointment to a scheme and any actions taken during that appointment are not invalidated by his subsequent removal from the register.
 - Set out the information that must be included in a notice given under section 22(2B) of the 1995 Act, that is, a notice of certain events having happened (as set out in section 22(2C) of the 1995 Act).

- Make provision for copies of the register to be provided to persons who request one and provide that a charge may be made to meet the costs of providing copies.
- Make certain modifications to sections 22 to 26 of the 1995 Act, in respect of the application of those sections to schemes in relation to which there is more than one employer, cases where the employer is a partnership, and schemes which have no active members
- Require any trustee appointed by the Regulator to notify certain persons of certain information in certain circumstances.

3 Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4 Legislative Background

- 4.1 The Secretary of State for Work and Pensions is empowered to make regulations under the Pensions Act 2004. In this case the Secretary of State for Work and Pensions, is exercising the powers conferred upon him by sections 23(3)(c), (4), (5)(a) and (6), 118(1)(a), (b) and (c), 124(1), 125(3) and 174 of the Pensions Act 1995, sections 113(1)(d), (2)(a) and (d), (3) and (4), 168(1) and (4) and 181(1) of the Pension Schemes Act 1993 and sections 10(5)(a), 93(2)(q), 97(5)(u), 315(2) and (4) and 318(1) of the Pensions Act 2004, which is consequential upon section 37 of the Pensions Act 2004.
- 4.2. Section 36(4) of the Pensions Act 2004 (Independent Trustees) amends section 23 of the Pensions Act 1995 and states that Regulations must provide for the Regulator to compile and maintain a register of persons who satisfy the prescribed conditions for registration as an independent trustee. Any independent trustee that the Regulator appoints under section 23 of the Pensions Act 1995 must be from the register. The Regulations, amongst other things, will:
- Prescribe the function of refusing to register a person in the trustee register as a regulatory function, as set out in section 93(2) of the 2004 Act.
 - Amend Schedule 2 of the 2004 Act by adding the function of removing a trustee from the register to the list of reserved regulatory functions, that is, those functions which are exercisable only by the Determinations Panel.
 - Add the function of removing trustees from the register to the list of regulatory functions which are eligible to be carried out under the special procedure in cases of urgency.
 - Require any trustee appointed by the Regulator to notify certain persons of certain information in certain circumstances.

- 4.3. Before the Secretary of State makes any regulations by virtue of the Pensions Act 2004, he may be required to consult such persons as he considers appropriate. There is no formal requirement to consult in this case because the regulations will be made within six months of the enabling powers of the Act coming in to force (section 317(2) of the Act). However, to reflect our commitment to openness, we have held a short, informal, consultation exercise with The Pensions Regulator Advisory Panel – a list of its membership is attached at Annex A. The findings of the consultation exercise are at Annex B.

5 Extent

- 5.1 This instrument applies to England, Wales and Scotland. Corresponding provision will be made in Northern Ireland by Regulations made under an Order in Council corresponding to the 2004 Act, as provided for in paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 and, under those sections of the Pension Schemes (Northern Ireland) Act 1993 which correspond to these under which this instrument is made.

6 European Convention on Human Rights

- 6.1. Not applicable.

7 Policy Background

- 7.1 Section 36 of the Pensions Act 2004 amends sections 22 to 25 of the Pensions Act 1995. It gives the Regulator power to appoint an independent trustee if the employer is insolvent, or if there is a Pension Protection Fund assessment period in relation to the scheme.
- 7.2. The Pensions Act 1995 requires an Insolvency Practitioner or Official Receiver to ensure that at all times there is an independent trustee in place. If there is not one in place they are required to appoint one. However, there is evidence to suggest that in practice an independent trustee is not always appointed, nor indeed may be appointed but not required creating unnecessary cost on the scheme.
- 7.3 Where a trustee is required the only way currently to resolve the situation is for a member of the scheme to apply to the Court to force the Insolvency Practitioner or Official Receiver to appoint an independent trustee. In practice this does not happen very often because of the potentially prohibitive personal costs to the member. This section will ensure that an independent trustee is appointed only where required by empowering the Regulator, rather than the Insolvency Practitioner or Official Receiver, to make the appointment.
- 7.4 There have also been concerns expressed about the fees charged by independent trustees, especially when a scheme is in wind-up. The Occupational Pensions Advisory Service (Opas) has called for greater regulation of who can become an independent trustee and greater

accountability over the fees charged. These concerns will be addressed by enabling the Regulator to decide whether an independent trustee appointment is appropriate, rather than requiring the Insolvency Practitioner or Official Receiver to appoint one in every case. This will do away with unnecessarily costly appointments and can ensure that a trustee with the appropriate knowledge and skill is appointed.

- 7.5 The Regulator will maintain the power to appoint a trustee under section 7 of the 1995 Pensions Act, which could be a member or other lay-trustee, rather than an independent trustee. The Regulator will also have the power to determine whether the employer, the scheme, or both, should meet the costs of any trustee (whether independent or not) that the Regulator appoints.
- 7.6 Section 23(4) of the Pensions Act 1995 (as amended by Section 36(4) of the 2004 Pensions Act) states that Regulations must provide for the Regulator to compile and maintain a register of persons who satisfy the prescribed conditions for registration as a trustee. Any independent trustee that the Regulator appoints under section 23 of the Pensions Act 1995 must be from the register. The minimum criteria for inclusion on the register are set out in the regulations.

8 Impact

- 8.1 An assessment of the impact on business, charities or the voluntary sector of the provisions in these regulations is included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. An extract, relating to the Pensions Regulator, is attached at Annex C.

9 Contact

- 9.1 The policy official responsible for these Regulations is:

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21 March 2005

TPR Advisory Panel

Name	Organisation	Role
Brian Holden	OPDU	Trustee perspective
Paul Greenwood	WM Mercer	Actuarial perspective (covers FIA angle)
Adrian Boulding	Legal & General	Provider perspective (ABI)
Ron Amy	Aon Consulting	General
Claire Whyley	National Consumer Council	Consumer perspective
Clare Boyle	FSA	
Peter Dickinson (or nominee) Jeff Highfield	Smith & Williamson Gissings & Co	PRAG
David Yeandle	Engineers Employers Federation	
Ed Humpherson	NAO	
Les Warner	Inland Revenue	
Laurie Edmans	ABI	
Ken MacIntyre	NAPF	
Tim Cox	APL	
Brian Marks	OPA was COPAS	
Michelle Lewis	TUC	
Fay Goddard	AIFA	IFA perspective
Des Hamilton	OPAS	
Penni Coppen	KPMG	

Robert Birmingham	SPC (President)	
Sue Howlett (or nominee)	PMI (secretary)	
Nicholas Hillman	ABI	

Consultation on:

INDEPENDENT TRUSTEES REGULATIONS

Start date: 12 January 2005

End date: 2 February 2005

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
1.	Brian Marks (BT)	<p>Thank you for sending me this draft and the one for Independent Trustees. The drafts appear to me to do what they intended to do.</p> <p>My only comment is about something that it is too late to remedy. It is unfortunate that the term "Independent Trustee" has been allowed to come into common use to mean both "a trustee who is not an employee not retired from the company" and "a trustee appointed by the Regulator"</p>	N/A	
2.	Philip Took (PwC)	<p>Thank you for letting me have a copy of the draft regulations. I have a few comments, which I set out below.</p> <p>Firstly, could I raise a question concerning the</p>	Y	Agree primary ambiguous but this is not

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		<p>interpretation of the primary legislation? The new requirement which will apply under section 22 2(C) (b) Pensions Act 1995 (inserted by section 36 Pensions Act 2004) for the insolvency practitioner to inform TPR and others when he ceases to act represents a significant new obligation on the practitioner. Will this obligation apply to insolvencies which are already in existence as at 5 April 2005? Do you consider that the requirement will apply in relation to all pension schemes (not just DB schemes), whether the insolvency appointment was made before or after April 2005?</p>		<p>something we can fix in the regs – therefore not taken into account. Will have to be considered by regulator when formulating its policy as to which interpretation it wishes to endorse.</p>
3.	Philip Took (PwC)	<p>With regard to the regulations themselves, I have already asked whether the absence of any exemptions of the type seen in regulation 5 of the 1997 regulations might mean that you will receive many notifications which might make it difficult to focus on DB schemes. It seems that the absence of exemptions means that there will be an obligation under section 22(2B) Pensions Act 1995 to inform the Board of the PPF for all schemes, not just DB schemes. I wonder whether the PPF is geared up to accept large</p>	Y	<p>Regulations could exempt MP schemes but this would not reduce number of reports as the duty is mirrored in section 120 of the PA 04 and reports are made in any event re PPF clause. Having separate rules would be confusing and unjustifiable.</p>

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		numbers of notifications, many of which will not relate to DB schemes.		
4.	Philip Took (PwC)	In regulation 8 of the draft regulations, I wonder whether the obligation to provide information could be subject to an "as far as practicable" criterion. This would protect the insolvency practitioner in the event that he could not provide all the information, for example if the scheme is not registered and therefore does not have a registration number, or if the scheme trustees decline to provide him with some of the information listed. It might be helpful if, perhaps on a voluntary basis, the insolvency practitioner were to state the type of scheme: this might help you to give priority to large DB schemes.	N	Reasonably practicable is a term used throughout the Act and covers the situation of where information is not immediately apparent. No penalty can be imposed – limited to reporting to professional body or using improvement notice.
5.	Philip Took (PwC)	I am not quite sure how regulation 10 is designed to work. In many cases where there is an insolvency of a participating employer in a multi-employer scheme (e.g. a solvent members' voluntary liquidation) the company concerned will already have ceased to have employees before the insolvency event. Accordingly, it will not be in the definition of "employer", because it will no longer be an employer of persons, and presumably regulation 12 would not apply in	Y	Regs amended accordingly to clear ambiguity.

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		those circumstances to vary the definition of employer because the scheme would still have active members employed by other participating employers. It seems that regulation 10 will apply differently depending on whether or not the company concerned happens to continue to have employees at the date of the insolvency event.		
6.	Philip Took (PwC)	<p>Set out below some comments with regard to regulation 13, although I realise that they could be made equally in relation to the existing regulation 7 of the 1997 regulations.</p> <p>I am not quite sure why regulation 13 should only apply to trustees appointed by TPR, and not, for example, to independent trustees who are already in place at the insolvency date.</p>	N	Regulations cannot be retrospective in nature. Those trustees appointed under the non-regulator methods are considered ‘out of our scope’ governed by deed and rules and if we intervened risk of criticism of ‘big brother’.
7.	Philip Took (PwC)	I also wonder whether it is really necessary to refer to prospective members and relevant trade unions, bearing in mind that in almost all cases the scheme will not admit any new members after the insolvency event, and in most cases, after the initial stages of the insolvency, the members will no longer be employed and so there will be no trade union that will be recognised for the purposes of collective	N	Although the prescribing power for regs is under section 23 – this register is for most regulator appointed and small occupational pension scheme exemption trustees and will be used for non insolvent situations e.g. small occupational pension schemes replacing SSASs.

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		bargaining.		
8.	Brian Holden TRM Ltd	<p>Thanks for the list of Regulations to be made under the Pensions Act. This is extremely useful.</p> <p>I have been looking at the draft Independent Trustee Regulations that you circulated previously. I'm not sure whether I have interpreted them correctly or not and would welcome your clarification on the following comments:</p> <p>The new Regs provide for an IT register (and the criteria for registration are set out). It is clear that if the Regulator wants to appoint an IT - for example, in a wind up situation - such appointment has to be made from the Register. Therefore, any IT wishing to be considered for such appointments will have to apply to be included on the Register.</p> <p>But what about other ITs who are not interested in such appointments via the Regulator? Can they continue in business without registration? In other words, do the Regs apply to all ITs who wish to be in business as professional trustees or</p>	N/A	<p>Thank you for your comments - we do not usually respond to consultation comments but as this is a simple and quick question I'm happy to clarify the point.</p> <p>The requirement that any IT appointed under section 23 of the PA 95 (as amended by the PA 04) must be on the register only applies to appointments made under the section 23 power on or after 6 April 2005. Therefore all the current appointments made under section 23 before 6 April 05 (i.e. those made by the IP) stand irrespective of whether the IT is on the register.</p> <p>Also, the regulator's general power to appoint a trustee under section 7 of the PA 95 can still be used where there is an insolvency situation - a section 7 appointment does not have to be a trustee on the register. However this would be used very occasionally and the vast majority of trustee appointments where there is employer insolvency will be made under section 23 and hence from the register.</p>

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		<p>only to those who, by being registered, can be appointed by the Regulator as required?</p> <p>There is a difference between both categories which, depending on my right or wrong interpretation, could result in some ITs being able to conduct business without registration.</p> <p>Please clarify for me.</p>		<p>Where a trust deed or other power can be used to appoint a trustee - the trustee does not have to be the register. Only those trustees appointed using the section 23 power must be on the register. Therefore non registered trustees can still take appointments and operate business as usual in all other circumstances.</p>
9.	Nicholas Boyes Alexander Forbes Trustee Services Ltd	<p>As one of the largest providers of independent trustee services in the UK, with special strengths in the area of statutory appointments made by insolvency practitioners, Alexander Forbes Trustee Services Limited (“AFTS”) has a particular interest in the move by the Government to regulate the actions of independent trustees. We welcome this initiative, and are pleased to note that our current practice will need little amendment in order to fully comply with the Regulations.</p> <p>The Regulations appear to be well thought out and should help to raise the standard of trusteeship and the accountability of independent trustees for their actions. We do have comments concerning specific aspects of the draft</p>		

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		<p>Regulations however, and these are set out below:</p> <p>3 (d)(i) “the applicant agrees ... to have his fees and costs scrutinised by an independent adjudicator and to be bound by that adjudicator’s final adjudication as to his fees and costs.”</p> <p>AFTS has for many years kept detailed records of the expenses incurred by us and by those acting on our behalf in respect of our trustee appointments. We believe that our charge-out rates are amongst the most competitive in the industry, and take steps to monitor and control expenditure on third-party expenditure. Each scheme is unique, however, and presents its own set of challenges: we would welcome the opportunity to appeal against the findings of an independent adjudicator’s findings in the event that we feel that the full circumstances of the case have not been taken into account in the adjudicator’s decision.</p>	N	<p>By applying to be on the register you are agreeing to be bound by the adjudicator’s decision. Analogy can be drawn with normal arbitration.</p>
10.	Nicholas Boyes Alexander Forbes Trustee Services Ltd	<p>We would also welcome clarification concerning the costs incurred in dealing with the adjudicator: would the cost of compiling the information, and any subsequent appeal, be legitimate costs to set</p>	N	<p>This is not a matter for regulations – will be regulator’s policy. Possibly breach of trust in extreme cases of overcharging.</p>

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		against the scheme?		
11.	Nicholas Boyes Alexander Forbes Trustee Services Ltd	<p>7 – Removal from the Independent Trustee Register – supplementary provision</p> <p>That the Regulator should have the power to remove an independent trustee from the register of trustees is accepted without question. This clause of the Regulations provides that any existing appointments would not be affected by a trustee’s subsequent removal from the register.</p> <p>There may be circumstances where this is the correct outcome, depending upon the reason for the removal from the register. Where the reason for the removal rests on the competence of the trustees, however, we would consider it prudent that the existing appointments be reviewed in order to ensure that the interests’ of the members of those schemes are not prejudiced.</p>	Y	The regs preserve the trustee’s position in relation to his appointments to date. On removal the regulator will as a matter of course check the trusteeships that person holds. Removal from each scheme would be at the Regulator’s discretion – this does not and should not be in regulations.
12.	Nicholas Boyes Alexander Forbes Trustee Services Ltd	<p>13 (1)(c) “A trustee...must furnish the...s of each of the amounts charged to the scheme by the appointed trustee in the past 12 months.”</p> <p>In a situation in which a scheme is in wind up, the role of the independent trustee is essentially</p>	N	This is not material for regulations this will be in guidance, if required.

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		<p>that of project manager, co-ordinating the efforts of the various third parties in the steps taken to confirm the liabilities and determine the benefits to be secured; dealing with member benefits as they fall due during the process' and with general member queries; and maintaining the compliance of the scheme.</p> <p>Our question over this regulation concerns the degree of detail that the trustee would be expected to provide. The annual Report and Accounts provide details of the expenses incurred by the scheme: how much additional detail is it reasonable to expect?</p> <p>If we can provide any further assistance in the drafting of the Regulations, please contact us.</p> <p>For and on behalf of Alexander Forbes Trustee Services Ltd</p>		
13.	Helen Miles APL	I am writing on behalf of the Legislative and Parliamentary Sub-committee of the Association of Pension Lawyers with comments on the above Regulations. Please note that these may not represent the views of the APL as a whole.		


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		Regulation 3(a) - is the person applying to be in a personal capacity only or, in the case of a body corporate is this to be one or more (or all?) of its directors, company secretary or employees? The point needs clarifying. It also needs to be the case that if there is a body corporate applying surely there need to be checks on whether directors or senior employees of that body have been subject to prohibition, supervision or disqualification.	Y	Regs amended to incorporate key persons of the corporate entity that will have responsibility for the trustee work.
14.	Helen Miles APL	Regulation 3(b)(i) - should the applicant's sufficient relevant experience also be shown to be up to date or will that be part of the definition of relevant? Presumably relevant also means relevant to the type of scheme?	N	Relevant is sufficiently wide to cover this point.
15.	Helen Miles APL	Regulation 3(b)(iii) - what is the meaning of "sound" in administrative and accounting procedures?	N	Generally used term – if there is a problem generally with interpretation we will have to issue guidance.
16.	Helen Miles APL	Regulation 3(b)(i) - What is intended to be covered by "fees and costs"? For example, is it meant to include advisor (eg. lawyers', actuaries', accountants') costs? The wording is not entirely clear.	N	Fees and costs are a question of fact not law. Regs need no amending.

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17.	Helen Miles APL	Regulation 3(d)(ii) - what is the meaning of "the areas of trustee working which he specialises"? Is it to relate, say, to pension schemes specifically? To schemes of particular sizes? To the industry sector in which the scheme sits? To something else?	N	At trustee's discretion to tell us not mandatory – application form will expand / explain.
18.	Helen Miles APL	Regulation 3(d)(iii) - surely compliance needs to be within a reasonable time as well as the requests being reasonable? Alternatively, would a request be unreasonable by virtue of the time for responding not being reasonable?	N	A reasonable request implies a period would be given. In fact how can a request be reasonable if you are not given a time period in which to comply?
19.	Helen Miles APL	Regulation 4, 5, 6, 8, 9, 11, 13 and 14 all seem to have formatting problems which make cross referencing very difficult.	Y	Sorted
20.	Helen Miles APL	Regulation 7 - if a trustee is removed from the register what happens to the validity of his appointment as trustee of a scheme, or to any action taken by him after that particular time? Is any appointment as an independent trustee deemed to come to an end? Presumably the intention of this regulation is not to invalidate past actions but what about the future?	N	Reg 7 refers to the period of the trustee's appointment not to the period of time it was on the register. If the appointment ends – obvious the trustee can no longer act as trustee. If appointment continues (after removal from register) trustee has all his powers with which he was appointed with.

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21.	Helen Miles APL	Regulation 8(1)(c) - most schemes don't have addresses per se and therefore it needs to be specified whether this is the contact address for the trustees, for the scheme administrator or some other address.	N	Scheme address is used in the primary legislation see section 60(2)(b). If the contact address is different this should be obvious from TPR's database.
22.	Helen Miles APL	Regulation 13(5) - recipients of dependents pension seem to be excluded from the definition of "member"; in the case of a prospective member, it will be very difficult in practice for the independent trustee to have access to the full terms of his contract of service - indeed, an independent trustee might need legal advice as to whether the wording used in a contract of service actually did give the prospective member eligibility etc for the scheme. Also in subparagraph (d) of the definition of "prospective member" the situation regarding employer consent and schemes which are open to members selected at an employer's discretion needs to be clarified.	Y N	(a) Meaning of member extended to include persons receiving benefits to capture widows / dependants pensions. Use receiving not entitled so IT knows where they are. (b) The IT only must send info to member or trade union. The IT only has to deal with prospective members if they specifically request information from him. Where the scheme is open the IT can verify with employer if he needs or he can ask the prospective member to prove he is a prospective member.
23.	Helen Miles APL	In relation to the definition of "relevant trade union", again, the independent trustee may have practical difficulties in identifying this in the event there is any dispute in relation to whether a trade union is recognised for the purposes of collective bargaining in relation to members or	N	Ask the employer – if silent or no employer the trustee needs only to take reasonable steps.

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		<p>prospective members of the scheme.</p> <p>Should you have any queries in this regard please do not hesitate to contact the sender.</p>		
24.	Dara Glover NAPF	<p>We are pleased to have the opportunity to comment on the draft Regulations.</p> <p>We welcome the power given to the Regulator in Section 23 Pensions Act 1995 as amended, to appoint an independent trustee. We understand that in practice, although required by the Pensions Act 1995, an independent trustee is not always appointed by an Insolvency Practitioner or Official Receiver. Giving power to the Regulator is a cost effective solution. It is preferable to the current costly remedy which requires a member of the scheme to apply for a Court order requiring the Insolvency Practitioner or Official Receiver to appoint an independent trustee.</p>	N/A	
25.	Dara Glover NAPF	<p>It is also preferable to leave it up to the Regulator's discretion as to whether it is appropriate to appoint an independent trustee (Section 23(1) Pensions Act 1995).</p>	N/A	
26.	Dara Glover	<p>Section 36(4) Pensions Act 1995 states that the</p>	Y	Not for regs – will be guidance

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	NAPF	Regulations must provide for the Regulator to compile and maintain a Register of persons who satisfy the prescribed conditions set out in Regulation 3. Section 23 appointments must be from the Register, which is a welcome development. However, will there be a guidance as to what constitutes “sufficient relevant experience” as set out in Regulation 3(b)(i)?		
27.	Dara Glover NAPF	The Register will enable the Regulator to monitor the fees that independent trustees charge. Regulation 3(d)(i) states that an independent trustee who wishes to register must “have his fees and costs scrutinised by an independent adjudicator” and “be bound by that adjudicator’s final adjudication as to his fees and costs”. The NAPF would be keen to provide assistance in devising an acceptable level of fees and costs.	N	We do not wish to set fees – purely make sure appropriate work carried out at reasonable rates.
28.	Gillian M King (IPTG)	<p>I am pleased to attach comments from The Independent Pension Trustee Group (IPTG) which operates under the auspices of The Pensions Management Institute (PMI).</p> <p>The IPTG was formed late in 2003 following discussions with the Pensions Ombudsman and Opra who were both keen to promote improved</p>	N/A	

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		<p>professional standards amongst independent pension trustees. Today, the Group, which is run by an elected committee, has over 130 members. In July 2004 it published a Code of Guidance for independent pension trustees. Full details can be found on the PMI website.</p>  <p>PMI</p> <p>I have no comments on the actual wording of the draft regulations. There has been a problem with the numbering of the first paragraph of each regulation, but I assume this is just a typographical problem that will be resolved.</p>	N/A	
29.	Gillian M King (IPTG)	<p>IPTG may wish to comment on:</p> <p>The new requirements set out in paragraphs 2.2.2(e)(i) (scrutiny of fees) and 2.3.2 (details of fees). It must be a good thing for fees to be scrutinised, but this would have to be in the light of the nature and complexity of the scheme, and the amount of work involved.</p>	Y	Will be dealt with by the Regulator not for regulations.
30.	Gillian M King (IPTG)	It is not clear how TPR will assess who has the relevant experience as a trustee and who is fit	N	Policy is not to have CPD or professional qualification.

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		and proper to act as a trustee. It is important that there is some objective standard and a requirement to maintain that standard by CPD. This is likely to be in the procedures developed by TPR and hopefully we will have the chance to comment at some future stage.		
31.	Gillian M King (IPTG)	Within the requirements for being added to the Independent Trustee Register (especially paragraph 2.2.2(c) above), there is an additional requirement for corporate trustees (see paragraph 2.2.2(c)(iii)) to have sound administrative and accounting procedures. I do not understand why an individual should not be required to have such procedures or why there should be a different standard. In my experience, most corporate trustees have sound structures in place for risk management purposes (inter alia) and would already comply.	Y	Individual added in amendments
32.	Gillian M King (IPTG)	There is no requirement for an independent trustee to be a member of a professional body that sets standards for behaviour. The IPTG sets out a Code of Guidance with good/best practice, and other professional bodies place requirements on members for professional conduct etc. I think we should make the comment that membership	N	Policy is not to have CPD or professional qualification.

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		of a professional body may increase the professionalism of independent trustees in schemes in winding up.		
33.	Gillian M King (IPTG)	For those independent trustees who are refused inclusion on the Register, the appeal is to the Pensions Regulator Appeal Tribunal. I am not sure when this Tribunal will be up and running. This could be an issue where applications for the Register are being made in March 2005 and there may not be the chance of an appeal for some time.	N	Set up for April.
34.	Gillian M King (IPTG)	There is a requirement for a trustee appointed by the Regulator to supply his name and address to every member or relevant trade union within 2 months of the appointment. However, there are already requirements for disclosure when an appointment is made (1 month from the date of appointment) and I assume this replaces the existing obligation.	Y	These regs revoke previous requirement
35.	Nicholas Hillman (ABI)	<p><u>1.0 INTRODUCTION</u></p> <p>1.1 The Association of British Insurers (ABI) is the trade association for Britain's insurance industry. It represents more than 400 member companies that provide over 97 per</p>	N/A	

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		<p>cent of the insurance business in the UK. The Association represents insurance companies to the Government and to regulatory and other agencies and it is an influential voice on public policy and financial services' issues. ABI member companies hold more than a fifth of all investments traded on the London Stock Exchange on behalf of millions of pensioners and savers.</p> <p>1.2 The ABI has long expressed support for the idea of building on the experience of Opra via the establishment of a new, risk-related regulator. For example, our response to the December 2003 Pensions Green Paper stated, 'A risk-based regulator to replace Opra is a welcome development. The regulator must focus its efforts on those schemes where members' rights are most at risk.' This support underlies all our comments on these three sets of draft regulations.</p> <p>3.1 The changes in these draft regulations, which provide the Pensions Regulator with the power to decide whether an independent trustee appointment is appropriate in certain</p>		

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		<p>circumstances, are generally welcome.</p> <p>3.2 The new rules are likely to help ensure that as much of the pension fund assets as possible reach the members (and the Pension Protection Fund). We welcome the application of common sense and the recognition of the current problems in this area, not least because it is in tune with the risk-based nature of best regulatory practice. Beyond this, we do not have any substantive comments to make at the current time.</p> <p>5.0 CONCLUSION</p> <p>5.1 The ABI has recently established a Pensions and Savings Regulatory Overview Sub-Committee, which is an off-shoot of our larger Pensions and Savings Committee, with the specific intention of helping to smooth the move from Opra to the new Pensions Regulator. The members of this Sub-Committee, under the Chairmanship of Laurie Edmans, are keen to work proactively to avoid problems before they arise.</p> <p>5.2 This Sub-Committee should be regarded as</p>		

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		<p>the first point of contact when the Pensions Regulator or Government officials wish to consult the insurance industry on practical questions regarding the transition. The main contact for this group is the Secretary, Nicholas Hillman (Nicholas.Hillman@abi.org.uk).</p>		
Letters arrived by post but after the deadline				
36.	Giles Orton TACT (letter dated 31/1/05)	<p>I am responding on behalf of the Pension Committee of The Association of Corporate Trustees (“TACT”) to your Consultation draft of the above regulations. As you will be aware the members of the TACT comprise most of the larger corporate trustees engaged in independent trustee work.</p> <p>I would say at the outset that we welcome the transfer of the Power of Appointment to the Regulator. However, these regulations focus very much on the conditions for registration rather on the more critical issue of the criteria to be adopted by the Regulator when selecting Independent Trustees from the Register for</p>	N/A	

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		<p>particular appointments. We appreciate however, that this is an issue to be determined by the Regulator and does not need to be prescribed in these Regulations.</p> <p>As regards to the drafting of the Regulations we have the following points to make by reference to the current numbering.</p>	Y	

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
37.		<p>Paragraph 3(b)(iii)</p> <p>We struggle to understand the logic for requiring a corporate but not an individual trustee to have sound administrative and accounting procedures. We wonder whether this requirement is necessary.</p>	Y	Sound admin etc for all trustees required in revised draft
38.		<p>Firstly, most pension scheme administration and accounting is contracted out by trustees to special administration companies. Secondly, we would have thought that having appropriate procedures could be considered to fall into part of being a fit and proper person. Thirdly, we struggle to understand why an individual trustee does not have to have a sound administration accounting procedures when a corporate does.</p>	Y	Anything can be fit and proper but this clarifies and assists by putting more objective criteria in regulations.
39.		<p>We consider that a more meaningful requirement that is not current in the regulations would be for trustees on the register to have adequate resources and professional indemnity insurance available to enable them to meet possible claims</p>	Y	Accepted indemnity insurance but not resources
40.	Giles Orton TACT	Paragraph 3(d)		

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
	(letter dated 31/1/05)	We fully endorse the provision for independent scrutiny of independent trustees' fees and costs. This is perhaps a point for the Regulator rather than the Regulations, but we assume that the Regulator will at the appointing stage agree the basis of charging so that independent trustees will not have to wait until the adjudication at the end of the trusteeship to discover what level of charge are acceptable. We presume that there will be provision made by the Regulator for periodic regular assessments.	N	Regulator will not fix fees on registration matter for when appointment made. Different appointments will require different degree of skill therefore different charge out rates.
41.	Giles Orton TACT (letter dated 31/1/05)	We are not entirely clear as to what is meant by the term "fees and costs". The wording under Section 25(6) of the Pensions Act 1995 is "reasonable fees ... and any expenses reasonably incurred". Is there any reason to depart from this wording in the Regulations? I trust you will find these comments of assistance.	N	25(6) is in different context
42.	Janet Garner Sovereign Trustees Ltd (letter dated 1/2/05)	Sovereign Trustees Limited has been considering the above draft regulations and would like to make the following comments. Register of independent trustees	N/A	

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		We believe that if the Regulator decides that an independent trustee cannot be included on the Independent Trustee Register then an explanation for that decision should be given to the independent trustee, who should have a right of appeal against the decision. We were of the opinion that this would be the case but cannot see it detailed in the regulations.	Y	Provided for in primary
43.	Janet Garner Sovereign Trustees Ltd (letter dated 1/2/05)	Likewise, if an independent trustee has been on the register and is removed by the Regulator, the regulations do not state that the Regulator will notify the independent trustee. As above, we believe that reasons for the removal should be given and the independent trustee should have right of appeal.	Y	Provided for in primary
44.	Janet Garner Sovereign Trustees Ltd (letter dated 1/2/05)	As an aside, we believe that, for transparency, the Regulator should publish details periodically (perhaps quarterly) of what appointments have been given to which independent trustee(s).	Y	In Annual Report
45.	Janet Garner Sovereign Trustees Ltd	Disclosure requirements and penalty We would like to query whether the numbering	Y	Sorted in revised draft.

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
	(letter dated 1/2/05)	of sections is correct.		
46.	Janet Garner Sovereign Trustees Ltd (letter dated 1/2/05)	<p>Under your section (3), we would like to see the wording being changed to "...with the date on which the request is received". From our experience, occasionally requests for information are not actually received until some considerable time after the date on the letters. This can be for various reasons; sometimes the member may not post the letter immediately or it can be delayed in the post. In addition, a request for an independent trustee to provide a member with information can come from a third party such as an independent financial adviser or the scheme's administrators. For this reason we believe that it would be fairer for the two months to commence from the date of receipt of the request.</p> <p>We would like to thank you for giving us the opportunity to comment on the draft regulations and hope that the above comments will receive due consideration.</p>	Y	Regulations amended accordingly.
E-mail arrived after deadline (3/2/05)				
47.	John Mortimer	Thank you for sending us the above draft		

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
	Society of Pensions Consultants (SPC)	<p>regulations. Our comments are as follows:-</p> <p>Draft Regulation 3(b)(i)</p> <p>We are not sure that it is necessary to specify that applicants have sufficient relevant experience <u>as a trustee of an occupational pension scheme</u>.</p> <p>An individual applicant might have relevant experience, for example having been a pension scheme manager or a director of a corporate trustee, but might never have actually been a trustee. Equally, an individual might have been a trustee of an occupational pension scheme, but never have encountered the particular challenges which a scheme faces when the employer is insolvent.</p> <p>The key test appears to be that the Authority is satisfied that the applicant has sufficient relevant experience and it is arguably unnecessary to restrict the pool of people from whom the Authority can chose, by specifying that the experience must be as a trustee of an occupational pension scheme.</p>	Y	Amending reg to read relevant experience in relation to [an] occupational pension scheme[s].
48.	John Mortimer Society of Pensions Consultants (SPC)	<p>Draft Regulation 10</p> <p>We are not clear why this modification has been made. We assume it is a measure designed to</p>		

Number	Responder Name	Comments	Accepted (Yes / No)	Policy View
		protect the Pension Protection Fund.	N	Not for PPF protection – to clarify position re multi-employer schemes
49.	John Mortimer Society of Pensions Consultants (SPC)	<p>Draft Regulation 13(2) We note an unwelcome reversion to specifying a time period (two months). Elsewhere in draft regulations, there has been a move to requiring action within a reasonable period and that approach ought to be taken here.</p> <p>We assume that there has simply been a carry over of the relevant part of the 1997 Independent Trustee regulations, ignoring the move to a reasonable period requirement in new regulations.</p>	Y	Change period to reasonable period in line with proposed changes to disclosure requirements in any event. Term used in 04 Act re new chapter 5 of part 4 of the PSA 93 re cash transfer sums etc.
50.	John Mortimer Society of Pensions Consultants (SPC)	<p>Draft Regulation 13(4) We notice that the maximum penalties here remain £1,000 and £10,000. This contrasts with, say, the draft indexation and disclosure regulations where the maxima are now £5,000 and £50,000. We are surprised to see that there is not consistency across the two sets of regulations.</p>	Y	DWP policy is not to fetter the regulator's powers as it did Opra's powers. We therefore removed the restriction in line with the indexation and draft disclosure regs generally.

EXTRACT FROM THE REGULATORY IMPACT ASSESSMENT

Chapter 3: Member Protection

3.1 The Pensions Regulator

3.1.1 Retaining the current regulator would fail to address weaknesses identified during the recent consultation process, undertaken as part of the Quinquennial Review of the Occupational Pensions Regulatory Authority (Opra). A National Audit Office (NAO) report also supported the need for a more pro-active, high-profile and risk-focussed regulator.

3.1.2 Opra has made a good job of fulfilling the role it was required to perform, and encouraged better governance of pension schemes. However there are flaws in the legal framework that define both Opra's current role and its powers to act or intervene in failing schemes. These flaws tend to lead to the organisation spending too much time on trivial matters that result in minor sanctions and penalties.

3.1.3 The introduction of a new pensions regulator providing support, advice and guidance to the industry will enhance the regulator's role, producing a higher profile, pro-active regulator that will be better placed to address risk to scheme members' benefits. The Pensions Regulator will move to a completely different style of regulation.

Summary of options and impact of consultation

3.1.4 There has been widespread agreement about the need for a new pensions regulator. Many responses to consultation support a regulator that has: statutory objectives that set a clear framework for its activity and provide an overarching definition of its functions; a flexible, pro-active and risk-focussed approach; a high profile in the community it regulates; and a responsive and proportionate regulatory 'tool kit' which enables it to take a targeted and appropriate approach both to direct breaches of pensions legislation and to other matters of conduct that pose a risk to members' benefits.

3.1.5 When addressing breaches of pensions legislation, the regulator should not just punish but encourage compliance with regulatory provisions via compliance visits, provision of guidance, educational material and template forms to the regulated community.

3.1.6 The intention is that these activities and approaches will create a regulator that is able to focus its resources on the areas of greatest risk and be seen to have done so. This, in turn, will cause it to be respected, and ensure that it will be seen as an authoritative force in the regulated community.

Pensions Bill 2004 Regulatory Impact Assessment
Securing compliance

3.1.7 The Regulator will have a regulatory ‘tool kit’ of sanctions, plus the power to serve an improvement notice. However, education, guidance, advice and support will be equally important tools to support the protection of pension scheme members’ benefits.

Costs/savings

3.1.8 The introduction of the Pension Protection Fund has helped shape the responsibilities of The Pensions Regulator. It is estimated that The Pensions Regulator will have annual running costs of around £23 million per year including the cost of any monitoring and enforcement action that the regulator may need to take in respect of all the provisions in this RIA, once the new regulator is in place and well established. This represents an increase of £6 million per annum compared with Opra, and an increase in the levy of roughly 25%.

3.1.9 These additional costs would be funded through a levy on occupational and personal pensions. The increase is due to staff and non-staff costs (accommodation, codes of practice, printing, IT) to cover The Pensions Regulator’s new powers and responsibilities. There will be one-off start up costs in the region of £6 million, and a further £20 million for IT development, some of which is necessitated by the difference between the new Regulator’s responsibilities and those of Opra. Many of these costs would have been incurred in response to the NAO and Quinquennial Review recommendations for Opra improvement.