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The Pensions  
Regulator 

# Consultation on the Pensions Regulator's Trustee Register

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## Executive summary

The Occupational Pension Schemes (Independent Trustee) Regulations 2005 require the Pensions Regulator ('the regulator') to compile and maintain a register of trustees that satisfy certain conditions (the Trustee Register). The Trustee Register is used by the regulator for appointing independent trustees to pension schemes.

There are currently 52 trustees on the Trustee Register, comprising of both individuals and corporate trustee firms.

The Trustee Register was established in 2005 and after four years of operating it, the regulator is proposing changes to how it assesses some of the conditions for registration.

The proposed changes reflect the regulator's experience of the trustee sector and aim to ensure that best practice and standards are increased and maintained by trustees on the Trustee Register. Whilst the regulator intends to leave some of its assessment criteria unchanged, others are being strengthened. Overall, the regulator believes that its proposed changes are justified having regard to the additional safeguards provided to members of schemes where the regulator appoints a trustee from the Trustee Register.

The proposed changes the regulator is consulting on relate to how it assesses:

- 'Overall management responsibility' and 'significant influence' when considering who is a Key Person and an Officer.
- The applicant's 'sufficient relevant experience'.
- Whether the applicant has 'sound administrative and accounting procedures'.
- Whether the applicant has 'adequate indemnity insurance cover'.

## Introduction

The Regulator is the regulatory body for work-based pension schemes<sup>1</sup> in the UK. The regulator has a set of specific objectives, which include:

- to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes;
- to reduce the risk of situations arising that may lead to compensation being payable from the Pension Protection Fund ('PPF'); and
- to promote, and to improve understanding of, the good administration of work-based pension schemes.<sup>1</sup>

The regulator has a number of statutory functions to help meet these objectives. This consultation relates to how the regulator proposes to carry out its statutory function to compile and maintain the Trustee Register.<sup>2</sup>

## Background

The regulator is required to compile and maintain a register of independent trustees who fulfil the legislative conditions<sup>3</sup>.

Since April 2005, the regulator may appoint<sup>4</sup> an 'independent trustee'<sup>5</sup> from its Trustee Register to a scheme where, in relation to the scheme's employer:

- an Insolvency Practitioner begins to act; or
- the Official Receiver becomes:
  - the liquidator or provisional liquidator (if the employer is a company);
  - the interim receiver of the employer's property; or
  - the receiver and the manager (or the trustee) of the employer's estate as a bankrupt.

These appointments are usually made, on expedient or protective grounds, to ensure that the scheme is properly administered and the members protected when its employer is insolvent.

The regulator may appoint a trustee to a scheme in other circumstances<sup>6</sup>. Although it is not required to do so, when making appointments in such circumstances the regulator will usually consider appointing a trustee from the Trustee Register.

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<sup>1</sup> See section 5(1) of the Pensions Act 2004.

<sup>2</sup> See section 23(4) of the Pensions Act 1995 (the Act).

<sup>3</sup> See section 23(4) of the Act.

<sup>4</sup> See section 23(1) of the Act.

<sup>5</sup> See section 23(3) of the Act

<sup>6</sup> See section 7 of the Act.

Since 2005, the regulator has accepted applications to be on the Trustee Register from independent trustees, both individual and corporate. Independent trustees are not required to be on the Trustee Register; it is a voluntary decision. Being on the Trustee Register does not guarantee appointments; before making any appointment the regulator considers the unique circumstances and needs of the scheme before selecting the appropriate trustee candidates for appointment.

There are a number of legislative conditions which an applicant must fulfil before admission onto the Trustee Register. The applicant must also continue to meet these conditions to remain on the Trustee Register. The conditions fall into two categories:

- Fact-based<sup>7</sup> (ie the conditions are met or not); and
- Judgement-based (ie in the light of the regulator's assessment, whether the applicant meets - and continues to meet - the criteria).

The judgement-based conditions are:

- The regulator must be satisfied that the applicant has, and continues to have, 'sufficient relevant experience' of occupational pension schemes<sup>8</sup>;
- The regulator must be satisfied that the applicant is, and continues to be, a 'fit and proper' person to act as a trustee of an occupational pension scheme<sup>9</sup>;
- The regulator must be satisfied that the applicant operates, and continues to operate, 'sound administrative and accounting procedures'<sup>10</sup>; and
- The regulator must be satisfied that the applicant has, and continues to have, 'adequate indemnity insurance' cover<sup>11</sup>.

All applicants must meet each of the fact-based and judgement-based conditions. In addition, where the applicant is a company, partnership or limited liability partnership, some of its main individuals also must meet some of the fact-based and judgement-based conditions.

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<sup>7</sup> See Appendix A.

<sup>8</sup> See regulation 3(b)(i) of the Occupational Pension Schemes (Independent Trustee) Regulations 2005 (SI 2005/703).

<sup>9</sup> See regulation 3(b)(ii).

<sup>10</sup> See regulation 3(b)(iii).

<sup>11</sup> See regulation 3(b)(iv).

## Consultation

As a matter of good practice, the regulator regularly reviews the manner in which it undertakes its functions. After four years of operating the Trustee Register and as part of its maintenance function in this regard, the regulator has reviewed how it assesses the judgement-based conditions and believes that a number of revisions and refinements are necessary. Over this period, the regulator has been in contact with a number of the trustees on the Trustee Register and has held workshops to gauge trustees' views on how the Trustee Register is being operated. As a result, the regulator has devised new criteria to be applied when assessing whether trustees meet, or continue to meet, the judgement-based conditions for acceptance onto the Trustee Register.

Whilst the regulator intends to leave some of its assessment criteria unchanged, others are being strengthened. The new proposed criteria are designed to ensure that best practice and high standards are maintained across the pool of trustees from which the regulator may make an appointment. Specifically the regulator is consulting in the following areas:

- The interpretation of 'overall management responsibility' and 'significant influence' when considering who is a Key person and Officer.
- The applicant's 'sufficient relevant experience'; and
- Whether the applicant has 'sound administrative and accounting procedures'; and
- Whether the applicant has 'adequate indemnity insurance cover'.

The regulator is also intending to simplify the process for application to the Trustee Register by using one application form for all applications.

The regulator is undertaking this consultation in recognition of the impact that its proposed changes may have on those trustees who are currently on the Trustee Register.

This consultation relates to the new criteria that the regulator proposes to adopt in order to exercise its judgement in relation to whether applicants meet, and continue to meet, the judgement-based conditions to be on the Trustee Register as well as who should be assessed as being either a Key Person or an Officer.

The consultation questions can be found in the *Consultation questions* section on page 20.

## Next steps

Details of how to respond to this consultation can be found towards the end of this document.

Once the consultation has been completed, the regulator will consider its proposals in the light of the responses received. Following this consideration, the regulator will publish its new assessment criteria and a new Trustee Register application form<sup>12</sup> on its website.

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<sup>12</sup> See Appendix B. The information provided to one section B may also be relevant to the regulator's assessment of the other conditions and may be used accordingly.

At that point, the regulator will accept applications from new trustees to be added to the Trustee Register. The regulator will also invite trustees who are currently on the Trustee Register, and who wish to remain on it, to re-submit their application form in the new format. All applications received will be assessed against the new criteria.

Until publication of the new criteria, the regulator will not be considering any fresh applications to be on the Trustee Register. Any applications made before publication will be returned to the applicant, who will be invited to re-submit once the new criteria have been published.

The regulator will also be publishing its response to this consultation.

## Timetable

- Consultation starts: **11 December 2009**
- Consultation ends: **12 March 2010**
- Publication of the new criteria and application form on: **12 April 2010**
- Publication of response to consultation: **12 April 2010**
- Deadline for existing applicants to re-submit their application in the new application form: **Q2 2010**

## Proposed changes – Definitions and interpretations

In this section, the regulator sets out how it assesses the definitions of Officer and Key Person<sup>13</sup> and specifically how, for the purpose of this consultation, it intends to interpret ‘significant influence’ and ‘overall management responsibility’.

### Key Person and Officer

Where an applicant, who is not an individual<sup>14</sup>, applies to be on the Trustee Register, *each* of its Officers and *each* of its Key Persons must themselves satisfy a number of the legislative conditions<sup>15</sup>:

- As well as a number of fact-based conditions,<sup>16</sup> every Officer must fulfil the judgement-based condition: to be ‘fit and proper’<sup>17</sup> to act as a trustee.
- As well as a number of fact-based conditions,<sup>18</sup> every Key Person must fulfil the judgement-based conditions: to be ‘fit and proper’ to act as a trustee and to have ‘sufficient relevant experience’<sup>19</sup> of schemes.

If *any* Officers or Key Persons do not fulfil the applicable legislative conditions, then the regulator will refuse the application to be on the Trustee Register (or remove a trustee already on the Trustee Register). Applicants may have more than one individual who satisfies these definitions. Applicants cannot apply for, or nominate, someone to be an Officer or Key Person. The regulations define these roles. The regulator does not interpret the regulations as requiring all individuals who undertake pension trustee work for the applicant to be Officers or Key Persons.

Where an individual is both a Key Person and an Officer, the regulator will expect that individual to meet the greater legislative conditions that apply for a Key Person.

It is incumbent on the applicant to identify its Officers and Key Persons. The regulator may request the applicant to provide more information as to why an individual is (or is not) considered to be a Key Person.

Trustees on the Trustee Register should ensure that they inform the regulator promptly following any changes to the identity of their Officers or Key Persons (including temporary changes).

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<sup>13</sup> See regulations 1(2) and 3(c).

<sup>14</sup> For example, a company or a partnership (including a limited liability partnership).

<sup>15</sup> For an Officer see regulation 3(c)(i) and for a Key Person see regulation 3(c)(ii).

<sup>16</sup> See regulations 3(c)(i) and 3(a) (the Officer must not be subject to either a prohibition order (under section 3 of the Act) or suspension order (under section 4 of the Act) and not disqualified as a trustee (under sections 29(1), 29(3) or (4) of the Act)).

<sup>17</sup> See regulations 3(c)(i) and 3(b)(ii).

<sup>18</sup> See regulations 3(c)(ii) and 3(a) (the Key Person must not be subject to either a prohibition order (under section 3 of the Act) or suspension order (under section 4 of the Act) and not disqualified as a trustee (under sections 29(1), 29(3) or (4) of the Act)).

<sup>19</sup> See regulations 3(c)(ii), 3(b)(i) and 3(b)(ii).

## Definition of Officer and ‘significant influence’

An Officer is:

- any person whose signature may authorise (in part or in full) a transaction involving the assets of any scheme for which the applicant acts as trustee;
- a director;<sup>20</sup> member of the committee of management; chief executive; or designated member in relation to a limited liability partnership; or partner who has ‘significant influence’ over the management of the pension trustee work;<sup>21</sup> or
- an individual who is a shareholder with 10% or more of the shares in the applicant, where this affords that shareholder ‘significant influence’ over the management of the applicant and the pension trustee work.<sup>22</sup>

In the regulator’s opinion, what constitutes ‘significant influence over the management of the pension trustee work’ will be a question of fact and degree. The regulator’s proposed view is that individuals will have ‘significant influence’ if they have responsibility for one or more of the following matters within the applicant:

- the setting of business targets (including for new business, profits, profitability and cross-selling);
- making decisions about the allocation of resources to the trustee work;
- the setting of fee levels/hourly rates for trustee work;
- providing instructions to cross-sell to other areas of the business, or the setting of targets in this regard;
- the setting of ‘house views’ on the most appropriate way to approach taking strategic decisions about the investment or allocation of scheme assets and other elements of the trustee business; and
- the setting of ‘house views’ on the most appropriate way to approach the identification, monitoring and management of conflicts of interest.

In relation to those individuals who hold 10% or more shares in the applicant, the regulator will assume that any such individual, by virtue of this shareholding, exercises ‘significant influence’ over the management of the applicant and the pension trustee work, unless that individual can show otherwise.

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<sup>20</sup> See regulation 1(2). The regulator, for the purposes of the Trustee Register, interprets director in the regulations consistently with the definition of director (including ‘shadow’ director), as contained in sections 250 and 251 of the Companies Act 2006: a director is “any person occupying the position of director, by whatever name called” and a shadow director is “a person in accordance with whose directions or instructions the directors of the company are accustomed to act”.

<sup>21</sup> Pension trustee work is broadly defined as all of the work: “carried out... (as trustee)...by the applicant in relation to trust schemes”, see regulation 1(2).

<sup>22</sup> See regulation 1(2).

### **Definition of Key Person and 'overall management responsibility'**

A Key Person is someone who has 'overall management responsibility' for the applicant's pension trustee work.

It is the regulator's view that a Key Person is the individual (or individuals) with overall responsibility or accountability for all the pension trustee work undertaken by the applicant. The regulator also proposes to include within its interpretation of the definition all those persons which the applicant is aware, as at the date of the application, might have this role temporarily (for example, if they ordinarily 'step in' or provide cover for the other Key Persons during periods of illness or leave).

## Proposed changes – Judgement-based conditions

In this section, the regulator sets out the proposed changes to the criteria for assessing the judgement-based conditions. We are not proposing changes to all of the criteria currently being used; however, for completeness, all of the aspects of how we assess each of the existing criteria have been listed, together with either the proposed change or, where appropriate, confirmation that there will be no change.

### Summary table

Condition	Current position	New position	Rationale	Validation
<b>Sufficient relevant experience</b>	A benchmark of at least five years' regular or continuous experience as an occupational pension scheme trustee at the time of the application.	<p>For both individuals and Key Persons – <b>no change</b></p> <p>Non-individual applicants should have had at least three years of regular or continuous experience as a trustee of occupational pension schemes up to the point of the application.</p> <p>Compliance will be checked on an annual basis.</p>	<p>No change, no reasons required.</p> <p>The legislation requires a non-individual applicant (in its own capacity as well as its Key Persons) to satisfy this condition.</p> <p>For non-individuals, five years of experience is not necessary as each of these applicants must have a Key Person with at least five years' relevant experience as an occupational pension scheme trustee. Nevertheless some sufficient relevant experience is required.</p>	<p>Not applicable.</p> <p>Three years is considered appropriate having regard to the minimum of five years' experience of the Key Person(s) and the experience of other employees undertaking trustee work.</p>

Condition	Current position	New position	Rationale	Validation
<b>Fit and Proper</b>	<p>At the time of the application the Applicant (including, if applicable any Officers and Key Persons) must be able to satisfy the regulator of its fitness and propriety, by answering a number of questions.</p> <p>The regulator also undertakes independent checks to assess this criteria and validate the responses required by the applicant.</p>	<p><b>No material</b> change.</p> <p>The regulator will still seek to be satisfied that the applicant has the qualities of fitness and propriety to be a trustee.</p> <p>However, the questions being asked in the application are broader in some cases and additional questions are being asked in order to better align our approach with our published guidance (on our website).</p> <p>Compliance will be checked on an annual basis (or whenever any changes are notified to the regulator by the applicant).</p>	No change, no reasons required.	Not applicable.

Condition	Current position	New position	Rationale	Validation
<p><b>Sound Administrative and Accounting Procedures</b></p>	<p>Applicants are required to demonstrate they operate 'sound administrative and accounting procedures' by answering a number of questions and effectively 'self certify' compliance, without any independent validation by the regulator.</p>	<p>The regulator proposes the adoption of the Audit and Assurance Faculty framework requiring the applicant to obtain certification from an independent Reporting Accountant stating that certain controls have been met.</p> <p>The model proposed is the framework developed by the Institute of Chartered Accountants in England &amp; Wales (ICAEW) - Assurance Reports on Internal Controls for service organisations (AAF01/06). It is one that is in common practice for certain service providers and generally recognised by the pensions industry.</p> <p>The regulator requires an unqualified report submitted by the applicant, upon application and on an annual basis, as evidence that this condition is satisfied.</p>	<p>Development of a consistent and standardised approach for assessing this condition.</p> <p>This process also enables applicants to demonstrate a best practice approach to pension scheme governance.</p> <p>A mechanism for obtaining independent assurance that the condition has been met.</p>	<p>Discussions with some of the trustees on the Trustee Register were all positive and did not object to the regulator's proposed move to seek the validation that they met this condition.</p>

Condition	Current position	New position	Rationale	Validation
<p><b>Adequate Indemnity Insurance cover</b></p>	<p>Applicants are asked to provide a summary and detail the extent of their cover for Indemnity Insurance.</p> <p>Applicants are asked to provide a copy of their Indemnity Insurance certificate.</p> <p>For all trustee work a minimum level of £1m of cover was required.</p>	<p>The applicant will provide a certificate of insurance confirming:</p> <ul style="list-style-type: none"> <li>• Each applicant must have cover of at least £2 million for a single claim with at least two reinstatements (i.e. three claims as a minimum) in respect of all of its occupational pension trustee work.</li> <li>• The applicant must have a minimum ten year rolling period of run-off cover in place.</li> <li>• The policy must be solely in the applicant's name, and the applicant must be a named insured on a group policy (if any).</li> <li>• The policy must be obtained from an external third party provider (ie not a captive insurer).</li> </ul> <p>The Applicant must have sufficient resources in its business to cover its policy excess.</p> <p>The Applicant must provide ten years' worth of their claims history.</p> <p>Compliance will be checked on an annual basis (or whenever any changes are notified to the regulator by the applicant).</p>	<p>Provides a higher level of protection and provides better protection if more than one claim is made annually.</p> <p>Provides protection if the applicant ceases to pay premiums.</p> <p>Prevents the cover from being swallowed up by other areas of an applicant's business (if applicable).</p> <p>Provides protection for the schemes, should there be a successful claim, that the applicant will be able to cover the policy excess.</p>	<p>An increase in £2 million and two reinstatements (from £1 million) is justified in the light of the wider developments within the pensions industry.</p> <p>Dialogue with both trustees and the insurance industry has informed the regulator that these conditions represent good practice for those undertaking trustee work.</p>

## Sufficient relevant experience

The regulator must be satisfied that the applicant has, and continues to have, 'sufficient relevant experience of occupational pension schemes'<sup>23</sup>.

To ensure that the Trustee Register contains only suitably experienced individuals of sufficient quality, the regulator has applied the following criteria when assessing 'sufficient relevant experience':

- Individual applicants: at least five years of regular or continuous experience as a trustee of an occupational pension scheme up to the point of the application.
- Key Persons: at least five years of regular or continuous experience as a trustee of an occupational pension scheme up to the point of the application.

The regulator believes that five years' worth of experience remains the right threshold and will not be changing this approach.

For those applicants who are not individuals, the regulator has not to date been assessing whether they have 'sufficient relevant experience'. Instead, the regulator has been assessing whether the applicant's Key Persons have this level of experience. This Key Person assessment has been used to inform the regulator's view as to whether the applicant itself has 'sufficient relevant experience'.

The regulator does not now consider that this approach is sufficient in the light of its present view of the legislative conditions: that both the applicant (in its own capacity) and its Key Persons should have 'sufficient relevant experience'.

The regulator proposes that these applicants must also demonstrate they have had at least three years of regular or continuous experience as a trustee of an occupational pension up to the point of the application.

Three years has been chosen as an appropriate length of 'sufficient relevant experience' for these applicants having regards to the minimum of five years' experience required by the Key Person(s) and the experience of other employees undertaking pension trustee work.

The regulator will conduct an annual check to ensure that applicants continue to maintain this level of experience.

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<sup>23</sup> See regulation 3(b)(i).

## Fitness and propriety

The regulator must be satisfied that the applicant is, and continues to be, a ‘fit and proper’ person to act as a trustee of an occupational pension scheme.<sup>24</sup> The regulator interprets ‘fit and proper’ as encompassing ‘fitness’ and ‘propriety’ and expects trustees to demonstrate certain standards when acting in a ‘fit and proper’ manner:

- honesty and integrity;<sup>25</sup>
- competence and capability;<sup>26</sup> and
- financial soundness.<sup>27</sup>

The regulator’s views of what is ‘fit and proper’ remain unchanged and the questions it asks (although revised) in the application form<sup>28</sup> and the checks it carries out (which will be repeated on an annual basis or more regularly if the regulator is notified of any change) will still seek to test whether an applicant remains ‘fit and proper’ by the regulator’s published standards.

## Sound administrative and accounting procedures

The regulator must be satisfied that the applicant operates, and continues to operate, ‘sound administrative and accounting procedures’<sup>29</sup>.

Currently, applicants complete responses to a series of questions in the Application Form.

The regulator’s criteria on sound administrative and accounting procedures can be demonstrated through compliance with a wide range of procedures and controls relating to both the applicant’s own business operations as well as those relating to the trustee services it provides, from Executive and Board decisions, to outsourcing functions and key operating controls and processes. These should cover:

- Sound procedures for reviewing key business decisions (including having processes in place for managing conflicts of interest);
- Sound administrative processes and procedures to ensure the applicants own business operations are properly administered and managed;
- Maintenance of accurate and complete member and financial records as well as financial management controls;

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<sup>24</sup> See regulation 3(b)(ii).

<sup>25</sup> See more guidance at:

[www.thepensionsregulator.gov.uk/regulatoryActivity/prohibitedTrustees/prohibited-06.aspx](http://www.thepensionsregulator.gov.uk/regulatoryActivity/prohibitedTrustees/prohibited-06.aspx)

<sup>26</sup> See more guidance at:

[www.thepensionsregulator.gov.uk/regulatoryActivity/prohibitedTrustees/prohibited-05.aspx](http://www.thepensionsregulator.gov.uk/regulatoryActivity/prohibitedTrustees/prohibited-05.aspx)

<sup>27</sup> See more guidance at:

[www.thepensionsregulator.gov.uk/regulatoryActivity/prohibitedTrustees/prohibited-06.aspx](http://www.thepensionsregulator.gov.uk/regulatoryActivity/prohibitedTrustees/prohibited-06.aspx)

<sup>28</sup> See Appendix B for an illustrative Application Form.

<sup>29</sup> See regulation 3(b)(iii).

- Sound processes for selecting and monitoring scheme advisers and administrators (including an ongoing assessment of the quality of service and advice);
- Sound administrative processes and controls for scheme management and reporting to members;
- Sound procedures for scheme risk management and safeguarding scheme assets;
- Sound procedures for business continuity plans including data protection; and
- Sound administrative processes in place for maintaining relevant knowledge and experience, as well as processes for managing training.

The current process for assessing the information contained in the application form does not involve the regulator undertaking due diligence to validate the information provided. Consistent with its proposed approach in relation to the other judgement-based conditions, the regulator considers that some validation in relation to this condition is necessary.

As a result of the limitations in the current process, the regulator is proposing to adopt the Audit and Assurance Faculty framework (AAF)<sup>30</sup> developed by the ICAEW to assess whether an applicant has 'sound administrative and accounting procedures'<sup>31</sup>. The AAF framework is common practice for certain service providers and generally recognised by the pensions industry.

The regulator will require all new applicants, as well as those currently on the Trustee Register to use the AAF framework and obtain an unqualified<sup>32</sup> independent assurance report from a Reporting Accountant before it can be considered for acceptance on to, or to remain on, the Trustee Register. An annual report will also be required to remain on the Trustee Register.

The AAF process requires applicants to describe and document control procedures aimed at ensuring that the control objectives are fulfilled. The design, implementation and operation of control procedures (e.g. the choice of a process or processes established to meet control objectives) are the responsibility of the applicant.

Outsourcing this work to an independent Reporting Accountant will enable a thorough and rigorous assessment of the applicant's procedures, controls and operations applicable to both its organisational management practices and those relating to its business activity of providing trustee services to pension schemes.

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<sup>30</sup> [www.icaew.com/index.cfm/route/149966/icaew\\_ga/en/Technical\\_and\\_Business\\_Topics/Topics/re\\_Assurance/AAF\\_01\\_06\\_Assurance\\_reports\\_on\\_internal\\_controls\\_of\\_service\\_organisations\\_made\\_available\\_to\\_third\\_parties](http://www.icaew.com/index.cfm/route/149966/icaew_ga/en/Technical_and_Business_Topics/Topics/re_Assurance/AAF_01_06_Assurance_reports_on_internal_controls_of_service_organisations_made_available_to_third_parties)

<sup>31</sup> See Appendix D for proposed AAF 01/06 control objectives.

<sup>32</sup> But only in relation to the extent of the proposed control objectives as detailed in Appendix D.

The regulator has been in consultation with an outsourced provider to develop a list of proposed control objectives for inclusion in the ICAEW AAF guidance. The proposed control objectives<sup>33</sup> have been developed to reflect key areas of governance the regulator would expect a trustee who wishes to be on the Trustee Register to be able to demonstrate, and those proposed represent a subset of the overall control objectives, which are currently being developed for trustee organisations for a wider use.

The proposed framework is intended to follow the guidelines developed by the ICAEW relating to assurance reports on internal controls of service organisations made available to third parties. In this case, however, the service organisation will be the applicant (individual or organisation), because ultimately they may provide specific services to a scheme to which they may be appointed, and the third party will be the regulator.

The overall set of proposed control objectives requires approval from the ICAEW and whilst timescales for this process are beyond the control of the regulator, the regulator will maintain dialogue to aid progression. In the event of a delay in approval, we will include questions in the Application Form that support the list of control objectives, which the applicant would be required to answer instead of independent scrutiny by a Reporting Accountant. In this eventuality, it is likely that the regulator would involve its own independent expert(s) to assess the responses provided.

If ICAEW approval is in place before the regulator publishes its new criteria, then all applicants to the Trustee Register will be required to produce an unqualified report from a Reporting Accountant. This should state that the Reporting Accountant is satisfied that the appropriate control procedures are in place to meet the control objectives. If such a report is submitted, the regulator will consider this condition to be met. All trustees currently on the Trustee Register will be required to produce this report within **three** months of the publication of the regulator's new criteria.

### **Adequate Indemnity Insurance**

The regulator must be satisfied that the applicant has, and continues to have, 'adequate indemnity insurance' cover<sup>34</sup>. Indemnity Insurance is also known as Professional Indemnity insurance.

The current criterion for assessing whether the applicant has an adequate level of Indemnity Insurance cover is set at a minimum level of £1 million per applicant.

The regulator has undertaken a review to ascertain whether this level remains appropriate. This review has involved:

- Research within the Indemnity Insurance sector;
- Research of other regulatory bodies' Indemnity Insurance requirements;
- Informal consultation with a selection of trustees on the Trustee Register; and

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<sup>33</sup> See Appendix D.

<sup>34</sup> See regulation 3(b)(iv).

- Informal consultation with some of the Indemnity Insurance providers.

As a result of this analysis the regulator proposes to change how it assesses whether the applicant has, and continues to have, adequate Indemnity Insurance cover as follows:

- The applicant must have cover of at least: £2 million for a single claim with at least two reinstatements (i.e. three claims as a minimum) in respect of all the applicant's occupational pension trustee work; and
- The applicant must have a minimum ten-year rolling period of run-off cover in place; and
- Where an applicant has an excess on its Indemnity Insurance, it has sufficient resources to meet the full value of this excess; and
- The insurance must be provided by an independent third party insurer (i.e. not a captive insurer) and solely in the applicant's name (and the applicant must be a named insured on any group<sup>35</sup> policy, if any); and
- The regulator also requires the applicant's claims history.

Having regard to the current pension landscape and the regulator's research, the regulator believes that the previous benchmark of £1 million cover is unlikely now to be sufficient.

The regulator also considers that two reinstatements provides sufficient cover should there be more than one claim. The regulator would like as many reinstatements as possible; however, this is not always viable for trustees, consequently, a minimum of two reinstatements is being proposed by the regulator.

The regulator proposes that the applicant must obtain a minimum of ten years' rolling run-off cover. This provides protection if the applicant ceases to pay premiums. Ensuring that the applicant has sufficient resources to cover the excess allows for claims to be met in full up to the limit of the policy. The regulator proposes to validate this information upon receipt of the applicant's accounts as part of the application process. Research within the pensions industry and with the insurance sector has revealed that Indemnity Insurance is often provided on the above terms. Applicants will be required to submit a certificate from their insurance brokers stating that they have met these requirements as part of the application and on an annual basis. In addition, applicants will need to inform the regulator of any new information relating to the applicant's cover.

The regulator is aware that many (but not all) occupational schemes will have exoneration clauses<sup>36</sup> and sponsoring employers will offer indemnities to trustees. The regulator does not consider that it is appropriate to consider these when it is assessing whether the applicant has 'adequate indemnity insurance cover', as the legislative condition is concerned with the adequate level of the applicant's cover notwithstanding the rules of any particular scheme to which the applicant has been appointments.

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<sup>35</sup> The regulator interprets 'group' consistently with section 1159 of the Companies Act 2006.

<sup>36</sup> Exoneration clauses are in the main clauses in a pension scheme's provisions that may exempt a trustee from liability for all forms of conduct except dishonesty.

## Consultation questions

These are:

- Do you consider the regulator's proposed view of 'significant influence' over the management of the pension trustee work to be reasonable? If not, how would you assess 'significant influence' over the management of the pension trustee work?
- Do you consider the regulator's proposed view of who it considers to have 'overall management responsibility' to be reasonable? If not, how would you assess who has 'overall management responsibility'?
- Is it reasonable for the regulator to require that applicants (who are not individuals) to be able to demonstrate three years' regular or continuous experience as a trustee? If not, how would you assess it for these applicants?
- Do you agree that the proposed ICAEW AAF framework is appropriate to use for assessing whether the applicant has 'sound administrative and accounting procedures' in place? If not, why not?
- Does the list of control objectives in Appendix D adequately address key areas which would demonstrate that an applicant has 'sound administrative and accounting procedures'? If not, what should be changed? If not, please explain why?
- Do you agree with the regulator's view as to what is adequate for the purposes of assessing the Indemnity Insurance cover (including the number of years for run-off cover)? If not, how would you assess adequate Indemnity Insurance cover?

## Responding to the consultation

Responses may be made in either of the following ways:

By email to: [trusteeregisterconsultation@thepensionsregulator.gsi.gov.uk](mailto:trusteeregisterconsultation@thepensionsregulator.gsi.gov.uk)

By post to: **Stephen Soper**  
Trustee Register Consultation  
The Pensions Regulator  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

We may need to share the feedback you send us within our own organisation or with other Government bodies. We may also publish this feedback as part of our response to the consultation. If you wish your comments to remain anonymous, please state this explicitly in your response.

If you wish your response to be kept confidential, please make this known and we will take the necessary steps to meet your request. However, please be aware that, should we receive a formal request under Freedom of Information legislation, we may be required to make your response available.

When responding, please advise whether you are responding as an individual or on behalf of an organisation (and if the latter, which organisation).

## Closing date

This consultation document was published on **11 December 2009**. Consultation will last twelve weeks. The closing date for responses to this consultation is **12 March 2010**.

## The Government Code of Practice on Consultation

This consultation is being conducted in line with the seven criteria of the [Government Code of Practice on Consultation](#):

- Formal consultation should take place at a stage when there is scope to influence the outcome.
- Consultations should normally last for at least twelve weeks, with consideration given to longer timescales where feasible and sensible.
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

## Feedback on this consultation exercise

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the policy issues raised) please contact Laura Butler.

By email to: [laura.butler@thepensionsregulator.gsi.gov.uk](mailto:laura.butler@thepensionsregulator.gsi.gov.uk)

By post to: **Laura Butler**  
Consultation Good Practice  
The Pensions Regulator  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. If you have any requirements that we need to meet to enable you to respond, please let us know.

## Appendix A - Fact-based conditions for the Trustee Register

- The applicant must not be the subject of a prohibition order<sup>37</sup> or suspension order,<sup>38</sup> or disqualified from being a trustee of a trust scheme on any of the prescribed grounds.<sup>39</sup>
- Where the applicant is not an individual, every Officer and every Key Person must satisfy certain conditions.<sup>40</sup>
- The applicant must have premises in the United Kingdom from which it conducts its trustee business and must disclose the address of those premises to the regulator (the regulator will expect those applicants with presences in other jurisdictions to provide an explanation of how they will safeguard the assets of UK schemes).<sup>41</sup>
- The applicant must agree:
  - To have costs and fees scrutinised by an independent adjudicator and be bound by that adjudicator as to fees and costs;
  - To the regulator disclosing his name, business address and the specialist areas of trustee work on a version of the Trustee Register, which is publicly available;
  - To comply with the regulator's reasonable requests to provide information; and
  - To inform the regulator as soon as is reasonably practicable if he becomes disqualified.<sup>42 43</sup>

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<sup>37</sup> See regulation 3(a)(i) and section 3 of the Act.

<sup>38</sup> See regulation 3(a)(ii) and section 4 of the Act.

<sup>39</sup> See regulation 3(a) and sections 29(1), (3) and (4) of the Act.

<sup>40</sup> See regulation 3(c).

<sup>41</sup> See regulation 3(d).

<sup>42</sup> Under sections 29(1) or (3)(b) of the Act.

<sup>43</sup> All in regulation 3(c).

## **Appendix B - Draft application form and guidance notes based on proposed new criteria**

**Please do not use this application form. It is for illustrative purposes only and is subject to change following the consultation.**

# Application form for inclusion on the Pensions Regulator's Trustee Register

## Introduction

The Occupational Pension Schemes (Independent Trustee) Regulations 2005 ('the Regulations') require the Pensions Regulator (the 'regulator') to compile and maintain a register of trustees who satisfy certain conditions. The conditions to be met in order to be registered and thereafter remain on the register are set out in the guidance notes section at the end of this form ('the conditions').

Please read these notes carefully before completing this form. Also, see the regulator's website at [www.the-pensionsregulator.gov.uk/trustees/register.aspx](http://www.the-pensionsregulator.gov.uk/trustees/register.aspx) which contains further important information about the legislative context for the register, its purpose and the regulator's approach to assessing the *conditions*.

The purpose of this application form is to enable the regulator to obtain information and assurances from the applicant in order that it can assess whether the applicant satisfies the *conditions*. This assessment will take place for the purpose of registering the applicant on to the register and, if registration is successful, further assessments will take place on an annual basis in order for the regulator to assess if the applicant continues to satisfy the *conditions*.

**This form is designed for both individual trustee and partnership/LLP/company trustee applicants. Ensure that you read each section and any accompanying notes carefully and complete all the sections that are applicable to you. In order to assist you in this regard, there is a checklist at the end of this form which identifies the sections to be completed by each type of applicant.**

Although requests for information in this form are split into sections relating to each of the *conditions*, the information provided may be relevant to the regulator's assessment of the other *conditions* and may be used accordingly.

Note that the regulator may wish to seek further information from the applicant following its review of the application form. The regulator may also wish to arrange a meeting with the applicant, either at its premises or at the regulator's offices.

*continued over...*

Please use black ink when completing this form and remember to write clearly.

## 1 Applicant's details General information on the applicant

*To be completed by individual applicants and partnership/LLP/company ('corporate') applicants*

**1.1. Applicant's name.**

**1.2. Type of applicant** (eg individual or corporate).

**1.3. Please provide the address of the premises in the United Kingdom from which the applicant conducts its business as a trustee of occupational pension schemes.**

**1.4. For corporate applicants only**

Please provide your Registered Company Number and Registered Office address.

**1.5. For corporate applicants only**

Please set out the names, home addresses and dates of birth of all Key Persons and Officers<sup>1</sup>.

**1.6. Provide the name and contact details of the individual whom you wish to be your principal contact for the regulator.**

**1.7. Provide the amount (%) of your turnover that is related purely to pension trusteeship work.**

*If you need additional space, please go to page 25 and state clearly which question your response relates to.*

*continued over...*

<sup>1</sup> See the guidance notes on pages 22 and 23 of this form for the regulator's views on these definitions.

## 1 Applicant's details *continued...*

### 1.8. For corporate applicants only

Please attach an organisation chart outlining the management structure of the applicant and its group<sup>2</sup> (if applicable).

Organisation chart attached

**1.9. Supply copies of your full audited (or subject to audit) accounts for the last three financial years (where these are not publicly available).** If you do not have accounts which are audited or subject to audit, provide copies of your accounts produced to accompany your tax return to the Inland Revenue for the same period.

### IMPORTANT NOTE

Except where indicated to the contrary, all the questions in sections 2, 3, 4 and 7 below should be answered by the applicant, whether individual or corporate and, in the case of applications from corporate entities, by each Key Person and each Officer.

*Please note: If there are more than 3 Key Persons, please use the additional space on page 25 and state clearly which question your response relates to.*

## 2 Condition 3(a)

**2.1** Confirm that you are not the subject of a prohibition order made under section 3 of the Pensions Act 1995.

Applicant

Key Person(s)

Officer(s)

**2.2** Confirm that you are not the subject of a suspension order made under section 4 of the Pensions Act 1995.

Applicant

Key Person(s)

Officer(s)

**2.3** Confirm that you are not disqualified for being a trustee of any trust scheme on any of the grounds set out in subsection (1) of section 29 of the Pensions Act 1995, by virtue of being the subject of an order made under subsection (3) or (4) of that section.

Applicant

Key Person(s)

Officer(s)

*If you need additional space, please go to page 25 and state clearly which question your response relates to.*

*continued over...*

<sup>2</sup> The regulator interprets 'group' consistently with section 1159 of the Companies Act 2006.

### 3 Experience

The applicant and each Key Person must satisfy the regulator that they have sufficient relevant experience of occupational pension schemes.

*Please note: If there are more than 3 Key Persons, please use the additional space on page 25 and state clearly which question your response relates to.*

#### 3.1. For individual applicants and Key Persons only

Please list all your trustee appointments in the last five years. Include the name of the scheme(s), the date(s) of the appointment(s), the duration of each appointment and the key issues considered/dealt with. We may request further information after considering this information.

Applicant

Key Person(s)

#### 3.2. For individual applicants and Key Persons only

Please attach an up-to-date CV setting out your complete employment history and include two recent professional references in respect of your trustee work.

Applicant	<input type="radio"/> CV provided	<input type="radio"/> Two references provided
Key Person 1	<input type="radio"/> CV provided	<input type="radio"/> Two references provided
Key Person 2	<input type="radio"/> CV provided	<input type="radio"/> Two references provided
Key Person 3	<input type="radio"/> CV provided	<input type="radio"/> Two references provided

#### 3.3. For corporate applicants only

Please list all your trustee appointments in the last three years, including the name of the scheme(s), the date(s) of the appointment(s), the duration of each appointment and the key issues considered/dealt with.

The applicant and each Key Person and each Officer must satisfy the regulator that they are a fit and proper person to act as a trustee of an occupational pension scheme.

*Please note: If there are more than 3 Key Persons, please use the additional space on page 25 and state clearly which question your response relates to.*

**4.1. How many IDR, TPAS or Pensions Ombudsman complaints have you received/are aware of in the last five years relating to, or arising out of or in connection with, your work as an occupational pension scheme trustee?**

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**4.2. If you have received/are aware of any such complaints, in respect of each, provide the date it was first made, the name of the complainant, the scheme, the nature of the complaint and the outcome (if any).** We may contact you for further details after considering this information.

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**4.3. Are you, or have you ever been, the subject of any regulatory/governmental body investigation or intervention?** If so, provide details of when any such investigation commenced, the matters investigated and the outcome (if any). We may contact you for further details after considering this information.

Applicant

Yes  No

Key Person(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Officer(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

*If you need additional space, please go to page 25 and state clearly which question your response relates to.*

*continued over...*

**4.4. Are you, or have you ever been, the subject of any civil proceedings, or received any pre-action protocol letter(s) or other letters indicating that such action might be taken against you?** If so, provide the date that any such proceedings commenced or letters were received, the matters in issue and the outcome (if any). We may contact you for further details after considering this information.

Applicant

Yes  No

Key Person(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Officer(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

**4.5. Have you ever suffered an insolvency event, as defined in sub-sections 121(2), (3) and (4) of the Pensions Act 2004 (for LLP applicants, review sub-section 121(3), substituting 'LLP' for 'company')?** If so, identify the event(s) and provide the dates upon which it/they occurred. We may contact you for further details after considering this information.

Applicant

Yes  No

Key Person(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Officer(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

**4.6. Are you, or have you ever been, the subject of any proceedings leading up to or referring to any event referred to in question 4.5. on page 6 (including receipt of a statutory demand), or are you, or have you ever been, involved in any negotiations/compromises with your creditors?** If so, tell us when the proceedings commenced or demand was sent, the issues raised in these and the outcome. Please also tell us the outcome of any negotiations/compromises with your creditors. We may contact you for further details after considering this information.

Applicant  
 Yes    No

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Key Person(s)  
 Yes    No \_\_\_\_\_  
 Yes    No \_\_\_\_\_  
 Yes    No \_\_\_\_\_

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Officer(s)  
 Yes    No \_\_\_\_\_  
 Yes    No \_\_\_\_\_  
 Yes    No \_\_\_\_\_

**4.7. Have you ever been convicted of, or cautioned in respect of, any criminal offence (excluding convictions that are spent with the meaning of the Rehabilitation of Offenders Act 1974 and any offences that were dealt with by way of a fixed penalty notice)?** If so, provide the dates of any such conviction(s) and/or caution(s), identify the offence and, if applicable, the penalty/fine/sentence imposed. We may ask you for further details after considering this information.

Applicant  
 Yes    No

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Key Person(s)  
 Yes    No \_\_\_\_\_  
 Yes    No \_\_\_\_\_  
 Yes    No \_\_\_\_\_

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Officer(s)  
 Yes    No \_\_\_\_\_  
 Yes    No \_\_\_\_\_  
 Yes    No \_\_\_\_\_

*If you need additional space, please go to page 25 and state clearly which question your response relates to.*

*continued over...*

**4.8. Has a trustee appointment held by you been terminated or have you resigned or been asked to resign from a trustee appointment due to:**

- (i) Negligence or misconduct;**
- (ii) Conflicts of interest;**
- (iii) Fees or costs incurred; or**
- (iv) Lack of progress.**

If so, provide details. We may contact you for further details after considering this information.

Applicant

Yes  No

Key Person(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Officer(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

**4.9. Have you been asked to resign, resigned, faced disciplinary action or had your employment terminated as a result in whole or in part of any negligence or misconduct (whether or not this resulted in formal action taken against you)?**

If so, provide details. We may contact you for further details after considering this information.

Applicant

Yes  No

Key Person(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Officer(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

**4.10. How do you ensure that you maintain sufficient knowledge and understanding of the issues that are relevant/might be relevant to trustee appointments?**

Applicant

Key Person(s)

Officer(s)

**4.11. For individual and corporate applicants only**

Please describe how you ensure that all of your staff involved in trustee work have the necessary knowledge and understanding to undertake this work.

Individual applicant

Corporate applicant

**4.12. Have you been unable to fulfil your trustee duties (in whole or in part) for a period greater than three consecutive months? If so, indicate when this occurred and the reasons for this.**

Applicant

Yes  No

Key Person(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Officer(s)

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

Yes  No \_\_\_\_\_

**4.13. For individual applicants, Key Persons and Officers only.** Please list all companies in which you are a director.

Individual applicant

Key Person(s)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Officer(s)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4.14. For individual applicants, Key Persons and Officers only.** Please list any companies/ partnerships/LLPs where you exercise control, whether alone or together with others (either directly or indirectly), over the management of that body.

Individual applicant

Key Person(s)

Officer(s)

**4.15. For individual applicants, Key Persons and Officers only.** Are you, or any individual with whom you are associated<sup>3</sup>, a director, shareholder, member, partner or employee in any entity which provides services to occupational pension schemes? If so, describe the nature of your association and list the entity(ies) and the services provided.

Individual applicant

Key Person(s)

Officer(s)

*If you need additional space, please go to page 25 and state clearly which question your response relates to.*

*continued over...*

<sup>3</sup> In accordance with the definition contained in section 435 of the Insolvency Act 1986.

**4.16. For individual applicants, Key Persons and Officers only.** If you have answered ‘Yes’ to question 4.15. on page 11, outline your policy on the use of any such services for any occupational pension scheme where you (or someone in the applicant organisation) are/is appointed as a trustee.

Individual applicant

Key Person(s)

Officer(s)

**4.17. For individual applicants only.** Do you or any individual with whom you are associated<sup>4</sup> provide any services (in addition to trusteeship) which might be provided to occupational pension schemes? If so, set out what these services are, who they are provided by (if not you) and outline your policy on the use of these services for any occupational pension scheme where you are appointed as a trustee.

Individual applicant

Yes  No

*If you need additional space, please go to page 25 and state clearly which question your response relates to.*

<sup>4</sup> See footnote 3 on page 11.

**4.18. For corporate applicants only**

Do you, or anyone with whom you are associated or connected<sup>5</sup>, provide any services (in addition to trusteeship) which might be provided to occupational pension schemes? If so, set out what these services are, who they are provided by (if not you) and outline your policy on the use of these services for any occupational pension scheme where you (or someone in the applicant organisation) are/is appointed as a trustee.

Corporate applicant

 Yes  No

*If you need additional space, please go to page 25 and state clearly which question your response relates to.*

*continued over...*

<sup>5</sup> In accordance with the definition contained in sections 249 and 435 of the Insolvency Act 1986.

**4.19. Describe the policies and procedures that you have in place or, in the case of Key Persons or Officers, otherwise adhere to, in order to ensure that any conflicts of interest which arise (or might arise) in relation to or following any trustee appointment are identified and thereafter avoided or managed (as appropriate).**

Individual applicant

Key Person(s)

Officer(s)

**4.20. For individual and corporate applicants only**

Describe how you ensure that any of your staff involved in trustee work understand what a conflict of interest is, how conflicts might arise and the options for avoiding or managing these.

Individual applicant

Corporate applicant

**4.21. For individual and corporate applicants only**

If different from the information provided in response to question 1.9, provide copies of your full audited (or subject to audit) accounts in respect of your occupational pension scheme trustee work for the previous three financial years. If you do not have accounts which are audited or subject to audit, provide copies of your accounts in respect of your occupational pension scheme trustee work produced to accompany your tax return to the Inland Revenue for the same period. In addition, attach details of any income/expenditure in respect of your trustee work that does not appear in your accounts.

Individual applicant

Accounts provided  
(Full audited or subject to audit)  Yes  No

Income/expenditure  
details provided that do  
not appear in accounts  Yes  No

Corporate applicant

Accounts provided  
(Full audited or subject to audit)  Yes  No

Income/expenditure  
details provided that do  
not appear in accounts  Yes  No

## 5 Administrative and accounting procedures

The applicant must satisfy the regulator that they operate sound administrative and accounting procedures.

### 5.1. For individual and corporate applicants only.

Please provide a copy of your certified AAF 01/06 unqualified report.

AAF 01/06 unqualified report provided

## 6 Indemnity insurance

The applicant must satisfy the regulator that they have adequate indemnity insurance cover.

### 6.1. For individual and corporate applicants only.

Provide a copy of your current professional indemnity insurance certificate.

Individual applicant

Indemnity insurance certificate provided

Corporate applicant

Indemnity insurance certificate provided

### 6.2. For individual and corporate applicants only.

Provide a certificate or letter from the appropriate insurance broker(s) confirming that your policy meets all of the following requirements:

\* At least £2 million professional indemnity insurance cover for a single claim with at least two reinstatements (ie three claims as a minimum) in respect of all your occupational pension trustee work.

\* At least a 10 year rolling period of run-off cover in place.

\* The cover is provided by an independent third party insurer (ie not a captive insurer) and is solely in your name.

\* You are named insured on any group<sup>6</sup> professional indemnity insurance policy in place.

Individual applicant

Certificate or letter from the appropriate insurance broker(s) provided

Corporate applicant

Certificate or letter from the appropriate insurance broker(s) provided

### 6.3. For individual and corporate applicants only.

Confirm that you have sufficient resources in your business to meet the full value of any excess on your policy.

Individual applicant

Yes

Corporate applicant

Yes

### 6.4. For individual and corporate applicants only.

Have you notified any claims on your indemnity insurance policy in the last 10 years? If so, provide details. We may contact you for further details after considering this information.

Individual applicant

Yes  No

Corporate applicant

Yes  No

If you need additional space, please go to page 25 and state clearly which question your response relates to.

continued over...

<sup>6</sup> See footnote 2 on page 3.

**7.1. Are you aware of any other information not specifically requested above which is or might be relevant to the applicant's application to join the register and the conditions that have to be met? If so, provide details.**

Yes  No

*If you need additional space, please go to page 25 and state clearly which question your response relates to.*

*continued over...*

**You must read and sign the declarations below before your application can be processed.**

**Applicant**

The applicant agrees to have its fees and costs scrutinised by an independent adjudicator and to be bound by that adjudicator's final adjudication as to its fees and costs.

The applicant agrees to the regulator disclosing its name, business address and the areas of trustee work in which it specialises on the version of the Trustee Register which is to be publicly available.

The applicant agrees to comply, as soon as reasonably practicable, with reasonable requests of the regulator to provide information to the regulator.

The applicant agrees to inform the regulator as soon as is reasonably practicable if it becomes disqualified under section 29 of the Pensions Act 1995.

It is accepted by the applicant that the regulator will hold the information provided by the applicant in the exercise of its functions and that it will be used by the regulator for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

The applicant certifies that the information it has provided in this form is accurate and complete and, in accordance with section 80 of the Pensions Act 2004, acknowledges that it would be a criminal offence for the applicant to knowingly or recklessly provide this information to the regulator if it is false or misleading in a material particular. The applicant also acknowledges that the provision of inaccurate information may be used by the regulator as a reason to refuse registration or remove from the register, as applicable.

The applicant certifies that the information provided by its Key Persons and Officers (if applicable) is true to the best of its knowledge, information and belief.

The applicant confirms that it has provided all information that is or might be relevant to the regulator's assessment of the *conditions*, including information that may be adverse to its application and acknowledges that full disclosure is required by it, notwithstanding that some information may already be in the public domain.

It is acknowledged and agreed by the applicant that any acceptance on to the Trustee Register does not represent, and is not to be represented as being, an endorsement or approval by the regulator of any services provided by the applicant.

The applicant agrees to inform the regulator of (1) any changes to its Key Persons or Officers, or (2) any new information relevant to questions 6.2. - 6.4. inclusive or (3) any new information relevant to questions 4.1. - 4.20. inclusive, within 10 working days of the changes occurring or the new information becoming known to the applicant.

The applicant agrees that the regulator may check the information it provides against (1) information which is already held by the regulator; and/or (2) information subsequently obtained by the regulator; and/or (3) information from other sources.

The applicant acknowledges that the regulator will assess the applicant's suitability for registration/remaining on the Trustee Register on the basis of the information provided in this form and any other information that the regulator considers relevant.

Signed

Name

Position

Date

**You must read and sign the declarations below before your application can be processed.**

**Each Officer**

It is accepted by each Officer that the regulator will hold the information provided by him/her in the exercise of its functions and that it will be used by the regulator for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

Each Officer certifies that the information he/she has provided in this form is accurate and complete and, in accordance with section 80 of the Pensions Act 2004, acknowledges that it would be a criminal offence for him/her to knowingly or recklessly provide this information to the regulator if it is false or misleading in a material particular. Each Officer also acknowledges that the provision of inaccurate information may be used by the regulator as a reason to refuse registration or remove from the register, as applicable.

Each Officer confirms that he/she has provided all information that is or might be relevant to the regulator's assessment of the relevant *conditions*, including information that may be adverse to the application and acknowledges that full disclosure is required by him/her, notwithstanding that some information may already be in the public domain.

Each Officer acknowledges and agrees that any acceptance on to the Trustee Register does not represent, and is not to be represented as being, an endorsement or approval by the regulator of any services provided by him/her.

Each Officer agrees to inform the regulator of any new information relevant to questions 4.1. - 4.20. inclusive, within 10 working days of the new information becoming known to him/her.

Each Officer agrees that the regulator may check the information he/she provides against (1) information which is already held by the regulator; and/or (2) information subsequently obtained by the regulator; and/or (3) information from other sources.

Each Officer acknowledges that the regulator will assess the applicant's suitability for registration/remaining on the Trustee Register on the basis of the information provided in this form and any other information that the regulator considers relevant.

Signed
Name
Position
Date
Signed
Name
Position
Date
Signed
Name
Position
Date

**You must read and sign the declarations below before your application can be processed.**

**Each Key Person**

It is accepted by each Key Person that the regulator will hold the information provided by him/her in the exercise of its functions and that it will be used by the regulator for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

Each Key Person certifies that the information he/she has provided in this form is accurate and complete and, in accordance with section 80 of the Pensions Act 2004, acknowledges that it would be a criminal offence for him/her to knowingly or recklessly provide this information to the regulator if it is false or misleading in a material particular. Each Key Person also acknowledges that the provision of inaccurate information may be used by the regulator as a reason to refuse registration or remove from the register, as applicable.

Each Key Person confirms that he/she has provided all information that is or might be relevant to the regulator's assessment of the relevant *conditions*, including information that may be adverse to the application and acknowledges that full disclosure is required by him/her, notwithstanding that some information may already be in the public domain.

Each Key Person acknowledges and agrees that any acceptance on to the Trustee Register does not represent, and is not to be represented as being, an endorsement or approval by the regulator of any services provided by him/her.

Each Key Person agrees to inform the regulator of any new information relevant to questions 4.1. - 4.20. inclusive, within 10 working days of the new information becoming known to him/her.

Each Key Person agrees that the regulator may check the information he/she provides against (1) information which is already held by the regulator; and/or (2) information subsequently obtained by the regulator; and/or (3) information from other sources.

Each Key Person acknowledges that the regulator will assess the applicant's suitability for registration/remaining on the Trustee Register on the basis of the information provided in this form and any other information that the regulator considers relevant.

Signed
Name
Position
Date
Signed
Name
Position
Date
Signed
Name
Position
Date

The conditions that have to be satisfied in order for the regulator to accept an applicant on to the register (or for an applicant to remain on the register) are contained in Regulation 3 of the Regulations. These are:

### “Conditions for registration

3. The conditions for registration prescribed for the purposes of section 23(4) of the 1995 Act (power to appoint independent trustees) are -
  - (a) the applicant must not, at the time he is making the application or at any time while he is registered in the trustee register, be any of the following -
    - (i) the subject of a prohibition order made under section 3 of the 1995 Act (prohibition orders),
    - (ii) the subject of a suspension order made under section 4 of the 1995 Act (suspension orders), or
    - (iii) disqualified for being a trustee of any trust scheme on any of the grounds set out in subsection (1) of section 29 of the 1995 Act (persons disqualified for being trustees), or by virtue of being the subject of an order made under subsection (3) or (4) of that section;
  - (b) the regulator is satisfied that -
    - (i) the applicant has sufficient relevant experience of occupational pension schemes,
    - (ii) the applicant is a fit and proper person to act as a trustee of an occupational pension scheme,
    - (iii) the applicant operates sound administrative and accounting procedures, and
    - (iv) the applicant has adequate indemnity insurance cover;
  - (c) where the applicant is not an individual -
    - (i) each officer of the applicant must satisfy the conditions specified in paragraphs (a) and (b)(ii) above, and
    - (ii) each key person must satisfy the conditions specified in paragraphs (a) and (b)(i) and (ii) above;
  - (d) the applicant has premises in the United Kingdom from which he conducts his business as a trustee of an occupational pension scheme, and he discloses the address of those premises to the regulator;
  - (e) the applicant agrees -
    - (i) 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,
    - (ii) to the regulator disclosing his name, business address and the areas of trustee work in which he specialises on the version of the trustee register which is to be publicly available,
    - (iii) to comply with reasonable requests of the regulator to provide information to the regulator, and
    - (iv) to inform the regulator as soon as is reasonably practicable if he becomes disqualified under section 29 of the 1995 Act -
      - (aa) for one of the reasons set out in subsection (1) of that section, or
      - (bb) by virtue of being the subject of an order made under subsection (3)(b) of that section.”

## Appendix A

For the purposes of Regulation 3(c) and in order to assist non-individual applicants (eg partnerships, LLPs and companies), the regulator sets out below how it intends to interpret the defined terms 'Key Person' and 'Officer'. Please note that it is not necessarily the case that a non-individual applicant will only have one Key Person or one Officer. The regulator envisages that non-individual applicants may well have more than one Key Person or more than one Officer.

**Corporate applicants should note that, in accordance with the Regulations, if any Officer of the applicant fails to satisfy the conditions in 3(a) and (b)(ii) above, or, if any Key Person of the applicant fails to satisfy the conditions in 3(a) and (b)(i) and (ii), then this will result in the regulator refusing to register the applicant or applying to removing it from the register (as the case may be).**

### Officer

This is:

- any person whose signature may authorise (in part or in full) a transaction involving the assets of any scheme for which the applicant acts as trustee; or
- every director<sup>7</sup>, member of the committee of management, chief executive, designated member in relation to a limited liability partnership or partner who has 'significant influence' over the management of the pension trustee work<sup>8</sup>; or
- an individual who is a shareholder with 10% or more of the shares in the applicant, where this affords that shareholder 'significant influence over the management of the applicant'.

In the regulator's opinion, what constitutes 'significant influence over the management of the pension trustee work' will be a question of fact and degree. The regulator's proposed view is that individuals will have 'significant influence' if they have responsibility for one or more of the following matters within the applicant:

- setting business targets (including for new business, profits, profitability and cross-selling);
- making decisions about the allocation of resources to the trustee work;
- the setting of fee levels/hourly rates for trustee work;
- providing instructions to cross-sell to other areas of the business or the setting of targets in this regard;
- in the setting of 'house views' on the most appropriate way to approach taking strategic decisions about the investment or allocation of scheme assets and other elements of the trustee business; and
- in the setting of 'house views' on the most appropriate way to approach the identification, monitoring and management of conflicts of interest.

In relation to those individuals who hold 10% or more shares in the applicant, the regulator will assume that any such individual, by virtue of this shareholding, exercises 'significant influence' over the management of the applicant, unless that individual can show otherwise.

<sup>7</sup> The regulator, for the purposes of the Trustee Register, interprets director in the Regulations consistently with the definition of director (including 'shadow' directors), as contained in sections 250 and 251 of the Companies Act 2006: a director is 'any person occupying the position of director, by whatever name called' and a shadow director is 'a person in accordance with whose directions or instructions the directors of the company are accustomed to act'.

<sup>8</sup> Pension trustee work is broadly defined, as all of the work 'carried out... (as trustee)...by the applicant in relation to trust schemes', see regulation 1(2).

## **Appendix A**...continued

### **Key Person**

This is someone who has 'overall management responsibility' for the applicant's pension trustee work.

It is the regulator's view that a Key Person is the individual (or individuals) with overall responsibility or accountability for all the pension trustee work undertaken by the applicant. The regulator also proposes to include within its interpretation of the definition all those persons which the applicant is aware, as at the date of the application, might have this role temporarily (for example, if they ordinarily 'step in' or provide cover for the other Key Persons during periods of illness or leave).

## Appendix B

### Application checklist

All applicants should use the table below for guidance when completing the application form. A cross in the relevant box indicates that the specified person must answer this question.

Question No.	Individual applicant	Corporate applicant	Each Key Person	Each Officer
1.1	X	X		
1.2	X	X		
1.3	X	X		
1.4		X		
1.5		X		
1.6	X	X		
1.7	X	X		
1.8		X		
1.9	X	X		
2.1	X	X	X	X
2.2	X	X	X	X
2.3	X	X	X	X
3.1	X		X	
3.2	X		X	
3.3		X		
4.1	X	X	X	X
4.2	X	X	X	X
4.3	X	X	X	X
4.4	X	X	X	X
4.5	X	X	X	X
4.6	X	X	X	X
4.7	X	X	X	X
4.8	X	X	X	X
4.9	X		X	X
4.10	X	X	X	X
4.11	X	X		
4.12	X	X	X	X
4.13	X		X	X
4.14	X		X	X
4.15	X		X	X
4.16	X		X	X
4.17	X			
4.18		X		
4.19	X	X	X	X
4.20	X	X		
4.21	X	X		
5.1	X	X		
6.1	X	X		
6.2	X	X		
6.3	X	X		
6.4	X	X		
7.1	X	X	X	X
8	X	X	X	X



## What to do now

This application form should be submitted together with copies of the relevant documents. Applicants should use the regulator's guidance notes when completing this application form.

Please use black ink to complete the form. Write clearly and only in CAPITAL LETTERS. Once the form is complete, please return it to:

### **Trustee Register Application**

c/o the Trustee Services Team  
The Pensions Regulator  
Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

## How to contact us

### **The Pensions Regulator**

Napier House  
Trafalgar Place  
Brighton  
BN1 4DW

[www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

[www.trusteetoolkit.com](http://www.trusteetoolkit.com)

### **Customer support**

Phone: **0870 6063636**  
9am to 5.30pm, Monday to Friday

Fax: **0870 2411144**

Email: [customersupport@thepensionsregulator.gov.uk](mailto:customersupport@thepensionsregulator.gov.uk)

## Appendix C - Impact assessment statement

### Introduction

The regulator is required to compile and maintain a register of independent trustees which it may appoint to scheme in a number of specific circumstances, notably when the sponsoring employer is insolvent, to ensure the proper administration of that scheme in the interests of its members.

The regulations set a number of conditions for admission of trustees to the register, including a number of judgement-based conditions. They require that the regulator satisfy itself that applicants to the register meet these conditions, specifically:

- that the applicant has, and continues to have, 'sufficient relevant experience' of occupational pension schemes;
- that the applicant is, and continues to be, a 'fit and proper' person to act as a trustee of an occupational pension scheme;
- that the applicant operates, and continues to operate, 'sound administrative and accounting procedures', and
- that the applicant has, and continues to have, 'adequate indemnity insurance cover'.

The regulator therefore has discretion to set out the criteria it will use to assess whether applicants meet these judgement-based conditions, and consequently some influence on the costs imposed on applicants.

It is important to note that these are not regulatory costs in the strict sense, as there is no requirement on trustees to be on the register. It is entirely a voluntary decision; the costs associated with application to the register, and with meeting and maintaining the conditions for admission to the register, are not mandatory for trustees. While admission to the register is no guarantee that trustee will receive appointments, the regulator believes that trustees are only likely to apply if they anticipate the benefit they will receive from such appointments is likely to outweigh the cost involved.

Nonetheless, despite the voluntary nature of the register, the regulator has elected to prepare this impact assessment, in keeping with good regulatory practice. The intention is to inform those currently on the register, those who might seek to apply in future, and other interested parties, of the evidence base for the proposed changes to the regulator's criteria, and their likely impact.

### **What is the problem under consideration? Why is intervention necessary?**

As part of its statutory responsibility to maintain the Trustee Register, the regulator has reviewed how it assesses the judgement-based conditions set out in the regulations. Based on four years of operating the register, and in light of significant changes to the pension landscape, the regulator has determined that a number of changes are necessary to continue to provide appropriate assurance that trustees admitted to the register meet and maintain best practice and appropriately high and consistent standards in the context of those conditions.

### **What are the policy objectives and the intended effects?**

The purpose of the Trustee Register is to enable the regulator to make timely and appropriate appointments of independent trustees to occupational pension schemes where empowered to do so, in support of its statutory objectives, which are:

- to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes;
- to reduce the risk of situations arising that may lead to compensation being payable from the Pension Protection Fund ('PPF'); and
- to promote, and to improve understanding of, the good administration of work-based pension schemes.

The regulator is revising the criteria it uses to assess whether applicants meet, and continue to meet, the judgement-based conditions for admission to the register, set out in the regulations, to ensure that it can continue to have appropriate assurance that those on the register exhibit best practice and are able to offer a consistently high standard of service in the best interests of scheme members.

### **What policy options have been considered? Please justify any preferred option.**

The consultation document sets out a number of proposed changes to the regulator's criteria, which have been developed following informal consultation with those currently on the register and other relevant stakeholders, based on the regulator's experience of operating the register and of developments in the landscape of pension provision. The impact of the proposed changes is assessed against the current criteria – the 'do nothing' option.

### **When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

As part of good regulatory practice, the regulator regularly reviews the manner in which it undertakes its functions. The proposed changes in this consultation document are the outcome of a review by the regulator of how it assesses applicants to the register in line with the judgement based conditions set out in the regulations. The regulator will continue to monitor the revised criteria, once they have been implemented, to ensure they remain fit for purpose.

## Summary of the impact of proposed changes

This Impact Assessment focuses in turn on the proposed changes to the regulator's criteria for assessing the judgement-based conditions for admission to the register. It also covers the impact of the proposed changes to application process, specifically:

- the requirement that all trustees currently on the register reapply against the revised criteria should they wish to remain on the register; and
- the introduction of a single simplified form for trustee applications to the register.

In each case, analysis is presented on likely additional costs, or savings, for applicants to the register, resulting from the proposals. These are presented as monetary estimates where it is possible and meaningful to do so.

It is not possible to present a meaningful quantitative measurement of the wider benefits of the proposals. These relate to the regulator's continued ability to be able to appoint independent trustees of a consistently high standard, as part of its risk-based approach to successfully delivering against its statutory objectives. Setting high standards for trustees appointed by the regulator will ensure that the right knowledge and skills are in place to resolve issues with schemes quickly, efficiently and effectively, in the interests of scheme members. The evidence base summarises the rationale for each of the proposed changes in the context of the regulator's wider policy objectives.

## Analysis

### Methodology

The assumptions underpinning the estimates below have been made following informal consultation with relevant stakeholders. Where estimates have been made of administrative costs or savings, these have been calculated using the Standard Cost Model (SCM) – used by the Government and internationally. This model provides a simple approach to estimating administrative burdens by identifying: the *population* effected by the administrative obligation; the *frequency* with which it occurs per annum, the *time* taken to complete it; and the *tariff* – i.e. the typical hourly wage of the person or persons involved in completing the task with adjustments to include overheads.

In this context, the following assumptions have been made:

- The population used is the 52 Independent Trustees currently on the register. These trustees will be required to reapply for admission to the register, once the proposed changes take effect, should they wish to remain on the register. While it is possible that the regulator may receive a greater or lesser number of applicants to join the register at this time, it is not possible to speculate on the number of applicants at this time. This Impact Assessment therefore focuses on the impact on those currently on the register. Where there is evidence that proposed changes will only affect some of those on the register, a subset of this population is identified.
- The tariff used in calculating estimates of administrative costs and savings is an hourly rate of £28.24. This assumes that a Key Person will complete the majority of the required activity. The figure is based on the median hourly wage for the category

'Financial Institution Manager' in the Annual Survey of Hours and Earnings (ASHE) 2009, up rated by 30% to include the cost of business overheads. This follows guidance in the UK SCM Manual issued by the Better Regulation Executive.

Respondents to the consultation are invited to comment on these assumptions and the detail of the estimates set out below.

### **Proposed changes to applications process**

The regulator will require all trustees currently on the register to reapply against the revised criteria should they wish to remain on the register. The benefit of this proposal is that the new criteria for admission to the register will be applied consistently to all trustees wishing to be admitted.

To date the regulator has issued two forms for completion as part of the applications process. Individual applicants to the register, and Key Persons in non-individual applicants, are currently required to complete and submit Form S1. Non-individual applicants must also complete Form A.

The regulator is now proposing to simplify the applications process to introduce a single streamlined application form for all applicants. The intention is to make the process more straightforward for trustees and ensure consistent information is gathered from individual and non-individual applicants.

The new streamlined form should result in a reduction in the administrative burden for any future applicants relative to the current application process. It is difficult to produce a meaningful overall estimate of these impacts, in part because the regulator cannot predict how many of those currently on the register will apply or how many future applicants there may be. Moreover, even if we assume that all and only those currently on the register will apply, the volume of information required, and therefore the administrative burden involved, will depend on the number of Key Persons and Officers in non-individual applicants.

### **Sufficient relevant experience**

The regulator proposes to maintain its current requirement that all individual applicants to the register, and Key Persons in non-individual applicants, have at least five years of regular or continuous experience as a trustee of an occupational pension scheme up to the point of application.

In addition to this requirement, the regulator now proposes to require that non-individual applicants also demonstrate that, as an organisation, they have three years of experience as a trustee of an occupational pension scheme up to the point of application.

The cost impact of this proposed change will not be significant. The regulator's assumption is that the majority, if not all, non-individual trustees currently on the register will meet this criteria, although it would be wrong to prejudge the detailed assessment of trustees applications to remain on the register. Evidence also shows that, with some exceptions, the majority of professional trustees generate a relatively small percentage of their income from appointments by the regulator. This suggests that the proposed requirement for non-individual trustees to have three years of experience as an organisation before applying to the register would not act as a barrier to new businesses of professional trustees starting up.

## Fitness and propriety

There is no material change to the 'fit and proper' criteria against which applicants (and key persons and officers where applicable) will be judged, and therefore no impact is anticipated for applicants from these proposals.

There will be some changes to the questions asked of applicants in relation to these criteria to enable the regulator has the relevant information to ensure its assessment of this criteria remains sufficiently robust.

## Sound administrative and accounting practices

At present trustees are required to respond to a series of questions in the application form to satisfy the regulator that they operate and will continue to operate sound administrative and accounting procedures.

The proposed change is to require applicants to obtain, upon application and on an annual basis, an unqualified assurance report from a Reporting Accountant against the Audit and Assurance Faculty (AAF) framework developed by the ICAEW.

The rationale for this change is to provide the regulator with assurance in the form of an independent validation that applicants meet a consistently high standard against this condition.

This proposal may also have wider unquantifiable benefits in two ways. First, although the regulator does not permit trustees to use their admission to the register to advertise to third parties, trustees may derive such a marketing benefit from meeting required standards under the AAF framework. Second, the adoption of a generally recognised common standard to inform the regulator's assessment may also have the indirect benefit of improving the overall adherence to good practice by the professional trustee services industry more widely.

The proposed change will have two main cost impacts for trustees applying to the regulator: the cost of obtaining the AAF assurance report on an annual basis; and the administrative burden of preparing for and engaging with the reporting accountant undertaking the AAF assurance report. Tables **A** and **B** below show estimates of the likely costs in each case.

**Table A: Estimated annual cost of the AAF assurance report, by size of trustee**

Trustee size	Population (no of trustees on current register)	Estimated cost (range):	Estimated cost (median):	Estimated cost (total):
Individual trustees	9	£3,000 - £7,000	£5,000	£45,000
Small trustees (responsible for up to 1000 scheme members)	13	£4,000 - £9,000	£6,500	£84,500

<b>Trustee size</b>	<b>Population</b> (no of trustees on current register)	<b>Estimated cost</b> (range):	<b>Estimated cost</b> (median):	<b>Estimated cost</b> (total):
<b>Medium trustees</b> (responsible for between 1001 and 20,000 scheme members)	21	£8,000 - £15,000	£11,500	£241,500
<b>Large trustees</b> (responsible for more than 20,000 members)	9	£16,000 - £25,000	£20,500	£184,500
<b>Total</b>	52			<b>£555,500</b>

**Table B: Estimated annual administrative burden of preparing for and engaging with the reporting accountant undertaking the AAF assurance report, by size of trustee**

<b>Trustee size</b>	of trustees on current register)	(Key person)	(range)	(median)	
<b>Individual trustees</b>	9	£28.24	14 - 28 hours	21 hours	£5,337
<b>Small trustees</b> (responsible for up to 1000 scheme members)	13	£28.24	14 - 35 hours	24.5 hours	£8,994
<b>Medium trustees</b> (responsible for between 1001 and 20,000 scheme members)	21	£28.24	21 – 42 hours	31.5 hours	£18,681
<b>Large trustees</b> (responsible for more than 20,000 members)	9	£28.24	42 – 70 hours	56 hours	£14,233
<b>Total</b>	52				<b>£47,245</b>

These are indicative estimates based on informal consultation with the accountancy profession. A number of factors may effect these assumptions – for example the number of business sites a trustee firm operates, and the extent to which the reporting accountant can place reliance on internal audit processes.

## Adequate Indemnity Insurance cover

Trustees are currently required to have a minimum level of £1m of Indemnity Insurance for all trustee work. The proposal is to increase this level of cover to at least £2m for a single claim, and to specify a number of other aspects of the cover including that the trustee's insurance policy must have a minimum of two reinstatements and a minimum ten year rolling period of run-off cover in place. Moreover the trustee must ensure that it has sufficient resources available to meet any excess on its Indemnity Insurance policy in full.

The regulator's reasoning for this proposed change is based on its analysis of the shifting pension landscape, and informal consultation with trustees and the insurance brokers and providers which suggests that the current minimum level is no longer appropriate.

The impact of this change will be to require some trustees to increase the level and coverage of Indemnity Insurance they have in place, resulting in higher policy premiums. Evidence suggests that the majority of trustees already on the register have insurance cover in excess of the new minimum requirement; however a number of the smaller firms will need to increase their level of cover to this level. It is not possible to produce a meaningful estimate of the cost to these trustees of increase their premiums as these will depend on the insurer's assessment of the specific risks for each trustee. We can however estimate that a typical premium for a policy with £1m indemnity cover might need to increase by 50-60 percent to meet the new minimum requirements.

It is possible that this additional cost will deter a small number of trustees, particularly individuals and small firms, from applying to remain on the register. The regulator has weighed up the risk that this proposed change will have a disproportionate impact on individual and small firm trustees. It is important to note that the level of insurance cover should be proportionate to the risk covered. There is considerable variation in the level of cover among those already on the register, with larger trustees often holding cover far above the minimum requirement and proportionate to the scale of their operations. Nonetheless the regulator has concluded that the criteria must be set by a consideration of what is appropriate as a minimum level of insurance cover in light of the level of risk to which a trustee might be exposed.

There is likely to be a further impact from the requirement on trustees to hold sufficient resources to meet any excess on its Indemnity Insurance policy, which will be an opportunity cost for their business. It is not possible to produce meaningful estimates of this opportunity cost; under the current requirements the regulator has incomplete information as to the level of excess in trustee's insurance policies. Moreover, the policy excess for any particular trustee will depend on the insurer's assessment of the specific risks to that trustee.

## Appendix D – AAF Proposed control framework and control objectives

AAF was designed by the ICAEW to offer a mechanism to gain assurance over the design and operating effectiveness of a service organisation's control procedures.

Guidance has been issued by the ICAEW to help organisations produce a written report on the effectiveness of internal controls and for the Reporting Accountants to express an opinion on the design and operational effectiveness of specific controls (the control objectives) in areas such as a pension trustee's administration and investment management. Currently this framework does not include the wider activities of a pension scheme trustee.

### The role of the Reporting Accountant and the applicant

The Reporting Accountant is engaged to express an overall conclusion on the information assessed relative to the control objectives, *which **must** include all those control objectives proposed in this appendix*. He will consider the control objectives and observe the control procedures specified by the applicant in their report.

The Reporting Accountant will be able to undertake a thorough and robust assessment, scrutinising the applicant's business operations applicable to both its organisation's management practices and those relating to its business activity of providing independent trustees services to pension schemes. This is likely to include on site visits by the Reporting Accountants' engagement team as part of their audit fieldwork.

As part of the independent reporting process, the applicant would be expected to make the following assertions in a report:

- the report describes fairly the control procedures that relate to the control objectives referred to (in the report) which were in place;
- the control procedures described are suitably designed such that there is reasonable assurance that the specified control objectives would be achieved if the described control procedures were complied with satisfactorily; and
- the control procedures described were operating with sufficient effectiveness to provide reasonable assurance that the related control objectives were achieved during the specific period.

Upon receipt of this report, the Reporting Accountant will read the applicant's description of control procedures to gain an understanding of the representations made by the applicant in the description.

As part of their evaluation of the above assertions, the Reporting Accountant will determine whether the control procedures are suitably designed. This will be supported by tests conducted by the Reporting Accountant to obtain evidence about the operating effectiveness of the control procedures and will invariably include on-site visits as part of the annual fieldwork.

Where appropriate, the consequences of a design deficiency failure may result in a qualification in the Reporting Accountant's opinion. Likewise, where results of tests conducted by the Reporting Accountant on the operating effectiveness of controls, identifies weaknesses (or exceptions) this may warrant a qualification.

In the event that a Reporting Accountant should qualify his opinion, the regulator proposes to take the view that the organisation or individual making the application has not demonstrated that it operates, or continues to operate, 'sound administration and accounting procedures'. The application would, therefore, be refused or, if this were appropriate, the regulator would seek to remove from the Trustee Register any applicant already on it.

In addition, there may be circumstances where, despite control procedures being suitably designed and operating effectively, the Reporting Accountant still qualifies his conclusion. This is because the Reporting Accountant will base his conclusion on the control objectives and the fairness of the description of control procedures described by the applicant in their report. We would expect applicants to ensure that all relevant control procedures are adequately identified and explained.

### **Proposed AAF 01/06 Control Objective framework for Pension Trustees**

The control objectives listed below represent the areas that the regulator considers need to be assessed in order for the applicant to be able to demonstrate that it operates 'sound administrative and accounting procedures'. Applicants will be required to show that they have procedures in place with a view to ensuring these objectives are met

#### **A. Accepting trusteeship**

- Risks associated with appointment as a trustee are identified and managed.
- Actual, potential and perceived conflicts of interest of the organisation and the scheme are identified, monitored and managed. The organisation can demonstrate compliance with Section 175 of CA 2006.
- Roles, responsibilities and duties of the Trustee are documented, understood and allocated to appropriate individuals.

#### **B. Maintaining financial and other records**

- Fees and expenses are completely and accurately recorded in the proper period.
- Key scheme documents are up to date, securely held and are readily available.
- Proper books and records relating to the scheme including minutes of Trustee meetings, members' details and transactions, are maintained and are accessible.
- Member and scheme data is complete, up to date and securely held.
- Outsourced activities are properly managed and monitored.

### **C. Authorising and processing transactions**

- Investment and funding principles are set and implemented in a timely and proper manner.
- Delegated authorities and decision making procedures are clearly documented, including delegations to third parties. (Full AAF only)
- Formal decisions are duly recorded and authorised.
- Peer review of key decisions is undertaken.
- Scheme advisers and administrators appointed are suitably qualified and their appointment is subject to ongoing periodic review.

### **D. Safeguarding assets**

- Key persons and officers of the organisation are responsible and trust worthy to undertake trustee services and changes to these are notified to the regulator immediately.
- Performance and risk associated with the scheme are regularly monitored and assessed.
- Business continuity is maintained throughout periods of absence and changes in key persons.
- Scheme assets are safeguarded from misappropriation.

### **E. Monitoring compliance**

- Investments are properly registered and client money is segregated.
- Reporting requirements are understood and adhered to.
- Member and employer contributions are calculated accurately and collected on a timely basis. Member benefits are calculated and paid promptly.
- Scheme is operated in accordance with constitutional documents and a periodic risk assessment is performed.
- The organisation ensures that key persons and officers providing trustee services have relevant experience and knowledge and this is maintained current.
- Services provided are monitored in line with service level agreements and subject to ongoing review.
- Performance of the trustee board is regularly assessed and evaluated.

### **F. Reporting to members**

- Scheme reports and accounts are prepared in accordance with applicable laws and regulations.

### **G. Information technology**

The list of control objectives in the AAF 01/06 guidance will refer the applicant to a series of objectives relating to Information technology controls covering areas such as security access and maintenance of computerised systems

(For the purpose of the control objectives above officers and key persons include individual applicants).