

## The Pensions Regulator

**“The Pensions Bill sets out proposals for a new Pensions Regulator to give better protection to members of work-based pension schemes and to reduce the compliance burden on well-run schemes.**

**It will focus on protecting the benefits of pension scheme members, concentrating its effort on schemes where it assesses that there is a high risk of fraud, bad governance or poor administration. The Pensions Regulator will have important new powers to tackle under-funding.**

**The Regulator will not overburden employers who provide pension schemes, enabling well-administered and funded schemes the freedom to continue supporting their schemes without being subject to constant, intrusive and burdensome regulation.”**

Andrew Smith, Secretary of State for Work and Pensions 12<sup>th</sup> February 2004

### **What happens at the moment?**

Occupational pensions are currently regulated by the Occupational Pensions Regulatory Authority (Opra). Opra takes action on certain reported breaches of pensions legislation to achieve compliance with the law. It has the power to impose civil penalties, and where appropriate, prosecute those responsible through the criminal courts.

Opra is an independent statutory body established on 1 April 1996 by the Pensions Act 1995. The Authority became operational on 6 April 1997. Its primary role is to protect scheme members' interests where people who run occupational pension schemes do not meet their legal obligations under the Pensions Act.

Scheme auditors and actuaries are under a duty to inform Opra of breaches of the law, and anyone else involved with the scheme can report their concerns to Opra.

Opra has laid good foundations in the regulation of work-based pensions, but the Government believes that regulation and regulatory bodies are most effective if they focus on the real risks. The current regulatory framework for work-based pensions does not fully support this approach.

Until the necessary legislation has been passed, Opra will continue to regulate the pensions industry.

### **What is changing?**

The new regulator will adopt a pro-active approach that in general adopts a light touch, concentrating on the things that threaten members' interest. That means a focus on fraud and mal-administration, as well as tough new powers on under-funding. But it also means much less of a regulatory burden for those well-run schemes that are best left to their own devices.

The aim of our approach in the Pensions Bill is to create a Pensions Regulator that is able to identify and focus on the areas of greatest risk, and provide better protection to members of work-based pension schemes

We want to change our approach to ensure that it is more risk-focused and pro-active.

It will be a respected and authoritative force in the regulated community. This new approach will benefit both those the Pensions Regulator seeks to protect, as well as those who provide and administer work-based pension schemes.

Scheme members will be better protected by a regulator that has the flexibility and powers to adopt a targeted approach to protecting scheme members' benefits, applying proportionate regulation depending on the level of the risks identified. For employers who are entering into pension provision for their employees there will be continued support by the Regulator, helping to keep burdens on business to a minimum. By targeting the badly run and highest-risk schemes the Pensions Regulator will enable well-administered and secure schemes to continue without unnecessary regulatory burden.

The Regulator will focus on tackling fraud, bad governance and poor administration and will encourage best practice through an increased education and guidance role. It will;

- have statutory objectives and functions under the Pensions Bill that set a clear framework for its activity and enable it to take a more flexible, pro-active and risk-based approach to regulation;
- be focused on those schemes where the risk to members' benefits is greatest;
- have a number of regulatory tools at its disposal, which are designed to protect members' benefits by improving the governance of schemes;
- be empowered to act quickly to anticipate and tackle issues before they become systemic and stop any practices that are detrimental to scheme members;
- provide education, advice and guidance to those administering, advising or running pension schemes;
- issue Codes of Practice to enable scheme trustees and professionals to understand readily how to comply with legislative requirements; and
- consider, where appropriate, the use of wider powers to undertake investigations and continue to act on reports by 'whistleblowers'.

### **How will the Pensions Regulator improve protection?**

The Pensions Regulator will inherit Opra's current powers as well as having a range of new or increased powers which will assist it in fulfilling its objective of protecting members' benefits.

The Regulator will have powers to gather, retain and share relevant information. The information gathered will be subject to analysis to inform the

risk-based approach. This will help to identify those schemes where members' benefits are more likely to be at risk and where regulatory intervention may be required.

The Pensions Regulator will also have a specific function of providing information, education and assistance to certain categories of people involved in administering, advising and facilitating the operation of certain schemes.

Other powers will include:

- issuing improvement notices compelling schemes to take specified action to remedy identified problems within a specified timescale;
- the ability to freeze a scheme whilst investigations take place to protect members' benefits or scheme assets;
- increased powers covering the suspension and removal of trustees; and
- increased whistleblowing responsibilities and duties to report certain events;

To ensure that procedures are fair some functions will be exercised by a Determinations Panel which is a body appointed by the Regulator.

The following examples show how The Pensions Regulator will work:

### **Example A**

**Scheme is poorly administered and has failed to produce annual accounts or an actuarial valuation. This could have significant effect on the security of the scheme funds because the funding level and investment practices are unknown to members or the Regulator.**

#### **Existing Powers**

Risk to members' benefits are not reduced because, although Opra may sanction those responsible, it has no powers to ensure that the scheme is brought back to order.

#### **New Pensions Regulator**

Protection of members' funds will be improved as the Pensions Regulator will have the option of issuing an improvement notice, which will require the scheme to return to order over a specified period. The Regulator can also issue third party notices where a contravention of pensions legislation is wholly, or partly attributable to the actions, or failure to act, of another person (the third party).

## **Example B**

**A pension scheme is under-funded and the employer is not paying sufficient contributions to return the scheme funding to the minimum level required to cover all liabilities. Such a situation may arise in particular if a member or number of members are due to retire early with enhanced benefits, perhaps as part of a redundancy package.**

### **Existing powers**

Opra's only options are to wind up the scheme or to appoint an independent trustee. Winding-up may result in some members losing a large proportion of their pension benefits.

### **New Pensions Regulator**

The new Regulator will have an additional power to 'freeze' the scheme for a period of time. This will enable the Regulator to investigate the situation further, and to encourage the employer and trustees to negotiate in order to remedy the situation without having to resort to winding up. Freezing the scheme in the meantime will help prevent the funding position from deteriorating further during this time.

## **Who will appoint the Pensions Regulator?**

The Governing Board of the Pensions Regulator will consist of a Chairman and at least six other members. The Secretary of State for Work and Pensions will appoint the Chairman and members of the Board.

The Pensions Regulator will establish a committee of non-executive board members which will exercise certain specified functions including the duty to keep under review the strategic direction of the Regulator.

## **Why won't the Regulator appoint the Board?**

The Secretary of State is accountable to Parliament for the performance of the Regulator. In making appointments he will have regard to any recommendations made by the Chairman with respect to the skills and knowledge appropriate for members of the Board. This strikes the balance between Parliamentary control and a Regulator operating at arms length from Government.

## **Who will review the role of the Regulator?**

The Pensions Regulator will be required to establish a non-executive committee to exercise certain specified functions, including the duty to contribute to and keep under review the strategic direction of the Regulator.

Legislation will make it clear that the main function of the Chief Executive of the Pensions Regulator will be to secure the effective and efficient discharge of the Regulator's activities.

As a Non-Departmental Public Body the Regulator will be subject to periodic review and scrutiny by the National Audit Office, as well as any other review considered appropriate by the Secretary of State.

### **What information-gathering powers will the Regulator have?**

In order to assess scheme risk the Regulator will need a substantial amount of up-to-date information on each pension scheme. This will be collected via a scheme return which must be completed at the request of the Regulator.

Failure to complete the return may result in a civil penalty. The Regulator will have other powers to collect, retain and disclose relevant information to assist it with the discharge of its regulatory functions.

### **If the Pensions Regulator makes a decision which those involved do not agree with, what can they do?**

Any person directly affected by a determination of the Regulator will be able to refer the matter to an independent tribunal – the Pensions Regulator Tribunal.

### **What is the relationship between the Financial Services Authority and The Pensions Regulator?**

We will ensure that the new Pensions Regulator and the FSA complement each other.

### **When will the new Pensions Regulator be in place?**

The new Pensions Regulator will be in place, subject to passage of the necessary legislation, from April 2005.

### **More information is available at?**

The shape of The Pensions Regulator is based on the findings of the report of the Quinquennial Review of the Occupational Pensions Regulatory Authority, the NAO Report on Opra 2002 and the findings of the Pickering Report in July 2002. The structure of the Board implements a recommendation of the Derek Higgs' Review for the Chancellor of the Exchequer and the Secretary of State for Trade and Industry of the role and effectiveness of non-executive directors (January 2003).