Screening Regulatory Impact Analysis

Application of the Pensions Act, 1990, to Retirement Annuity Contracts

1. Policy Context

1.1 Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision ("the Directive") imposes regulatory requirements on occupational pension schemes and these requirements also apply to trust based Retirement Annuity Contracts ("trust RACs"). In order to comply with the IORPs Directive, trust RACs should be subject to Pensions Act ("the Act") provisions.

1.2 Individual RACs are set up under individual contracts with an insurer. These contracts are governed by the Life Directives and are not subject to the Pensions Act.

1.3 The one exception is a scheme for a group of individuals established under trust. Examples of trust RACs are those operated by certain professional bodies, including the Bar Council, the Institute of Chartered Accountants in Ireland and the Law Society of Ireland. Trust RACs are schemes to which section 784(4) or section 785(5) of the Taxes Consolidation Act refers. The rationale for establishing RACs under trust is mainly to avail of economies of scale through group discount rates and to centralise administration procedures.

1.4 Trust RACs must be established for the benefit of individuals engaged in, or connected with, a particular occupation for the purposes of providing retirement annuities for them or for the purposes of providing annuities or lump sums for their dependants. They are not obliged to invest their assets in insurance contracts, although in practice, many of them do.

1.5 Trust-based RAC schemes can be set up as insured or self-administered arrangements. Under an insured arrangement, there should be a trust deed setting up the scheme. The trustees then effect a group pension policy with a life company and each member has his own account within this group policy. Under the self-administered arrangement, a trust deed establishes the scheme, and entitlements are unitized and the trust is not required to wholly invest in insurance policies.

Current regulatory requirements applying to RAC arrangements

<u>Individual RACs</u>

1.6 Individual RACs issued on or after 1 February 2001 are subject to the Life Assurance (Provision of Information) Regulations, 2001, which requires the disclosure of information to the individual at the issue of the policy and annual statements in respect of the premium payable and the current surrender value. Certain chapters of the Financial Regulator's Consumer Protection Code is also applicable.

1.7 An individual RAC holder has a statutory right to refer a compliant about the conduct of an insurer and/or an insurance intermediary involved in an RAC to the Financial Services Ombudsman on a wide range of grounds, including that conduct complained of was contrary to law, unreasonable, unjust, discriminatory or otherwise improper. The Financial Regulator can award compensation to the policy holder.

1.8 The insurance company with whom the individual RAC is established is regulated by the Financial Regulator.

<u>Trust RACs (insured)</u>

1.9 It appears that many of these schemes have operated on a 'de facto' series of individual RACs basis for a number of years, many without formal trust documentation and, in many cases, without the life company ever issuing a group policy document to the trustees. In the early years, all contributors paid by members under these schemes were pooled but, since the early 1990s, members' assets in the majority of these schemes have been administered in much the same way as individual retirement annuity contracts.

Life Assurance (Provision of Information) Regulations, 2001

1.9 The Life Assurance (Provision of Information) Regulations, 2001, do not apply to insured trust RACs as the trustees of these schemes are not individuals but trade organisations and/or representative bodies.

Financial Regulator's Consumer Protection Code

1.10 Certain chapters (General Principles; Common Rules; Insurance; Advertising) of the Financial Regulator's Consumer Protection Code apply to insured trust RACs

Trustee investment powers

1.11 It is possible that many insured trust RACs may, in the absence of specific wide investment powers granted to the trustees, be subject to the restrictions of the Trustee (Authorised Investments) Act, 1958 and Orders made under that Act from time to time. If so, many of these schemes may not have complied with the requirements of the Act and its Orders by investing 100% in a single life assurance policy.

Complaints

There is no independent legal forum to which individuals can make complaints or seek redress apart from the possibility of taking a court action for breach of trust. The expense and time involved in bringing such an action is likely to deter most complainants.

Recent developments

1.12 Anecdotal evidence suggests that many insurers are relatively unenthusiastic about group RAC trust insured schemes, given that they are effectively administered as a series of individual contracts, but with the disadvantages of a group structure, e.g. offering better 'bulk' terms. In addition, their popularity among consumers appears to have declined substantially in recent years due to a combination of market developments.

<u>RAC Trusts – self-administered schemes</u>

1.10 These schemes appear to be properly established under trust documentation, with wide investment powers for trustees (therefore not subject to Trustee (Authorised Investments) Act, 1958). It also appears that such schemes have appointed auditors who must prepare annual audited accounts, as per the terms of the Trust Deed and Rules.

<u>IORPs and the Pensions Act</u>

1.11 It is the view of the Department and the Pensions Board that both insured and self-administered trust RACs fall within the scope of the Directive on the basis that the trust is established separately from 'any sponsoring undertaking or trade' for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement with self employed persons. In this regard, there is a need to bring such arrangements under the remit of the Act.

1.12 An option to avail of a derogation under Article 5 of the Directive, to exclude small trust RACs (with less than 100 members, including deferreds and actives), is also considered in this analysis.

2. Statement of Objectives

2.1 To ensure that trust RACs are subject to minimum regulatory standards in order to protect the interests of consumers (scheme members).

2.2 To provide improved consistency of approach in regulating trust-based pension schemes generally

3. Identification of options/choices

A. Do nothing

The "do nothing" option is primarily being included for benchmarking purposes. Therefore, it will not be examined in great detail as part of this RIA because it is not envisaged that this option will be pursued in practice. To take no action would mean a failure to comply fully with our EU obligations. If such an approach was taken, the status quo, as set out in the policy context section above, would remain.

B. Bring only trust RACs under the remit of the Pensions Act

This option examines whether only trust RACs should be brought under the Act, leaving individual RAC contracts under their current regulatory regime. Individual RACs, or personal pensions, are currently subject to a significant regulatory infrastructure, including the Life Assurance (Provision of Information) Regulations, 2001, Article 45(3) of the European Communities (Life Assurance) Framework Regulations, 1994, the Financial Regulator Consumer Protection Code, and a right of redress to the Financial Services Ombudsman. In addition, individual RACs do not fall under the requirements of the IORPs Directive. In this regard, this option considers whether only trust RACs should be subject to Pensions Act provisions.

C. **Bring all Retirement Annuity Contracts under the remit of the Pensions Act**

Bearing in mind that the IORPs Directive requires trust RACs to be subject to certain provisions of the Pensions Act, this option looks at 'gold-plating' this requirement and examines whether all RACs should be brought under the Act's scope.

Note: In relation to Options B and C, only "large trust RACs" are required to be subject to the IORPs Directive. A derogation exists in the Directive in relation to small schemes (trust RACs with less than 100 active and deferred members in total). It is considered proportionate to take this derogation for small trust RACs. However, as these smaller schemes also have a trust underlay, it is appropriate to set out minimal responsibilities of such bodies of trustees and to provide for investigation and the taking of enforcement measures by the Pensions Board where they have failed to discharge their responsibilities, consistent with other small trust-based schemes.

4. Identification of costs, benefits and impacts

4.1 COSTS

Option A: Do Nothing

4.1.1 The do nothing option will not require a legislative amendment, and thus will not impose initial additional costs on the Exchequer, industry, nor consumers.

4.1.2 However, a cost of this option is the ongoing (negative) impact it would have on consumer protection. At present, trust RACs do not offer the same protections that are afforded occupational pension schemes under the Pensions Act. While the situation differs between insured and self-administered trust RACs, even in the case of the latter, where in practice the trust deed provides for protections for the individual such as the requirement to have audited accounts, there are no remedies available to the individual for breach of any of the requirements - apart from a court action, which is not an attractive option.

Option B: Bring only trust RACs under the remit of the Pensions Act, as required by the IORPs Directive

4.1.3 The costs associated with applying relevant Pensions Act provisions to trust RACs mainly relate to compliance with a new regime. To assist with an analysis of prospective costs, trust RACs are compared to the regulation currently experienced by comparable defined contribution schemes. **Appendix I** sets out the relevant Articles of the IORPs Directive, the corresponding sections of the Pensions Act to which the Articles apply, the current arrangements for defined contribution occupational pension schemes under these sections, and the potential costs associated of applying these sections to trust RACs.

4.1.4 As stated previously, given the additional regulatory burden involved, it is considered disproportionate to apply all IORPs requirements to small trust-based RAC schemes. A derogation exists to exclude schemes of less than one hundred members (deferreds and actives) from the requirements of the Directive. It is envisaged, in particular, that the disclosure of information requirements of the Directive should not apply to small trust RACs for reasons of proportionality.

4.1.5 The Directive also requires, however, that small trust RACs comply fully with the Directive in the unlikely event that such trusts were to apply to engage in cross-border activities.

Summary of Costs for Option B

4.1.6 Costs for Option B fall, in the main, on the schemes themselves through the additional administration required (compliance costs) to fulfil new statutory obligations. Minimal, if any, costs fall on the Pensions Board, as its supervisory reach is slightly extended to cover trust RACs.

Costs for large trust RACs

Bearer of Cost	**Registration**	**Administration**	**Supervision**
Scheme member	€9.50 p.a. per member		
Large trust RAC		Additional compliance costs	
Industry (providers)		Additional compliance costs	
Pensions Board			Minimal, if any, additional costs
Financial Regulator			Minimal, if any, additional costs
Pensions Ombudsman			Minimal, if any, additional costs
Financial Services Ombudsman			Minimal, if any, additional costs

Costs for small trust RACs

Bearer of Cost	Registration	Administration	Supervision
Scheme member	€9.50 p.a. per member		
Small trust RAC		Minimal	
Industry (providers)		Minimal	
Pensions Board			Minimal/none
Financial Regulator			Minimal/none
Pensions Ombudsman			Minimal/none
Financial Services Ombudsman			Minimal/none

4.1.7 It should be noted that the final bearer of costs is not always apparent as costs can be passed on. For example, increased administration costs may be borne, in the first instance, by the providers, but these may be passed on to the consumer through higher fees and charges.

<u>Option C: Bring all RACs under the remit of the Pensions Act</u>

4.1.8 As already stated, individual RACs are not required to be subject to the Act under the Directive. The Act is designed around the regulation of trusts, and significant legislative changes would be required in order to apply the Pensions Act to individual RACs. However, there may be benefits to be gained from this approach, particularly if the protections offered by the Act for consumers were greater than those currently enjoyed under the existing regulatory regime. **Appendix II**, however, examines the potential costs involved in applying the Pensions Act regime to individual RACs, bearing in mind that total costs for this option include those identified under Option B. In addition, the costs identified are restricted to applying the provisions of the Pensions Act that currently apply to one-member Defined Contribution arrangements. In this regard, derogations that apply to one-member arrangements are also envisaged to apply to individual RACs. Rather than focusing on IORPs provisions, therefore, Appendix II focuses on the relevant provisions of the Pensions Act.

Summary of costs for Option C

4.1.9 Again, the costs of bringing all RACs under the remit of the Act fall mainly on the schemes themselves, where additional compliance costs arise. In addition, conflict may arise between existing legislative requirements and those under the Pensions Act, where there could be confusing and conflicting duplication of requirements.

4.1.10 This option may add cost through the opening of regulatory gaps whereby individual RACs are subject to certain Pensions Act requirements and (similar) PRSAs are not. Given that PRSAs are already subject to a separate regulatory regime under the Pensions Act, it would be impractical to subject PRSAs to aspects of double regulation under the Act.

4.1.11 While it is difficult to quantify, costs may accrue through over-regulation if this option were to be chosen. It would also be inconsistent with the principles of Better Regulation. A summary of the costs are:

4.1.12 The costs of Option B plus:

Bearer of Cost	**Registration**	**Administration**	**Supervision**
Scheme member	€9.50 p.a. per member		
Industry (providers)		Significant IT and other costs associated with moving business to new regime	
Pensions Board			Significant supervision costs
Financial Regulator			None
Pensions Ombudsman			(Depends on responsibility for complaints)
Financial Services Ombudsman			(Depends on responsibility for complaints)

4.2 BENEFITS

Option A: "Do Nothing"

4.2.1 It is unlikely that the 'do nothing' option would provide any benefits. In terms of improving customer protection objective, the existing regime would remain and no benefits would accrue towards achieving this objective. In addition, the conflicting regulatory approach between trust-based schemes generally (e.g. between occupational pension schemes and trust-based RACs) would remain and thus no benefits would accrue.

Option B: Bring only trust RACs under the remit of the Act, as required by the IORPs Directive

4.2.2 The benefits to be gained from Option B consist of the following:

i) Additional consumer/scheme member protection
ii) Addressing regulatory gaps and streamlining the regulatory regime
iii) Increased governance standards and accountability in trust RACs

Option C: Bring all Retirement Annuity Contracts under the remit of the Pensions Act

4.2.3 The benefits accruing to Option C include those already stated under Option B in relation to trust RACs. In relation to individual RACs, the providers of these products are regulated by the Financial Regulator, and those contracts issued on or after 1 February 2001 must comply with the disclosure of information requirements under the Life Assurance (Provision of Information) Regulations, 2001. The Financial Regulator's Consumer Protection Code also requires insurers and insurance intermediaries to have procedures in place for dealing with complaints concerning individual RACs and the RAC holder has a statutory right to refer a complaint about the conduct of the insurer or insurance intermediary involved in the RAC to the Financial Services Ombudsman.

4.2.4 The only area where there might be 'added value' by extending the Act's requirements to individual RACs would be in specifying the "Statement of Reasonable Projection – DC" as the annual benefit statement, compared to the current legal requirements in relation to RACs. This would ensure consistent projections as between individual RAC holders, members of trust RAC arrangements and members of defined contribution occupational pension schemes. However, if this were to be done, it would be more appropriately achieved through the Financial Regulator.

4.3 OTHER IMPACTS

Option A: Do Nothing

4.3.1 The 'do nothing' option, as it retains the status quo, would not have a significant impact on national competitiveness, the socially excluded or vulnerable groups, the environment, the rights of citizens, nor the compliance burden. In addition, this option would not involve any policy change in an economic market. However, it would impact on consumer protection in a negative way by failing to address current shortcomings in the regulatory regime.

Option B: Bring only trust-based Retirement Annuity Contracts under the remit of the Pensions Act, as required by the IORPs Directive

National Competitiveness

4.3.2 The inclusion of trust RACs in the Act's provisions, as required under the Directive, has a small potential to increase competitiveness, allowing members of particular professions in other Member States to join trust RACs in this jurisdiction. This scenario also depends on other factors (e.g. fees/charges and regulatory competition), however. The decision to adopt proportionate regulatory standards, however, is positive from the point of view of competitiveness.

Impacts on the socially excluded or vulnerable groups

4.3.3 There are no envisaged impacts.

Environmental Impacts

4.3.4 There are no envisaged impacts.

Significant policy change in an economic market / Impact on consumers and competition

4.3.5 There is a possibility that the application of these requirement to insured trust RACs may cause insurers to seek to unwind such group schemes (particularly smaller, more inactive schemes) and replace them by a series of individual RACs. This might not be an unattractive outcome, however, as many such schemes are already operated on a similar basis to individual RACs. In addition, it is not considered that such a scenario would have a significant impact on consumers nor competition, given that most provisions will only apply to the large trust RACs and that strong consumer protections apply in the individual RAC market.

The rights of citizens

4.3.6 There are no envisaged impacts.

Option C: Bring all Retirement Annuity Contracts under the remit of the Pensions Act

National Competitiveness

4.3.7 No additional impacts beyond those envisaged under Option B.

Impacts on the socially excluded or vulnerable groups

4.3.8 There are no envisaged impacts.

Environmental Impacts

4.3.9 There are no envisaged impacts.

Significant policy change in an economic market / Impact on consumers and competition

4.3.10 The inclusion of individual RACs under the Pensions Act provisions is likely to result in over-regulation and conflict between the new regime and existing regulatory requirements.

The rights of citizens

4.3.11 There are no envisaged impacts.

5. Summary of costs, benefits and impacts

5.1 Option A: No benefits in applying this option and some non-Exchequer extra costs. Not a valid option as the Directive requires its provisions to apply to trust RACs.

5.2 Option B: There are costs associated with this proposal which are spread between the consumer, industry and the regulatory bodies. The benefits provided, however, are in line with the objectives of the regulation and will provide added consumer protection and a more consistent and accountable regulatory regime. While there may be some impact on the trust RAC market, this is likely to occur through transfer to individual RACs, a move which will not have a significant negative impact on the consumer nor the industry.

5.3 Option C: Relative to Option B, Option C is likely to involve more costs (to schemes and consumers) and unnecessary regulation with little, if any, benefit in terms of consumer protection.

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

6. Consultation

Background

6.1 In May 2006, the Pensions Board wrote to the main providers of trust-based Retirement Annuity Contracts (RACs) and trade and professional organisations who operated trust-based RACs on behalf of their members. The purpose of the letter was to advise that the IORPs Directive appeared to impose regulatory requirements on trust-based RACs and that the Board was considering bringing such schemes within the ambit of the Pensions Act to comply with the Directive. The Board asked for views and comments on this proposal and also sought additional information from the providers and trade and professional organisations on the nature of the trust-based RAC operated by them.

General comments received from providers of trust-based RACs and organisations operating such schemes include:

6.2 Irish Postmasters Union: Would welcome any developments that would better secure the rights of their members, including regulatory requirements on the scheme. Had a concern about some of their members who pay such small contributions that scheme costs negated such contributions.

6.3 Construction Industry Retirement Trust Scheme: No objection to bringing their scheme within the IORPs Directive. They requested, however, that the Pensions Board exercise care when introducing regulations on retirement trust schemes so as to avoid imposing an excessive compliance burden.

6.4 Irish Pharmaceutical Union: The trustees of the scheme did not have the opportunity to consider the Pensions Board's proposals but the Secretary General of the Union stated that it would be important that any changes made did not increase compliance costs on members.

6.5 Bank of Ireland Trust Services (trustees of Law Society of Ireland Retirement Trust Scheme and the Bar Council): Bank of Ireland Trust Services outlined the possible implications that may arise on bringing trust-based RACs within the ambit of the Pensions Act, as follows, including

- Potentially significant compliance costs
- Structural issues, e.g. if required to invest in individual underlying contract/insurance policy-based investments
- The interest and capability of potential providers in providing a personal pension administration service to a small number of trust schemes.
- Any additional operational issues for the schemes arising from statutory and regulatory obligations of some service providers under, for example, the Investment Intermediaries Act, 1995, and/or relevant Industry Codes.

6.7 Irish Life: Irish Life contends that the Directive does not apply to trust RACs as the sponsoring undertaking (employer) is not required to pay contributions to the scheme. Irish Life's interpretation of the Directive is that the sponsoring undertaking must pay contributions into the institution for occupational retirement provision (IORP) for the Directive to apply to that scheme.

6.8 Comment on Irish Life view: Legal and other advice received by the Board suggests that trust RACs fall within the scope of the Directive on the basis that the trust is established separately from "any sponsoring undertaking or trade" for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement with self-employed persons. There is no requirement for the sponsoring undertaking to contribute to the trust in order for the arrangement to be considered as an IORP under the Directive. (If that were the case, for example, group AVC schemes would be outside the terms of the Directive.)

6.9 General Comment: The regulatory response to the requirement to apply the Directive to trust RACs is considered proportionate and in keeping with the principles of Better Regulation. While it will add compliance costs to some schemes, there are also significant benefits in terms of added consumer protection and added internal consistency of the regulatory regime across pension schemes.

7. Enforcement and compliance

7.1 Enforcement of the new requirements on trust RACs will be carried out by the Pensions Board, in line with its current enforcement approach to occupational pension schemes.

7.2 The Pensions Board expects a high level of compliance with the new regime and will use existing practices (i.e. those that apply to occupational pension schemes) to ensure that that this is achieved.

Better regulation principles

7.3 These legislative amendments are in line with the Better Regulation principle of consistency in that it is introducing regulation on trust RACs that is consistent with regulation of occupational pension schemes (also established under trust). The regulation will not give rise to anomalies or inconsistencies but will instead close regulatory gaps.

7.4 The legislation will also increase accountability in that the trustees of trust RACs will be under more direct supervision and will be more clearly accountable for their actions or lack of compliance.

Complaints/Redress

7.5 Following discussions between the Financial Services Ombudsman and the Pensions Ombudsman, it is intended that they will be responsible for rights to redress in the following way:

Financial Services Ombudsman	**Pensions Ombudsman**
Insured trust RACs (on a "look through" basis)	Self-administered trust RACs
Contract-based (individual) RACs – as at present	

8. Review

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

Appendix I

***OPTION B**: Legislative amendments required to satisfy IORPs requirements for trust-based RACs and potential costs*

IORPs Article	**Existing legislative requirements for DC occupational pension schemes**	**Amendments required to Pensions Act**	**Cost**
Article 9(1)(a) [Registration]	Section 60 sets out the requirements on trustees to register the scheme. The scheme must be registered within a year of commencement.	The Act has to be amended to require all trust RACs to register with the Pensions Board and pay the relevant fees.	Additional administration and cost. €9.50 per member. c.10,000 members. €95,000 p.a.
Article 9(1)(b) [Institution should be run by persons of good repute with appropriate qualifications and experience.]	Various sections of the Act require that trustees must have certain knowledge and satisfy certain requirements. The Board has the power to determine whether a person satisfies these requirements.	These sections should be applied to trustees of all trust RACs as they currently apply in respect of trustees of occupational pension schemes.	Additional administration and cost.
Article 9(1)(c) [Schemes should have properly constituted rules, implement them, and inform members of the rules]	Section 2(1) of the Pensions Act defines "rules" for the purpose of an occupational pension scheme	All trust RACs should be required to have a trust deed and rules.	Additional administration and cost for some schemes.
Article 9(1)(f) [Disclosure]	The Disclosure Regulations under section 54 of the Act apply these requirements to occupational pension schemes.	Modified Disclosure Regulations detailing minimum IORPs requirements for large trust-based RACs will have to be drafted, providing for the minimum disclosure requirements as provided for by the Directive.	Additional administration and cost for large trust RACs.
Article 10 [Annual accounts and annual reports]	Section 55 imposes a duty on trustees of a pension scheme to prepare an annual report. Section 56 imposes various duties on the trustees of pension schemes, including the duty to have the accounts audited in the case of a large DC scheme and the duty to have the assets and liabilities of the scheme actuarially valued.	Large trust-based RACs should be treated in the same manner as large DC schemes under the Pensions Act.	Additional administration and cost.
Article 11 [Disclosure]	Pensions Act disclosure requirements	Disclosure requirements should be	Additional administration and cost.

IORPs Article	Existing legislative requirements for DC occupational pension schemes	Amendments required to Pensions Act	Cost
	impose a duty on trustees and employers to furnish prescribed information relating to the constitution of the scheme, the administration and finances, any rights and obligations arising under the scheme and such other matters as may be prescribed. The Disclosure Regulations prescribe the information and require trustees to make available documents containing information about the constitution of the scheme for inspection by specified persons and for copies to be furnished on request on payment of a reasonable charge. Certain basic information mainly about the contributions and benefit structure of the scheme must be given to every member joining the scheme and to members and other specified persons on request and for material alterations to be drawn to members' attention. Information about individual benefit entitlements must be made available by the trustees to specified person in specified circumstances. Section 54(5) includes an offence for non-compliance.	applied to large trust RACs.	
Article 12 [Statement of Investment Policy Principles]	Section 59(1B)(a) requires trustees to prepare a statement of investment policy principles and to conduct a triennial review of the statement of investment principles. Section 59(1B)(b) provides for regulations to specify the form and content of the statement.	The provisions of section 59(1B) should be applied to large trust RACs, as should the provisions of the OPS (Investment) Regulations 2006, S.I. 294 of 2006	Additional administration and cost. Also potential for conflicting regulation if trust RAC is already, inadvertently, subject to much tighter Trustee (Authorised Investments) Act, 1958.

IORPs Article	Existing legislative requirements for DC occupational pension schemes	Amendments required to Pensions Act	Cost
Article 13(a) [Scheme or members of its board of directors to supply information about all business matters]	Section 18 contains comprehensive powers for the Pensions Board or other authorised persons to carry out investigations on a regular or ad-hoc basis on the operation of occupational pension schemes and to obtain all the necessary information and explanations it considers necessary for the purposes of its supervisory functions. Section 54(1) and 54(4)(c) allow the Board to request information from trustees or an employer re the constitution of the scheme, the administration and finances of the scheme, and other matters. Section 54(5) includes sanction for non-compliance.	These sections of the Pensions Act should be applied to all trust-based RACs.	Minimal, if any, additional supervisory costs for Pensions Board.
Article 13(b), 13(c), and 13(d) [Supervision and inspection]	Section 18(1) of the Act empowers the Board to authorise a person to inspect or investigate on behalf of the Pensions Board the state and conduct of a scheme. Section 18(3A)(a) specifically empowers an authorised person to enter the premises of an agent for the purpose of obtaining information.	The entire section 18 should be applied to all trust RACs.	Minimal, if any, additional supervisory costs for the Pensions Board.
Article 14(1) [Institutions to have sound administrative and accounting procedures and adequate internal control mechanisms]	Section 59 sets out the general duties of trustees. It provides that trustees must comply with all the relevant provisions of the Pensions Act.	Section 59 should be applied to all trust RACs	Some additional administration and cost.
Article 14(2). 14(3) and 14(4)	Various sections of the Pensions Act, as	Adopting the de minimum approach,	Minimal, if any, additional supervisory

IORPs Article	**Existing legislative requirements for DC occupational pension schemes**	**Amendments required to Pensions Act**	**Cost**
[Competent authorities to take action to prevent or remedy irregularities]	well as the Trustee Act, 1893, provide for remedies and applications to the High Court.	sections 3, 18, 63, 63A, 64, 88, 89 and 90 should be applied to all trust RACs.	costs to Pensions Board.
Article 15 [Technical provisions]	Section 56(2A) of the Pensions Act and Article 6(6) of the OPS (Disclosure) Regulations 2006 which requires the trustees to cause the liabilities of the scheme to be valued annually.	Section 56(2A) should be applied to large trust-based RACs.	Additional administration and cost
Article 18[Prudent investment]	Section 59(1)(b) requires trustees to provide for the proper investment of the resources of the scheme in accordance with the OPS (Investment) Regulations.	Section 59(1)(b) and Modified Investment Regulations should be applied to all trust RACs.	Additional administration and cost. But potential for conflicting regulation for trust-based RAC insured scheme if it is already inadvertently subject to much tighter Trustee (Authorised Investments) Act 1958 investment restrictions.
Article 20 [Cross Border]	Part XII of the Act provides for occupational pension schemes to operate on a cross-border basis.	Part XII of the Act should be applied to all trust RACs.	Additional administration and cost if small trust RAC decides to operate cross-border. Disclosure and other obligations would then apply.

Appendix II

Option C: ***Legislative amendments to satisfy potential Pensions Act requirements for individual RACs and potential costs***

Pensions Act provision	**Individual RAC contract – current requirements**	**'One member' occupational pension scheme – Pensions Act**	**Costs/comment**
Registration with Pensions Board	Not required	Required. Annual fee = €9.50	Additional administration and cost. c.100,000 x €9.50 = €950,000
Preservation (Part III)	Automatic as per legislative requirements for conditions of approval by Revenue Commissioners. Transfers, at RAC holder's option only, allowed to: • Other RAC • PRSA	After 2 years qualifying service, on termination of service in relevant employment. Member's right to transfer value of preserved benefit to: • Another OPS • Buy Out Bond • PRSA • Overseas Arrangement Trustees right to transfer value of preserved benefit without member's permission in certain limited circumstances, i.e. value < €10,000	(RACs may be excluded from Part III on the basis that existing preservation requirements applicable to RACs are better than that provided under Part III of the Pensions Act.) Potential conflict between current RAC legislative requirements for approval and Pensions Act preservation requirements.

Disclosure of Information (Part V)	For RAC policies issued on or after 1st February 2001:
	
	• Subject to Life Assurance (Provision of Information) Regulations, 2001 (if policyholder resident in the State)
	• Disclosure Notice, with projected benefits, charges and sales/intermediary remuneration at the point of sale and/or issue of policy
	• Annual Statement of
	  o Current premium payable
		Provision by trustees of :
		• Document constituting the scheme (on request)
		• Specified information on:
		  o Joining scheme
		  o Termination of employment
		  o Retirement or death
		• Statement of Reasonable Projection – DC; must relate to date not earlier than 3 months before.
			Pensions Act disclosure requirements more wide ranging. Would require additional administration and cost.

Pensions Act provision	Individual RAC contract – current requirements	'One member' occupational pension scheme – Pensions Act	Costs/comment
	○ Current surrender or maturity value ○ Such other information as insurers consider appropriate	○ Annually ○ Within two months of joining scheme or receipt of transfer value ○ Within four weeks of request by member ○ Termination of relevant employment • Information about 'investment alternatives' for schemes where member can direct trustees regarding investment choice.	
Obligations on trustees (Part VI)	N/A	• Time limit and information requirements in relation to collection and investment of contributions • Trustees subject to OPS (Trustee) Regulations, 2006, in relation to investment qualifications and expertise • Other trustee requirements of the Act	If Part VI provisions apply, they would have to apply to the life company underwriting the contract. Not relevant.
Equal Pension Treatment (Part VII)	Already apply in relation to benefits provided by RAC, but life company can provide different benefits as between males and females on actuarial grounds.	Part VII, Pensions Act.	No additional cost.
Whistle Blowing (Part VIII)	No specific requirement.	Obligation to report to Pensions Board on suspicion of: • Material misappropriation or fraudulent conversion of the resources of the scheme • Employer failing to comply with s121 obligations • Failure of employer to remit	Life company legally owns and controls the RAC funds. Thus, difficult to see value in applying Part VIII provisions to individual RACs. Cost: Over-regulation.

Pensions Act provision	Individual RAC contract – current requirements	'One member' occupational pension scheme – Pensions Act	Costs/comment
		contributions within time limit	
Complaints	Financial Regulator's Consumer Protection Code (July 2006) requires regulated firms, such as insurers and insurance intermediaries, to have a 'written procedure for the proper handling of complaints' from consumers. The term 'complaint' can relate to the: • Provision of a service or product to the consumer by the entity, or • The failure of the entity to provide a product or service to the consumer Code sets out minimum requirements of such procedures, including: • Acknowledgement of complaint within 5 days • Nominated individual(s) to be contact point for complainant • Regular update on progress of complaint investigation, at least every 20 business days • Target to complete investigation and resolve complaint within 40 business days • Inform complainant of right to refer complaint to Financial Services Ombudsman	Part XI, through S.I. 397 of 2003, requires trustees to establish procedures for internal resolution of disputes.	Pensions Act provisions far more limited than current Financial Regulator Code requirements. Potential costs to consumer in moving to the new regime. In addition, it would be confusing to have two different regulatory complaints handling procedures applying to an RAC – over-regulation.
Investment rules/restrictions	• None applying at the policyholder level, other than might be specified by life company, as per the terms of the particular RAC contract • Life company 'admissible assets' rules for solvency purposes; however, for unit-linked business these have limited practical impact on investment choice that can be offered to the unit linked policyholder. E.g. exempt unit trusts are admissible assets, and all types of other assets	• Trustees can not act as guarantor for 3rd party. • Trustees can borrow to invest (subject to certain Revenue practice restrictions) • Trustees not subject to OPS (Investment) Regulations • In so far as trust invests in life	Little practical difference between two regimes in relation to investment scope/freedom. Some administration costs in changing over to new regime.

Pensions Act provision	Individual RAC contract – current requirements	‘One member’ occupational pension scheme – Pensions Act	Costs/comment
	can be held within an EUT anyway.	policy, life company ‘admissible assets’ rules for solvency purposes have limited practical impact on investment choice that can be offered.	