

REGULATORY IMPACT ANALYSIS

Implementation of proposals on trusteeship Social Welfare and Pensions Bill 2008

Proposal 1: Registration and audit of pension scheme administrators and introduction of compulsory service level agreements between pension scheme trustees and their administrators

1. Policy Context

1.1 The Pensions Board's Review of Trusteeship was presented to the Minister for Social and Family Affairs in November 2006. The following broad terms of reference set out the main objectives of the review:

- i) Evaluate the trust model of pension scheme governance;
- ii) Identify potential regulatory and governance improvements that can be made to enable the trust model to perform more effectively;
- iii) Examine the supports in place for trustees.

1.2 A significant element of the review focused on the role of trustees and their relationship with administrators. 94% of the 93,486 pension schemes which account for 90bn approx. in pension funds are administered by third party administrators. These administrators are currently unregulated in terms of the scheme administration work carried out on behalf of trustees. This is primarily because there are no formal qualifications for administration and no benchmark against which standards are currently measured. Experience suggests that, in some cases, the standards of administration are poor. This impacts both on scheme members, in the first instance (who may be given erroneous statements of their entitlements), and on trustees who may be prosecuted for errors made by parties to which they have delegated administration functions.

1.3 While it is the trustees' responsibility to monitor the performance of their delegates, they may find it difficult to monitor the administration standards on an ongoing basis, or may find a problem some time after an error or breach has been made. It has also been suggested that trustees attend disproportionately to actuarial/consultancy issues at the expense of scheme administration, particularly in defined contribution schemes.

1.4 Research conducted in 2006 found that, among a small sample surveyed, the absence of any regulatory oversight of pension scheme administrators was seen as a particular problem by both industry experts and a small number of trustees interviewed. There was particular concern among some respondents about the standards of administration in the industry.

- 1.5 It is considered appropriate, therefore, that some form of oversight is introduced to ensure that the standards of pensions administration are monitored and improved.

2. Existing Regulatory Framework

- 2.1 There is no distinct focus in the financial regulatory system on what might be called administration service standards, even though pensions administration work can be carried out by entities regulated by the Financial Regulator.
- 2.2 In relation to occupational pension schemes, however, the trustees of a scheme are responsible for the administration of the scheme, whether this work has been delegated to a third party or not. In this regard, the lack of regulation of administrators means that trustees are fined and or prosecuted in all cases where a breach of the Pensions Act in relation to their responsibilities is discovered.
- 2.3 As outlined earlier, trustees are often not aware that breaches have occurred when functions have been delegated to third party administrators. In this regard, it needs to be determined whether directly regulating administrators – through holding them directly responsible for the statutory functions delegated to them – would assist in increasing the likelihood that such breaches would not occur.

3. Statement of Objectives

- i) To increase the standards of administration in pension schemes;
- ii) To assist pension scheme trustees in monitoring the actions of third parties to whom they have delegated administration work.

4. Identification of options/choices

- A) No policy change
- B) Require pension administrators to register with the Pensions Board; provide the Pensions Board with auditing powers; require trustees to enter into service level agreements with administrators to whom they have delegated administrative work.
- C) Same as option B but create separate duties for trustees and for administrators and regulate both independently. (No requirement for service level agreements.)

5. Option A – No Policy Change

5.1 *Costs*

It is difficult to determine the costs of the ‘no policy change’ option as the costs of continuing poor administration in occupational pension schemes are difficult to quantify. Evidence suggests, however, that poor administration is widespread, with consequent costs for scheme members.

Costs would also be borne by trustees, who would continue to be penalised for breaches of the Pensions Act, even though administrators may have been responsible for the breach.

Option A: Costs				
Scheme members	Trustees	Administrators (compliance costs)	Pensions Board (supervisory costs)	Exchequer
Potentially high for individual members. Difficult to quantify total cost.	On-the-spot fine: €2,000. Current maximum fine for summary offence is €5,000.	No additional cost.	No additional cost but scheme-specific regulation of administration is an ongoing cost.	No additional cost.

5.2 *Benefits*

When related to the objectives of the regulatory proposal, the ‘no policy change’ option will neither assist in increasing pension administration standards, nor in allowing trustees to monitor the actions of third parties.

5.3 *Other impacts*

National competitiveness

No impacts envisaged.

Socially excluded or vulnerable groups

No impacts envisaged.

Significant policy change in an economic market

No impacts envisaged.

Rights of citizens

No impacts envisaged.

Significant compliance burden

No impacts envisaged.

6. **Option B - Require pension administrators to register with the Pensions Board; provide the Pensions Board with auditing powers; require trustees to enter into service agreements with administrators to whom they have delegated administration work.**

There are several strands to this option. The first is to ensure that administrators need to register as administrators with the Pensions Board before they are allowed to conduct pensions administration work. The second is that the Pensions Board would be allowed to audit the work of administrators to ensure that appropriate standards are maintained. The third is that trustees compulsorily enter into service level agreements with administrators in order to ensure that: a) each party is aware of the duties for which each is responsible; and b) trustees are provided with a tool for monitoring the trustee functions which they have delegated, a duty under trust law.

6.1 ***Costs***

Costs would arise for all parties under this option. In relation to administrators, the increased supervisory regime, including the need to register and to maintain higher standards, is likely to result in higher costs. This, in turn, is likely to lead to higher charges on pension scheme members. These higher charges may be particularly disproportionate for smaller schemes.

The danger that administrators would withdraw from the business needs also to be considered. (However, this possibility did not arise as an issue during the consultation process.)

There would be some costs associated with extending the Pensions Board's supervisory reach to include administrators, although these may be more than offset by the associated benefits (see 6.2 below).

Further costs would also be incurred in relation to the compulsory service level agreements between trustees and administrators.

A significant cost to this approach, however, is that – to work effectively – the creation of joint offences would be required (where trustees and administrators would both be liable for breaches of the Act). This is legally problematic.

Option B: Costs				
Scheme members	Trustees	Administrators (compliance costs)	Pensions Board (supervisory costs)	Exchequer
Additional costs for scheme members through potential of higher fees charged by administrators.	Would maintain current costs for breaches of the Act. However, potential for sharing these costs through creation of joint offences.	Registration costs. Additional costs through shared responsibility for breaches of the Act resting with administrators. Additional administrative costs through compulsory service agreements.	Potential for reduction of costs through reallocation of resources to audit administrators (and the schemes under their remit) rather than on a scheme-specific basis.	Potential legal difficulties through creation of joint offences.

6.2 Benefits

The benefits to this option are likely to assist in meeting the objectives set out in section 3. In addition, further benefits may accrue.

The increased supervisory reach of the Pensions Board ensures that administrators would be monitored in terms of the administration work they carry out on behalf of pension scheme trustees. Persistent low standards, for example, may result in withdrawal of registration. This auditing is likely to increase the standards of pension scheme administration.

In addition, instead of focusing on a large number of individual pension schemes for compliance, the Pensions Board would be in a position to audit a number of schemes held by the same administrator. This is likely to provide benefits in terms of reducing the amount of time spent on compliance monitoring, or increasing the number of schemes that are monitored.

Service agreements would allow trustees to monitor the functions which they have delegated to the administrators. This assists the trustees in fulfilling their trust law duty to monitor and supervise the actions of their delegates.

6.3 Other impacts

National competitiveness
None envisaged.

Socially excluded or vulnerable groups
None envisaged.

Environmental impacts

None envisaged.

Significant policy change in an economic market

This proposal provides the Pensions Board with new powers in relation to its regulatory functions. In this regard, consultation took place with stakeholders in the industry. In addition, a notice for submissions was placed on the Pensions Board's website. (See section on consultation below).

Rights of citizens

None envisaged.

6.4 Compliance costs

As noted previously, the compliance costs will mainly fall on administrators, in the first instance, but these may be passed on to scheme members through higher fees charged for administration work. However, in light of the view that standards of administration are likely to increase as a result of greater monitoring of those standards, this will provide benefits to scheme members also.

7. Option C - Same as option B but create separate duties for trustees and for administrators and regulate both independently

This option is similar to Option B but, instead of creating joint offences, it allows for separate functions to be allocated to trustees and to administrators. A set of 'core administration functions' would be prescribed which can only be carried out by a registered administrator. If trustees continue to carry out any or all of these functions, they would also need to register as administrators.

7.1 Costs

Option C: Costs				
Scheme members	Trustees	Administrators (compliance costs)	Pensions Board (supervisory costs)	Exchequer
Additional costs for scheme members through potential of higher fees charged by administrators.	Would result in lesser costs due to responsibility of breaches of certain parts of the Act now resting with registered administrators.	Registration costs. Additional costs through responsibility for breaches of the Act resting with administrators.	Potential for reduction of costs through reallocation of resources to audit administrators (and the schemes under their remit) rather than on a scheme-specific basis.	None.

7.2 *Benefits*

The benefits to this option are likely to assist in meeting the first of the objectives set out in section 3.

The creation of core administration functions, separate from trustee duties, ensures that the actions of third party administrators are under direct scrutiny. This removes the current situation whereby trustees themselves are held responsible for breaches of the Act caused by third party administrators. It also removes the necessity for the establishment of service level agreements between trustees and administrators – ensuring that some costs associated with Option B are avoided.

The increased supervisory reach of the Pensions Board ensures that administrators would be monitored in terms of the administration work they carry out on behalf of pension scheme trustees. Persistent low standards, for example, may result in withdrawal of registration. This auditing is likely to increase the standards of pension scheme administration.

In addition, instead of focusing on a large number of individual pension schemes for compliance, the Pensions Board would be in a position to audit a number of schemes held by the same administrator. This is likely to provide benefits in terms of reducing the amount of time spent on compliance monitoring, or increasing the number of schemes that are monitored.

7.3 *Other impacts*

National competitiveness

None envisaged.

Socially excluded or vulnerable groups

None envisaged.

Environmental impacts

None envisaged.

Significant policy change in an economic market

This proposal provides the Pensions Board with new powers in relation to its regulatory functions. In this regard, consultation took place with stakeholders in the industry. In addition, a notice for submissions was placed on the Pensions Board's website. (See section on consultation below).

Rights of citizens

None envisaged.

7.4 *Compliance costs*

The compliance costs will mainly fall on administrators, in the first instance, but these may be passed on to scheme members through higher fees charged for administration work. However, in light of the view that standards of administration are likely to increase as a result of greater monitoring of those standards, this will provide benefits to scheme members also.

8. **Summary of costs, benefits and impacts**

- 8.1 It is likely that Option A, by retaining the status quo, will continue to cost consumers, trustees and the Pensions Board and will not deliver any benefits.
- 8.2 The overall costs of Option B may prove higher than that for Option A. However, the benefits considerably outweigh those of maintaining the status quo. The likelihood of long-term benefits through higher administration standards need to be weighed against the potential higher costs to scheme members who will bear the incidence of higher charges.
- 8.3 In addition, the benefits associated with the wider supervisory reach of the Pensions Board may result in lower supervisory costs. Also, the ability to audit administrators and the entirety of the schemes under their remit allows for a greater ability to identify low administration standards and breaches of the Act. The creation of joint offences, however, is legally problematic.
- 8.5 While there are costs associated with Option C, they are likely to be less than those associated with Option B (particularly given that the requirement to establish service level agreements is no longer necessary). The benefits, however, are likely to be the same – if not greater, given that the regulatory regime under Option C provides more clarity. In addition, the creation of joint offences does not arise under this option – providing legal clarity on the bearer of responsibility for breaches of the Act.
- 8.6 ***Preferred option: Upon examining the likely costs, benefits and impacts of each proposal, Option C is the preferred option.***

9. **Consultation**

As part of the consultation process, the Pensions Board established a group to discuss implementation of the Trusteeship Review proposals. The group – which included representation from Government Departments, pensions industry/administrators, trustee representatives, and the social partners – provided observations on aspects of the proposals but were generally in favour of the measures being considered.

In addition, the Pensions Board undertook a public consultation process through an advertisement on its website. There were two responses to this process, both of which were positive towards the registration and audit of pension scheme administrators.

10. Enforcement and compliance

The legislation will provide the Board with the power to investigate the conduct and activities of a registered administrator. It will allow the Board to require registered administrators and its officers and employees to furnish it with information, explanations, books of account and such other documents as are required.

The Board will also have the power to terminate the registration of a registered administrator where it has expressly requested the termination, has failed to comply with the requirements under the Act, has not complied with a restriction imposed by the Board, or is prohibited from acting as a registered administrator.

11. Review

The efficacy of this regulation will be reviewed in the context of ongoing monitoring of the operation of the Pensions Act between the Pensions Board and the Department of Social and Family Affairs.

Proposal 2: Introduce legislation so that employers automatically arrange trustee training for all trustees within six months of their appointment and at least every two years thereafter.

1. Policy Context

1.1 The Pensions Board's Review of Trusteeship was presented to the Minister for Social and Family Affairs in November 2006. The following broad terms of reference set out the main objectives of the review:

- i) Evaluate the trust model of pension scheme governance;
- ii) Identify potential regulatory and governance improvements that can be made to enable the trust model to perform more effectively;
- iii) Examine the supports in place for trustees.

1.2 Trustee training is considered important for pension scheme governance as it assists trustees to develop the skill-set necessary to perform their duties and functions effectively. Ongoing training ensures that trustees are kept up to date with regulatory developments and changes in the pensions landscape. Better-skilled trustees, performing effectively, will have a positive impact on pension scheme governance with consequent benefits for pension scheme members.

1.3 However, it is clear that trustees are not being trained on an ongoing basis. As stated in the Review of Trusteeship (2006:21):

“While trustees are required to disclose whether they have access to trustee training in the annual report, the body of research on this issue reveals that continuous, quality training is not the norm. In seeking to drive up levels of ability and understanding among trustees, it remains an option to introduce automatic training for trustees in order to increase standards. The delivery of such training, and the supporting infrastructure, as well as the potential costs to the schemes, present the most significant challenges to its introduction.”

2. Existing Regulatory Framework

2.1 Currently, the Occupational Pension Schemes (Disclosure of Information) Regulations, 2006, require that the annual report includes a statement as to whether trustees have access to appropriate training on their duties and responsibilities. This does not place any requirement on trustees to undergo training, nor on employers to ensure that scheme trustees undergo training.

3. Statement of Objectives

- i) To increase pension scheme trustees' understanding of their role and to improve their skills necessary to perform that role;

- ii) To increase the quality of pension scheme trustees' decision-making.

4. Identification of options/choices

- A) No policy change
- B) Require employers to automatically arrange trustee training for all trustees within six months of their appointment and at least every two years thereafter.
- C) Require trustees to undertake trustee training within six months of their appointment and at least every two years thereafter.

5. Option A – No Policy Change

5.1 *Costs*

The costs of maintaining the current approach will mainly fall on scheme members as lack of adequate trustee training is likely to result in poor decision-making at the trustee board. In addition, the current legislation provides that expenses for trustee training may reasonably be paid for from the resources of the scheme.

Option A: Costs				
Scheme	Trustees	Employers	Pensions Board	Exchequer
Potential ongoing costs due to poor decision-making by trustees.	None.	None.	None.	None.
Payment for reasonable trustee training expenses generally drawn from scheme resources.				

5.2 *Benefits*

The 'no policy change' option will not contribute towards the achievement of the objectives of this proposal.

5.3 *Other impacts*

National competitiveness

No impacts envisaged.

Socially excluded or vulnerable groups

No impacts envisaged.

Significant policy change in an economic market

No impacts envisaged.

Rights of citizens

No impacts envisaged.

Significant compliance burden

No impacts envisaged.

6. **Option B - Require employers to automatically arrange trustee training for all trustees within six months of their appointment and at least every two years thereafter.**

6.1 *Costs*

Overall costs may rise as more trustees will be trained and more often. It should be noted, however, that it is intended to investigate how a system of e-learning could be introduced (similar to that provided by the Pensions Regulator in the UK) to fulfil obligations in this area. This has the potential to significantly reduce the cost of trustee training. It is envisaged that an e-learning system will be in place before the new proposals on trustee training will be implemented.

One potential drawback to this option is that trustees may refuse or neglect to undertake training, despite it being arranged by the employer. However, research in this area has shown that, in general, trustees wish to undertake ongoing training but are often constrained by geographical, work or time pressures. In addition, a new requirement under the Act will provide that trustees must state, in their annual report, "*the appropriate training arranged for and received by the trustees as required under section 59AA*".

Option B: Costs				
Scheme	Trustees	Employers	Pensions Board	Exchequer
Additional costs where trustee training has not been provided and in the requirement for refresher training. E-learning should have a significant impact in reducing training costs	None.	Additional costs where trustee training has not been provided and in the requirement for refresher training. Potential cost (fines) for employers for breach of this requirement.	Minimal, if any, additional supervisory costs and costs arising in the investigation /development and maintenance of a n e-learning facility	None.

6.2 Benefits

The benefits of this option are that the abilities of trustees to perform their duties effectively will be increased. Employers will be required to organise training for each trustee of a scheme (with the exception of pensioner and professional trustees) upon taking up the post, and at least every two years thereafter. This will assist in ensuring that trustees are kept aware of their duties and functions. Their increased knowledge will assist in more informed decision-making, with consequent benefits for scheme members.

6.3 Other impacts

National competitiveness

None envisaged.

Socially excluded or vulnerable groups

None envisaged.

Environmental impacts

None envisaged.

Significant policy change in an economic market

None envisaged.

Rights of citizens

None envisaged.

6.4 *Compliance costs*

As outlined above, compliance costs will arise. However, the introduction of e-learning has the potential to significantly reduce trustee training costs.

7. **Option C - Require trustees to undertake trustee training within six months of their appointment and at least every two years thereafter.**

This option is similar to Option B but, instead of the responsibility falling upon the employers to organise training, the requirement is placed upon the trustee to ensure that he or she receives training.

7.1 *Costs*

Under this option, the obligation is on trustees to undertake training. Costs for breaches of this requirement would then fall upon trustees.

Depending on whether the requirement to pay for training expenses rested with the scheme resources or the employer, costs would fall upon either of these respectively.

A particular drawback of this approach is that employers are not placed under any obligation to organise training for the trustees. Research in this area has shown that gaining access to training – due to time, work or geographical pressures, for example – was difficult for some trustees. In the absence of an employer obligation, the ability of trustees to engage in trustee training may be limited and beyond their control.

Option C: Costs				
Scheme	Trustees	Employers	Pensions Board (supervisory costs)	Exchequer
Potential cost if training expenses are drawn from the scheme. No requirement for employers to arrange training. This may mean that trustees cannot fulfil the statutory requirement with consequences for scheme members.	Potential cost (fines) for trustees for breach of this requirement.	Potential cost if required to pay for training expenses.	Minimal, if any, additional supervisory costs.	None.

7.2 **Benefits**

While the requirement for trustees to undergo training would assist in meeting the objectives of this proposal, there may be difficulties in ensuring compliance if employers are not placed under any obligation to allow trustees to fulfil this duty.

7.3 **Other impacts**

National competitiveness

None envisaged.

Socially excluded or vulnerable groups

None envisaged.

Environmental impacts

None envisaged.

Significant policy change in an economic market

None envisaged.

Rights of citizens

None envisaged.

7.4 **Compliance costs**

Compliance costs will be spread among trustees and, depending on how the costs of training would be levied, upon employers and/or scheme members. In addition, as outlined above, this option creates a problematic situation whereby trustees could be held liable for breaches of the Act where the ability to attend trustee training may be beyond their control.

8. **Summary of costs, benefits and impacts**

8.1 It is likely that Option A, by retaining the status quo, will continue to cost scheme members through the lack of obligation for trustees to undergo appropriate training. In addition, it fails to meet the objectives of the proposal.

8.2 Option B may give rise to an increase in the overall financial costs as all relevant trustees are now required to undergo training. However, significant benefits accrue to scheme members through the enhanced potential for better governance of the scheme. Option C would offer similar costs and benefits but there may be difficulties in ensuring compliance if employers are not placed under any obligation to allow trustees to attend training.

8.3 ***Preferred option: Upon examining the likely costs, benefits and impacts of each proposal, Option B is the preferred option.***

9. Consultation

- 9.1 As part of the consultation process, the Pensions Board established a group to discuss implementation of the Trusteeship Review proposals. The group – which included representation from Government Departments, pensions industry/administrators, trustee representatives, and the social partners – provided observations on aspects of the proposals but were generally in favour of the measures being considered.
- 9.2 In addition, the Pensions Board undertook a public consultation process through an advertisement on its website.
- 9.3 There were two responses to this process, both of which were positive towards the requirement for employers to organise training for trustees. One organisation, however, suggested that the requirement should apply to companies acting as trustees as well as to individuals. However, the view of the Department, and that of the group referred to at 9.1 above, was that the requirements should be restricted to ‘lay’ trustees as expertise already exists within professional trustee companies.
- 9.4 A professional trustee company suggested that trustees could, in any event, only be trained up to “a rudimentary level of proficiency”. While this may be true, the Department’s view is that evidence suggests that trustees, and consequently scheme members, will benefit from ongoing and up-to-date trustee training. The best way to deliver this is to ensure that employers organise such training for the trustees on an ongoing basis.

10. Enforcement and compliance

- 10.1 Several statutory responsibilities will be put in place to encourage compliance with the new requirements. Firstly, trustee annual reports must state “*the appropriate training arranged for and received by the trustees*”. Second, a trustee will not be permitted to continue acting as a trustee if the appropriate training has not been received within the specified time period. Finally, a new statutory obligation on employers to arrange training for trustees will be introduced. The Pensions Board will monitor compliance with the new requirements as part of their current auditing regime.

11. Review

The efficacy of this regulation will be reviewed in the context of ongoing monitoring of the operation of the Pensions Act between the Pensions Board and the Department of Social and Family Affairs.

