

Pensions Law Review 2006



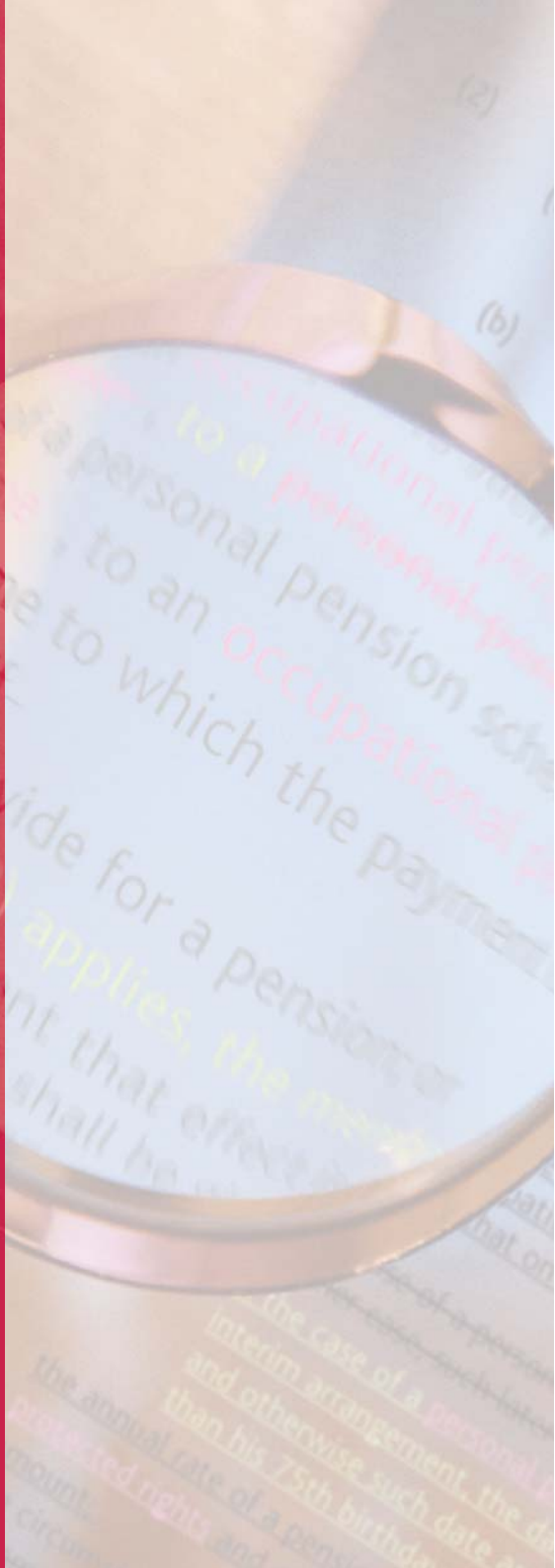
Pinsent Masons

About Pinsent Masons

Pinsent Masons is a full service commercial law firm with over 250 partners, a total legal team of more than 900 and in excess of 1,500 staff in the UK and internationally. The firm ranks in the UK top 15 and is in the Global 100 of law firms. In the UK, the firm has offices in London, Birmingham, Bristol, Edinburgh, Glasgow, Leeds and Manchester.

Internationally, Pinsent Masons has offices in Brussels, Dubai, Hong Kong and Shanghai, as well as strategic alliances with firms in France, Germany, Spain, Holland, India, the Czech Republic, Slovakia, Eastern Europe, Scandinavia and the USA.

The firm's Pensions Group, regarded as one of the leading practices in the UK, currently has 10 partners and a full dedicated legal and trust administration team of 44.





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Introduction

This is the first of what is hoped will be an annual review of pensions law.

It appears at a time when there has never been so much of it. The stream of acts, statutory instruments, guidance notes and codes of practice seems never ending; the summary at the back of this year's collection is testament to the creativity of prolixity of the legislators. In addition there have been cases both in the courts and with the Pensions Ombudsman, and commentary and discussion almost without count.

For employers, pension scheme managers and trustees as well as members, this excessive production of law has practical repercussions. Cost is one. With the suggestion by the Morris Inquiry into the actuarial profession that in many cases two actuaries would be better than one, with the complexity of the legislation requiring expert interpretation, with the Regulator insisting that when corporate deals are done, pension liabilities should in many cases be negotiated with the Regulator, and with the uncertainty of many of the new rules, the needs of each of the parties involved does not come cheap. Together with the cost of advice, is the cost of provision – the statutory funding objectives together with the accounting rules require additional funding in many cases where in normal circumstances such funding would be regarded as excessive. This funding is being required not so much to protect the scheme members as to protect the regulators.

Second is the issue of the extension of liability of the parties. Trustees, employers, bankers, and corporate purchasers are all now potentially liable for what may be substantial sums if things go wrong, and that liability is in many cases far beyond their ability to pay or even insure.

All this has made the role of the pensions lawyer, at least so long as defined benefit arrangements continue, more important than ever before. As a sign of that the numbers of pensions lawyers (or at least members of the Association of Pension Lawyers) is now around 1,000, and few of them can manage without an electronic legal support service such as Perspective, supplied by Pendragon, who have helped us with this review.

The review is intended to serve a number of objectives. First, it is intended to provide an analysis of some of those changes, together with some quantitative research indicating the amount of law issued year by year. The graphs and numbers show the amount of litigation (having a minor respite this year) the number of pages of new law (a bonanza year for the publishers) and other indicators. As time goes on it is hoped that this will be linked with the number of people in Defined Benefit (DB) schemes (where most of the legislation applies) and the number of schemes, so that we can carry out a ratio of laws to schemes.

Second, is a summary of what has happened over the last twelve months or so. With the volume of change it is all too easy to overlook just what happened when, and this review is intended as a brief reminder of some of the previous years' changes. 'Year' has no particular legal definition in this case; it broadly covers 2005, but in fact covers the period mid 2004 to 2005, in order to meet publishing deadlines.



As this review develops, we hope to take account of any comments and criticisms that emerge so that we can improve year by year the service to readers. But it does not pretend to be comprehensive; it attempts to reflect themes and trends, rather than operate as a total summary of all the legal developments. Nonetheless, it should give a reasonable guide to the developments over the past year, which most of us struggle to memorise. And of course the review will take account of any radical restructuring of the pensions system following on from the Pensions Commission Report in November 2005 and the Pensions Act 2007.

Finally, the style of this review may seem curious; it is intended to act as a reminder of what took place over the recent past, a gentle historical overview with the occasional comment, rather than act as a guide to current law and practice. It should not therefore be regarded or used as a technical handbook.

Acknowledgments

The production of this review has been a co-operative effort, involving the skills and determination of many people, including Simon Herbert, Liz Wheaton, Jacqui Blundell, and our practice support lawyers Simon Tyler and Nicola Bumpus from Pinsent Masons, and Simon Freeman and Euan Callum from Pendragon. Errors and omissions are mine.

Robin Ellison



An overview of the statistics

The Pensions Law review entertains a quantitative as well as a qualitative approach. Normally this is an unproductive way of examining legal developments, but in the light of the extraordinary length and extent of law and regulation in recent years, the question is whether there is anything we can learn from the reforms.

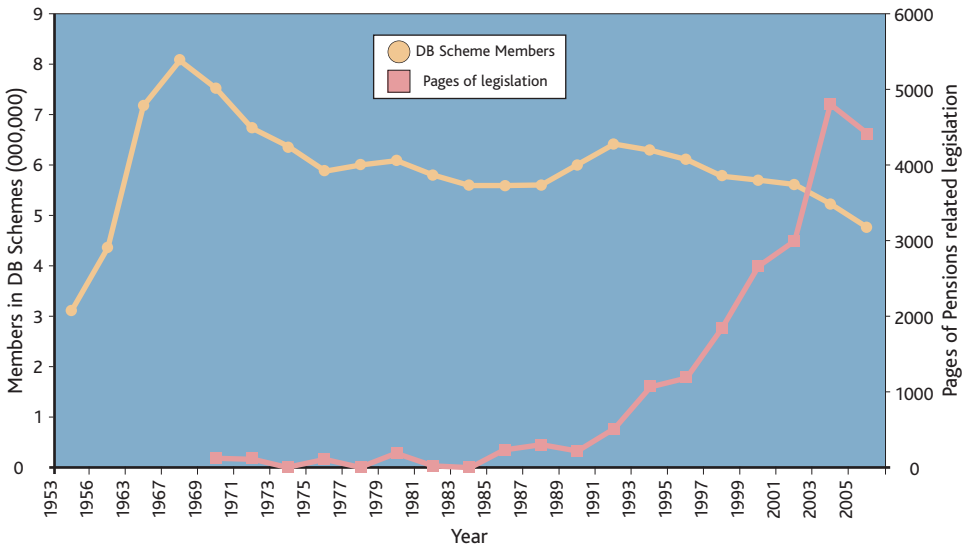
Numerical analysis in this area is fraught with peril, so the discussion starts with some caveats. The information on which most of the graphs are created depends mostly on the Perspective pensions information service operated by Pendragon. Detailed information prior to its establishment is available on an ad hoc basis, and does not necessarily include the Parliamentary materials for example from earlier years. The data on which some of the graphs are prepared does not include various categories of Perspective documents. In many cases they merely include primary legislation (Acts of Parliament), delegated legislation (statutory instruments), regulatory documents (issued for example by The Pensions Regulatory) law reports from the courts (not all of which are UK reports) but not necessarily parliamentary materials (Hansard, or government or departmental reports) Ombudsman determinations or indeed industry commentary.

Accordingly the graphs and tables below are meant to be illustrative, and show a calculated value of the number of legal, regulatory and report pages added to Pendragon's Perspective electronic pensions information service published in each calendar year, and a cumulative total from 1921. The data includes all legislation, regulatory materials, law reports and papers (that is government and industry reports and green and white papers etc.). Perspective was launched in 1997. Its collection of materials does not, for example, include papers published before 1996 or most of the legislation and regulatory materials revoked before Perspective was launched. Perspective does have a wider range of relevant information available to its subscribers. Further information on the statistical issues involved in preparation of the information is available from email@pendragon.co.uk (020 7608 9000).

Despite the inevitable imperfections of the base materials, and the assumptions that have had to be made in producing the graphs, there is no doubt that they illustrate some intriguing trends.



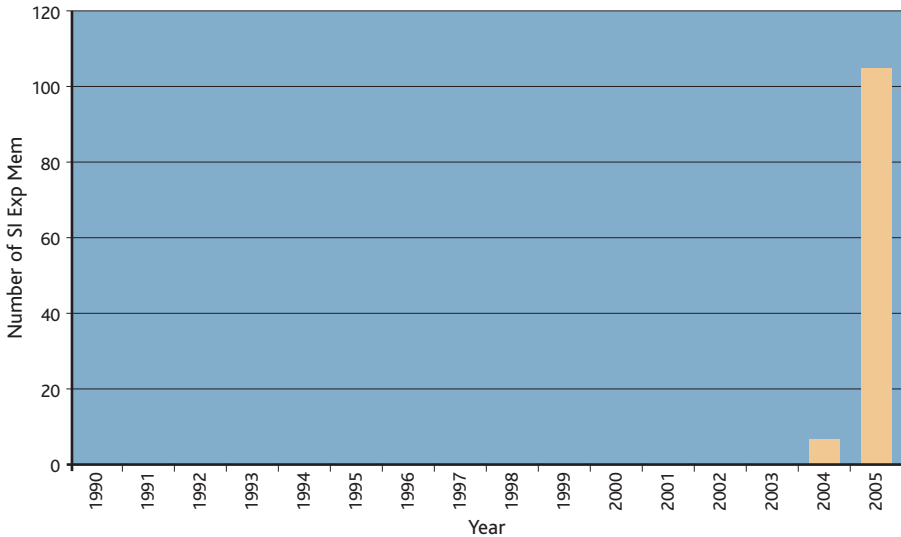
Number of members in Defined Benefit schemes v pages of pensions related legislation



Graph 1 offers some sobering thoughts, which have been mentioned over the last year or so in both academic research (mostly notably a study by Debbie Harrison at the Cass Business School) of the possible unintended consequences of repeated legislative and regulatory attempts at reform. This is the risk that we may be developing a pension system that restricts or avoids risk - but with the consequence that fewer employees have the opportunity to enjoy pension benefits, and certainly defined benefit arrangements. Graph 1 suggests that there might be an inverse correlation between the increase in legislation and the decrease in DB scheme membership. Longer-term consequences of this, if the decline in membership continues, could be a reducing base upon which the Pensions Protection Fund could levy charges for example, creating a spiral of increasing claims on a declining club of funds.



Number of Statutory Instruments Explanatory Memorandum

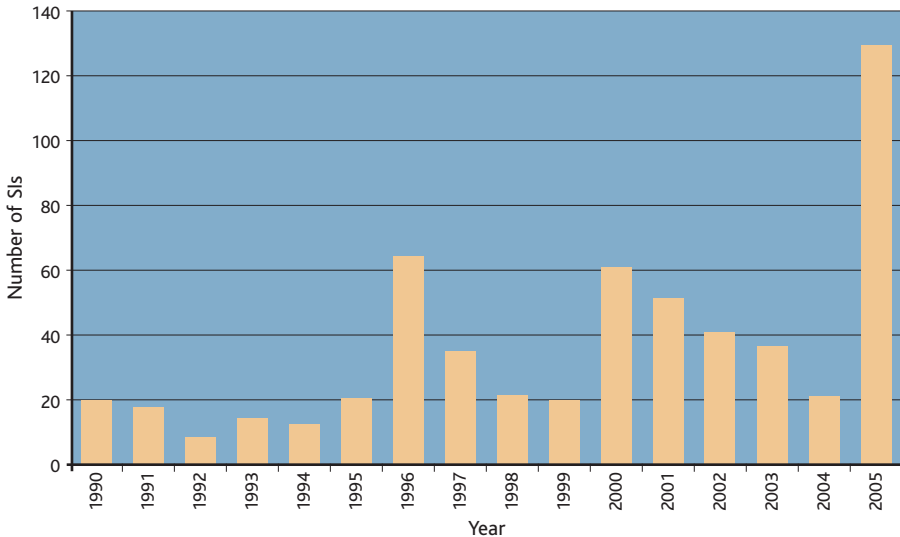


Graph 2 at this stage, is partly encouraging in that some of the statutory instruments are now being issued together with explanatory memoranda. This also could be a double edged benefit. On the one hand it is helpful to lawyers and others to understand the policy intent and the structure of the rules; on the other it creates an additional body of quasi-law which might result in ambiguity.

Graph provided by Pendragon



Number of Statutory Instruments

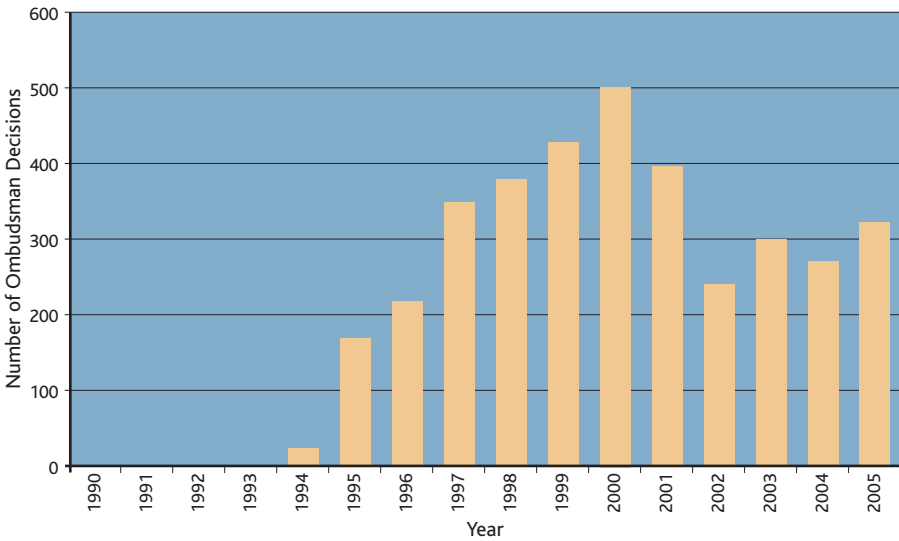


Graph 3 indicates the number of relevant statutory instruments issued in relation to pensions over the last fifteen years. 2005 is salutary; the issue of over 120 sets of regulations, not merely regulations, is a sad tribute to the efforts towards simplification which was the purported intent of the Pensions Act 2004. Not all regulations relate to that Act or intent, but for any field of activity to need 10 sets of regulations in any one year (1992) and between 20 and 60 in other years probably indicates that the system is under strain. Other jurisdictions manage to cope with regulations that do not change between decades.

Graph provided by Pendragon



Number of Ombudsman decisions

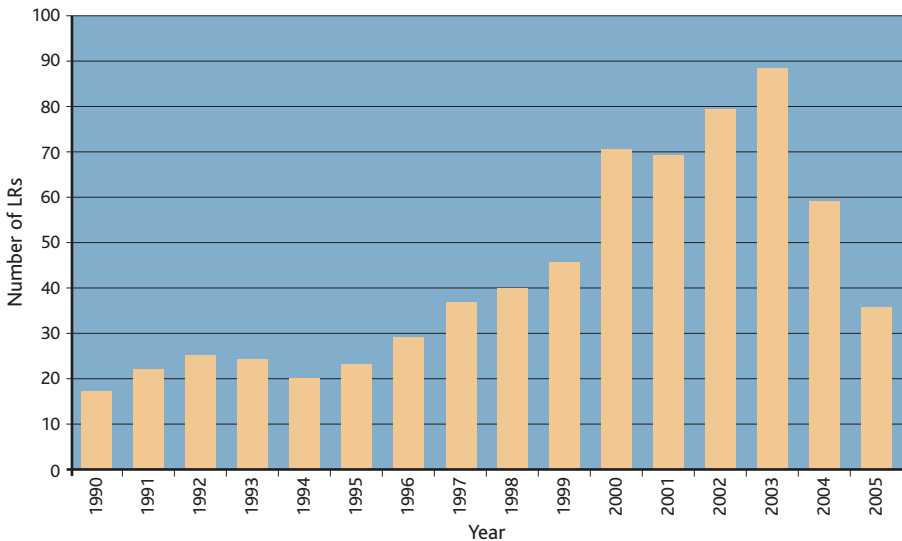


Graph 4 is encouraging in some ways but may be misleading. It indicates a welcome fall in the number of Pensions Ombudsman decisions (despite an increase in the staffing resources) with a slight increase in 2005. It may however disguise a considerable increase in the number of complaints, many of which have been declined or passed elsewhere.

Graph provided by Pendragon



Number of law reports

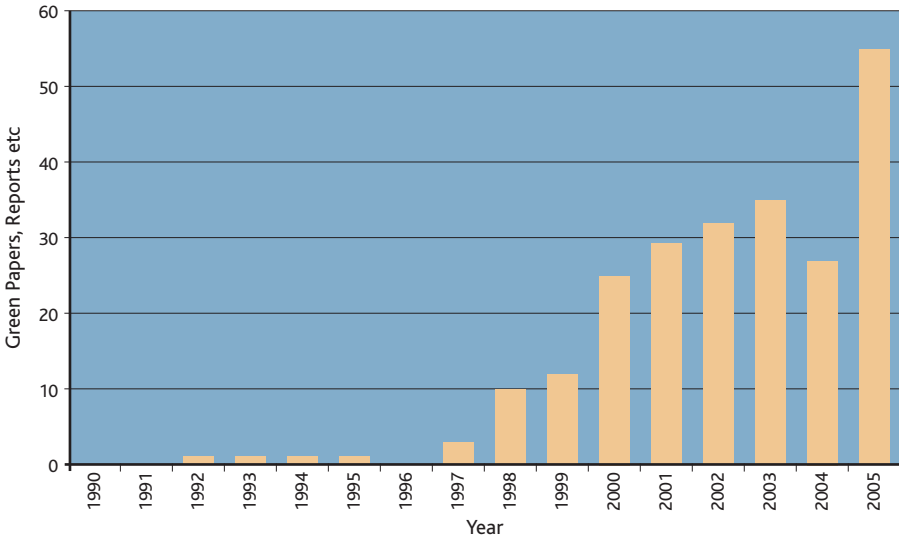


Graph 5 indicates a welcome decline in the number of cases being entertained by the court system. The database includes not only UK cases, but reflects disputes in other common law jurisdictions, so it reflects a world-wide trend. The UK however has been particularly affected by the trend towards alternative dispute resolution (especially mediation) and the Woolf reforms in court procedure, which have encouraged early settlements. Empirical evidence suggests however that the lull may be temporary, and that the flood of regulation and expansion of regulation will prompt further recourse to the courts in coming years. Many of the cases in the later part of the century involve surpluses, an area of dispute which has now passed for obvious reasons.

Graph provided by Pendragon



Number of Green Papers, reports etc

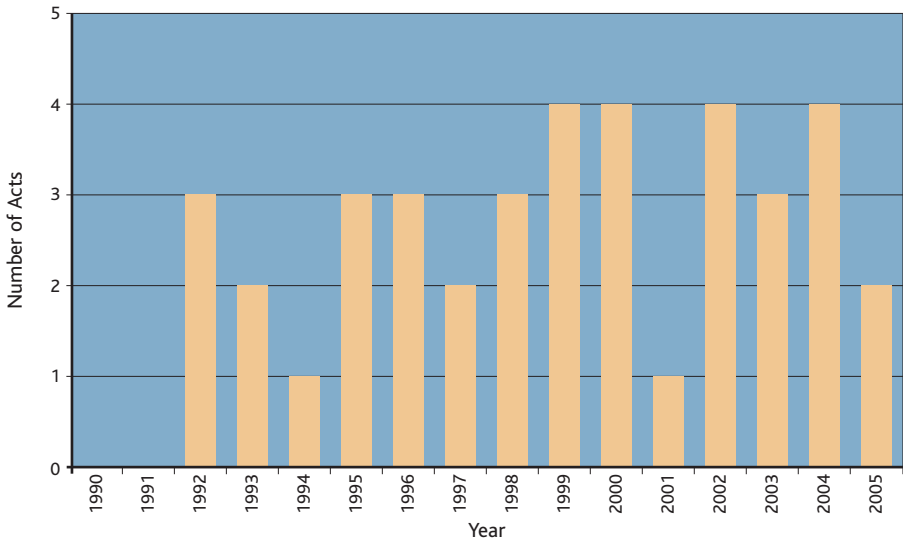


Graph 6 is based on incomplete information; nonetheless, the degree of interest by Government in workplace pension systems since 1997 seems disproportionate; pension systems flourished (imperfectly) from 1921 onwards for a variety of reasons. It is by no means clear whether the obsessive intervention by departments of state since 1997 (the year the Pensions Act 2005, itself a response to the Maxwell Affair) is contributing to a solution to many of the pension problems, or merely adding to it.

Graph provided by Pendragon



Number of acts

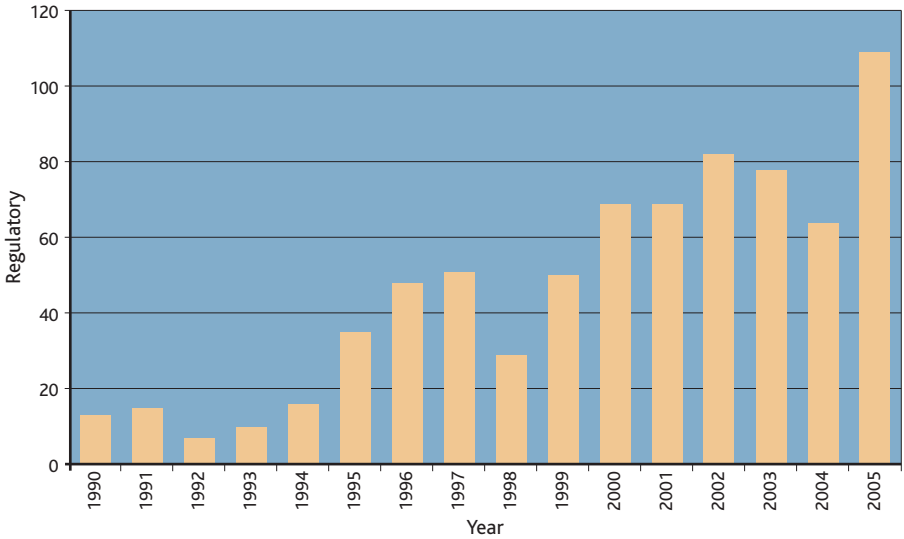


Graph 7 suggests that 2005 was a quiet year legislatively, certainly compared with earlier years. It goes to confirm that statistics can be misleading. Although activity declined in primary legislation it is far from clear that there was any need at all for more legislation and amendments to the Finance Act 2005 merely confirming that the simplification of the fiscal regime deserved more thought before its implementation.

Graph provided by Pendragon



Regulatory

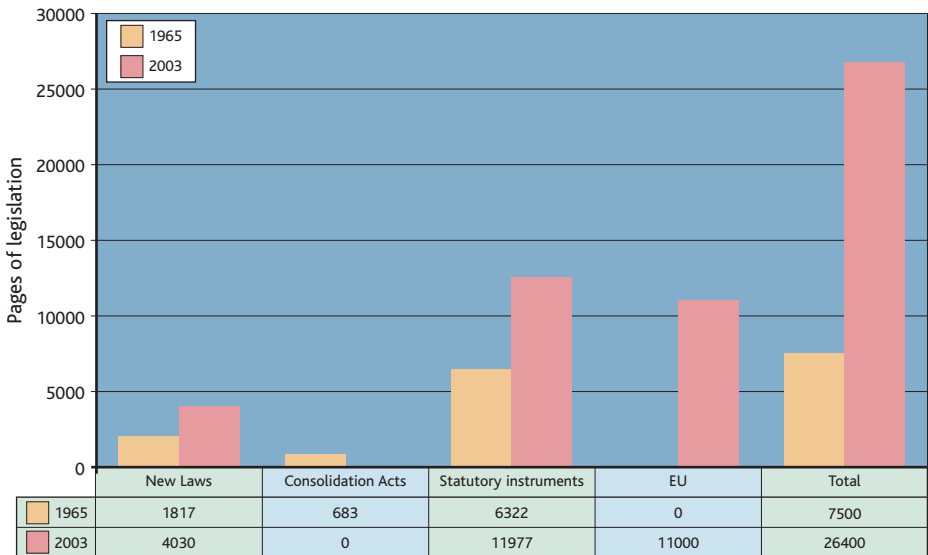


Graph 8 in some ways is rather surprising and comforting - but does not seem to reflect perceptions in the pensions sector that regulation has not proliferated. Nonetheless to have over 100 regulatory documents in one year (to add to around 60 the year before, itself a quiet year) seems to suggest that one of the few growth industries in the UK is pensions regulation. There must come a stage when legislators and the civil service conclude that the problem may be iatrogenic rather than endemic.

Graph provided by Pendragon



Pages of legislation - a comparison between 1965 and 2003



Graph 9 reproduces a graph in slightly different form issued by the Law Commission in January 2006, which attempted to indicate the secular growth in legislation generally. It is intended to put the growth of pensions law in context and shows the annual production of pages of law in two key years, 1965 and 2003. It indicates a growth in the number of pages of over 250% pa in less than 40 years and the Law Commission Notes that each page is now 11% larger.

The Law Commission - 31 January 2006



Accounting

IAS19 is on the way

Companies that are still struggling to apply the provisions of FRS17, now have to think about IAS19 instead. Under EU accounting requirements all EU listed companies were required to use international accounting standards (IASs) for their annual consolidated accounts as from 1 January 2005. IAS19 sets out what details need to be included in relation to employee benefits. 1 January 2005 was also the date from which companies not falling within the IAS regime must adopt FRS17 in full, ie include the figures in the main financial accounts rather than in the notes to the accounts.

A crucial difference between the two standards is that FRS17 requires companies to recognise actuarial gains and losses in defined benefit schemes in the year they occur. IAS19 gives companies the choice to recognise gains and losses immediately or to defer them over the life of the pension scheme. Deferment is only possible if the actuarial gain or loss is within 10% of the original actuarial estimate. Actuarial gains and losses include the difference between actuarial assumptions and what occurred in practice and any changes in actuarial assumptions.

Pinsent Masons' Accounting Services Group provides forensic accountancy and corporate support services to ensure the seamless provision of legal and financial advice. For further information, please contact Tony Chapman, Director of Accounting Services Group, on 0113 244 5000.

Guidance on audit of occupational pension schemes

APB Practice Guide 15 was published. A copy is available at:
<http://www.asb.org.uk>

Requirement for annual report and accounts

In accordance with a European Directive (known as IORP), the Government is amending the accounts requirements so that the vast majority of pension schemes will have to draw up an annual report and accounts. There are a limited number of exemptions for schemes with fewer than 100 members, and public sector schemes. This means that earmarked schemes and unapproved schemes with more than 100 members will for the first time have to produce an annual report and accounts. This change came into force on 22 September 2005 for schemes set up after this date. For existing schemes, the changes applied from the start of the first scheme year after 22 September 2005.



Actuarial

Morris review of actuarial profession

Sir Derek Morris published his final report on the actuarial profession in the UK. The review focused on three broad areas: the regulatory framework for the actuarial profession; the level of choice and competition in the market for actuarial services; and the future role of the Government Actuary and the Government Actuary's Department. The interim review contained substantial criticisms of the actuarial profession, particularly that the profession was too insular and slow to adapt to changing circumstances. Its main conclusions included:

- The current self-regulation by the actuarial profession does not adequately protect the public. Given its small size, an independent statutory regulator is considered too costly. However, an independent body (such as the Financial Reporting Council) could be appointed to oversee the actuarial profession.
- The review considers whether certain roles, such as scheme valuations, should be carried out by actuaries. Given that only actuaries currently have the necessary experience, the report recognises that in the short-term no change to the current position should be made. In the longer term it may be a good idea to allow other professionals to carry out these roles. This would help competition, for example.
- Actuaries must be more accountable. There are clear conflicts between the actuary's client (eg employer or trustees) and the need to whistleblow to the regulator. Conflicts also arise when the actuary advises both the trustees and employer. Four options to resolve this are suggested including putting the trustees into the driving seat. Only when trustees deem there to be a conflict would the employer need to seek separate advice.
- An independent actuarial standards board should be responsible for professional standards. Current standards are too weak, ambiguous or limited in range.
- There should be greater scrutiny of actuarial advice.

The final report clearly recognised concerns that actuarial advice has often been too employer-driven in the past and that trustees have not always been in a position to question the advice which they have been given. Pensions is an area in which it is easy to slip into jargon, which makes it confusing for the lay trustees. Actuarial information is even more littered with jargon and many trustees have not felt sufficiently knowledgeable to question the assumptions or even the actuarial method which has been proposed. Both the Regulator and Morris wish to change this.



Actuaries may also be forced to consider their assumptions even more carefully given that trustees will now need to show that they have scrutinised all their advice. However, forcing trustees to tender their actuarial, investment and fund manager selection advice separately may not be helpful. Indeed, it may drive up costs, especially for smaller schemes. It is not yet clear how actuarial advice will be subjected to independent scrutiny, who will pay for it; will it drive up costs; will it result in actuarial advice being delayed?

The Government, in the 2005 Budget, welcomed the report of the Morris review and, in principle, accepted its recommendations.

A copy of the report is available at:

http://www.hm-treasury.gov.uk/media/A62/3D/Morris_final_150305.pdf

Calculating transfer values – actuarial profession consults on new approach

Guidance note GN11 gave new guidance to actuaries about how they should calculate individual transfer values. Previously, transfer values represented the “expected cost to the scheme” of providing the benefits which the transferring member is giving up. The new approach will be based on bond yields, there may therefore be a mismatch between transfer values and the assets in the scheme.

The new calculation requires actuaries to take into account the funding level of the scheme and its winding up priorities, the financial strength of the employer, the investment strategy and the scheme’s funding policy.

This recommended change represents a fundamental shift from the current prescriptive transfer value calculation. Once the new basis comes into effect, trustees are going to have to be more heavily involved in these calculations and give instructions to the actuary on the employer’s financial strength, for example. This is in line with the sort of decisions the trustees are likely to have to make now the scheme specific funding calculations kicked-in in September 2005. Trustees may be forced into making these decisions on transfers before the first scheme specific funding valuation takes place. So there will be no time for them to acclimatise themselves before they have to make key decisions. Once made, they will also need to have good reasons to change their position. The other issue for trustees is that the new calculation will be based on bond yields and not on actual scheme investments.

The new guidance was introduced to become effective towards the end of the 2005. However, following exclusive adverse comments from the industry it has now been put on indefinite hold.

The latest revisions take into account the removal of the MFR underpin from the calculation of cash equivalent transfer values and applied from 30 December 2005. The major amendments to this guidance note previously put forward remain under consideration and have not been included in this latest revision.



Actuarial guidance note GN48

An actuarial guidance note (GN48) required a scheme actuary to ensure that all written advice he provides is subject to review. It is expected that this scrutiny will be extended over the longer term. Given this was one of the suggestions made in the Morris review, it looks as if the actuarial profession is taking the comments seriously. GN48 was issued as Recommended Practice from 31 December 2004. It will become a Practice Standard on 1 January 2007.

Actuarial guidance note GN19 (amended)

GN19 which gives guidance on the calculation of pension scheme deficits on winding-up has been amended to reflect recent changes which require most debts to be calculated on a full-buy-out basis. Further changes will be made once the changes to the calculation of such debts are brought into force under the Pensions Act 2004.

GN28 - advice for actuaries when signing the reference test certificate

This latest guidance has been revised to take into account the scheme specific funding regime and the new requirements relating to civil partners which came into force on 5 December 2005.

GN11 - transfer values

The latest revisions take into account the removal of the MFR underpin from the calculation of cash equivalent transfer values and applied from 30 December 2005. The major amendments to this guidance note previously put forward remain under consideration and have not been included in this latest revision.

GN49 - scheme funding matters for which actuarial advice needed

This is a new guidance note and became effective on 30 December 2005. The actuary must take into account any guidance and Code of Practice produced by the Regulator. Any oral advice must be confirmed in writing.

GN9 - presentation of actuarial advice

Also applies from 30 December 2005. Funding principles must be presented with sufficient clarity. The idea is that two actuaries would produce similar valuations using the principles outlined.



Contracting-out

Under the Guaranteed Minimum Pensions Increase Order 2005 the prescribed increase for that part of any guaranteed minimum pension attributable to earnings factors for years 1988/89 to 1996/97 was 3%.

The Contracting-out, Protected Rights and Safeguarded Rights (Transfer Payment) Amendment Regulations 2005 removed the requirement that trustees must satisfy themselves that a member has permanently emigrated before making a transfer of contracted-out or safeguarded rights to an overseas scheme from 6 April 2005. The requirements are set out in IR Update 152.

Contracting out – some simplification offered

Amendments to contracting-out legislation might:

- Allow protected rights to be commuted as part of a 25% tax free lump sum on retirement. The same proportion of protected rights and non-protected rights will need to be commuted.
- Increase the trivial commutation limit to 1% of the lifetime allowance in line with the changes introduced by tax simplification.
- Allow serious ill-health commutation of all contracted-out rights, except those relating to survivors' pensions; and
- Allow protected rights to be paid at the same time as all other rights.

The consultation period ended on 5 May 2005 and the changes are due to come into force on 6 April 2006.

A copy of the amendments are available at:

http://www.dss.gov.uk/consultations/2005/contractedoutregs_amdts/consultation.pdf

The Protected Rights (Transfer Payment) (Amendment) Regulations 2005

This is a revised version of regulations originally issued in 2001. Under the regulations:

- The protected rights of a deferred can be transferred from a contracted-out money purchase scheme (COMP) to another COMP.
- Consent will not be needed where the trustees have made reasonable efforts to get the deferred's consent and have given him at least three months to reply.
- Only transfers between group schemes or where there is a financial transaction are allowed.
- Consent will still be needed to transfer the protected rights of active members. The reasoning is not clear, but the DWP says that it would amount to a change in the contract of employment.



Contributions

Reporting late contributions to money purchase and personal pension plans – briefings 1 and 2 and codes of practice published

The Pensions Regulator published two codes of practice – one covering late payment of contributions to occupational money purchase schemes and the other to personal pension plans. The Pensions Act 2004 amends the provisions relating to reporting late payment of contributions to the Pensions Regulator. The expected date for these changes is 6 April 2006.

Under the new requirements where contributions are paid later than the dates set out in the payments schedule or where the employer deducts contributions from the employees but does not pay them over within 19 days; and the trustees have reasonable cause to believe that this failure is likely to be of “material significance” to the Pensions Regulator, the trustees must notify the failure to the Pensions Regulator and to the members within a reasonable time.

The code states that trustees must use their judgment in deciding what to report. Trustees must always make a report where:

- There is dishonesty or misuse of assets.
- A failure carries a criminal penalty.
- The contributions remain unpaid after 90 days (unless it is an administrative error which is corrected when found).
- The employer does not have adequate systems in place or if there is no early prospect of the contributions being paid because of the financial circumstances of the employer.

Trustees should make a written report to the Pensions Regulator and members within five working days. Where there is current or imminent danger to payments unless immediate preventative action is taken, trustees should make a report to the Pensions Regulator by telephone. Whilst minor problems do not need to be reported, a combination of problems may need to be.

Until the code of practice comes into effect in April 2006 Pensions Regulator Briefing 1 sets out the procedures for reporting late payment of money purchase contributions and Briefing 2 for personal pension plans. The reporting obligations are similar to those set out under the code of practice. Essentially, reports must be made when an employer’s contributions are outstanding for more than 90 days. If there is a more serious or wider problem, a report should be made earlier. Members must be told if contributions are more than 60 days late. Briefing 1 suggests that an earlier report should be made if the employer is using contributions to alleviate cash flow difficulties or if proper procedures are not in place for normal payment. Where there is an immediate or potential significant risk to members, trustees should consider making an immediate report.



Copies of the two codes and two briefings are available at:

<http://www.pensionsregulator.gov.uk/pdf/CoPLatePaymentsPP.pdf>

<http://www.pensionsregulator.gov.uk/pdf/CoPLatePayments.pdf>

<http://www.pensionsregulator.gov.uk/pdf/briefingNo1.pdf>

<http://www.pensionsregulator.gov.uk/pdf/briefingNo2.pdf>

Clearance

See **PENSIONS REGULATOR**

Cross-border schemes

The Occupational Pension Schemes (Cross-border Activities) Regulations 2005

These regulations set out the conditions for a UK occupational pension scheme to meet before it can accept contributions from an employer based in another EU state. The final regulations have amended the very restrictive provisions suggested in the regulations for secondees.

Separately, the Pensions Regulator has issued guidance about the new requirements together with application forms to apply for authorisation and approval. Under the Pensions Act 2004:

- The UK scheme must be authorised by the Pensions Regulator to accept contributions from an employer from another EU state. Such schemes will be known as cross-border schemes.
- The trustees must be approved to accept contributions from a particular non-UK employer.

The regulations give more details about the new obligations for cross-border schemes.

- Cross-border schemes must be fully funded on the scheme specific funding basis. New schemes will have two years from the date of application and existing schemes until 22 September 2008 to meet this funding requirement.
- The regulations set out the process for applying for authorisation and approval. Schemes which were cross-border schemes at 22 September 2005 have until 29 March 2006 to apply. New schemes must obtain the necessary authorisation and approval before they can accept contributions.
- Schemes with workers who are seconded to another EU state for a limited period and who are expected either to return to the UK to work for the same employer or to retire are not caught by these new requirements.



Limited period is not defined in the new regulations but the Regulator's guidance suggests that it covers periods up to five years. This is not consistent with the Government's paper responding to the consultation on the draft regulations which stated that any secondments in place at 30 December 2005 would not be caught. Rather unhelpfully the Regulator is leaving it up to trustees to decide what limited periods are in these circumstances (although this is not stated in the guidance it has produced).

A copy of the guidance and application forms are available at:
<http://www.pensionsregulator.gov.uk/trustees/crossBorder/index.aspx>

A copy of the latest Pinsent Masons Pensions Bite on cross-border schemes is available at:
<http://www.pinsentmasons.com/media/1290244946.pdf>

Data protection

Data protection code

The Information Commissioner produced the final part of his data protection code of practice. It covers workers' health and keeping records about workers' health. It includes separate guidance for small businesses. Whilst the code is not legally binding, nevertheless it does aim to promote good practice. Information about an employee's physical or mental health, and any disability which he has will be classed as sensitive data and therefore more onerous requirements must be complied with. These are set out in the code of practice. Trustees are likely to need this type of information when dealing, for example, with ill-health pension requests and disability discrimination claims.

A copy of the code is available at:
<http://www.informationcommissioner.gov.uk>

Disability

Disability rights extended from 1 October 2005

Trustees and employers need to make sure that they complied with the extended rights for disabled people which came into force from 1 October 2005.

Dispute resolution

OPAS Casework Report

OPAS 2004 report contained summaries of cases together with facts and figures. Complaints rose by almost 20% during the year. Administration complaints represent 30% of the total cases. Only 8% of cases were referred to the Pensions Ombudsman on OPAS's recommendation (www.opas.org.uk).



Appointment of deputy Pensions Ombudsman

Charles Gordon was announced as the new deputy Pensions Ombudsman. His appointment took effect on 4 April 2005 and lasts three years.

Parliamentary Ombudsman inquiry into occupational pension issues

The Parliamentary Ombudsman, who is independent of the Government, investigated two complaints raised by the public:

- Whether the Government ignored evidence when taking decisions on whether to warn scheme members of the risks to their pensions should their schemes wind up; and
- Whether information and advice provided by the Government was inaccurate.

The Departments being investigated are the DWP, OPRA, the Treasury and the National Insurance Contributions Office. The Parliamentary Ombudsman will not investigate the Financial Services Authority as that is outside her jurisdiction.

Dispute resolution - code of practice

The Pensions Act 2004 changes the requirements for dispute resolution procedures to give trustees more flexibility. Instead of the old prescriptive two-stage process, trustees simply need to put into place a procedure so that those with an interest in the scheme are able to apply to the trustees for a decision on a disputed matter. The form of procedure is not prescribed – that is left up to trustees to decide, based on the requirements of their own scheme. However, decisions must be made within a reasonable period and those decisions must be given to the applicant within a reasonable period of the decision being made.

The main points made in the code are:

- Any information requested by the trustees on the dispute must be relevant, proportionate and capable of being obtained by the applicant without difficulty.
- Trustees are expected to acknowledge receipt of any application and tell the applicant when they should expect a response.

If the trustees operate a one-stage process, the Regulator expects trustees to make a decision and notify it to the applicant within four months of receiving the application. If more than one-stage is used, the final decision should be made and communicated to the applicant within ten months of receiving the application. However, any timetable must give applicants sufficient time to consider the first-stage decision and seek advice, if necessary. Decisions should be given to applicants as soon as practicable and usually within seven days.

Where the trustees are unable to complete the process within the suggested timeframe, for example because the dispute is particularly complex, trustees should respond as soon as practicable. The applicant should be kept informed about the delay, be given a revised target date for the formal response and be given the reasons for the delay.

On 17 January 2006 the Government announced that 'Legislation will not require a code of practice on Dispute resolution.'

A copy of the announcement is available at:

http://www.dwp.gov.uk/consultations/consult/2005/pensions/internal_dispute.pdf



Pensions Ombudsman published his guidance on “How to avoid the Pensions Ombudsman”

The guidance is detailed and covers a wide range of potential complaints including conflicts of interest, ill-health and death benefit cases and winding-up as well as general scheme administration. It contains a number of tips for avoiding disputes, as well as indicating the Ombudsman’s approach to determining certain cases.

A copy of the full guidance is available at:

<http://www.pensions-ombudsman.org.uk/publications/docs/HowToAvoidThePO.pdf>


Education



Employees’ pensions information pack

Employees from 100 selected firms received a pensions information pack devised by the DWP in conjunction with the ABI to test the impact of savings advice in the workplace. The pilot was designed to find out whether employees make changes to their financial arrangements as a result of receiving pensions information and advice. It ran for about a year and the results were published in August 2005. The pack contained a separate leaflet for employees and employers. The employees’ leaflet gave a simple summary of the different sorts of pension provision together with answers to basic questions. The employers’ leaflet gave information about what employers can and cannot say to employees about their pension scheme.

Employers



Employers’ powers to promote their own pension schemes

The Government announced changes to the financial services regime to allow employers to promote stakeholder and group personal pension plans which they offer to their staff. Occupational pensions are not covered as they fall outside the scope of the Financial Promotions Order.

- Employers must contribute to the scheme and will have to disclose the size and nature of their contribution.
- Employers must not receive an indirect commercial benefit.
- Communications can be oral or written. Anything in writing must tell employees that they are free to seek independent advice from an authorised financial adviser.
- Employers will be encouraged not to provide individual advice. Guidance will be issued to ensure that employers’ representatives are knowledgeable and competent to promote the schemes.

The changes came into effect in April 2005.



ABI revised guidelines on executive remuneration

ABI guidelines took into account developments over the previous year as well as the introduction of the new accounting standards this year. Pension provision is also likely to be scrutinised, particularly where it is being reviewed in the light of the changes next year to pension taxation.

A copy of the guidance is available at:

<http://www.abi.org.uk/newsreleases/default.asp?display=month&year=2004&month=12>

TUPE regulations

Section 258 of the Pensions Act 2004 requires that, employees who are transferred to a new employer on a business sale have their pension rights protected in part. Where the transferring employer made contributions in respect of the transferring employees, the new employer will have to provide one of the following:

- An occupational money purchase or a stakeholder scheme to which it must make relevant contributions; or
- An occupational scheme which is not a money purchase scheme (ie a final salary scheme) which either complies with the reference scheme test or with alternative requirements which will be prescribed.

The regulations provide that in the case of money purchase or stakeholder schemes, employers will have to match the employees' contributions up to 6% of basic pay. Where both the old and new employers have a final salary scheme, the alternative standard is that the overall benefits after the transfer are at least equal in value to those under the transferor's scheme. This latter test is not defined in the regulations, but we assume that some form of actuarial test will be prescribed.

The consultation ended on 21 January 2005.

A copy of the consultation paper is available at:

http://www.dwp.gov.uk/publications/dwp/2004/eppr/eppr_2005.pdf

Neither the legislation nor the draft regulations refer to standard personal pension plans, which seems to preclude a new employer offering such an arrangement to transferring employees. Given that many employers still offer such arrangements to their staff, it seems unfair that they cannot use facilities which they already have in place for newly transferred staff. Perhaps the Government wants to encourage stakeholder take-up.

Purchasing employers should also bear in mind that personal pension plans offered by transferring employers fall outside these new requirements. This is because such arrangements transfer automatically on a sale in any event. Employer contributions in respect of such employees should therefore continue to be paid at the same rate as before any transfer.



Other provisions arising from the TUPE Regulations

The regulations are being changed to make it clear that transferred employees cannot bring breach of contract or constructive dismissal employment claims against the transferring employer if the new employer does not provide the same level of occupational pension benefits.

A transferring employer will need to give receiving employers written details of the transferring employees and the associated rights and liabilities which will transfer "in good time before the transfer". Given that some occupational pension rights on early retirement do seem to transfer following the *Beckmann* and *Martin* cases, employers may also need to include their occupational pension schemes in the disclosure list. Employers could be fined up to £75,000 if they do not meet this requirement.

A copy of the paper is available at:
<http://www.dti.gov.uk/er/tupeconsultation.pdf>

The comments in this consultation paper were the first Government thoughts on the implications of the *Beckmann* and *Martin* cases. They are inconsistent with the approach it has adopted in relation to transfers of occupational pension rights under the Pensions Act 2004, where purchasers are only required to put into place money purchase arrangements with 6% matching contributions. This sort of level of contributions would not replicate any early retirement or redundancy package in a final salary scheme.

Future changes to pension provision: new employer consultation process

The Government has published two sets of regulations amending the previous drafts published in June 2005, together with comprehensive guidance on the new requirements. The regulations are The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 and The Occupational Pension Schemes (Consultation by Employers) (Modification for Multi-employer Schemes) Regulations 2006. The new provisions come into force on 6 April 2006.

Employers will have to undertake a consultation process under the Pensions Act 2004 if they wish to make major or significant changes to future pension arrangements. These include increases to normal pension age, closing the scheme to new members, stopping the future accrual of benefits and changing from DB to DC. Consultations must last at least 60 days.

Implementation of these new provisions will be phased in. Initially, only employers with more than 150 employees will need to comply. From April 2007 employers with more than 100 employees and from April 2008 employers with more than 50 employees will also need to comply.



To avoid employers having to consult under the Information and Consultation requirements for employment changes ("ICON") as well as the Pensions Act 2004 requirements in relation to a particular change, the Information and Consultation of Employees (Amendment) Regulations 2006 provide that where an employer is following the Pensions Act consultation procedures, it does not also have to comply with ICON as well. The employer must, however, notify the employee representatives that it is complying with its statutory duty in this way.

The majority of changes to future pension benefits will be caught by these requirements. Employers are therefore going to have to factor in this 60 day consultation period for making changes. They will not be able to rush changes through unless they are prepared to incur a fine. However, the process should now be familiar to employers as the information and consultation requirements on employment issues came into force last April and these are simply an extension of those provisions, but aimed specifically at pension changes.

A copy of the guidance is available at:

http://www.dti.gov.uk/er/consultation/ic_guidance_Jan2006.pdf

Employment law consultation changes

The Information and Consultation of Employees Regulations (ICON) came into force on 6 April 2005. In broad terms, under the Regulations:

- Employers will only have to negotiate information and consultation arrangements if they receive a request from at least 10% of their workforce.
- If a valid request is received from employees and agreement is not reached within set timescales, employers will be required to implement standard procedures. These set out rigidly the issues on which employers must inform and consult and also how this is to be done. The Government suggests that the standard provisions will, amongst other things, require information and consultation on changes to an occupational pensions scheme, at least where there is a contractual right to participate.
- If an employer has in place a pre-existing agreement (as defined in the legislation) before an employee request is received, the employer can put the request to a ballot. Then, only if 40% of the entire workforce (not just those voting), and a majority of those voting, endorse the request will an employer be obliged to negotiate different arrangements. If this pre-existing agreement survives this process, there is a moratorium of three years before it could be challenged again.

Pre-existing agreements give much more flexibility to employers as they can agree the issues, method and frequency of information and consultation. The arrangements can be tailored to suit individual organisations and have the potential to minimise the impact of



the Regulations. Initially, only organisations employing more than 150 will be covered. From April 2007 those employing 100 or more will be caught. Eventually (April 2008), ICON will apply to businesses with more than 50 employees.

The Occupational Pension Schemes (Payments to Employer) Regulations 2006

These give more detail about the requirements needed to make payments to an employer from an ongoing registered occupational pension scheme from 6 April 2006. Under the Finance Act 2004, such payments will be taxed at 35%.

- Payment of surplus can only be made from assets above those required to secure the benefits of all of the members in full on an insurance company “buy-out” basis.
- All members, apart from deferred and pension credit members for whom the trustees do not have an address, must be notified of the proposal. The regulations set out what the notice must tell members.
- Trustees may now also make a payment of surplus from a money purchase scheme where each member’s fund is secured by a separate insurance policy and all of the liabilities under the scheme in respect of that member have been secured.
- These new requirements are not overriding so schemes will need to amend their rules if they wish to take advantage of the simplified process. Trustees are, however, given powers to amend their rules for a limited period of five years (ie until 2011) if they currently have power to make repayments of surplus. Before they can do so, trustees will need to inform members and employees in accordance with the regulations.
- The consultation finished on 1 February and the regulations are intended to come into force on 6 April 2006.

For a copy of the regulations, please see:

<http://www.dss.gov.uk/publications/dwp/2006/opsper06/consult050106.pdf>

Europe

Taxation

In July 2004 the European Commission requested the UK to end pension taxation discrimination. In a further move towards the creation of a pan-European pension, the European Commission sent the UK a formal request to amend its legislation to end tax discrimination against other member states. In particular, it wants the UK to extend its favourable tax treatment to schemes which are not necessarily trusts and which do not have a UK administrator. If the UK fails to comply, the case may be referred to the European Court of Justice (ECJ). Spain has already been referred to the ECJ.



Family law

Civil Partnership Act 2004

The Civil Partnership Act received Royal Assent and came in force from 5 December 2005. The purpose of the Act is to enable same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. Forming a civil partnership will have legal consequences. The civil partners will assume legal rights and responsibilities with regard to each other and to third parties, including the state.

Gender Recognition Act 2004

The Bill received Royal Assent and the Act gives transsexual people legal recognition in their acquired gender once they have been issued with a full gender recognition certificate. Key points for pension schemes are:

- Once a certificate has been issued, the person's gender becomes that of the acquired gender for all purposes. However, the legislation is not retrospective so benefits accrued prior to the issue of the certificate can be calculated on the basis of the member's original gender.
- The position is more complicated in relation to guaranteed minimum pensions. The pensionable age for payment of these will be taken to be that of the acquired gender. This means, for example, that a woman over 60 but under 65 who becomes a man will lose his entitlement to the GMP until he reaches 65.

Funding

Actuarial profession to review pension funding

The Institute of Actuaries announced a review of actuarial standards for reporting pension valuations. At a meeting of its members three actuaries argued that the profession should tighten its standards. In particular, funding targets should relate to solvency levels. This would be a fundamental change in the way actuarial valuations are carried out and would make it much clearer to members and trustees how secure benefits were. Employers are likely to be particularly affected by any change as they will come under pressure to increase their contribution levels.



Statutory funding objective - Code of practice

From 30 December 2005 (delayed from September 2005), the statutory funding objective replaced the minimum funding requirement. Trustees will need to prepare a statement of funding principles setting out how the statutory funding objective will be met. Actuarial valuations will need to be carried out annually or every three years if the scheme actuary prepares an annual actuarial report on developments which affect funding. Where the scheme does not have enough assets to meet its liabilities, the trustees will need to prepare a recovery plan to make up any deficit. A copy of this will need to be sent to the Pensions Regulator.

Details of the test, together with the code of practice, have been published.

- Actuarial valuations must be produced within 15 months of their effective date. Trustees should draw up an action plan with the scheme actuary and employer to meet this deadline. Initial calculations should ideally be available within 5 months.
- Trustees need to understand the actuarial advice and its implications. They will be expected to actively question their actuary.
- Trustees should record the decisions which they make after receiving actuarial advice in writing, together with their reasons.
- Trustees should act independently and robustly when dealing with the employer. They will be expected to form a view on the ability of the employer to fund scheme benefits and obtain specialist financial accountancy advice, where appropriate. Trustees should ask employers to provide them with all relevant information (although there is no requirement for employers to provide this to the trustees, but the Regulator has very wide powers to obtain information from employers).
- Trustees must choose their actuarial assumptions prudently. Trustees should consider, on advice from the actuary, whether it would be appropriate to incorporate a margin for error.
- Trustees are expected to have a good understanding of the effect of different assumptions and the effect on the funding if these assumptions are not borne out in practice. The code of practice goes into some detail about the factors which they will need to take into account.
- Recovery plans should aim to eliminate any shortfall within a finite time, but in any event as soon as practicable. The plan must be realistically capable of being followed.
- Trustees should commission out-of-cycle valuations and review the statement of funding principles, recovery plan and schedule of contributions where circumstances have changed and it appears to the trustees to be in the interests of scheme members to do so. Examples of when this might be appropriate are given in the Code and include where there is a significant fall in the market value of the scheme assets.



- The Code of Practice gives guidance on communicating the annual funding statement to members.
- Trustees should ensure that there is a robust procedure in place for monitoring receipt of contributions. Any apparent failure must be investigated.

The Code contains complementary guidance which includes an example action plan, timetable for a valuation and specimens of the statement of funding principles, recovery plan, schedule of contributions and annual funding statements for actives, deferred's and pensioners.

Copies of these documents are available at:

<http://www.dss.gov.uk/consultations/consult/2005/funding-pension-schemes/index.asp>

Scheme funding – actuarial guidance

The Pensions Act 2004 requires trustees to obtain actuarial advice before:

- Making a decision on the scheme's methods and assumptions;
- Preparing or revising a statement of funding principles or schedule of contributions;
- Preparing or revising a recovery plan; and
- Making a significant change to future benefits.

This actuarial guidance note (EXD 56) does not give trustees much more assistance – it essentially tells actuaries that they need to have regard to the Regulator's Code of Practice and Guidance on funding. Of more interest is a separate guidance note (EXD 55) which covers the presentation of actuarial advice – it states that the main purpose of actuary's advice is to ensure that it is presented with sufficient information to enable the recipient to understand the expected future course of a scheme's contribution rates and of its solvency levels.

A copy of the guidance is available at:

http://www.actuaries.org.uk/Display_Page.cgi?url=/pensions/pens_news_0507_exds.html

These guidance notes do not give actuaries any view about the meaning of "prudence". The concept of prudence is fundamental to the whole new funding regime and is a matter for trustees to determine in the context of their own scheme. For example, the actuarial assumptions which the trustees choose must be prudent. No definition is given in legislation or the Regulator's Code of Practice; trustees are essentially left to determine its meaning by themselves. A timely actuarial debate is taking place at present over the concept of "prudence". Until a settled view emerges, trustees will be relying heavily on their own scheme advisers.

Pensions Regulator - approach to scheme funding

This lengthy consultation document describes how the Pensions Regulator proposes to implement the scheme funding legislation.



Pinsent Masons has produced a Pension Bites describing the paper in more detail. A copy is available at: <http://www.pinsentmasons.com/media/983323503.pdf>

A copy of the consultation is available at:
<http://www.pensionsregulator.gov.uk/pdf/schemeFundingConsultation.pdf>

Scheme funding

The Occupational Pension Schemes (Scheme Funding) Regulations 2005

These regulations, published in draft in March 2005, came into force on 30 December 2005.

They apply to valuations with an effective date on or after 22 September 2005. The main points are:

- The trustees must decide the method and assumptions to be used for valuing the scheme's liabilities (known as the technical provisions).
- The assumptions must be chosen prudently, taking into account, if applicable, an appropriate margin for these assumptions not being borne out in practice.
- Any changes in assumptions from the previous valuation must be justified by a change of legal, demographic or economic circumstances.
- Statements of funding principles must be prepared within 15 months of the actuarial valuation. The regulations set out the information which must be included in these statements.

There has been one significant change from the draft regulations. The draft regulations provided that trustees with power under the scheme rules to determine contribution rates without the employer's agreement would now need to consult with the employer, but would otherwise retain the unilateral power to determine contribution rates. Under the final regulations, trustees only retain that unilateral power if they are the only persons able to reduce the rates or suspend payment of contributions. Many schemes give employers the power to suspend payment of contributions. In those schemes, trustees will need to obtain the employer's agreement to funding matters (including contribution rates) even where they previously had unilateral power to set the rates.

Trustees and employers should refer to the Regulator's Code of Practice on Funding Defined Benefits, which explains trustees' and employers' duties under these regulations.

A copy of the Pension Bites produced by Pinsent Masons on the Code of Practice is available at:
<http://www.pinsentmasons.com/media/373756559.pdf>



Insolvency

See also TRUSTEES; WINDING-UP

The Occupational Pension Schemes (Independent Trustee) Regulations 2005

Under the Pensions Act 1995, insolvency practitioners were required to appoint an independent trustee if one is not in place; in practice this did not always happen. The Pensions Act 2004 therefore gave this power to the Pensions Regulator from 6 April 2005.

The regulations:

- Require the Regulator to maintain a register of independent trustees which satisfies the conditions set out in the regulations. To be included on the register independent trustees must have agreed to have their fees scrutinised by an independent adjudicator and be bound by his final decision.
- Any person may request an up-to-date copy of the register. The Regulator is allowed to charge for postage, packing and copying costs.
- Within a reasonable period of any appointment, an independent trustee must give members and any trade union details of his name and address, his fees and any sums charged to the scheme in the previous 12 months. Members and trade unions can also request this information every year.

The regulations came into force on 11 April 2005.

Investments

See also TRUSTEES

Myners – what schemes are really doing

Pressure mounted on schemes to comply with Paul Myners recommendations on the way in which pension schemes should manage their investments. Government research on trustees' progress indicated:

- Almost 20% of schemes had taken no steps towards compliance
- Compliance had mostly been led by investment consultants, although compliance on two of the five key principles – “Asset allocation” and “Clear objectives” had been good. The research questioned whether the level of action taken was adequate, although insufficient progress had been made to measure the performance of investment consultants and trustees and on shareholder activism.
- Just over half of schemes had reported to members on compliance.



Myners - Government proposals to strengthen principles

In December 2004 the Government concluded that not enough was being done to comply with Myners' principles. It has therefore outlined a number of new proposals:

- The chair of the trustees will be responsible for ensuring that trustees taking investment decisions are familiar with the issues.
- For pension schemes with more than 5,000 members, the chair and at least one-third of the trustees should be familiar with investment issues (even where investment decisions have been delegated to a sub-committee).
- Pension schemes with more than 5,000 members should have access to in-house investment expertise. This should be equivalent to at least one full-time member of staff familiar with investment issues.
- Trustees will need separate contracts for strategic asset allocation and fund manager selection advice.
- Trustees should provide the results of monitoring their own performance to members and ensure that key information is available on a dedicated fund website.
- The Government is also looking at whether there should be an additional voluntary provision for trustees to commission an independent report on their compliance with the Myners principles.

The NAPF at the request of the Government is reviewing further progress in 2007.

FSA policy on soft commissions

An FSA policy statement gives details as to what is expected from fund managers particularly in relation to soft commissions. It sets out what services may not be paid from commission. The aim is for there to be better disclosure to clients.

NAPF guide - Voting made Simple

The NAPF produced a guide that explains why trustees should vote, what issues they should consider and sets out the main steps for putting a voting policy into place.

Copies can be obtained from the NAPF - 020 7808 1333.

The Occupational Pension Schemes (Investment) Regulations 2005

These regulations, published in draft in March 2005, came into force on 30 December 2005. Under the regulations:



- Trustees must review their statement of investment principles at least every three years and immediately after any significant change in investment policy.
- Trustees must disclose their investment risk measurement methods and risk management processes (rather than just their policy on risk) in the statement of investment principles.
- More detail is given about how trustees must exercise their investment powers. Assets must be invested in the best interests of members and beneficiaries. In particular, investments must predominantly be in regulated markets. Investments in other assets must be kept to a prudent level. Assets must be invested in a manner appropriate to the nature and duration of the scheme benefits.
- Trustees may not borrow money or act as a guarantor, except on a temporary basis to provide liquidity for the scheme.
- Schemes with fewer than 100 active and deferred members and wholly-insured schemes are exempt from some of the requirements.
- The restrictions on employer-related investments are largely unchanged.

Pensions Regulator

See also REGULATION; DISPUTE RESOLUTION

Requirement to notify Pensions Regulator

From 6 April 2005, trustees and employers of pension schemes which are eligible for the Pension Protection Fund (broadly defined benefit schemes) have been under a duty to notify certain events to the Pensions Regulator. The purpose of this new requirement is to reduce the calls on the Pension Protection Fund. The Pensions Regulator (Notifiable Events) Regulations 2005 give details of the events which must be notified.

The Pensions Regulator issued directions stating that certain events do not need to be notified if:

- The pension scheme is funded at the Pension Protection Fund buy-out level (or MFR if no PPF valuation has been carried out); and
- The trustees have not reported any failure to pay contributions in the previous 12 months.

Trustees must notify the following:

- Any decision by them to compromise a scheme debt (this must always be notified unless the debt is less than 0.5% of the scheme's assets);



- Two or more changes to the auditor or actuary in the last 12 months.
- Any decision to make or accept a transfer payment of at least 5% of the scheme assets (or £1.5 million if less).
- Any decision to grant benefits on more favourable terms than those set out in the scheme rules unless the trustees either sought actuarial advice or secured additional funding; and
- Any decision to grant benefits to a member, the cost of which is more than 5% of the scheme assets (or £1.5 million if less).

Employers must notify:

- Any decision by it to compromise a scheme debt.
- Any decision to cease to carry on a business in the UK.
- If it receives advice that it is trading wrongfully or where the director or former director knows that there is no reasonable prospect that the company will avoid going into insolvent liquidation.
- Any breach of its banking covenant, unless the bank has agreed not to enforce the covenant.
- Any change in the employer's credit rating (this must always be notified unless the change is other than from investment to sub-investment grade where the credit rating is provided by a recognised credit rating agency).
- Any decision by the controlling company to relinquish control of the employer.
- Where there have been two or more changes in the chief executive or finance director in the previous 12 months.
- Any conviction for dishonesty by a director.

Notifications must be made in writing within a reasonable period. What this means will depend on the particular circumstances, but implies urgency.

A copy of the standard form is available on the Pensions Regulator's website at:
<http://www.pensionsregulator.gov.uk/>

The Regulator may impose a fine of up to £5,000 (£50,000 for corporates) for failure to notify. Corporate transactions will not be unwound.

A copy of the Code of Practice and the directions are available at:
<http://www.pensionsregulator.gov.uk/pdf/codeNotifiableLaid.pdf>
<http://www.pensionsregulator.gov.uk/pdf/Directions.pdf>



Clearance statements - Pensions Regulator guidance

Companies involved in a wide variety of corporate transactions may be concerned about the risk that the Pensions Regulator could impose a financial support direction or a contribution notice. To protect themselves against this possibility, an application for a clearance statement can be made to the Regulator. This latest guidance sets out more details about how the Regulator envisages this process working. The main points are:

The Regulator expects clearance to be sought only where an event is financially detrimental to the ability of a defined benefit pension scheme to meet its liabilities. The detriment must be material. This means that:

- The scheme must be in deficit; and
- The triggering event itself must be classified under the Code as a "Type A" event.

Until the scheme funding objective is available (when the point may be looked at again), the Code states that deficits should be measured using FRS17 (or on the scheme's funding standard, if higher). If there is any doubt that the employer will continue as a going concern, it should be measured on a section 75 buy-out basis. Different provisions apply for schemes which have adopted IAS19. It is not clear, however, at what point the scheme needs to be in deficit as the scheme may be in a worse position than when the FRS17 calculation was carried out.

Type A events are listed in the Code and divide into three broad categories: change in the level of security given to the creditors, a return of capital and a change in the group structure of an employer. Examples include the granting of a new fixed or floating charge, dividend payments, share buy-backs and changes in the parent company. The Code sets out when such events are material. Some mergers and acquisitions may well involve a Type A event. Compromises of scheme debts also constitute Type A events.

Where possible, the Regulator expects the applicant for clearance to have spoken to the trustees. Employers are told that they should provide trustees with information on their financial position and future plans and any Type A event that may occur. If a Type A event is material, employers are expected to pay for the trustees to obtain an independent report if one is not available.

Applications for clearance should be made as early as possible. It should be accompanied by full and accurate disclosure. Clearance will not be valid if the circumstances set out in the application are materially different from those which actually apply.

See Pinsent Masons Urgent Briefing available at:
<http://www.pinsentmasons.com/media/476315371.pdf>

A copy of the guidance is available at:
<http://www.pensionsregulator.gov.uk/pdf/clearanceGuidance.pdf>



The Pensions Regulator (Contribution Notices and Restoration Orders) Regulations 2005 exempts certain schemes from the requirements relating to contribution notices. These include unapproved and certain public sector schemes.

Pensions Regulator published booklet for DC schemes

From 6 April 2005, trustees of defined contribution schemes must tell those members who are approaching retirement about the different types of annuities available. Trustees can meet this requirement by providing members with a copy of the Regulator's new booklet "Your retirement choices".

A copy of the booklet is available at:
<http://www.pensionsregulator.gov.uk/pdf/scopeguidancedc.pdf>

Code of Practice: Reporting breaches of the law

From 6 April 2005, the Pensions Act 2004 extended the whistleblowing requirements under the Pensions Act 1995. Trustees, employers, administrators, advisers and service providers of occupational, personal and stakeholder schemes must now give a written report to the Pensions Regulator where:

- They have "reasonable cause to believe" that there has been a breach of the law which relates to the administration of the pension scheme; and
- The failure is likely to be of material significance to the Regulator.

Reports must be given as "soon as reasonably practicable". The duty overrides other obligations, such as confidentiality.

The code of practice gives more detail about how the Pensions Regulator expects these new requirements to be complied with. Where trustee boards are comprised of individuals rather than a corporate trustee, the duty will fall on each trustee individually. Administration is taken to cover a very broad range of areas as well as those tasks normally associated with the administration of the pension scheme, such as record-keeping. Basically, it is anything which could potentially affect members' benefits or members' ability to obtain information to which they are entitled. It therefore covers funding, investment and custody.

Breaches caused by dishonesty, poor governance, incomplete or inaccurate advice and acting (or failing to act) in deliberate contravention of the law are likely to be breaches which are "materially significant". If trustees take prompt and effective action to investigate and correct the breach (and notify those affected), the breach will not normally be materially significant. Potential reporters should also consider the wider implications of the breach. The Regulator is more interested in breaches relating to poorly funded schemes which are not well run.



Although trustees should already have procedures in place for reporting breaches, this is a good time to look at them again to make sure that they are effective. A suggested procedure is included in the Code. This includes a system for recording breaches which are not reported, as this will provide background information in case there are future breaches.

The Regulator wants to avoid duplicate reporting. Copies of any report should be sent to the trustees, unless dishonesty is suspected. A standard form for reporting is available on the Regulator's website. Failure to report carries a fine of up to £5,000 for individuals and £50,000 for corporates.

A copy of the guidance is available at:

<http://www.pensionsregulator.gov.uk/codesAndGuidance/guidance/reportingBreaches/index.aspx>

Reporting breaches of the law – further guidance from the Regulator

Having published its first code of practice, the Regulator produced a guidance note with examples and further clarification of the reporting requirements. The principal points are:

- An employer's duty to report extends to insolvency practitioners who still employ scheme members.
- The guidance suggests a traffic light (red, amber and green) approach to help reporters decide whether something is of material significance. Examples of each scenario are given.

A copy of the guidance is available at:

<http://www.pensionsregulator.gov.uk/pdf/COPEarlyLeavers.pdf>

Freedom of information

The Pensions Regulator issued guidance explaining how it will comply with the Freedom of Information Act which came into force in January 2005. The Act gives people a right to be told if information is held and be given that information. The Regulator can withhold certain information, for example if it would prejudice any investigation or if it is legal advice.



Politics

New Secretary of State

David Blunkett resigned as Secretary of State for Work and Pensions on 2 December 2005 and John Hutton was appointed in his place on the same day. Stephen Timms is the new Pensions Minister.



Protection funds

See also TAXATION: LEVIES

The Financial Assistance Scheme and completing scheme wind-up

OPRA issued guidance (Update No 9) to trustees of schemes in winding-up who are concerned that their actions may prejudice any claim they may have from the Financial Assistance Scheme. It advised:

- Trustees should continue to progress wind-ups actively.
- Wherever possible, trustees should postpone buying out benefits until FAS claims have been settled unless they consider it would be in members' best interests to buy out.
- Trustees who wish to delay buying out should bear in mind the possible risks of such an approach.

PPF - Guidance for trustees

The guidance was produced to help trustees with the assessment process which decides whether a pension scheme is eligible for the PPF. It sets out the main steps in the procedure and describes what is required of trustees, the PPF and insolvency practitioners during the various stages.

A copy of the guidance is available at:

http://www.pensionprotectionfund.org.uk/trustee_guidance_-bookmarked_pdf_version.pdf

The Pension Protection Fund website

The PPF launched its own website on <http://www.pensionprotectionfund.org.uk/>

The website contains general details of the schemes which are eligible and is developing fast.

The Pension Protection Fund

The PPF published on its website the compensation cap applicable at different ages. This cap is used to determine the maximum level of compensation payable by the PPF to those under their normal retirement date. For those who wish to take their compensation early, an early retirement factor is applied.

The factors/compensation cap are available at:

http://www.pensionsprotectionfund.co.uk/compensation_cap_factors_table.pdf



The PPF produced a guide to the PPF levies for 2005/6. It gives details of the initial levy (which is a flat rate levy based on the number of members within a scheme and the type of member) and the administration levy (which is a per member charge). Members whose only entitlements are to Equivalent Pension Benefits will count as members, but dependants and death benefit only members will not. Schemes which are exempt from the levy are listed.

A copy of the leaflet is available at:

http://www.pensionprotectionfund.org.uk/guide_to_levies.pdf

Pension Protection Fund - guidance issued

Two guides were produced. The first is the Guidance for carrying out the risk-based levy valuation. The risk-based pension protection levy will apply from 6 April 2006. Schemes must carry out at their first PPF valuation between 1 November 2004 and 5 April 2008 so that the risk-based levy can be set. Subsequent PPF valuations must be produced at least every three years. This guidance sets out the assumptions and discount rate which must be used. This valuation is also important to trustees when deciding whether an event is notifiable (see Pensions Regulator section for more details). The second is the Guidance for carrying out the PPF entry valuation.

Guidance for undertaking the risk-based levy available at:

http://www.pensionprotectionfund.org.uk/section_179.pdf

Guidance for undertaking the PPF entry valuation available at:

http://www.pensionprotectionfund.org.uk/section_143.pdf

PPF publishes final risk based levy proposals for 2006/7

This latest consultation sets out what the PPF terms its firm proposals for the 2006/7 risk based levy. This is intended to help schemes take action to reduce the amount of their levy. Key points include:

- The risk based levy will make up 80% of the total PPF levy payable by schemes. The remaining 20% will be the scheme based levy. The risk based levy will be capped at 0.5% of section 179 liabilities.
- The proposed levy estimate is £575 million, twice that of the original estimate.
- Some contingent assets will now be recognised. These include group company guarantees, security over cash, property or securities of the employer and letters of credit and bank guarantees. In order to be recognised, security will need to comply with certain requirements. Security over receivables will not count. The PPF has published separate guidance on the requirements for contingent assets together with standard form legal documentation and forms of notification. Notification must have been made by 31 March 2006 and must be accompanied by a legal opinion.



- Schemes with funding above 125% on the PPF valuation basis will not have to pay the risk based element. A reduction to the risk based element will apply to schemes funded above 104%.
- The number of insolvency risk bands has been increased from 10 to 100.
- Schemes will not need to complete their first PPF valuation until 31 March 2008 (put back from 31 December 2006).
- Asset allocation will not be taken into account in 2006/7 but the PPF will be looking at this during 2006 for future years.
- The PPF is encouraging employers to obtain their D&B failure score (on which their insolvency risk will be calculated) as soon as possible. The failure score can be obtained from D&B on 0870 243 2344 or by email on customerhelp@dnb.com

A copy of the consultation paper is available at:

http://www.pensionprotectionfund.org.uk/rbl_dec_05.pdf

Section 179 valuations – FAQs updated

A copy is available at:

http://www.pensionprotectionfund.gov.uk/index/faqs/s179_faqs.htm

The Financial Assistance Scheme – regulations published

The regulations broadly follow the earlier draft. In order to qualify, the scheme must have started winding up between 1 January 1997 and 5 April 2005. Some schemes are excluded - they include money purchase, SSAs and certain public sector schemes.

An insolvency event must have occurred in relation to an employer before the last day of the notification period. The notification period was defined as the period between 1 September 2005 and 28 February 2006, so insolvency events must have occurred by 28 February 2006. Insolvency events include the appointment of an administrative receiver and the passing of a resolution for a voluntary winding up. Where the scheme has more than one employer, the insolvency event must occur in relation to the principal employer (or all employers where there is no principal employer).

For the scheme to qualify, a trustee, member, surviving spouse, civil partner or professional adviser (or insurance company paying annuities where the scheme has been wound up) must have given the manager of the Financial Assistance Scheme prescribed details about the scheme in writing between 1 September 2005 and 28 February 2006.




Only members who reach their scheme's normal retirement age by 14 May 2007 (or if they have died, would have met this requirement) will qualify. Dependants are only eligible if they were receiving a pension before the scheme started to wind up and will reach the scheme's normal retirement age by 14 May 2007. (Presumably this means that children do not qualify for any assistance.) Benefits must not be fully secured as a result of underfunding in the scheme.

The pension payable from the Financial Assistance Scheme will be 80% of the member's expected pension (subject to a cap of £12,000 and a minimum of £520 pa) less any pension which the member actually receives. Survivors will be entitled to half this. AVC benefits are excluded. The first pension payment will not be made until the member reaches 65 (but will be backdated to 14 May 2004, if earlier). Terminally ill members who qualify for assistance from the FAS will be entitled to a pension immediately.

The regulations came into force on 1 September 2005, although it is not clear when payments will actually be made.

Now that the final regulations are available, schemes which have been in limbo can look at whether their members are likely to qualify for redress from the Financial Assistance Scheme. They must also ensure that they made the necessary notification to the FAS by 28 February 2006.



Reform

See also [POLICY](#)

[Pensions Commission report](#)

The Pensions Commission, chaired by ex CBI-chief Adair Turner, produced its first report on 12 October 2004. Policy recommendations suggest that we will either need to work for longer, save more or pay more taxes.

[Reform of state and private pensions](#)

Alan Johnson published in January 2005 a paper setting out the principles which will underpin the reform of state and private pensions. These will be the criteria which will guide further reform. The idea is to obtain national consensus on the next stage of the reform, by encouraging public debate before the publication of the Pension Commission's report in Autumn 2006. Once consensus has been achieved about the principles, the detail can be worked out later.



The six principles are:

- The pensions system must tackle poverty effectively.
- The opportunity to build an adequate retirement income for all.
- Public pensions provision must be sustainable.
- Fair outcomes for women and carers.
- A better understood system.
- To go forward, where possible, in consensus.

The Government recognised that any reform must strike a balance between the needs of individuals, employers, the financial services industry and the Government. A further report will be published on women and pensions.

The Government is seeking to obtain broad agreement on the way to reform pensions. Any change must be sustainable over the long term so that people can make personal choices about their retirement income. It is no good, for example, having a state pension if the goal posts are changed so that higher earners are then excluded. Similarly, all political parties must agree on the way forward as this requires a long-term solution, rather than a short-term fix. However, there have been a number of consultations on this issue over the last few years and the Government does not seem to be getting any closer to a solution. Furthermore, the six principles outlined in the document are not likely to be controversial. It is the detail (which the Government is leaving for the moment) which people want to know. That is where consensus is needed and that is what the Government cannot make a decision upon.

Employer task force pensions report

A report, published in December 2004 warned that action needs to be taken if employers wish to maintain the current voluntary system. Key recommendations are:

- There should be combined employer and employee contributions of 10 to 15% of salary. Employer contributions should make up 2/3rds of the total.
- There should be targeted incentives for smaller employers, who have a limited interest in pensions.
- Employee demand for pensions would encourage employers to provide them.
- Legislation and regulations act as a barrier to pension provision. The interaction of private and state pension provision causes confusion for employers, some of whom are concerned that it may not be in the employee's best interest to join the pension scheme.
- There should be a review of the annuity market.



The report on pensions highlighted some interesting points but it does not actually change anything. What is useful is that this report actually makes concrete proposals to try to encourage employers to make higher (and in many cases, any) contributions to pension schemes for their staff. However, the Government does not seem to be able to decide what to do about pensions, except to complicate things further with the new Pensions Act 2004. The report recognises that stability is what the pensions market needs and this is what the Government (and other political parties) should aim to provide.

The General Election and party manifestos

2005 saw a general election; the three main parties were reticent on pensions policy reforms:

Labour

- Nothing new in manifesto.
- Will seek a national consensus for long-term reform.
- Interested in citizen's pension but no commitment to change from means tested benefits.
- Likely to wait for results of Pensions Commission report before announcing changes. Has recently indicated that there will be further significant reform, but not until after the end of the next Parliament.

Conservatives

- Will retain contributory basic state pension. Increases would be made in line with earnings, rather than prices. Commitment is only for four years.
- Will create a new lifetime savings account in which Government contributions will top up the money people save. Not clear whether this is the same as the proposal to add £10 for every £100 saved towards a money purchase pension for basic rate taxpayers from April 2006.
- Will use unclaimed bank assets to replenish pension funds of people who lose out when schemes fail.
- No intention to reverse 1997 decision to scrap tax relief on pension fund dividends.
- Will abolish rules that prevent organisations promoting their pension schemes and will encourage employers to make pension schemes "opt-out" rather than "opt-in".

Liberal Democrats

- Will replace basic state pension for over 75s with a citizen's pension. The citizen's pension would be based on residency, rather than national insurance contributions. Increases would be made in line with average earnings. Not clear when the citizen's pension would be extended to under 75s.
- Will improve Financial Assistance Scheme benefits to Pension Protection Fund level.
- Actuaries amend guidance on bulk transfers without consent.



- Before trustees make a bulk transfer without consent, the scheme actuary must give a certificate. The guidance note for actuaries, GN 16, has been amended following legal advice. The new guidance no longer sets out tests which the actuary must carry out before giving a certificate. Instead, it is left to individual actuaries to determine, although relevant considerations are included. However, actuaries must now report additional items to trustees. These include matters which he has not taken into account when giving the certificate and whether any items should be investigated by the trustees before they agree to the transfer taking place.
- The new guidance was effective from 5 April 2005, although actuaries can use the previous version until 4 July 2005.
- Actuaries to publish new mortality tables.
- These latest tables highlight the effect that smoking has on death rates. Work is ongoing on the latest figures for mortality improvements.

Regulation



Pension Tracing service

The Pension Tracing service was transferred to the Department of Work and Pensions. Contact details are: The Pension Tracing Service, The Pension Service, Whitley Road, Newcastle upon Tyne, NE 98 1BA. The levy collection function will be managed by the Pensions Regulator.

Statutory money purchase illustrations

Revised technical memorandum 1 issued. The changes reflect the increased costs of annuities.

A copy of the memo is available at:

http://www.actuaries.org.uk/Display_Page.cgi?url=/pensions/smpi.xml

Pensions Act 2004 - Explanatory Notes

Explanatory notes for the Pensions Act 2004 published.

A copy of the note is available at:

<http://www.hmso.gov.uk/acts/en2004/2004en35.htm>

Scheme returns

The Pensions Regulator began issuing scheme return forms in April 2005 to 8,000 occupational pension schemes shortly. Other schemes were issued with a return later in the year.



The “scheme return” is designed to provide the Regulator with information, such as: scheme type and status, membership, details about trustees and their advisers, financial information about the scheme, and details about participating employers.

Trustees will have approximately eight weeks in which to complete the scheme return and send it back to the Regulator. The form will be sent to the scheme address and marked for the attention of the trustee(s). A guidance leaflet will also be provided to help with form completion.

Scheme design

Regulations on early leavers

The Pensions Act 2004 has, for the first time, given benefit rights to members of occupational pension schemes with less than two years' service. Early leavers with between three months' and two years' service will, from 6 April 2006, have the right to choose to take a transfer instead of a return of contributions. Where the scheme is in winding-up, members are only entitled to a refund of contributions. The legislation requires trustees to notify members of their rights and how to exercise them, and also to give effect to the member's chosen option within a reasonable period.

The Pensions Regulator issued a code of practice on this new legislation. Now the DWP has produced the Occupational Pension Schemes (Early leavers: Cash transfer sums and Contribution Refunds) Regulations 2005.

These cover:

- The calculation of cash transfer sums – these will be done on the same basis as cash equivalent transfers.
- The circumstances in which cash transfer sums and contribution refunds can be increased or reduced – broadly the same as for cash equivalent transfers. So cash transfer sums can be reduced where the scheme is under-funded. The reduction will be based on the last GN11 report, although the Government is looking at whether there should be additional protections for members once the current MFR underpin goes. A reduction can also be made where the scheme goes into winding-up after the member leaves the pension scheme.
- The requirements to be met by receiving schemes – again consistent with approach adopted for cash equivalent transfers.
- Member information – much of this is set out in the Pensions Act 2004, but additional information includes the reasons for any reduction, details of any tax liability and telling the member that if he does not respond before the reply date, the trustees will be entitled to pay a return of contributions to him.



Indexation set to go

The Government published the Personal and Occupational Pension Schemes (Indexation and Disclosure of Information) (Amendment) Regulations 2005. The amendments:

- Remove the indexation requirement for pensions derived from protected rights accrued before 6 April 1997;
- Require trustees to provide members with new information about annuities. This will include the characteristics of flat rate and index linked annuities. Trustees will also need to suggest that members consider taking professional advice.

A copy of the consultation can be found on


http://www.dwp.gov.uk/publications/dwp/2004/pops/index_info_req.pdf

What does the Regulator say about time limits?

The Pensions Regulator suggests that written notices setting out the member's rights should be given within two months of the member leaving pensionable service. Good practice would be to give this notice on the last day of service, but the Regulator accepts that this may not always be possible. If there is any delay, trustees should keep members informed and give them reasons for the delay.

The Regulator expects members to be given at least three months to decide whether to exercise their rights. Members must exercise their rights in writing – which includes fax and email, if both parties agree. Once a member has responded, trustees should give effect to his choice without “unjustifiable delay”. In practice, this normally means within three months. If a member does not respond, the Regulator expects trustees to allow at least three months after the reply date before they pay the contribution refund to the member.

Stakeholders



Stakeholders - lifestyling introduced

Under the Stakeholder Pension Schemes (Amendment) Regulations 2005 members who have not chosen how their contributions will be invested will be subject to lifestyling from at least five years before retirement. Lifestyling will apply automatically to members joining the scheme after 6 April 2005, but existing members will need to request it. Members will be able to opt out if they wish.

Amendments to stakeholder pension regulations

Regulations have been published and the aim is to ensure that stakeholder pensions are suitable to be sold under the basic advice regime. Key changes are:

- Where the member makes no investment choice, savings must be moved to less volatile investments over the five years before retirement. Existing members who have not made an investment choice must also be offered this “lifestyling” choice.



- The 1% cap on charges will remain for existing members. For new members the annual management charge can be increased to 1.5% for the first 10 years. Thereafter it will be 1%.

Separately, the Government has announced the discontinuance of the CAT standard. Further changes may be made over the next few years in the light of other Government pension initiatives.

State pensions

Deferring state pension

From 6 April 2005, there were extra incentives for people who put off claiming their state pension. The changes:

- Give an extra 1% of state pension for every five weeks deferred (down from seven weeks at the moment).
- Give a one-off lump sum payment equal to the amount of state pension the individual would have received during the deferred period, plus interest. Individuals will need to defer their pension for at least 12 months after 5 April 2005 for this to apply.
- Confirm that there is no time limit on the length of time that the state pension can be deferred.
- Confirm that if someone dies during the deferred period, their widow or widower will be able to claim the lump sum or extra state pension.

The DWP has produced a guide to the changes for individuals. This can be found at http://www.dwp.gov.uk/lifeevent/penret/penreform/6_sp.asp#a1

DWP guide to state pension deferral

To encourage the public to consider state pension deferral, the DWP has produced a new guide on the process.

A copy of the guide is available at:
<http://www.dwp.gov.uk/publications>

Equal Treatment - Age Discrimination

Legislation will set a default retirement age of 65. Employees can request working beyond compulsory retirement age and employers must consider any such request. Employers will be able to use an earlier retirement age, if they can show it is appropriate and necessary.



The Government will monitor whether it is appropriate to keep a retirement age. Formal reviews will take place every five years. Unjustified age discrimination in recruitment, promotion and other employment terms will be banned. Final legislation is due to come into force on 1 October 2006.

A copy of the Pinsent Masons Pensions Bite on Age Discrimination is available at: <http://www.pinsentmasons.com/media/212541668.pdf>

Taxation

Tax exemption for pensions information and advice

As announced in the 2005 Budget, regulations exempt pensions advice and information from tax. The changes apply from the 2005/06 tax year. To qualify, the benefit must generally be available to all employees and the advice must not exceed £150 per year for each employee. Investment, tax and legal advice is not covered.

Pension schemes required to notify IR electronically from April 2006

The Inland Revenue announced in November 2004 that from 6 April 2006, registered pension schemes are required to submit forms online and make payments electronically.

Overseas secondment requirement relaxed

In September 2004 the Inland Revenue issued guidance on overseas secondments. Employees who are seconded abroad have been able to remain in their UK approved pension scheme as long as their period of service abroad was less than 10 years. From 22 September 2005 this 10 year requirement has been waived for employees who are currently accruing benefits in a UK approved occupational pension scheme. The other conditions must still be met. From 6 April 2006 an employee will be entitled to accrue benefits in a UK scheme whether they are a UK resident or not. This latest relaxation of Inland Revenue policy is intended to reflect this change (HMRC Pensions Update 148).

NAPF Guide to the tax regime

The NAPF published a guide to the new tax regime. At 25 pages it was shorter than the legislation and it contains a checklist of what needs to be done.

Pre-budget report

- From 6 April 2006, there will be penal tax charges on SIPPs and other forms of self-directed pensions if they invest in residential property and certain other assets, such as fine wines.
- A member who takes a tax-free lump sum and then reinvests it in a pension scheme, will not be able to obtain any tax relief from the reinvestment.
- The Finance Bill 2006 will clarify how inheritance tax will apply to pensions from 6 April 2006. More details will be available shortly.



- The Government has welcomed the Turner Commission's report. It is working towards publication of a White Paper in spring 2006.
- The exemptions from financial regulation for employers advising employees on work-related financial matters including pensions, health, income and life insurance, share incentive schemes and share saver schemes will be broadened.

Pensions tax simplification - Inland Revenue announces further changes

The Inland Revenue has published a note of changes which will be introduced. Many of these resolve problems with the legislation and include:

Under the Finance Act 2004, there is no limit on the level of dependants' pensions which can be paid. A new limit will now be introduced, although no details of what this will be have been announced.

Schemes with fewer than 50 members will no longer have to secure pensions through an insurance company. Members of small schemes will be protected through the scheme funding legislation.

Transfers of pensions in payment will be possible, but no changes to their terms will be possible.

Current legislation only allows pensions in payment to be reduced in limited circumstances. These do not include ill-health pensions if the member's health improves. The general rule will be relaxed, but it is not clear whether it will cover ill-health.

HM Revenue and Customs (HMRC) published four new updates

- Update 150 – pre A-day avoidance: where the HMRC comes across a scheme which is trying to circumvent the boundaries of discretionary approval, it will consider whether this affects the approval of the pension scheme concerned.
- Update 151 – revised procedure for claiming tax relief on contributions to overseas schemes: sets out the new procedure which will apply from 6 April 2005.
- Update 152 – amendments to overseas transfers practice: as from 6 April 2005, overseas transfers of GMPs, post-97 contracted-out salary related rights, protected rights and safeguarded rights will have to meet HMRC requirements. The transferee must have left the UK on a permanent basis with no intention of returning to the UK to work or retire. (Previously, DWP legislation required the transferring scheme to establish that the member had permanently emigrated overseas, but this was removed from 6 April 2005.)
- Update 153 – permitted maximum: sets out the changes to the permitted maximum and earnings cap from 6 April 2005.



- Pensions Update 157 – simplifies the process for scheme administrators to report outstanding and/or late reports of chargeable events. Reports should be submitted on form 1(SF).
- Pensions Update 158 – sets out further measures which HMRC will take in relation to pre A-Day avoidance. All notifications to opt out of deemed registration will be considered by HMRC. Where necessary, enquiries will be made to ensure they are not part of an anti-avoidance device.

HM Revenue and Customs tax simplification forms

The HMRC has put draft forms on its website. The forms cover registration of new schemes, event reporting and protection of existing rights.

A copy of the forms are available at:

<http://www.hmrc.gov.uk/pensionschemes/draftregs.htm>

Tax simplification – more regulations published

HMRC has issued a raft of final regulations – these are essentially the same as previously issued regulations. In February 2005, HMRC published a note of changes which would be made to the tax simplification legislation. Some more of these proposals have been included in the Pension Schemes (Transitional Provisions) Order 2005. They include:

- Allowing a one-off payment to cover funeral expenses for those over 75, but only if the right to receive them exists (and the same right would have been offered if the member had joined the scheme on 10 December 2003) and the member had retired before 6 April 2006.
- Transitional provisions which would allow certain dependent children to be able to continue to receive a pension until they finish full-time education or vocational training (from 6 April 2006 no such pension can be paid after 23).

Tax simplification newsletter

HMRC has published ten newsletters on tax simplification.

The helpline number is – 0115 974 1600 or 0115 974 1777.

For a copy of any of these please see the link below:

<http://www.hmrc.gov.uk/pensionschemes/pts-newsletters.htm>

Tax simplification – HM Revenue and Customs produces new guidance

HMRC has produced guidance on the new tax regime for high earners. It gives a summary of the enhanced and primary protection and the protection of lump sum rights. Topics covered include how to calculate the maximum permitted pension, flexible retirement,



pension sharing orders, transfers and taking benefits before 55. The guidance contains numerous worked examples to illustrate the text. There is separate guidance for members and for scheme administrators.

A copy of the guidance is available at:

<http://www.hmrc.gov.uk/manuals/rpsmmanual/index.htm>

Finance Act 2005

The Finance Act 2005 introduced a number of changes to the pension tax simplification requirements. Many of these closed loop-holes in the tax simplification legislation.

The Act:

- Removes the requirement for schemes with fewer than 50 members to secure their pensions through an insurance company.
- Introduces a number of new circumstances in which a pension may be reduced once it has come into payment. Further circumstances may be prescribed by regulation. Unfortunately, there is still no provision which would allow ill-health pensions to be reduced, so schemes will need to wait until regulations are produced.
- Extends the definition of dependant to include ex-spouses who were married to the member when the pension came into payment.
- Relaxes the rules for the payment of dependants' pensions – there is no longer a requirement for pensions to be paid for life, until marriage or until cessation of dependency. This is intended to give schemes more flexibility.
- Introduces a new limit on the level of a dependant's pension. Where the member dies after 75, the total dependants' pensions must not exceed the member's pension at the date of death. Restrictions on future pension increases are also set out to avoid schemes trying to get around the initial limit.
- Extends the period to 2011 (from 2009) during which regulations can automatically modify scheme rules to deal with tax simplification.

For a copy of the Finance Act 2005, please see:

<http://www.opsi.gov.uk/acts/acts2005/20050007.htm>

Levies

The Occupational Pension Schemes (Levies) Regulations 2005 set the initial PPF flat-rate levy at £15 for actives and pensioners and £5 for deferreds. Members of the DC element of a hybrid scheme are exempt from the levy payment. Administration levies will depend on the number of members in the scheme.

The Occupational and Personal Pension Schemes (General Levy) Regulations 2005 set out the level of the general levy for occupational and personal pension schemes.



Budget 2005

Income tax

The limits for income tax will increase in line with statutory indexation. There are no other changes to income tax rates. The basic rate band for 2005/06 will apply to annual income of £2,091 to £32,400 per year (up from £2,021 to £31,400 for 2004/05).

Age-related allowances will increase in line with earnings to £7,090 for those aged 65-74 in 2005/06 (£6,830 for 2004-05), and for those aged 75 or over to £7,220 in 2005/06 (£6,950 for 2004-05). Other allowances, including the personal allowance for those aged under 65, will increase in line with statutory indexation. The earnings cap is increased in line with statutory indexation to £105,600.

Pension credit

The guarantee element of the Pension Credit will be increased by earnings until 2008. The Pension Credit guarantee has risen to £109.45 for single pensioners and £167.05 for couples from April 2005; and the Pension Credit savings credit reward has risen to a maximum of £16.44 a week for single pensioners and £21.51 for couples from April 2005.

Basic state pension

The basic state pension has risen to £82.05 for single pensioners and £131.20 for couples from April 2005.

Special benefits for the elderly

Over 65s will get a council tax rebate of £200.

Those over 60 will be entitled to free off peak local area bus travel from April 2006. All those entering hospital from April 2005 will continue to receive their full state pension and their full entitlement to Incapacity Benefit, Severe Disablement Allowance and Income Support for the entire duration of their stay in hospital from April 2006. Those already in hospital will have their benefits increased from April 2006 if they have then been in hospital for 52 weeks or more.

Trusteeship

See also [INSOLVENCY \(for Independent Trustees\)](#)

Code of Guidance for independent trustees

The Independent Pension Trustee Group, which is part of the PMI, issued guidance for independent trustees in August 2004. The guidance, in which Pinsent Masons' partners



Chris Mullen and Susan Andrews were involved, covers six main areas – appointment, dealing with co-trustees and third parties, investment, risk management, compliance and insolvency. Key points suggested that independent trustees should:

- review the recent scheme history and establish whether there have been any breaches of trust;
- have a working knowledge of the employer's business – this includes understanding the financial impact of the scheme on the business, and monitoring its ability to support the scheme.
- understand the factors that play a part in determining investment policy and have a thorough knowledge of the available asset classes.
- make sure that the scheme provisions and legal requirements are complied with.

The useful checklist for both trustees and independent trustees gives an indication of what standards are expected (although it is unlikely that lay trustees would be expected to have the same level of knowledge as paid professionals). The Pensions Ombudsman has said that he will be taking these standards into account when considering complaints against independent trustees. OPRA has also welcomed this checklist.

A copy of the Code is available at:
<http://www.pensions-pmi.org.uk>

Member nominated trustees - further clarification given

The DWP has said that the Government is looking at modifying the 50% member appointed trustee requirement in schemes which have independent trustees. Employers had been concerned that such an obligation would effectively mean that member appointed trustees outnumbered employer appointed trustees. The proposed change will mean that independent trustees would not be taken into account when working out the total number of trustees - the result is that employers could appoint an equal number of trustees to the membership.

PMI trustees' panel

The panel will advise the Government on issues which affect trustees including Myners. The TUC, NAPF and OPDU will collaborate with the panel.

Code of Practice - Trustee knowledge and understanding

Under the Pensions Act 2004, trustees must have knowledge and understanding of pensions and trust law as well as investment and funding principles. They must also be conversant with their own scheme's documentation. The degree of knowledge is not prescribed, but must be appropriate to enable the trustee to carry out his functions as trustee of his own scheme. The new requirements will apply both to defined benefit and defined contribution schemes.



This code of practice is intended to give trustees practical guidance on how to comply with these requirements. The main points are:

- Trustees are not expected to become experts. The aim is for trustees to have sufficient knowledge to understand the advice given to them, enter into discussions and challenge the advice, if necessary, and come to their own decisions.
- Trustees' individual training needs will depend upon the size, nature and complexity of their scheme and their role within it.
- Trustees will have six months from the date of their appointment to satisfy the new requirements, although corporate and professional trustees will have to meet the obligations immediately. Pre-appointment training is encouraged.
- The Regulator is looking at making learning more widely available, at a low cost.
- Trustees are expected to analyse their own training needs using the scope of knowledge, understanding and conversance as a checklist. This process will need to be regularly repeated (at least annually) to ensure that knowledge and understanding is kept up to date. Further training may be required if the trustee takes on a new role or if there are legislative or internal scheme changes.
- There will be no mandatory qualifications, although trustees can take accredited qualifications if they wish.
- The learning which is required should be measured in days not weeks. (During the Committee stage of the Pensions Bill, the Government suggested two full days' training on becoming a trustee and then one day each year.)

The new requirements apply from 6 April 2006.

A copy of the consultation paper is available at:

<http://www.pensionsregulator.gov.uk/pdf/codeTKU.pdf>

The Regulator has clearly listened to the pensions industry and has tried to recognise the different needs of each scheme. It has also tried to be understanding about the cost of training, particularly for smaller schemes. The Regulator may continue with this approach when it comes to look at whether trustees have met the relevant requirements. Given that different trustees will have different training needs, which each individual has to determine for himself, it may be that a generic training programme will not actually meet the requirements, except perhaps when they first become trustees. Trustees may therefore need to look at bespoke training or find courses which meet their individual training requirements. The code refers to informal learning, such as reading and attendance at trade conferences. This may suit larger schemes with experienced trustees.



The Occupational Pension Schemes (Trustees' Knowledge and Understanding) Regulations 2005

Gives new trustees six months' grace to meet the knowledge and understanding requirements. Trustees, however, will be expected to be conversant with the scheme's documentation immediately. Further details of the new knowledge and understanding requirements are set out in the code of practice.

http://www.dss.gov.uk/publications/dwp/2005/occ_pen_tku/occ_pen_tku.pdf

Winding-up

The Occupational Pension Schemes (Winding up etc) Regulations 2005

Broadly, these regulations replace the Occupational Pension Schemes (Winding Up) Regulations 1996 for schemes which went into winding up after 5 April 2005. The amendments are made as a result of changes which are being made by the Pensions Act 2004, which include a new statutory order of priority which applies to wind-ups after 5 April 2005. Under that priority order, PPF liabilities must be secured first.

Amongst other things, the regulations:

- Modify the method of calculating PPF liabilities for the purposes of calculating what benefits the trustees need to secure.
- Treat early leavers with between three months' and two years' service as if they have opted for a refund of contributions, rather than a right to a cash equivalent transfer.
- Slightly alter the rules for determining when the winding up commences. Changes made include where the Pensions Regulator or the courts order the scheme to be wound up.

The Occupational Pension Schemes (Employer Debt) Regulations 2005

These regulations replace the Occupational Pension Schemes (Deficiency on Winding up etc) Regulations 1996. They set out the method for calculating the statutory section 75 debt for schemes which start to wind up after 5 April 2005 unless the debt arose on or before this date.

The regulations appear simply to be a rewrite of the current position – ie the debt will be calculated on the buy-out level except where an employer leaves a multi-employer scheme which still has participating employers, when a modified version of the MFR will apply. This, of course, is set to change when the amendments being brought in by the Pensions Act 2004 come into force. At that point the debt will increase to buy-out level. There is provision in the Act for the debt to be calculated on a lower basis if approved arrangements are put



into place. Although no details are given in the Act, the explanatory note suggests that the scheme specific funding basis will be used for this lower debt calculation.

The Occupational Pension Schemes (Winding Up, Deficiency on Winding Up and Transfer Values) (Amendment) Regulations 2005

The section 75 debt on winding up will increase to full buy-out (including expenses) whether the employer is solvent or insolvent.

For multi-employer schemes that are not in winding up, the full buy-out debt will apply in each of the following cases:

- Where the last employer ceases to participate - so it will no longer matter whether this employer is solvent or insolvent; and
- Where a relevant insolvency event occurs in relation to a participating employer.

Where trustees of schemes in winding up receive a transfer request, they will be required to inform the member that the guaranteed transfer value may be affected by the winding up, that a decision to take the transfer value should be given careful consideration, and that the member should take independent financial advice before making a transfer.

A copy of the regulations is available at:

<http://www.hmso.gov.uk/si/si2005/20050072.htm>

MNTs to be increased to 50% but no increase in State Pension Age

Alan Johnson has announced that the number of MNTs in schemes is to be increased to 50%. However, it seems that it will be done so "incrementally". The implementation of the 50% requirement is likely to be delayed until 2009.

Alan Johnson also announced at the Labour Party Conference that a new challenge fund would be created. This will generate more workplace advice by specially trained union representatives.

Pensions Act 2004

The DWP has announced a timetable for implementation of the Pensions Act 2004.

Date	Pensions Bill measure
April 2005	Introduction of PPF
	Reduction of LPI cap to 2.5% for final salary schemes
	Withdrawal of LPI requirement for money purchase schemes
April 2006	Withdrawal of requirement to provide AVC facilities
	Change to contracted-out money purchase benefits to allow commutation
	Introduction of new rights for new joiners after 3 months
April 2007?	Annual benefit statements to be sent to members



Turner Report

The full report is 460 pages long. Even the executive summary covers 40 pages. It will take the pensions industry some time to go beyond the headlines and digest the details.

Turner recommendations

Introduction of a National Pension Savings Scheme (NPSS) by 2010

- Joint employer, employee and Government contribution rate of 8% gross earnings between the Primary Threshold and Upper Earnings Limit. Employer to pay a minimum of 3% with Government adding 1%. Employees would be enrolled automatically from 21, but could opt out.
- Voluntary contributions on top should be allowed, subject to a cap of twice the default contributions.
- Employers may opt out if they offer a pension scheme to which there is automatic enrolment. Contributions (taking into account charges) must be at least equal to that of the NPSS.
- Tax system for NPSS to be reviewed and possibly simplified.
- The self-employed should be able to join on a voluntary basis. Unpaid workers could also join and receive tax relief at basic rate.
- There would be a range of 6 to 10 basic funds, with further options on offer including a default fund. An annual management charge of not more than 0.3% should be the aim.
- Individuals would be free to purchase a level or index-linked annuity. Annuities could be single or joint-life. NPSS could have powers to bulk negotiate annuities for specific groups if it could get a better deal. On death before retirement, the fund would form part of the deceased person's estate.

Reform of state system

Retain two-tier system of basic state pension (BSP) and state second pension (S2P). Both pensions would be flat-rate. BSP would be increased in line with basic earnings. Individuals would accrue it in their own right and payment would be linked to residency rather than contribution record. The BSP for current pensioners would also be reformed so that it too would be based on residency over a specified age (75 is suggested). The system of credits for the S2P for carers should be improved. The Upper Earnings Limit for S2P accruals should be frozen to accelerate the S2P for a flat-rate pension.

Two alternative proposals for payment are suggested:

- One is an increase in the state pension age for both BSP and S2P. This would be a gradual rise to 66 in 2030, 67 in 2040 and 68 in 2050.



- Alternatively, S2P pension age could rise to 69 by 2050 with BSP rising only to 67 and three months. This difference would go some way to protect lower socio-economic groups which tend to have a lower life expectancy.

The Government to facilitate later working

Policies to achieve this include:

- Anti-age discrimination legislation which is coming into operation in October 2006. Turner recommends that there should be no default retirement age.
- Good financial incentives for later retirement.
- The Government to consider whether a reduced rate of employer's NI on earnings up to a maximum ceiling should be applied post state pension age.
- Strong focus on the education and training of older workers.

No major reform of the tax relief system

Reform of contracting-out rules

Contracting-out option to be abolished for DC and personal pension schemes. Members of these schemes would become members of the S2P. Contracting-out for DB schemes to continue for the time being. However, it should be abolished by 2030 at the latest, at which time S2P will become flat-rate.

Successor body to Pensions Commission established

The new body would report to Parliament and the Government every four years.

Review of annuity market suggested

The minimum and maximum ages for taking an annuity should increase in line with life expectancy.

The Turner Report is a detailed, minutely researched document. It is full of graphs and statistics and it contains many constructive proposals. However, the implementation of some of those proposals may prove tricky as the implications are far from simple. Savers could have a pension built up of five different elements – the basic state pension, the second state pension, the national pension savings scheme (basic and top-up) and a private pension. This is far from straightforward to explain. Whilst it is a shame that the report did not take the opportunity to simplify pensions dramatically, Turner is clearly concerned not to put additional burdens on DB schemes. Welcome to the new pensions minefield!



Legislation

The Occupational Pensions (Revaluation) Order 2005

2.7% for 1 January to 31 December 2005.

The Pensions Act 2004 (Commencement No 1 and Consequential and Transitional Provisions) Order 2004

brings into force from 17 December 2004 those parts of the Pensions Act 2004 which set up the Pensions Regulator and the board of the Pension Protection Fund, which cover the issue of codes of practice, which allow a deputy Pensions Ombudsman to be appointed and which cover the Pensions Compensation Board.

The Contracting-out, Protected Rights and Safeguarded Rights (Transfer Payment) Amendment Regulations 2005

will remove the requirement that trustees satisfy themselves that the member has permanently emigrated before making a transfer of contracted-out or safeguarded rights to an overseas scheme. The Inland Revenue will also be amending its guidance covering overseas transfers so that contracted-out and safeguarded rights are subject to the same requirements as non-contracted-out rights.

The Information and Consultation of Employees Regulations 2004

in force 6 April 2005. The DTI has also published guidance on the new requirements. For a copy please see below. http://www.dti.gov.uk/er/consultation/i_c_regs_guidance.pdf

The Pensions Regulator Tribunal Rules 2005

Occupational Pension Schemes (Levies) Regulations 2005

sets the initial PPF flat-rate levy at £15 for actives and pensioners and £5 for deferreds. Members of the DC element of a hybrid scheme are exempt from the levy payment.

Guaranteed Minimum Pensions Increase Order 2005

3% for increase of that part of any guaranteed minimum pension attributable to earnings factors for years 1988/89 to 1996/97.

The Social Security Revaluation of Earnings Factors Order 2005

4.1% for 2004/5.



The Social Security Pensions (Low Earnings Threshold) Order 2005

£12,100 for 2005/6.

The Pensions Act 2004 (Commencement No 2, Transitional Provisions and Consequential Amendments) Order 2005

brings into force sections of the Pensions Act 2004 including those relating to the PPF, dissolution of OPRA and transfer of its function to the Pensions Regulator, anti-avoidance, debt due from employer leaving multi-employer scheme, and provisions relating to paternity and adoption leave.

Financial Assistance Scheme

the Government announced that the benefit cap for the Financial Assistance Scheme will be £12,000. The DWP is asking scheme professionals to provide it with new or updated scheme information. For more details see http://www.dwp.gov.uk/lifeevent/penret/penreform/3_fas.asp

The Pensions Appeal Tribunals (Posthumous Appeals) (Amendment) Order 2005

The draft Pensions Regulator Tribunal (Legal Assistance Scheme) Regulations 2005

The Pensions Act 2004 (Commencement No 3, Transitional Provisions and Amendment) Order 2005

transfers OPRA's functions to the Pensions Regulator on 6 April 2005 and brings into force the provision increasing the debt due from an employer leaving a multi-employer scheme on 15 March 2005. This later provision is meaningless without regulations which have been deferred until early summer.

The Pensions Regulator Tribunal (Legal Assistance Scheme – Costs) Regulations 2005



The Pensions Regulator Tribunal
(Legal Assistance Scheme –
Costs) Regulations 2005

The Pension Protection Fund
(Partially Guaranteed Schemes)
(Modification) Regulations 2005

in force 6 April 2005.

The Pension Protection Fund
(Limit on Borrowing) Order 2005

in force 9 March 2005.

The Retirement Benefit Schemes
(Indexation of Earnings Cap)
Order 2005

increases the earnings cap to £105,600
for 2005/6.

The Retirement Benefits Schemes
(Increase in Permitted Maximum
in Transitional Cases) Order 2005

increases the final remuneration cap for
schemes approved before 1989 to £105,600
for 2005/6.

The Personal and Occupational
Pension Schemes (Indexation and
Disclosure of Information)
(Miscellaneous Amendments)
Regulations 2005

no indexation is required for the money
purchase benefits of hybrid schemes and for
protected rights coming into payment after
6 April 2005; where a person has the
opportunity to select an annuity provider,
trustees will need to comply with additional
disclosure requirements.

The Social Security (Deferral of
Retirement Pensions) Regulations
2005, The Social Security (Graduated
Retirement Benefit) Regulations
2005 and The Social Security
(Retirement Pensions etc)
(Transitional Provisions) Regulations

deal with the deferral of state pension
(for more details see deferring state
pension under regulatory practice).

The Occupational Pension
Schemes (Contracting-out)
(Amount Required For Restoring
State Scheme Rights)
Amendment Regulations 2005

amends the calculation of the amount
required for restoring state scheme rights
from 21 April 2005 in schemes which are
under-funded when wound up.

The Pensions Act 2004
(Commencement No 4 and
Amendment) Order 2005

brings into force the new requirement to
report breaches of law on 6 April 2005.



The Occupational and Personal Pension Schemes (Pension Liberation) Regulations 2005

relates to the courts' powers to order restitution where pension liberation has occurred.

Pension Protection Fund Regulations

The Pension Protection Fund (Appointment of Ordinary Members) Regulations 2005

sets out the process for appointing ordinary members to the board of the PPF.

The Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005

covers the PPF requirements of multi-employer schemes (both where sections are segregated and where they are not). It also covers the process where there is a requirement for partial wind-up, where there is no partial wind-up and where the trustees have the option of partial wind-up. Where there is no partial wind-up, the PPF is only a possibility if there is an insolvency event in relation to the last employer in the scheme. Where the trustees have to segregate part of the scheme's assets to cover the employer (ie there is a requirement for a partial wind-up), the segregated assets will be treated as a separate scheme. Where the trustees have the option, the scheme will be treated as if the trustees had chosen to segregate the assets. If the trustees decide not to exercise the option, they must notify the PPF.

The Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005

relates to the discharge of money purchase benefits during the assessment period.

The Pension Protection Fund (Compensation) Regulations 2005

gives more details of the compensation payable under the PPF. The regulations cover surviving dependants, ill-health pensions, revaluation and commutation.

The Pension Protection Fund (Maladministration) Regulations 2005

the process for making a complaint to the PPF and the decision-making process.



<p>The Pension Protection Fund (Reviewable Ill Health Pensions) Regulations 2005</p>	<p>sets out the procedure to be followed in respect of ill-health pensions.</p>
<p>The Pension Protection Fund (Eligible Schemes) Appointed Day Order 2005</p>	<p>confirms that schemes will not be eligible for the PPF if they are wound up before 6 April 2005.</p>
<p>The Pension Protection Fund (Statement of Investment Principles) Regulations 2005</p>	<p>set out the requirements relating to the Statement of Investment Principles which the PPF is required to prepare.</p>
<p>The Pension Protection Fund (Provision of Information) Regulations 2005</p>	<p>sets out the information which the PPF, insolvency practitioners, trustees, members and beneficiaries are required to provide if a scheme may be eligible for compensation. Time limits are also prescribed.</p>
<p>The Pension Protection Fund (Valuation) Regulations 2005</p>	<p>sets out how schemes which are eligible for the PPF should be valued. As well as an initial valuation, schemes will need to be valued every three years.</p>
<p>The Pension Protection Fund (Reviewable Matters) Regulations 2005</p>	<p>gives further details about which PPF decisions can be reviewed.</p>
<p>The Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005</p>	<p>sets out the process for review of the PPF's decisions.</p>
<p>The Pension Protection Fund (Entry Rules) Regulations 2005</p>	<p>sets out what is not an eligible scheme, the notification requirements for insolvency practitioners, the application process to the PPF and the types of payment and what can happen during an assessment period.</p>
<p>The Pension Protection Fund (PPF Ombudsman) Order 2005</p>	<p>allows the PPF Ombudsman to function from 6 April 2005.</p>
<p>The Pension Protection Fund (Pension Compensation Cap) Order 2005</p>	<p>sets the cap at £27,777.78, which would give active members maximum compensation of £25,000.</p>



The Occupational Pension Schemes (Modification of Pension Protection Provisions) Regulations 2005

ensures that a valuation of the scheme for the PPF takes into account changes to the assets and liabilities as a result of the trustees discharging their liability to provide a pension during the assessment period.

The Pension Protection Fund (Pension Protection Levies Consultation) Regulations 2005

consultation process for pension protection levies.

The Register of Occupational and Personal Pension Schemes Regulations 2005

sets out the information which must be kept on the register.

The Pensions Regulator Tribunal Rules 2005

The Pensions Appeal Tribunals (England and Wales) (Amendment) Rules 2005

provide a new route of appeal to the Pensions Appeal Commissioners.

The Pensions Regulator (Freezing Orders and Consequential Amendments) Regulations 2005

takes into account that trustees may not be able to comply with time limits if a freezing order has been made.

The Pensions Regulator Tribunal (Legal Assistance Scheme) Regulations 2005

The Pensions Regulator Tribunal (Legal Assistance Scheme - Costs) Regulations 2005

The Pensions Regulator (Freezing Orders and Consequential Amendments) Regulations 2005

extends time limits for statements of entitlement and transfer payments where a freezing order is in place. Where a freezing order is revoked and the Regulator makes an order covering the accrual of benefits during the period of the freezing order, the trustees must notify the Regulator within seven days and members within 14 days if the employer does not pay the contributions specified by the Regulator.



The Pension Protection Fund (Tax) (2005-06) Regulations 2005	tax application of the PPF and the Fraud Compensation Fund during the tax year 2005/6.
The Pension Protection Fund (Payments to meet Investment Costs) Regulations 2005	
The Financial Assistance Scheme (Internal Review) Regulations 2005	the internal review of reviewable determinations made under the FAS.
The Pensions Act 2004 (Commencement No 5) Order 2005	brings into force further Pensions Act 2004 provisions.
Occupational Pension Schemes (Administration and Audited Accounts) (Amendment) Regulations 2005	
The Registered Pension Schemes (Prescribed Manner of Determining Amount of Annuities) Regulations 2005	sets out how to determine the amount of a member's lifetime annuity, dependant's annuity and short-term annuity for the purposes of deciding whether an annuity is a lifetime annuity, dependant's annuity and short term annuity.
The Civil Partnership (Miscellaneous and Consequential Provisions) Order 2005	extends certain pension provisions to cover civil partners.
The Civil Partnership (Miscellaneous and Consequential Provisions) Order 2005	makes a number of changes, including to contracting-out and divorce legislation to cover civil partnerships.
The Occupational Pension Schemes (Scheme Funding) Regulations 2005	
The Occupational Pension Schemes (Investment) Regulations 2005	
The Occupational Pension Schemes (Cross Border Activities) Regulations 2005	



<p>The Pensions Ombudsman (Disclosure of Information) (Amendment of Specified Persons) Order 2005</p>	<p>allows the Pensions Ombudsman to disclose information to the Financial Ombudsman's office if he considers that disclosure would assist the person to discharge his functions.</p>
<p>The Social Security (Inherited SERPS) (Amendments relating to Civil Partnership) Regulations 2005</p>	<p>make changes to the SERPS regime to cover civil partners.</p>
<p>The Civil Partnership (Miscellaneous and Consequential Provisions) Order 2005</p>	<p>makes a number of changes including to contracting-out and divorce legislation to cover civil partnerships.</p>
<p>The Civil Partnership (Pensions, Social Security and Child Support) (Consequential, etc. Provisions) Order 2005</p>	<p>extends the pension divorce, disclosure, revaluation, preservation, IDR, modification and bankruptcy provisions to civil partners.</p>
<p>The Dissolution etc (Pensions) Regulations 2005</p>	<p>deals with the pension rights on dissolution, separation or nullity of civil partnerships.</p>
<p>The Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005</p>	<p>cover deferral of entitlement to state pension.</p>
<p>The Occupational Pension Schemes (Exemption) Regulations 2006</p>	<p>exempt certain occupational pension schemes with their main administration outside the EU from certain provisions of pensions legislation including preservation, IDR and section 75 debt requirements.</p>
<p>The Occupational Pension Schemes (Internal Controls) Regulations 2005</p>	
<p>The Occupational Pension Schemes (Payments to Employer) Regulations 2006</p>	



**The Pensions Act 2004
(Commencement No 8)
Order 2005**

brought the Pensions Act requirements relating to scheme funding, investment and borrowing and cross-border activities into force on 30 December 2005 as expected, and provisions relating to the pension protection levies on 9 December 2005.

**The Occupational Pension
Schemes (Early Leavers: Cash
Transfer Sums and Contribution
Refunds) Regulations 2006**

sets out how transfers and contribution refunds will be calculated for leavers with between three months' and two years' service. Broadly, these are equivalent to cash equivalent transfers and there are provisions for reducing the calculation where the scheme is in deficit.

**The Occupational Pension
Schemes (Regulatory Own Funds)
Regulations 2005**

regulations which the Government is required to implement as a result of the European Pensions Directive but which are not expected to catch UK occupational pension schemes.

**The Financial Assistance Scheme
(Appeals) Regulations 2005**

enable the Pensions Ombudsman (or his deputy) and the PPF to investigate and determine appeals against review decisions made by the FAS.

**The Pensions Act 2004 (PPF
Payments and FAS Payments)
(Consequential Provisions)
Order 2006**

allows PPF and FAS payments to be taken into account for state benefits.

**Pension Protection Fund (Tax)
Regulations 2006**

come into force on 6 April 2006. They generally provide that payments from the Pensions Protection Fund will receive the same tax treatment as if paid from a registered pension scheme.

**Pension Protection Fund
(Risk-based Pension Protection
Levy) Regulations 2006**

allow the PPF to reduce the risk-based levy where arrangements are in place that reduce insolvency (such as contingent assets). For more details, see above.



Cases

Alphabetical listing of cases reported in 2005 (inc USA & Can)

Alonso v INSS
Aon Trust Corporation Ltd v KPMG (a firm) & others
Association Provinciale Des Retraités d'Hydro-Québec v Hydro-Québec
Boivin v US Airways
Cross v British Airways
Drake Insurance v MacDonald
Gallaher v Gallaher Pensions
General Motors v United States
Henderson v Stephenson Harwood
Hooper v Secretary of State for Work and Pensions
James Hay Pension Trustees v Hird
Langbecker v Electronic Data Systems
Lewis v Pensions Ombudsman
Lonsdale v Braisby
MacDonald (HMIT) v Dextra Accessories
McGinley v Schilling
McKesson HBOC Inc ERISA Litigation
Milosky v American Airlines
MNOFP Trustees v Everard
NHS Pensions Agency v Suggett
Phoenix Venture Holdings Ltd
Pinsent Curtis v Capital Cranfield Trustees
Precis 521 v Mercer
R v Inland Revenue ex p Wilkinson
R v Secretary of State for Work and Pensions ex p Carson
Register v Honeywell Federal Manufacturing
Rousey v Jacoway
Rupp v Kunz
Saffil Pension Scheme v Curzon
Sieff v Fox
Smith v City of Jackson
Steria Limited v Ronald Hutchison
Strunk v Oregon Public Employees Retirement Board
Waller v Cornwall County Council
Ward v South Yorkshire Pension Authority
WorldCom ERISA Litigation



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