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Pension Schemes Bill

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The Pension Schemes Bill was introduced in the Northern Ireland Assembly by the Minister for Communities on 23 June 2020. The Bill mirrors the provisions of the Westminster Pensions Act 2017 which introduced a new regulatory framework for master trusts and sought to regulate unfair member-borne commissioning charges and early exit charges. This Bill paper explores the provisions of the Northern Ireland Bill.

This paper comprises research material only. Nothing in the paper should be taken as legal interpretation or a substitute thereof.

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Introduction

1. The Pension Schemes Bill was introduced in the Northern Ireland Assembly by the Minister for Communities on 23 June 2020[1]. The Bill seeks to make provision for Northern Ireland corresponding to provisions that are contained within the Westminster Pension Schemes Act 2017 which received Royal Assent on 27 April 2017. This Research and Information Service (RaISe) Bill Paper has been prepared to inform consideration of the Northern Ireland Pension Schemes Bill. For ease of reference, this paper is divided into three sections.

   Section 1 provides an overview of the Bill and the equivalent legislation at Westminster (i.e. the 2017 Act). It also explores why Northern Ireland requires its own legislation; the consultation process on the measures outlined in the Bill; and the outcome of Department for Communities Equality Impact Assessment.

   Section 2 of this paper looks at the issue of Master Trust regulation. It examines the proposed statutory definition of a master trust and the new regulatory framework for master trusts provided for in the Bill. It should be noted that The Pensions Regulator is already utilising this new regulatory mechanism in relation to master trusts operating in England, Scotland and Wales (given that the equivalent legislation for these jurisdictions received Royal Assent in April 2017). It has also been applied to Northern Ireland's only functioning master trust (i.e. the Workers Pension Trust) which has members both in Northern Ireland and Great Britain[2].

   This section also, for ease of understanding of the provisions of the NI Bill, provides links to the various guidance documents and the Code of Practice for master trusts that has been published by The Pensions Regulator. Whilst these documents would not yet be applicable to any recently formed master trusts based in Northern Ireland. They do provide a tangible illustration of how the Regulator deploys the new regulatory framework and powers provided by the Westminster legislation.

   Section 3 of the paper explores in further detail the provisions outlined in Part 2 of the Bill, i.e. the regulation of member-borne commission charges and the cap/ban on early exit charges in relation to certain occupational pension schemes.

Section 1: An overview of the Pension Schemes Bill

2. As previously stated, the Bill makes provision for Northern Ireland corresponding to the provisions of the Westminster Pension Schemes Act 2017[3] which received Royal Assent on 27 April 2017. The purpose of the 2017 Westminster Pensions Act (which extended to England, Scotland and Wales) was to introduce three measures to help

[1] Pension Schemes Bill (as introduced) www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/pension-schemes-bill/

[2] Northern Ireland Assembly. Committee for Communities. Official Report: Minutes of Evidence. 17 June 2020.

[3] Pension Schemes Act 2017 https://services.parliament.uk/bills/2016-17/pensionschemes.html

support the ongoing aim of government to encourage greater pension savings and provide individuals with more control over their pension pots. The three measures were[4]:

- To put in place a **new regulatory regime for 'master trusts'** including a new authorisation and supervision framework to ensure that members of these pension schemes are adequately protected against specific types of risk arising in master trusts. The new regulatory regime would be overseen by The Pensions Regulator;
- To facilitate the **introduction of a ban on member-borne commission charges** that arise under certain existing contracts so that members are protected from hidden charges; and
- To facilitate the **introduction of a cap/ban on certain early exit charges** to ensure that members are not deterred from accessing pensions due to excessive early exit charges.

3. The Northern Ireland Pension Schemes Bill largely directly mirrors the 2017 Act by containing the same three broad legislative provisions.

The new regulatory framework for master trusts

4 A **Master Trust** is a defined contribution[5] occupational pension scheme set up under a board of trustees. The purpose of a master trust is to provide a workplace pensions scheme that can be used by **multiple unrelated employers**. In contrast, traditional occupational pension schemes are usually established to provide a workplace pension for a single employer or group of employees within the same group of companies.

5. A number of master trusts based in Great Britain have been established by well-known companies that specialise in insurance, savings and investments such as Aviva, Legal and General and HSBC. Further examples of master trusts are available from The Pensions Regulator website[6]. Northern Ireland currently has one master trust scheme that is still functioning[7], i.e. the Workers Pension Trust. This trust has already received 'authorisation' from The Pensions Regulator. The authorisation process is one of the key components of the new regulatory framework for master trusts (further detailed information on the authorisation process is provided later in this paper).

[4] Department for Work and Pensions. Pension Schemes Bill Impact Assessment: Summary of Impacts. January 2017. www.parliament.uk/documents/impact-assessments/IA17-002.pdf
[5] See explanation of different types of private pensions provided by the gov.uk website www.gov.uk/pension-types
[6] List of authorised master trusts – The Pensions Regulator website www.thepensionsregulator.gov.uk/en/master-trust-pension-schemes/list-of-authorised-master-trusts
[7] Northern Ireland Assembly. Committee for Communities. Official Report: Minutes of Evidence. 17 June 2020. http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=22664&eveID=11986

Workers Pension Trust

The Workers Pension Trust is based on the Malone Road, Belfast is but open to all businesses in the UK. The Trust is a not for profit organisation, and states that it is the largest private sector pension scheme based in Northern Ireland. It has been awarded master trust authorisation from The Pensions Regulator and appears on its list of authorised master trusts. It states that it has enrolled more than 85,000 members into its pension scheme from over 5,000 organisations spanning a wide range of sectors in both in Northern Ireland and Great Britain. It has described the process of securing master trust authorisation from TPR as a "complex and rigorous process" but believes that there are benefits to the new regulatory framework. The Managing Director of the Trust has stated that authorisation "*creates safeguards by ensuring master trust are run by fit and proper people and have the right systems, processes, plans and finances in place. We believe that it will not only further improve the outcomes for our members and participating employers but will also serve to reassure them that Workers Pension Trust is the right provider*"[8].

6. There has been significant growth in the development and use of master trusts across the UK in recent years. In 2010, there were around 0.2 million members in master trust schemes and by the end of 2016, this had increased to around 7 million members[9]. The Department for Communities Equality Impact Assessment for the Bill highlights that, as of November 2019, there were approximately 16 million members in 37 master trusts schemes, that held more than £36 billion in assets[10]. One of the most significant reasons why the master trust market has expanded rapidly is due to the introduction and increased take-up of 'automatic enrolment'[11].

What is 'automatic enrolment'?

Automatic enrolment was introduced in Northern Ireland under the provision of the Pensions (No. 2) Act (Northern Ireland) 2008 and in Great Britain under the Pensions Act 2008. This legislation placed a duty on employers to automatically enrol jobholders into, and contribute to, a workplace pensions savings scheme. The purpose of automatic enrolment is to help more people save for later in life through a pension scheme at work. Automatic enrolment was phased in according to employer size between 2012 and 2018.

Employers must 'automatically enrol' workers who are[12]:

[8] Information extracted from Workers Pension Trust. Press Release. Major success for NI-based Workers Pension Trust. 27 August 2019. https://workerspensiontrust.co.uk/news/major-success-for-ni-based-workers-pension-trust

[9] Department for Work and Pensions. Pension Schemes Bill Impact Assessment. Summary of Impacts. January 2017. www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-proposed-pension-schemes-bill-completed-eqia.pdf

[10] Department for Communities. Proposals for a Pension Scheme Bill. Completed Equality Impact Assessment. 28 May 2020.

[11] Further information on automatic enrolment is available from www.nibusinessinfo.co.uk/content/automatic-enrolment-workplace-pension; The Pensions Regulator website www.thepensionsregulator.gov.uk/en/employers and the Pensions Advisory Service website www.pensionsadvisoryservice.org.uk/about-pensions/pensions-basics/automatic-enrolment

[12] Information extracted from the Pensions Advisory Service website www.pensionsadvisoryservice.org.uk/about-pensions/pensions-basics/automatic-enrolment

- Not already in a workplace pension scheme;
- Aged between 22 and State Pension Age;
- Earn more than a minimum earning threshold (£10,000 per year); and
- Work or ordinarily work in the UK and have a contact of employment (i.e. are an employee and not a self-employed contractor) or who have a contract to provide work and/or services personally (i.e. so can't sub-contract to a third party.

Employers must enrol these employees either in the National Employment Savings Trust (NEST) or another qualifying pension scheme that meets specified criteria. An eligible jobholder who is automatically enrolled in workplace pension scheme can choose to opt out of the scheme. Non-eligible jobholders, who are not already members of a workplace pension scheme, and who meet certain criteria, have a right to ask to join an employers pension scheme. Although the employer is not obligated make a contribution if the worker earns less than a specified threshold.

The UK Government has set minimum levels of contributions that both employees and employers must pay into the scheme. From 6 April 2019, 8% of an employee's qualified earnings must be paid into the scheme (3% from the employer, 4% from the employee and 1% in the form of tax relief provided by the government)[13] .

For further detailed information on automatic enrolment including eligibility criteria see:

- The Pensions Advisory Service – information on automatic enrolment (FAQs)[14].
- NIBusinessInfo website – automatic enrolment into a workplace pension: know your legal obligations on pensions[15].
- The Pensions Regulator: Automatic enrolment – work place pension duties.

Recommended further reading on automatic enrolment:

The House of Commons Library has produced a comprehensive paper on automatic enrolment and its policy context see - House of Commons Library Research Briefing by Djuna Thurley - 'Pensions: Automatic enrolment – current issues' (published July 2020)[16].

7. An 'Automatic Enrolment evaluation report' published by the Department for Work and Pensions (DWP) in 2019 highlights that since the start of automatic enrolment in 2012, more than 10.2 million workers across the UK have been automatically enrolled and

[13] Information extracted from the Pensions Advisory Service website www.pensionsadvisoryservice.org.uk/about-pensions/pensions-basics/automatic-enrolment/how-much-do-i-and-my-employer-have-to-pay

[14] The Pensions Advisory Service – information on automatic enrolment. www.pensionsadvisoryservice.org.uk/about-pensions/pensions-basics/automatic-enrolment

[15] NIBusinessInfo https://www.nibusinessinfo.co.uk/content/automatic-enrolment-workplace-pension

[16] Thurley, D. Pensions: automatic enrolment – current issues. House of Commons Library Briefing Paper. 1 May 2020. https://commonslibrary.parliament.uk/research-briefings/sn06417/

over 1.6 million employers have met their automatic enrolment duties[17]. Many employers use master trusts as a vehicle to provide their employees with pensions under the automatic enrolment duties. It is important to note, however, that whilst many master trusts were established specifically to serve the automatic enrolment market, not all were set up for this purpose and not all employers who provide automatic enrolment-related pensions do so via master trusts.

8. The Department for Communities Equality Impact Assessment on the NI Pensions Schemes Bill highlighted that Master Trusts have become a popular vehicle for employers, particularly small and micro-employers seeking to enrol employees into an occupational pension scheme[18]. A House of Commons Work and Pensions Committee report on automatic enrolment, published in May 2016, maintained that the master trust model was a "good fit" with automatic enrolment, stating that it[19]:

> *"…can provide the ongoing oversight of investments provided by a trustee board at lower operating costs than single employer schemes, through economies of scale from pooling administrative functions. TPR [The Pensions Regulator] encouraged employers to consider large multi-employer schemes for AE [Automatic Enrolment] because they were "better placed to meet the standards […] necessary for good outcomes for retirement savers".*

9. However, the Committee also noted that there were concerns regarding master trust regulation[20]:

> *"Gaps in pension law and regulation have allowed potentially unstable master trusts onto the market. Should one of these collapse, there is a very real danger that ordinary scheme members could lose retirement savings. There is also a risk that faith in automatic-enrolment as a whole could be undermined. We support the Minister's call for a Pension Bill to introduce stronger regulation of master trusts. We recommend the Bill makes provision for The Pensions Regulator (TPR) to have powers to enforce:*
>
> - *Minimum financial and governance standards for market entry;*

[17] Department for Work and Pensions. Automatic Enrolment Evaluation Report 2019. Updated May 2020. www.gov.uk/government/publications/automatic-enrolment-evaluation-report-2019/automatic-enrolment-evaluation-report-2019

[18] Department for Communities. Proposals for a Pension Scheme Bill. Completed Equality Impact Assessment. 28 May 2020. www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-proposed-pension-schemes-bill-completed-eqia.pdf

[19] House of Commons Work and Pensions Committee. Automatic enrolment. Eleventh Report of Session 2015-16] https://publications.parliament.uk/pa/cm201516/cmselect/cmworpen/579/579.pdf

[20] House of Commons Work and Pensions Committee. Automatic enrolment. Eleventh Report of Session 2015-16]

- *Ongoing requirements for master trust schemes, which might include making compliance with the master trust framework mandatory; and*

- *Measures to protect members assets in the event of a master trust winding up."*

10. The UK Government, in its risk assessment for the Westminster Pension Schemes Bill, acknowledged that there were a number of risks associated with the regulatory regime for master trusts at that time[21], i.e.:

    - Master Trusts had developed into new types of business structures which created a significant alteration of the relationship (and the behavioural incentives) between key players (members, employers, trustees, providers) which are integral to the current basis for existing law and regulation.

    - Master Trusts are run on a profit basis. Introducing the profit motive into occupational pensions introduced a significant new dynamic (and changes incentive structures) which existing occupation pension regulation at that time did not take into consideration.

    - Master Trusts have multiple employers to serve. The complexity involved in serving the customer base and the distance of removal from the end user was believed to have posed a challenge to costs and exacerbated the "principal-agent problem" (i.e. a conflict in priorities between a person or group and the representative/body authorised to act on their behalf).

    - Master Trusts were not at that time subject to the regulation that applied to other financial products such as contract-based workplace pensions. The UK Government maintained that whilst this made master trust schemes cheaper to set up and deliver, master trusts could at that time avoid key requirements that existed within the Financial Conduct Authority regulatory regime for other pension products e.g. tests for financial stability and key personnel competence.

11. An enhanced regulatory regime for master trusts, overseen by The Pensions Regulator, was subsequently included in the Westminster Pension Schemes Bill. This Bill was introduced in the House of Lords on 19 October 2016 and received Royal Assent on 27 April 2017 (see Pension Scheme Act 2017). The Act's Explanatory Memorandum states that the "*matters in the Act are Great-Britain only measures. Northern Ireland has powers to bring forward parallel legislation*"[22]. Hence the

[21] DWP, Master Trust Authorisation – Impact Assessment, October 2016 cited in Thurley, D. & Keen, R. Pension Schemes Bill 2016-17 – debates in Parliament. 5 July 2017. https://researchbriefings.files.parliament.uk/documents/CBP-7874/CBP-7874.pdf

[22] Pension Schemes Act 2017. Explanatory Memorandum. www.legislation.gov.uk/ukpga/2017/17/notes/division/5/index.htm

requirement for the Northern Ireland Pension Schemes Bill which was introduced to the Assembly by the Minister for Communities on 23 June 2020.

12. **Section 2** of this bill paper looks at the statutory definition of master trusts, the new regulatory framework, and the relevant parts of the Northern Ireland Pension Schemes Bill in further detail.

A ban on member-borne commission charges and a cap/ban on early exit charges

13. Consecutive UK Governments have introduced a series of pension reforms aimed at (a) increasing access to occupational pensions via automatic enrolment; and (b) providing greater freedom to access pension pots before retirement age. Several untended consequences have emerged from these policy developments, i.e. certain unfair administration charges placed on members of pension schemes and excessive early exit charges. The UK Government has sought to control such charges by seeking to either prohibit or cap such charges.

14. Part 2 (**Clause 41**) of the Northern Ireland Pension Schemes Bill (as introduced) would provide for regulations to over-ride contractual terms in occupational pension schemes where these terms conflict with the regulations. The policy intention of this aspect of the Bill is to restrict certain charges in occupational pension schemes, i.e.:

- To introduce a **ban on member-borne commission charges** that arise under existing contracts so that members are protected from hidden charges; and
- To introduce a **cap/ban on early exit charges** in certain occupational pension schemes to ensure that members are not deterred from accessing pension freedoms due to excessive early exit charges.

15. **Section 3** of this bill paper looks at these provisions in further detail including exploring the policy context behind the proposals.

Why does Northern Ireland require its own pension schemes legislation?

16. As is the case with social security, pensions in Northern Ireland is largely a devolved matter. However, the scope of the Northern Ireland Assembly to make significant changes to how occupation pensions are regulated is influenced by the "parity principle". The "parity principle" is enshrined in Section 87 of the Northern Ireland 1998. It requires the Secretary of State and the Northern Ireland Minister responsible for social security to "consult" with one another with a view to securing ("to the extent agreed between them") that there are single systems of social security, child support and pensions for the United Kingdom.

17. In more recent years, the Northern Ireland Assembly has deviated from parity in relation to social security, most notably the welfare reform mitigation measures. But it has generally maintained parity in relation to pension policy and legislation. Deviations from parity in relation to pensions could potentially have significant financial implications for the Northern Ireland Block Grant. Additionally, as the DfC Equality Impact Assessment of the Bill highlights, many private pension schemes operating in Northern Ireland are UK-wide schemes. The regulatory bodies overseeing pension regulation and protection such as The Pensions Regulator, the Pensions Ombudsman and the Pension Protection Fund operate on a UK-wide basis. Therefore, the Department's Impact Assessment maintains that "*it is highly desirable that the same regulatory framework is in place in NI to facilitate compliance and enforcement"*[23].

18. The Department for Communities states that the progress of a Northern Ireland Pension Schemes Bill was delayed due to the lack of a sitting NI Assembly from January 2017 to January 2020. The Westminster Pensions Schemes Act 2017 received Royal Assent on 27 April 2017 with a number of provisions in the Bill coming into force on that day. The Department highlights that a new regulatory regime for master trusts has already gone live for master trusts operating in Great Britain (since April 2018). The EQIA states that the The Pensions Regular (TPR) now has the power to *"take certain enforcement actions against schemes in GB but does not have the full recourse to the same regulatory toolkit for schemes in NI"*[24].

19. The Workers Pension Trust, Northern Ireland's only current functioning master trust which is open to employers across the UK, has already received authorisation from The Pensions Regulator and appears on its list of authorised master trusts. The scope of the NI Bill in relation to both existing and any forthcoming new master trusts based in Northern Ireland should become more evident when the Bill is subject to statutory scrutiny by the Assembly[25].

Recommended reading for further policy context on the Pension Schemes Bill:

A detailed analysis of the passage of the **Westminster** Pension Schemes Bill, including amendments and debates on the clauses of the Bill has been published by the **House of Commons Library** – see Thurley, D. & Keen, R. 'Pension Schemes Bill 2016-17 – debates in Parliament'. House of Commons Library Briefing Paper. 5 July 2017.

**Whilst reading the paper it is important to note, however, that the clauses of the Northern Ireland Pension Schemes Bill mirrors the Westminster Pension Schemes Act 2017 and not the Westminster Pension Schemes Bill (as introduced). This is because a number of amendments were made to the Westminster Bill before it received Royal Assent.*

[23] Department for Communities. Proposals for a Pension Scheme Bill. Completed Equality Impact Assessment. 28 May 2020.
[24] Ibid.
[25] The Pensions Regulator. List of authorised mater trusts [accessed 5 July 2020]. www.thepensionsregulator.gov.uk/en/master-trust-pension-schemes/list-of-authorised-master-trusts

Department for Work and Pensions **impact assessments** on the Bill, on master trust authorisation, the capping of early exit charges, and banning member borne commission in occupational pension schemes used for automatic enrolment are available to download here[26].

Was there consultation on the measures contained within the Pension Schemes Bill?

20. The measures outlined in the Bill were initially consulted on in Northern Ireland as part of the Westminster consultation process[27], i.e.

- HM Treasury issued the consultation paper 'Pension transfers and early exit charges"[28] in July 2015 to gather views on whether early exit charges applied by schemes were preventing consumers from accessing their pension savings. The consultation outcome document 'Pension transfer and early exit charges: response to the consultation' was published in February 2016[29]. To support this consultation the Financial Conduct Authority (FCA) and The Pensions Regulator (TPR) conducted an evidence gathering exercise[30] on the prevalence of exit fees and charges and the transfer process in occupational defined pension schemes.
- A separate consultation on 'Capping early exit charges for members of occupational pension schemes' was published by DWP in May 2016[31]. The government response to the findings of the consultation was published in November 2016[32].

Was there an Equality Impact Assessment on the NI Pension Schemes Bill?

21. The Department for Communities states that it consulted on the *draft* Equality Impact Assessment from 16 December 2016 to 9 February 2017. Two responses to the consultation were received (i.e. from NIPSA and the Education Authority). DfC published its completed Equality Impact Assessment on the proposals for a Pension Schemes Bill in May 2020[33]. The EQIA concluded that *"none of the proposed*

[26] See https://services.parliament.uk/bills/2016-17/pensionschemes/documents.html
[27] Department for Communities. Proposals for a Pension Schemes Bill: Completed equality impact assessment. May 2020. www.communities-ni.gov.uk/publications/proposals-pension-schemes-bill-completed-equality-impact-assessment-may-2020
[28] HM Treasury. Pension transfers and early exit charges: consultation. July 2015.
[29] HM Treasury. Pension transfer and early exit charges: response to the consultation. February 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/498871/pension_transfers_and_early_exit_charges_response.pdf
[30] See www.fca.org.uk/publication/correspondence/pensions-data-request.pdf
[31] Department for Work and Pensions. Capping early exit charges for members of occupational pension schemes: ensuring a fair and consistent approach across all defined contribution pensions. May 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/526040/consultation-capping-early-exit-charges-for-members-of-occupational-pension-schemes.pdf
[32] UK Government. Government response to the consultation on capping early exit charges for members of occupational pension schemes. www.gov.uk/government/consultations/capping-early-exit-charges-for-members-of-occupational-pension-schemes
[33] Department for Communities. Proposals for a Pension Scheme Bill. Completed Equality Impact Assessment. 28 May 2020. www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-proposed-pension-schemes-bill-completed-eqia.pdf

measures are expected to have an adverse impact on equality of opportunity on any of the section 75 groups. Consequently, there is no requirement for mitigating measures".

22. The impact assessment does include references to interesting data published by NISRA on the proportion of employees in Northern Ireland who belong to an occupational pension scheme (note figures relate to all occupational pension schemes and not just automatic enrolment)[34]:

Statistical Information on Workplace Pensions – NISRA Annual Survey of Hours and Earnings (Pensions Results) 2019

Key findings:

- 74% of employees in Northern Ireland belong to a workplace pension scheme in 2019, compared to just 44% of employees in 2012 (this increase is influenced by the introduction of automatic enrolment from October 2012).
- However, the proportion of employees belonging to a workplace pension remained static in 2019 for the first time in since 2012 (i.e. 74% of employees were members of a workplace pension scheme in both 2018 and 2019).
- The most common form of workplace pension was an Occupational Defined Benefit Pension, held by nearly one third of employees (30%);
- A higher proportion of public sector employees (91%) than private sector employees (65%) were members of a workplace pension scheme.
- Pension membership was highest for those aged 30-59 (82%) and lowest for those aged 18-21 (15%).
- Full-time employees had a higher percentage of workplace pension participation than part-time employees (82% compared with 54%).
- Those in professional occupations were most likely to have a pension (88%) whilst those in sales and customer service were least likely (53%).
- Almost all those employed in 'Public administration and defence' belonged to a workplace pension (97%) compared to 42% of employees in 'accommodation and food service activities'.

Further data on workplace pension scheme membership in Northern Ireland is available from NISRA's Annual Survey of Hours and Earnings 2019[35] which provides a breakdown by type of pension, public/private sector membership; age; gender, work pattern (i.e. full-time/part-time); occupation; and industry.

[34] Ibid

[35] Northern Ireland Statistics and Research Agency. 2019 Annual Survey of Hours and Earnings: Pensions Results. www.nisra.gov.uk/publications/ni-ashe-pension-results

The remaining sections of this bill paper explore the clauses and provisions of the Northern Ireland Pension Schemes Bill.

Section Two: A new regulatory regime for master trusts

23. The Northern Ireland Pension Schemes Bill consists of two parts, Part 1 (Clauses 1 to 40) of the Bill sets out not only a statutory definition of a "master trust" but also the arrangements under which they will be regulated by The Pensions Regulator. **This section** of the bill paper explores the statutory definition of a master trust, the new regulatory framework, and the relevant parts of the Northern Ireland Pension Schemes Bill in further detail.

What is The Pensions Regulator?

The Pensions Regulator (TPR) is a public body, sponsored by the Department for Work and Pensions. It is the UK-wide regulator of work-based pension schemes. Its responsibilities include ensuring that employers fulfil their automatic enrolment requirements; protecting people's savings in workplace pensions; and improving the way in which workplace pension schemes are run. The Pensions Regulator works closely with other bodies such as the Department for Work and Pensions, the Financial Conduct Authority and the Pension Protection Fund.

Further information on the role of TPR can be found here[36].

What exactly is a "master trust"?

24. Master trusts are a form of multi-employer pensions scheme that operate on a trust basis (i.e. has a board of trustees). They are established by a founder who sets the trust deed, rules and appoints a board of trustees. Employers are able to select an appropriate master trust for their eligible workers rather than needing to set up their own pensions scheme[37]. Many employers in the UK have selected master trusts as the vehicle to deliver their commitments under automatic enrolment.

25. A statutory definition of a master trust scheme is provided in **Clauses 1 and 2** of the Northern Ireland Pension Schemes Bill. **Clause 1** sets out the criteria that must be met by an occupational pension scheme in order for it to be considered a master trust, i.e. it must:

- Provide **"money purchase benefits"** (whether alone or with other benefits);
- Be **used, or intended to be used, by two or more employers**;

[36] The Pensions Regulator – What we do and who we are www.thepensionsregulator.gov.uk/en/about-us/what-tpr-does-and-who-we-are

[37] Definition extracted from the Westminster Pension Schemes Bill Impact Assessment. September 2016. www.parliament.uk/documents/impact-assessments/IA16-010B.pdf

- Is ***not* used**, ***nor intended* to be used**, only by **employers that are connected with each other** (the clause sets out the circumstances in which an employer is connected to another); and
- ***Must not* be a public service pension scheme** (public service pension schemes tend to have membership consisting of, for example, civil servants, teachers, local government employees etc.).

What are money purchase benefits?

The Pensions Advisory Service provides the following definition – *"money purchase schemes provide benefits on retirement based on the money that has been paid into the scheme, how long this money has been invested, the level of charges and investment returns over this period".*

Further information on how money purchase schemes work is available from the Pensions Advisory Service website[38].

26. The Pensions Regulator Code of Practice for master trusts (pp6-9) provides further information on the definition of master trusts and schemes that fall outside of the scope of a master trust[39]. This Code of Practice currently only relates to trusts regulated under the Westminster Pension Schemes Act 2017 but is a very useful illustrative tool for how the scheme would operation in Northern Ireland if the NI Pension Schemes Bill is enacted.

Why is a new regulatory framework for master trusts required?

27. There has been significant growth in the development and use of Master Trusts across the UK in recent years. In 2010 there were around 0.2 million members in Master Trust schemes and by the end of 2016, this had increased to around 7 million members[40]. The Department for Communities Equality Impact Assessment for the Bill highlights that, as of November 2019, there were approximately 16 million members in 37 master trusts schemes, and that these schemes held more than £36 billion in assets[41]. One of the most significant reasons why the master trust market has expanded rapidly is due to the introduction and increased take-up of 'automatic enrolment'[42].

[38] Pensions Advisory Service. Defined contributions: Money purchase schemes. www.pensionsadvisoryservice.org.uk/about-pensions/pensions-basics/workplace-pension-schemes/dc-money-purchase-schemes
[39] The Pensions Regulator. Code of Practice no. 15: authorisation and supervision of master trusts. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/code-15-master-trusts.ashx
[40] Department for Work and Pensions. Pension Schemes Bill Impact Assessment. Summary of Impacts. January 2017. www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-proposed-pension-schemes-bill-completed-eqia.pdf
[41] Department for Communities. Proposals for a Pension Scheme Bill. Completed Equality Impact Assessment. 28 May 2020.
[42] Further information on automatic enrolment is available from www.nibusinessinfo.co.uk/content/automatic-enrolment-workplace-pension; The Pensions Regulator website www.thepensionsregulator.gov.uk/en/employers and the Pensions Advisory Service website www.pensionsadvisoryservice.org.uk/about-pensions/pensions-basics/automatic-enrolment

28. The master trust model is perceived to be an effective vehicle for automatic enrolment. A report on automatic enrolment by the House of Commons Work and Pensions Committee (published in May 2016)[43]. The Committee's report described the trusts as a 'good fit' for automatic enrolment given that they could *"provide the ongoing oversight of investments provided by a trustee board at lower operating costs than single employer schemes, through economies of scale from pooling administrative functions"*.

29. Similarly, the September 2016 Impact Assessment on the Westminster Pension Schemes Bill described how master trust schemes had emerged in response to Automatic Enrolment and new pensions flexibilities and that *"…Master Trust schemes are important for the success of these pension reforms – they can offer good value for members due to scale, and the benefit of the fiduciary trust oversight"*[44][45].

30. However, the HoC Work and Pensions Committee report on automatic enrolment also noted that there were concerns about the then regulation of master trusts. The Committee had heard evidence that[46]:

    - The Pension Regulator's (TPR) regulatory powers with regards to master trusts were *"insufficiently robust"* and that TPR had stated that it was concerned that it was *"not able to exercise stronger regulation on this group, given their importance, the number of employees-members they are serving"*;
    - The trusts were not subject to the high level of ongoing regulatory scrutiny and active monitoring given to contract-based schemes (the regulation of which was overseen by the Financial Conduct Authority). Whilst the FCA could issue legally binding rules to support its regulatory functions in relation to contact-based pensions schemes, TPR relied upon regulating master trusts through non-binding guidance. This meant that the two parts of the pensions market were regulated very differently; and
    - TPR acknowledged that, at that time, some of the smaller master trusts may "not be run by competent people" and that inadequate regulation increased the prospect of substandard governance and investment strategies that could potentially lead to poor investment returns for scheme members.

31. The report noted that The Pensions Regulator (TPR) had taken steps to mitigate these risks by publishing, in May 2014, a Master Trust Assurance (MTA) framework. The framework allowed reputable schemes to demonstrate good standards of governance and administration and in return they received MTA accreditation from TPR. The Committee noted, however, that such accreditation schemes were *voluntary* and that TPR had no power to compel master trusts too meet those standards. The then Minister of State for Pensions assured the Committee that whilst the immediate risks to

[43] House of Commons Work and Pensions Committee. Automatic Enrolment. Eleventh Report of Session 2015-16. https://publications.parliament.uk/pa/cm201516/cmselect/cmworpen/579/579.pdf
[44] Westminster Pension Schemes Bill Impact Assessment. September 2016. www.parliament.uk/documents/impact-assessments/IA16-010B.pdf
[45] A fiduciary trust is one in which trustees hold the title to assets for the beneficiary.
[46] House of Commons Work and Pensions Committee. Automatic Enrolment. Eleventh Report of Session 2015-16.

savers was small, the problem needed to be addressed and that she would be pressing her colleagues in Government for a new Pensions Bill to provide for more robust regulation for master trusts[47].

32. The then Work and Pensions Committee recommended that:

"Gaps in pension law and regulation have allowed potentially unstable master trusts onto the market. Should one of these collapse, there is a very real danger that ordinary scheme members could lose retirement savings. There is also a risk that faith in automatic-enrolment as a whole could be undermined. We support the Minister's call for a Pension Bill to introduce stronger regulation of master trusts. We recommend the Bill makes provision for The Pensions Regulator (TPR) to have powers to enforce:

- *Minimum financial and governance standards for market entry;*
- *Ongoing requirements for master trust schemes, which might include making compliance with the master trust framework mandatory; and*
- *Measures to protect members assets in the event of a master trust winding up."*

An overview of the new regulatory regime

33. The Explanatory Memorandum of the NI Pension Schemes Bill states that the Bill provides for a regulatory regime which will include[48]:

- The introduction of an **authorisation** and **supervision** regime for master trusts. A master trust will have to demonstrate to The Pensions Regulator that they meet certain key criteria on their establishment, and then continue to do so throughout the lifetime of the trust;
- Bringing existing master trusts into the new regime and requiring them to **meet the new criteria**;
- Providing **The Pensions Regulator with greater powers** to take action where the key criteria are not met; and
- Protecting members of pension schemes by placing requirements on trustees to act in certain ways in the event of a **wind-up or closure of a master trust**.

34. The new regulatory regime is **already operational for master trusts in England, Scotland and Wales (and the single master trust in Northern Ireland has already received authorisation from TPR)**. From October 2018, master trusts had to apply to The Pensions Regulator (TPR) for authorisation to operate in the market. However, plans for the new regime begin well in advance. That is, TPR stated that it contacted masters trusts in advance of this date to establish whether they intended to apply for

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[47] Ibid.

[48] Northern Ireland Pension Schemes Bill. Explanatory Memorandum. www.niassembly.gov.uk/assembly-business/legislation/2017-2022-mandate/primary-legislation---bills-2017---2022-mandate/pension-schemes-bill/efm---as-introduced/

authorisation, and if so, when they intended to apply[49]. By May 2019, all expected applications from existing master trusts in the market at that time had been filed with TPR (with nearly 14 million people saving in these schemes), with each submission setting out how their scheme meets the standards laid out in the legislation. For those schemes that decided to exit the market, TPR states that it would oversee the process and ensure trustees were taking the right steps to protect savers when they were moved onto an alternative scheme[50].

35. RaISe has contacted The Pensions Regulator for some up-to-date data on master trusts, including the master trust in Northern Ireland. This paper will be updated when that information becomes available.

36. The Pensions Regulator has now made available important information on master trusts (i.e. those that fall within its remit under the 2017 Act) and published several key documents, i.e.:

- Schemes can check whether they fall within the statutory definition of a master trust in– "Is your scheme a master trust?";
- A list of authorised master trusts has been published;
- A detailed Code of Practice (October 2018) relating to the authorisation and supervision of trusts has been published. The publication of the Code is a statutory requirement. The Code sets out how an application for authorisation is made and the matters taken into account when considering applications. The code is supported by several guidance documents[51];
- Guidance documents on authorisation, supervision, fit and proper person checks and assessment, scheme financial details and checklists, and an enforcement policy; and
- A Trustee toolkit which is a free online learning programme aimed at trustees of occupational pension schemes.

37. These documents and resources currently *only apply to those master trusts that fall within the remit of TPR under the Westminster Pension Schemes Act*. However, they do provide an important insight into how the provisions of the Northern Ireland Pension Schemes Bill on master trust regulation are likely to operate in practice given that TPR is a UK-wide regulator.

The following sections of this paper will now explore the clauses of the Northern Ireland Pensions Bill in further detail.

[49] The Pensions Regulator. 'Master trusts – how we're working to protect 10 million savers" . Blog. 20 March 2018. https://blog.thepensionsregulator.gov.uk/2018/03/20/master-trusts-how-were-working-to-protect-10-million-savers/

[50] The Pensions Regulator. 'What lies ahead for master trusts". Blog. 14 May 2019. https://blog.thepensionsregulator.gov.uk/2019/05/14/what-lies-ahead-for-master-trusts/

[51] The Pensions Regulator. Code of Practice no. 15: Authorisation and supervision of master trusts. October 2018. https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/code-15-master-trusts.ashx

Master trusts: the authorisation process

Prohibition on operating a scheme unless it is authorised

38. **Clause 3** of the Bill (as introduced) provides that "a person" **cannot operate a master trust unless it is "authorised"**. Such authorisation must be sought from, and granted by, **The Pensions Regulator (TPR)**. A person is defined as operating a master trust if they:

- Accept money from members or employers (or prospective members or employers) in respect of fees, charges, contributions etc. in relation to the scheme; and
- Enter into an agreement with an employer that relates to the provision of pension savings for employees and other workers.

39. The Bill provides that if TPR becomes aware that a master trust is operating without authorisation, it must notify the trustees of that master trust. A person who operates a trust without authorisation can be subject to a civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 (i.e. a fine of up to £5,000 for an individual or £50,000 in any other case).

40. Where TPR becomes aware that a scheme is operating without authorisation, Clause 3 provides, that TPR is required to issue a "notice" to the trustees of the scheme. The notice must state that the scheme is not authorised and that operating without authorisation is a 'trigger event'. Further information on 'triggering events' is included later in this paper.

How does a master trust become authorised?

41. The Trustees of a Master Trust must apply to TPR for authorisation (**Clause 4**). The application must be in made in the form specified by TPR and must include the following:

- The scheme's latest accounts;
- The latest accounts of each scheme funder;
- The scheme's business plan; and
- The scheme's continuity strategy – a detailed continuity strategy checklist for those trusts currently regulated by the 2017 Act has been published by TRP and is available to download here[52]. The checklist states that a "continuity strategy should set out how the interests of members will be protected during a "triggering event" and must include a statement of administration charges.

[52] The Pensions Regulator. Master Trust Authorisation: Continuity Strategy Checklist. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/master-trust-continuity-strategy-checklist.ashx

42. In considering an application, clause 3 provides that TPR may take into account "any matters it considers appropriate" including:

- Additional information provided by the applicant; and
- Subsequent changes to the application or any information provided by the applicant.

43. The clause also provides that the Department for Communities may make regulations setting out (a) any other information to be included in the application and (b) the application fee payable to the Regulator. These regulations would be subject to negative resolution.

Further information on the authorisation process currently in operation for master trusts (as defined under the Westminster 2017 Act) is available from the Pensions Regulator website:

- Master Trust Code of Practice pp 10-75
- Master Trust authorisation: forms and guidance webpages

44. **Clause 5** of the Bill (as introduced) provides that TPR must decide whether it is satisfied that the scheme meets the authorisation criteria. TPR must make that decision within **a period of six months** beginning with the day on which it receives the application. There are **five elements to the authorisation criteria** which are briefly outlined in Clause 5 but expanded on in other clauses of the Bill. The five criteria are as follows:

- That the persons involved in the scheme are **"fit and proper"** (**Clause 7**)
- That the scheme is **financially sustainable** demonstrated by having a **business plan** that meets the requirements of the legislation (**Clauses 8 and 9**);
- That each scheme funder meets the requirements set out in **Clause 10**;
- That the **systems and processes** used in running the scheme are sufficient to ensure it is run effectively (**Clause 11**); and
- That the scheme has an adequate continuity strategy (**Clause 12**).

45. For ease of understanding, the information in the box below, extracted from The Pensions Regulator Code of Practice for Master Trusts, provides a brief overview of the current criteria under which master trusts (regulated under the 2017 Act) are expected to operate:

The Pensions Regulator. Code of Practice no. 15: Authorisation and supervision of master trusts[53].

The five authorisation criteria:

a. **Fit and Proper:** All individual being assessed must be able to satisfy us that they are fit and proper because they meet the standard of honesty, integrity and knowledge appropriate to their role**.**

b. **Systems and processes:** Master trusts must have sufficient IT systems and processes in place to run efficiently and have robust systems and processes to effectively govern the scheme and comply with all the relevant requirements.

c. **Financial sustainability:** The master trust needs to have enough financial support to ensure it can be set up and operate on a day to day basis and to cover the costs subsequent to a trigger event without increasing the costs to members. A key part of demonstrating that the authorisation criteria are met is by having a business plan in place setting out the expected activities and growth of the master trust and how they will be funded. This plan will be critical in our assessment of whether a master trust meets the authorisation criteria.

d. **Scheme funder:** Any scheme funder must be a body corporate or partnership and only carry out activities relating directly to master trusts (unless exempt). We will be looking for clear evidence in relation to its business activities that it is able to financially support the master trust.

e. **Continuity strategy:** sufficient contingency planning is crucial to the effective running of a master trust and we'll be looking for a credible strategy as to how members will be protected if there is a triggering event and how a master trust may be closed down or how the triggering event will be resolved.

Can The Pensions Regulator refuse authorisation? If authorisation is refused, is there an appeals mechanism?

46. **Clause 5(c)** provides that if TPR is not satisfied that a master trust meets the authorisation criteria, then it must refuse to grant authorisation and notify the applicant of its decision. Under Clause 5(d) this notification must include both the reasons for the decision and the right of referral to the First Tier Tribunal or Upper Tribunal.

47. **Clause 6** provides that the decision to refuse to grant authorisation can be referred to the Tribunal by either the trustees or any other person who appears to the Tribunal to be affected by the decision.

[53] The Pensions Regulator. Code of Practice no. 15: Authorisation and supervision of master trusts. October 2018. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/code-15-master-trusts.ashx

The authorisation criteria – clauses 7 to 12

48. Clauses 7 to 12 of the NI Pension Schemes Bill (as introduced) elaborate on the **specific requirements of the five authorisation criteria**.

The fit and proper person requirement

49. In order to obtain authorisation, The Pensions Regulator must be satisfied that those who exert control over a master trust are "fit and proper" persons. **Clause 7(2)** of the Bill provides that TPR must assess whether a person in a range of roles connected to the master trust is a "fit and proper" person. For example, a person who establishes the scheme, a person who had power to appoint or remove a trustee, the scheme funder, the scheme strategist etc. An explanation of these roles is provided in the TPR Code of Practice for Master Trusts (see pp13-15). The Bill provides that the Department for Communities would have the power to specify by way of regulations other individuals who should be subject to the fit and proper person test. These regulations would be subject to negative resolution.

50. TPR may also assess whether a person who promotes or markets the scheme or any person acting in a capacity specified in regulations made by the Department for Communities is a fit and proper person (such regulations would be subject to the negative resolution.

51. In assessing whether a person is a fit and proper person, TPR must take into account any matters specified in regulations made by the Department for Communities and may also take into account any other matters it considers appropriate. The first regulations that are made by DfC under this part of the legislation would be subject to the confirmatory procedure and any subsequent regulations subject to the negative resolution procedure.

What is a 'fit and proper' person assessment?

The actual details of what is involved in determining whether a person is fit and proper in relation to those master trusts regulated under the Pension Schemes Act 2017 is contained within subordinate legislation[54]. The Pensions Regulator's **Code of Practice** for master trusts states that there are different thresholds to this criterion for different roles; the evidence required will vary from role to role; and a declaration and criminal conviction certificate will be required for each individual subject to the assessment.

The Code highlights that the regulations set out the matters TPR must take into account in its assessment, these matters relate to (a) honesty integrity and financial soundness; (b) competence; and, (c) conduct. TPR may also take into account any other matters it considers appropriate, including those relating to a connected person. TPR also expects that any master trust, before applying for authorisation will use the Code to carry out due diligence (to the

[54] The Occupational Pension Schemes (Master Trusts) Regulations 2018.

extent possible) to determine if the relevant person meets the fit and proper person requirements.

For further background information on how the fit and proper person requirement is applied to master trusts subject to the Westminster Pension Scheme Act 2017 see the TPR's Code of Practice for Master Trusts (pp11-22); guidance on "identifying persons for the fit and proper person assessment" and the "Master trust authorisation: Fit and proper assessment guide".

The financial sustainability requirement

52. One of the key features of the NI Pension Schemes Bill (as introduced) is the obligation for master trusts to be able to demonstrate that they have access to sufficient financial resources to continue to operate. **Clause 8** of the Bill states that in order to be satisfied that a master trust scheme is financial sustainable, TPR must be content that:

- The scheme's business strategy is sound; and
- That the scheme has sufficient financial resources to meet the costs of the scheme. i.e. the costs of setting up and running the scheme and the costs associated with a "triggering event".

53. In deciding whether it is satisfied that the master trust is financially sustainable, the Bill provides that TPR must take into account any matters specified in regulations made by the Department for Communities. These regulations may include provisions specifying the information that the Regulator must take into account, for example, the scheme's accounts and funder; the scheme's business plan and supporting documents. The first regulations made under this section would be subject to the confirmatory procedure with any subsequent regulations subject to negative resolution.

Further detailed information on the financial sustainability requirement as required of master trusts subject to the provisions of the Westminster Pension Schemes Act 2017 is available in the TPR Code of Practice for Master Trusts – see section on financial sustainability pp53-74 and the range of guidance publications (including checklists) on financial sustainability provided by TPR[55].

TRP states that it takes into account a wide range of documents in its assessment of the financial sustainability of these master trusts, including the business plan, the master trust accounts, the scheme funder's accounts, the statement of investment, and the most recent chair's statement. It may also require sight of an extensive array of additional documents such as evidence of reserves (where the scheme is an insurer or bank); details of joint bank accounts held on or behalf of the trustees or scheme funders; and extracts of the master trust's deed and rules which govern expenses and winding up arrangements.

[55] See www.thepensionsregulator.gov.uk/en/master-trust-pension-schemes/authorisation-of-new-master-trusts/master-trust-authorisation-forms-and-guidance

The financial sustainability requirement: the business plan

54. **Clause 9** of the Bill provides that a master trust must have a business plan prepared by the scheme strategist and approved by the scheme funder, any other scheme strategist and the trustees. The clause provides the Department for Communities with the power to make regulations setting out the information to be included in the business plan and any other requirements. The first regulations made would be subject to the confirmatory procedure and any subsequent regulations subject to the negative resolution procedure.

55. The clause also provides that the business plan must be reviewed by the scheme strategist at least annually and revised if appropriate. It must also be revised in the event of a significant change to the information set out in the plan.

56. The clause also provides that business plan and supporting documents must be provided to TPR by the scheme strategist or trustees at certain times, i.e.:

- when the scheme applies for authorisation;
- within three months of a business plan being revised; and
- on request by The Pensions Regulator.

Further detailed information on the financial sustainability requirement as it relates to the business plan of master trusts subject to the provisions of the Westminster Pension Schemes Act 2017 is available in the TPR Code of Practice for Master Trusts – see pp75-85.

Scheme funder requirements

57. **Clause 10** makes provisions in relation to master trust scheme funders and the requirements they must satisfy in order to meet the authorisation criteria, i.e.

- Scheme funders must be a body corporate or partnership that is a legal person under the law in which it is governed; and
- Scheme funders must only carry out activities that relate direct to master trust schemes in relation to which it is a scheme funder or prospective scheme funder. Clause 10 provides that the Department for Communities may make regulations providing for exceptions to this requirement. The first regulations would be subject to the confirmatory procedure and any subsequent regulations to negative resolution.

58. The clause also provides DfC with the power to make regulations setting out the requirements relating to a scheme funder's accounts, e.g. setting out requirements relating to the audit of accounts. These regulations would be subject to negative resolution.

Further detailed information on the financial sustainability requirement as it relates to the business plan of master trusts subject to the provisions of the Westminster Pension Schemes Act 2017 is available in the TPR Code of Practice for Master Trusts – see pp47-51.

TPR provides an example in the code whereby a current or prospective scheme funder may, as part of the application for authorisation, request an exemption from the requirement to only carry out activities that relate directly to the master trusts. Reasons for this may include a situation where their activities are too interwoven into the wider business of the scheme funder to economically disentangle. There may also be cases where splitting out the master trust scheme funder from other group operations reduces the security of the scheme funder or increases costs to members. TPR states that it will expect the scheme funder to provide evidence to support their rationale for an exemption.

Systems and processes requirement

59. **Clause 11** provides that a master trust needs to satisfy the Regulator that it has sufficient systems and processes in place for it to run effectively. The Bill provides that the Regulator must take into account any matters specified in Regulations made by the Department for Communities.

60. Clause 11(3) sets out how these regulations may make provisions relating to "systems" and "processes":

- **Systems** include: the features and functionality required of the IT systems that run the scheme; standards that those IT systems must meet (e.g. quality and security of data); and the maintenance of those IT systems.
- **Processes** include: records management; risk management; resource planning; processes in relation to transactions and investment decisions; processes relating to the appointment and removal of trustees, and their professional development; processes relation to the roles and responsibilities of a scheme strategist and a scheme funder; and processes relating to the appointment, removal, roles and responsibilities of other persons involved in running the scheme or persons providing serves in relation to the scheme.

61. The first regulations made under this section of the Act would be subject to the confirmatory procedure and any subsequent regulations to negative resolution.

Further detailed information on the systems and processes requirement as it relates to master trusts subject to the provisions of the Westminster Pension Schemes Act 2017 is available in the TPR Code of Practice for Master Trusts – see pp 22-35.

Continuity strategy requirement

62. A continuity strategy is a document that sets out how members' benefits will be protected following a "triggering event". A trigger event can refer to an incident that may indicate that the scheme cannot continue to operate. **Clause 12** of the Pension Schemes Bill (as introduced) provides that:

- a continuity strategy must be prepared by a scheme strategist;
- the continuity strategy must include a section setting out the levels of administration charges that apply in relation to members of the scheme. These level of charges must be set out in the manner specified in regulations made by the Department for Communities. The first regulations made will be subject to the confirmatory procedure and any subsequent regulations subject to negative resolution.
- The continuity strategy must contain such other information as may be specified in regulations made by DfC and must be prepared in accordance with regulations made by DfC.
- A scheme strategist must keep the continuity strategy under review and revise it if appropriate.
- The continuity strategy, and any revisions to it, must be approved by each scheme funder, the trustees and any other scheme strategist.
- The scheme strategist or trustees must provide the continuity strategy to The Pensions Regulator at various stages, i.e. on application for authorisation, within three months of the strategy being revised, and at any other time on the request of the TPR.

> **Further detailed information on continuity strategy requirements** as it relates to master trusts subject to the provisions of the Westminster Pension Schemes Act 2017 is available in the TPR Code of Practice for Master Trusts – see pp 35-46 and the 'Master trust authorisation: Continuity strategy checklist'.

The ongoing supervision of master trust schemes – clauses 13 to 19

63. Master trusts must continue to meet the authorisation criteria on an ongoing basis, and this will be monitored by TPR. Clauses 13 to 19 of the Pension Schemes Bill (as introduced) provides a framework for supervision that includes a requirement to publish a list of authorised schemes; to submit a supervisory return; and a duty to notify TPR of significant events. There are also provisions in the Bill for fixed penalty notices and escalated fixed penalty notices in relation to non-compliance. This section of the Bill (as introduced) also provides that where The Pensions Regulator is no longer satisfied that a scheme meets the authorisation criteria, it may withdraw the scheme's authorisation.

A list of authorised schemes

64. TPR must maintain and publish a list of authorised master trusts schemes (**clause 13**). The list must identify each authorised master trust by scheme name and may include any other information TRP considers appropriate. The Pensions Regulator has already published a list of authorised schemes that are required to be authorised under the Westminster Pensions Act 2017[56]. As of the 30 June 2020, 38 authorised master trusts were on the list, including the not-for-profit Northern Ireland-based master trust, The Workers Pension Trust[57][58].

Requirement to submit annual accounts

65. **Clause 14** provides that the Trustees of an authorised master trust scheme must send the scheme's accounts to TPR. The accounts must be sent no later than two months after they are obtained by the Trustees. A scheme funder must also send its accounts to TPR and these should be sent no later than nine months after the end of the financial year in to which they relate, or within such other period that may be specified in regulations made by the Department of Communities. These regulations would be subject to negative resolution.

66. A civil penalty, under Article 10 of the Pensions (Northern Ireland) Order 1995 may be applied to a person who fails to comply with such requirements (i.e. a fine of up to £5,000 for an individual or £50,000 in any other case).

Requirement to submit a supervisory return

67. There are provisions under **clause 15** to allow the TPR to require (by way of written notice) the trustees of an authorised master trust scheme to submit a supervisory return. The Department for Communities would be provided with the power to make regulations setting out the information that TPR may require in such a return. These regulations would be subject to negative resolution.

68. TPR's written notice must specify the information required to be included in the return, the manner and form in which the return must be submitted, and the time period (of at least 28 days) within which the return must be submitted.

69. Clause 15 provides that the trustees of an authorised master trust scheme may not be required to submit a supervisory return more than once in any 12-month period.

[56] The Pensions Regulator. List of authorised master trusts. [accessed 30 June 2020]. www.thepensionsregulator.gov.uk/en/master-trust-pension-schemes/list-of-authorised-master-trusts#:~:text=The%20following%20pension%20schemes%20have%20been%20granted%20master,Cheviot%20Pension.%2010%20Combined%20Nuclear%20Pension%20Plan.%20
[57] The Workers Pension Trust. https://workerspensiontrust.co.uk/
[58] Workers Pension Trust. Press Release. 'Major success for NI-based Workers Pension Trust. 27 August 2019. https://workerspensiontrust.co.uk/news/major-success-for-ni-based-workers-pension-trust

> **Further detailed information on supervisory returns** and master trusts subject to the provisions of the Westminster Pension Schemes Act 2017 is available from The Pensions Regulator website here[59].

Duty to notify The Pensions Regulator of significant events

70. **Clause 16** of the Bill contains provisions that would require "a person" to notify The Pensions Regulator that a significant event has occurred in an authorised master trust scheme. Such persons are identified as:

- A trustee of the scheme;
- A person who (alone or with others) has power to appoint or remove a trustee;
- A person who (alone or with others) has power to vary the terms of trust under which the scheme is established (where the scheme is established under a trust);
- A person who (alone or with others) has power to vary the scheme (where the scheme is not established under a trust;
- A scheme funder;
- A scheme strategist;
- A person who provides legal, financial or actuarial advice in relation to the scheme;
- A person who manages the scheme administration services;
- A person acting in a capacity specified in regulations made by the Department for Communities. These regulations would be subject to negative resolution.

71. Clause 16(3) provides that DfC must make regulations setting out the events that constitute significant events. The first regulations made under this section would be subject to the confirmatory procedure and subsequent regulations subject to negative resolution.

72. A person would not be required to disclose anything in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

73. A civil penalty, under Article 10 of the Pensions (Northern Ireland) Order 1995 may be applied to a person who fails to notify the Regulation that a significant event has occurred (i.e. a fine of up to £5,000 for an individual or £50,000 in any other case).

> **Further detailed information on significant events** in relation to master trusts subject to the provisions of the Westminster Pension Schemes Act 2017 is available from The Pensions Regulator website here[60]. The Code explains that significant events *"are circumstances arising*

[59] The Pensions Regulator. Supervisory return for master trusts. www.thepensionsregulator.gov.uk/en/master-trust-pension-schemes/supervision-of-master-trusts/supervisory-return

[60] The Pensions Regulator. Significant event duties for master trusts. www.thepensionsregulator.gov.uk/en/master-trust-pension-schemes/supervision-of-master-trusts/significant-event-duties-for-master-trusts

> *during the operation of a master trust"*. These can include, for example, certain changes to the statement of investment principles; significant changes to the business plan; certain failures to meet milestones in the business plan; the master trust unlikely or unable to meet its liabilities on demand; the master trust is unlikely or unable to meet the level of assets or liquidity agreed with TPR and as set out in the business plan; or a failure of the systems and processes used in running the master trust which has a significant adverse effect on the security or quality of data or on service delivery. The Code sets out the expectation of TPR in relation to such significant events and the period by which TPR expects to be notified that such an event as occurred.

Fixed penalty notice for failure to comply with request for information

74. Master trusts are expected to interact openly with The Pensions Regulator and provide a variety of information to enable TPR to carry out its statutory supervision duties. TPR in its 'Master trust authorisation: supervision and enforcement policy' (October 2018) states that it expects those involved in the running of a master trust to work and interact with the supervision team in an open, honest and co-operative way. It states that it must be able to obtain accurate and up to date information to enable it to supervise effectively[61].

75. **Clause 17** provides that The Pensions Regulator may issue a **fixed penalty notice** to a person if it considers that the person has failed to comply with a statutory notice for information under Article 67 of the Pensions (Northern Ireland) Order 2005. Article 67 provides TPR with the power to require a range of persons involved in pension schemes to provide certain information.

76. A fixed penalty notice is defined in the Bill as "*a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice"*. The penalty is to be determined by the Department for Communities by way of regulations but it must not exceed £50,000. The Bill provides that these regulations would be subject to negative resolution.

77. The Fixed Penalty Notice must:

- State the amount of the penalty;
- The date by which the penalty must be paid (which must be at least 28 days after the date on which the notice is issued);
- State the period to which the penalty relates;
- Specify the failure to which the penalty relates; and

[61] The Pensions Regulator. Master Trust authorisation: Supervision and enforcement policy. October 2018. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/master-trust-supervision-and-enforcement-policy.ashx

- Notifying the person to whom the notice is issued of the right of referral to a tribunal.

> The TPR '[Master trust authorisation: supervision and enforcement policy]' (October 2018) which currently relates to master trusts authorised under the Westminster Pensions Schemes Act 2017 states that the Fixed Penalty Notice applicable to trusts who fail to comply with a notice requesting information is £500. This must be paid by a specified date at least 28 days after the notice is issued and the underlying request for information should also be complied with.

Escalating penalty notice for failure to comply with request for information

78. **Clause 18** of the Bill provides that the Regulator may issue an Escalating Penalty Notice (EPN) if it considers that a person has failed to provide information requested in a notice issued under Article 67 of the 2005 Order.

79. However, the clause also provides that an EPN may not be imposed on a person if a fixed penalty notice (under clause 17) has been referred to a tribunal and that tribunal has not yet made a decision.

80. The EPN would be calculated in accordance with a daily rate. The Bill's Explanatory Memorandum states that the daily rate would be determined in accordance with regulations but must not be more than £10,000.

81. Clause 18(6) specifies the requirements for what an EPN must contain, i.e. the daily rate of the penalty, the date by which the penalty must be paid, the failure to which the penalty relates, and details of how to appeal the penalty.

> The TPR '[Master trust authorisation: supervision and enforcement policy]' (October 2018) sets out the daily rate for Escalating Penalty Notice that can be imposed on master trusts authorised under the Westminster Pensions Schemes Act 2017 who fail to provide information following a statutory request, i.e.
>
> Day 1: £1,000
>
> Day 2: £2,000
>
> Day 3: £3,000
>
> Day 4: £4,000
>
> Day 5: £5,000
>
> Day 6: £6,000
>
> Day 7: £7,000
>
> Day 8: £8,000
>
> Day 9: £9,000

Day 10: £10,000

Each subsequent day: £10,000

TPR states that it may also use other legislation at its disposal to pursue a criminal investigation (i.e. Section 77 of the Pensions Act 2004), which cases should be subject to criminal prosecution would be in accordance with its prosecution policy[62].

Withdrawal of authorisation

82. **Clause 19** provides that where The Pensions Regulator is no longer satisfied that a scheme meets the authorisation criteria, it may withdraw the scheme's authorisation. Where TPR issues a warning notice that it intends to de-authorise a scheme under the "standard procedure" or a determination notice under the "special procedure", the notice must include a statement that the issue of the notice is a triggering event along with an explanation of the trustees' duties under clauses 20 to 33. Further details on the TPR standard and special procedure under which master trusts currently regulated under the Westminster Pension Schemes Act are subject to is available on page 21 of the TPR 'Master trust authorisation: Supervision and enforcement policy'[63].

83. Subsection (3) sets out that where a scheme is de-authorised TPR must notify the trustees of this and remove the scheme from the published list of authorised master trusts.

Triggering events – clauses 20 to 33

84. The Pension Schemes Bill (as introduced) places a duty on those running master trust pension schemes to notify The Pensions Regulator about certain 'triggering events' that may indicate that the trust is in difficulty. TPR states that triggering events are incidents that potentially threatened the existence of a master trust. They can broadly fall into two categories (a full list of triggering events is outlined in **Clause 21** of the Bill) i.e.:

- Those relating directly to a trust's authorisation status (e.g. there is an immediate risk to the interests of members or assets of the scheme); and
- Events that are linked to decisions and actions taken by those involved in running the master trusts (e.g. a scheme funder decides to end the relationship or arrangements with their master trust)[64].

[62] The Pensions Regulator. Prosecution Policy. June 2016. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/prosecution-policy.ashx

[63] The Pensions Regulator. Master trust authorisation: Supervision and enforcement policy. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/master-trust-supervision-and-enforcement-policy.ashx

[64] The Pensions Regulator. Master Trust authorisation: Identifying and notifying triggering events. November 2018. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/master-trust-triggering-events-guidance.ashx

> The Pensions Regulator has published detailed guidance on 'identifying and notifying triggering events'[65] for master trusts requiring authorisation under the Westminster Pension Schemes Act 2017. The guidance applies only in respect of triggering events occurring after 1 October 2018. The guidance will aid an understanding of how the provisions relating to triggering events contained with Northern Ireland Pension Schemes Bill are likely to operate in practice. The guidance also contains a very useful and detailed list the ten events which TPR deem to be triggering events. See also the section "Triggering events duties for Master Trusts" on the TPR website[66].

Triggering events: the duties of trustees

85. If a master trust experiences a triggering event, **Clause 20** provides that trustees must comply with three sets of duties i.e.:

- To notify The Pensions Regulator and employees (Clause 22);
- To pursue a continuity option (clause 23); and
- To prepare and submit and implementation strategy to TPR (Clause 26 and 27).

What types of situations constitute triggering events?

86. **Clause 21** of the Bill (as introduced) provides a table which lists 10 triggering events (second column) and the date on which the event occurs (third column):

Item	Triggering event	Date event occurs
1	The Regulator issues a warning notice under the standard procedure in respect of a decision to withdraw the schemes authorisation.	The date on which the notice is issued.
2	The Regulator issues a determination notice under the special procedure in respect of a decision to withdraw the scheme's authorisation.	The date on which the notice is issued.
3	The Regulator gives a notice under section (3)(3) (scheme not authorised).	The date on which the notification is given.
4	An insolvency event occurs in relation to a scheme funder.	The date on which the insolvency occurs.

[65] Ibid.
[66] The Pensions Regulator. Triggering event duties for master trusts. www.thepensionsregulator.gov.uk/en/master-trust-pension-schemes/supervision-of-master-trusts/master-trust-triggering-events-and-authorisation

5	A scheme funder becomes unlikely to continue as a going concern, where the scheme funder is a person or body of a kind that meets requirements prescribed under Article 113(1)(b) of the 2005 Order.	The date on which (a) the scheme funder notifies the Regulator of that fact, or (b) (if earlier) the trustees or a scheme strategist become aware of that fact.
6	A scheme funder ends the relationship or arrangements with the master trust scheme by virtue of which it is a scheme funder.	The date of the decision.
7	A scheme funder ends the relationship or arrangements with the master trust scheme by virtue of which it is a scheme funder.	The date on which (a) the scheme funder notifies the Regulator of that fact, or (b) (if earlier) the trustees or a scheme strategist become aware of that fact.
8	A scheme funder, scheme strategist or the trustees decide that the master trust scheme should be wound up, where the person making the decision has power to do so under the scheme or the rules of the scheme.	The date of the decision.
9	An event occurs which is required or permitted by the scheme or the rules of the scheme to result in the winding up of the master trust scheme.	The date on which the event occurs.
10	The trustees decide that the master trust scheme is at risk of failure and so it is necessary for one of the continuity options to be pursued (see clause 23).	The date of the decision.

Who is required to notify the Regulator that a triggering event has occurred?

87. As highlighted in the beginning of this section, trustees have three notification duties. However, **Clause 22** places notification requirements on others involved in the master trust in relation to certain triggering events as set out in the table below (column 2). However, Clause 22(4)(b) requires that if a specified triggering event has occurred, it places a duty on other specified persons, if they become aware that the event has occurred, to notify the Regulator (column 3):

Event	Person under duty to notify	Persons under duty to notify TPR if they become aware of an event
Item 4 (insolvency event in relation to a scheme funder)	The scheme funder	The trustees A scheme strategist
Item 5 (scheme funder unlikely to continue as a going concern)	The scheme funder	The trustees A scheme strategist
Item 6 (scheme funder decides to end relationship or arrangement)	The scheme funder	The trustees A scheme strategist
Item 7 (scheme funder ends relationship or arrangement)	The scheme funder	The trustees A scheme strategist
Item 8 (scheme funder, scheme strategist or trustees decide that the scheme should be wound up)	The person or person who take the decision	The trustees A scheme funder A scheme strategist
Item 10 (trustees decide that it is necessary to pursue continuity option)	The trustees	A scheme funder A scheme strategist

88. The Pensions Regulator's guidance on 'identifying and notifying triggering events' (applicable to trusts under the 2017 Act) states that where the legal duty to notify a triggering event falls on a number of relevant persons, TPR would expect the master trust scheme to have systems and processes in place to facilitate compliance and manage the notification process.

Will employers who use the pension scheme be informed that a triggering event has occurred?

89. If a triggering event occurs, Clause 22(6) provides that the trustees must **notify the employers** (e.g. employers using the pension scheme) that a triggering event has occurred. It also provides the Department for Communities with the power to specify in regulations "such other matters" that the trustees must notify employers regarding the event. Notification to employers must be given before the end of the period specified also in regulations. Regulations under this section would be subject to negative resolution.

90. A person who fails to comply with a notification requirement under **Clause 22** may be subject to a civil penalty under Article 10 of the Pensions (Northern Ireland Order) 1995 (i.e. a fine of up to £5,000 for an individual or £50,000 in any other case).

Continuity options during a triggering event

91. Where a master trust has experienced a triggering event, **Clause 23** of the Bill provides that two options are available to the trustees depending upon the nature of that triggering event, i.e.:

***Continuity option 1:* the trustees of a master trust transfer all members (and their accrued rights and benefits) out of the scheme and ensure that the scheme is wound up** (clause 24). **Clause 24** provides that the trustees must identify one or more other pension schemes which are able to accept the accrued rights and benefits of its master trust scheme. These schemes can either be master trusts or alternative schemes that have characteristics that can be set out in regulations. The Bill's Explanatory Memorandum states that members of master trusts will retain a right to transfer to a scheme of their own choosing if they do not wish to transfer to the scheme selected by the trustees.

***Continuity option 2:* the trustees determine that the triggering event can be resolved** (clause 25). Clause 25 provides a requirement for trustees to notify The Pensions Regulator when they consider the triggering event to be resolved. The notification must set out how the trustees consider it has been resolved and provided the notification by the end of the period specified in Regulations made by the Department for Communities (subject to negative resolution). After receiving the notification, the TPR must notify the trustees of whether it is satisfied that the triggering event has been resolved. A trustee may be subject to a civil penalty (under Article 10 of the 1995 Order) if they fail to comply with these requirements.

92. If a master trust has been de-authorised by TPR, and all appeals have been exhausted, or the scheme is not authorised (under clause 3(3)), the only available option available to the trustees is option 1 (i.e. transfer and winding up). Any person who fails to comply with a requirement imposed under this section may be subject to a civil penalty under Article 10 of the 1995 Order.

The Pensions Regulator has published detailed guidance on 'pursing an continuity option during a triggering event'[67] which provides a useful illustration of how the continuity aspects of the Northern Ireland Bill (as introduced) would be regulated in practice by TPR.

[67] The Pensions Regulator. Master trust authorisation: Pursuing a continuity option during a triggering event guide. November 2018. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/master-trust-continuity-options-guidance.ashx?la=en&hash=C769BD845CB1B777A99F57D1F0F6B83CE6395A83

Triggering events: the implementation strategy

93. If a trigger event occurs, **Clause 26** provides that an **implementation strategy** must be submitted by the trustees to The Pensions Regulator for approval. Clause 27(2) defines the implementation strategy as a "*document setting out how the interests of members of the scheme are to be protected following an occurrence of the triggering event"*. Clause 26 sets out the circumstances in which an implementation strategy will be required.

94. Where the trustees are required to submit an implementation strategy to TPR for approval, the strategy must be submitted before the end of a periods specified in regulations made by the Department for Communities (the Bill, as introduced, provides that these will be subject to negative resolution). The Regulator may direct trustees to comply with requirements of this section of the legislation, and clause 26 provides for civil penalties (under Article 10 of the 1995 Act) if a person fails to comply with this direction.

95. Clause 26 provides that TPR may approve an implementation strategy only if it is satisfied that the strategy is adequate, i.e. it meets the requirements of **Clause 27** which sets out what information the implementation strategy should contain. This clause provides that the strategy must include:

- a section setting out the levels of administration charges that applied in relation to members of the scheme (these charges must be set out in the manner and at the date specified or described in regulations made by the Department for Communities);
- the continuity option that the trustees are required, or decide, to pursue;
- if the trustees are required or decide to pursue, continuity option 1 (i.e. transfer of members' accrued rights and benefits and winding up) the implementation strategy must contain information on the scheme or schemes to which it is proposing to transfer those rights and benefits (if known) and details of when these rights and benefits are expected to be transferred;
- where the trustees intend to pursue continuity option 2 (resolving the triggering event), the strategy should contain information on how the master trusts is proposing to resolve that triggering event; and
- other information as may be specified in regulations made by the Department for Communities and be prepared in accordance with regulations (these regulations would be subject to negative resolution).

Duty to pursue a continuity option

96. **Clause 28** provides that when TPR notifies the trustees that the implementation strategy is approved, the trustees must (a) pursue the continuity option identified in the strategy and (b) take any other steps identified in the strategy in order to carry it out.

97. This clause also provides that the trustees must make the strategy available to the employers (i.e. employers using the pensions scheme) before the end of a period specified in regulations made by the Department for Communities (these would be subject to negative resolution).

Prohibition on winding up except in accordance with continuity option 1

98. **Clause 29** provides that master trusts schemes can only be wound up in accordance with continuity option 1 (as set out in Clause 24). The Pensions Regulator may still by order direct the scheme to wind up under Article 11 of the Pensions (Northern Ireland) Order 1995. Where a person fails to comply with subsection (1) i.e. master trusts can only be wound up in accordance with continuity option 1, they may be subject to a civil penalty under Article 10 of the 1995 Order.

Triggering event: periodic reporting requirements

99. **Clause 30** provides that during a triggering event, the trustees must submit **periodic reports** to The Pensions Regulator. The reports must (a) report on progress in carrying out the implementation strategy; (b) record events or decisions of a description specified in regulations made by the Department for Communities; and (c) contain other such information as specified in Regulations made by the Department. Both regulations would be subject to negative resolution. The report must be made in the manner and form specified by TPR.

100. The first report must be submitted before the end of a period specified in regulations made by the Department for Communities (subject to negative resolution). All subsequent reports must be submitted at intervals specified by the Regulator.

101. A person who failed to comply with these requirements may be subject to a civil penalty under Article 10 of the 1995 Act.

Pause orders

102. A pause order is a decision given to a master trust scheme to limit the range of activity that a scheme can undertake during the period the order is in effect. **Clause 31** s applies to a triggering event period, and provides TPR with the power to make a pause order in relation to a scheme if either of the following two conditions is met, i.e.:

Condition 1: the Regulator is satisfied that making a pause order will help the trustees to carry out the implementation strategy.

Condition 2: the Regulator is satisfied that:

- there is (or is likely to be if a pause order is not made) an immediate risk to the interests of members or the assets of the scheme; and
- it is necessary to make a pause order to protect the interests of the generality of the members of the scheme.

103. **Clause 31** provides that during the period the pause order is in effect one or more of the following can apply:

- preventing new members (or specified classes of members) be admitted to the scheme;
- stopping the receipt of contributions or payments to the scheme by or on behalf of members, or ceasing the payment of any (or specified) benefits;
- refunding contributions or deductions from earnings; and
- stopping any transfers, transfer payments or other steps to discharge any liability.

104. The Pensions Regulator currently monitors compliance with pause orders made under the Westminster Pensions Act 2017 by using a number of tools including periodic reports submitted by master trusts and HMRC Real Time information data[68].

Prohibition on new employers during a trigger event period

105. **Clause 32** provides that during a triggering event period, neither the trustees, the scheme funder or the scheme strategist may (a) permit any new person to become an employer in relation to the scheme or (b) enter into an agreement under which a new person will become an employer in relation to the scheme after the end of the triggering event period. A person who fails to comply with this requirement may be subject to a civil penalty under Article 10 of the 1995 Order.

Prohibition on increasing charges etc. during a trigger event period

106. **Clause 33** provides that during a triggering event period, the trustees must not:

- impose any administration charges on or in respect of members at levels above those set out in the implementation strategy;
- impose any new administration charges on or in respect of members; and
- impose any administration charges on or in respect of a member in consequence of that member leaving, or deciding to leave, the scheme during that period.

107. This clause also provides that a master trust scheme which receives a transfer of members' rights and benefits (i.e. from a scheme that has pursued continuity option 1) can only increase administration charges above the level set out in the document provided to The Pensions Regulator under certain circumstances.

A civil penalty under Article 10 of the 1995 Order may be applied to a trustee who fails to comply with a prohibition.

[68] The Pensions Regulator. Master trust authorisation. Supervision and enforcement policy. October 2018.

Decisions on withdrawal of authorisation: timing

108. **Clauses 34** provides for authorisation not to be withdrawn in certain circumstances following a triggering event and **Clause 35** sets out when a decision to withdrawn authorisation becomes final.

Other clauses within Part 1 of the Bill

109. **Clause 36** provides for a regulation-making power to enable the Department for Communities to modify Articles 165 and 170 of the Pensions (Northern Ireland) Order 2005, which relate to fraud compensation. These regulations will make amendments to modify how fraud compensation under the 2005 Order applies to master trusts and other pension schemes to which all or some of the provisions of Part 1 of the Bill apply. The Bill's Explanatory Memorandum states that the Department proposes to use regulations to make adjustments to fraud compensation to make it more suitable for master trusts.

110. **Clause 37 and Schedule 2** of the Bill (as introduced) put in place transitional provision for master trusts that are in existence before the commencement date (commencement date is defined by reference to the commencement of clause 3 (i.e. the prohibition on operating a master trust without authorisation).

111. **Clauses 38 and Schedule 3** of the Bill include minor and consequential amendments, **Clause 39** the interpretation of part 1 of the Bill and **Clause 40** the Regulations modifying the application of Part 1 of the Bill.

Conclusion

112. The Pensions Regular has over a number of years shifted its emphasis into a more proactive oversight into protecting workplace pensions as part of its TPR Future initiative[69]. The Regulator's "Master trust authorisation: supervision and enforcement policy" provides an insight into its regulatory approach to master trusts, the same approach is likely to be extended to Northern Ireland when the Pension Schemes Bill is enacted.

113. In terms of expectations, TPR expects those responsible for master trusts to[70]:

- Be open, honest and transparent in their interactions with us, responding promptly to information requests;
- Proactively liaise with TPR and volunteer information about material developments, risks and any issues that may affect the scheme's ability to continue to meet the authorisation criteria and other obligations.

[69] The Pension Regulator. Protecting workplace pensions. TPR Future – a review of the way we work. July 2017. www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/tpr-future-protecting-workplace-pensions.ashx

[70] The Pensions Regulator. Master trust authorisation: supervision and enforcement policy.

- Satisfy TPR that they will continue to meet their obligations and that there is a low risk that the master trust will fail to meet their obligations going forward (including providing relevant evidence);
- Be proactive in identifying and monitoring risks; and
- Be proactive in rectifying any issues that may arise and affect the scheme's ability to continue to meet the authorisation criteria or other obligations.

114. TPR states that it will be continuing to monitor the master trust industry as a while with the aim of identifying[71]:

    - Key risks relating to master trusts and delivering its approach towards managing and/or mitigating such risks;
    - Master trusts operating contrary to their legal and regulatory obligations; and
    - Master trusts operating unlawfully without authorisation.

115. In terms of enforcement, TPR hopes that any of the risks and issues identified with master trusts can be managed by master trusts and that they should proactively resolve the concerns of TPR without TPR having to use its powers[72]. However, the Regulator states that it may, after having taken account of relevant aggravating and mitigating factors, use its enforcement powers if necessary[73].

Section three: a cap or ban on administration charges

116. Part 2 (**Clause 41**) of the Pension Schemes Bill (as introduced) provides for regulations to over-ride contractual terms in occupational pension schemes where these terms conflict with the regulations. The policy intention of this aspect of the Bill is to restrict certain charges in occupational pension schemes, i.e.:

    - To introduce a **ban on member-borne commission charges** that arise under existing contracts so that members are protected from hidden charges; and
    - To introduce a **cap/ban on early exit charges** in certain occupational pension schemes to ensure that members are not deterred from accessing pension freedoms due to excessive early exit charges.

Policy Context

117. Consecutive UK Governments have introduced a series of pension reforms to enable people to make provision for their retirement through saving into a workplace pension and offer people more flexibility to access their pension before retirement age. Given that Northern Ireland generally maintains parity in pensions, the Northern Ireland Assembly has legislated to ensure that citizens in Northern Ireland maintain the same

[71] Ibid
[72] Ibid
[73] Ibid

rights in relation to occupational pensions as those in Great Britain. Two major waves of pension reform have been introduced across the UK in recent years.

118. The **first** wave was the introduction of **automatic enrolment**. Enacted in Northern Ireland via the Pensions (No.2) Act (Northern Ireland) 2008 which made it compulsory for employers to automatically enrol eligible workers into a qualifying workplace pension scheme. These reforms were phased-in between October 2012 and February 2018. Part 1 of the Pension Schemes Bill aims to protect the interests of members of these pension schemes by introducing an enhanced regulatory framework for master trusts.

119. The **second wave** of private pension reform, known as the "**pension freedoms**", was announced in the UK Budget 2014[74] to provide individuals with more choice in how and when to access their retirement savings. Under these new pension flexibility rules, individuals aged 55 and over who are members of a defined contribution (DC) pension scheme are able to access their pension pot as and when they wish (subject to a marginal rate of income tax). They can do this via their current scheme or by transferring their savings to a scheme that offers flexible access options. However, as noted by the DWP's impact assessment on the equivalent Westminster Pensions Bill, there were concerns that expensive fees were preventing some scheme members from accessing these freedoms[75].

120. Unintended consequences impacting on pension scheme members soon become evident. For those automatically enrolled in workplace pensions, high and unfair commissioning charges imposed on members became a significant issue. For pension members seeking to avail of the new "pension freedoms" by accessing their pension pot early, expensive "early exit" charges were emerging as a barrier.

A ban on member-borne commissioning charges

121. Member-borne commissions are arrangements between a service provider and an adviser, or an employer and an adviser, where the charge is passed onto the members who are required to pay for advice and services they may not use or may not benefit from. In March 2014, the UK Government announced a range of control measures to protect savers automatically enrolled into a workplace pension scheme. This included action to prevent service provision from imposing commissioning charges on members[76]. The ban would apply to occupational pension schemes providing money purchase benefits and which were used for automatic enrolment[77].

[74] UK Budget 2014. www.gov.uk/government/publications/budget-2014-documents
[75] DWP. Pension Schemes Bill. Impact Assessment: Summary of Impacts. January 2017. www.parliament.uk/documents/impact-assessments/IA17-002.pdf
[76] Department for Communities. Proposals for a Pension Schemes Bill: Completed equality impact assessment – May 2020. www.communities-ni.gov.uk/publications/proposals-pension-schemes-bill-completed-equality-impact-assessment-may-2020
[77] The prohibition did not apply to certain schemes. For further information see DWP. Banning new member-borne commission: guidance for service providers and trustees or managers of occupational pension schemes. 8 March 2016.

122. Subsequently, the then Department for Social Development introduced the Occupational Pension Scheme (Charges and Governance) (Amendment) Regulations (Northern Ireland) 2016. These regulations prohibited charges being levied on members to recoup payments that service providers made to advisers (for advice and services) under *new* commissioning arrangements. New commissioning arrangements were those entered into ***on or after 6 April***. Advisers would still be able to offer and charge a fee for specific advice and services to members and employers but they would no longer be paid for this via a blanket charge on all members within a scheme.

How do member-borne commissioning charges work?

The Explanatory Memorandum of the 2016 Regulations provided the following explanation of how member-borne charges worked before the introduction of the regulations:

"..financial advisers and service providers are able to agree commission arrangements where the financial adviser is remunerated for their services via an administration charge levied on all members of a pension scheme. The service provider administers the member charge, and members bear the cost.

There are three forms of commission arrangement:

- *Initial commission – this refers to an arrangement whereby a pension provider makes an up-front lump sum payment to an adviser in return for new business, the costs are recovered via a charge borne by the scheme members;*
- *Deferred commission – this refers to an arrangement whereby a pension provider agrees a lump sum payment with an adviser and makes the payments, for example, over 2-3 years once a scheme has been established. The costs are recovered via a charge borne by scheme members; and*
- *Trail commission – this refers to an arrangements whereby ongoing payments are borne by scheme members for advice or services provided by an adviser.*

123. The prohibition on member-borne commissioning charges did not extend to commissioning arrangements entered into before 6 April 2016 (these were known as *existing* commissioning arrangements) unless the agreement was renewed or varied after this date[78]. However, it was the UK Government's intention that legislation would be enacted to **fully implement the ban** across both new and existing commissioning arrangements.

124. Schedule 18 of the Pensions Act (Northern Ireland) 2015 provides the Department of Communities with the power to make regulations that restrict charges or impose requirements on certain pension schemes. **Clause 41** of the Pension Schemes Bill (as introduced) provides for an amendment to be made to paragraph 6 of Schedule 18 of the 2015 Act to provide that "The Department may by regulations provided that the

www.gov.uk/government/publications/banning-member-borne-commission-in-automatic-enrolment-pension-schemes/banning-new-member-borne-commission-guidance-for-service-providers-and-trustees-or-managers-of-occupational-pension-schemes

[78] DWP. Banning new member-borne commission: guidance for service providers and trustees or managers of occupational pension schemes. 8 March 2016.

specified provisions override any term of a relevant contract to the extent that it conflicts with them". A "relevant contact" refers to a contract between the trustees or managers of a relevant scheme or a person providing services in relation to the scheme.

125. The purpose of Clause 41 is, therefore, to amend existing powers **to allow regulations to be made** that will override contractual terms in order to facilitate a ban on member-borne commissioning charges that arise under existing contracts (i.e. those entered into before 1 April 2016). It is also the intention that Clause 41 will be utilised to facilitate a cap/ban on early exit charges in certain occupational pension schemes.

> Further detailed information on the historic policy context of the ban on member-borne commissioning charges in relevant workplace schemes used for automatic enrolment is available from the Explanatory Memorandum of the Occupational Pension Scheme (Charges and Governance) (Amendment) Regulations (Northern Ireland) 2016[79].

Early exit charges

126. Clause 41 of the Bill will facilitate the introduction of a cap on early exit charges for members of occupational pension schemes who are aged 55 and over and who wish to access the "pension freedoms". The Bill does not set out the level of the early exit cap, this will be set out in secondary legislation.

127. The Department for Work and Pensions published a consultation on capping early exit changes for members of occupational pension schemes in May 2016[80]. In its response to the consultation, the UK Government announced its intention to cap early exit charges for members of occupational pension schemes as follows[81]:

- 1% for existing members of occupational pension schemes
- 0% for new members of occupational pension schemes (in other words a ban on early exit charges)

128. The UK Government believed that using the date a member joins the scheme as the criteria for determining whether the 1% cap/ban would apply was the best way of

[79] Occupational Pension Scheme (Charges and Governance) (Amendment) Regulations (Northern Ireland) 2016. Explanatory memorandum. www.legislation.gov.uk/nisr/2016/171/pdfs/nisrem_20160171_en.pdf

[80] Department for Work and Pensions. Capping early exit charges for members of occupational pension schemes. Ensuring a fair and consistent approach across all defined contribution pensions. Public consultation. May 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/526040/consultation-capping-early-exit-charges-for-members-of-occupational-pension-schemes.pdf

[81] UK Government. Capping early exit charges for members of occupational pension schemes. Government response. November 2016. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/567617/government-response-consultation-capping-early-exit-charges-for-members-of-occupational-pension-schemes.pdf

aligning the rules that were being put in place for capping similar charges in personal and stakeholder pensions[82].

129. It is important to reiterate that the Bill does not set out what the level of the cap will be but an important factor in determining the application of the cap in relation to pension savers in Northern Ireland is the "parity principle" as set out in section 87 of the Northern Ireland Act 1998.

130. Provisions for regulation making powers under Clause 41 of the Bill would facilitate the introduction of a cap on early exit charges for members of occupational pension schemes who are aged 55 and over and who wish to access the "pension freedoms". The Bill does not set out the level of the early exit cap, this will be set out in secondary legislation.

Pension "Freedoms"

Further background information on the pension flexibility reforms is available in a House of Commons Library Research Briefing 'Pension flexibilities: the 'freedom and choice' reforms. Published December 2019.

Conclusion

131. The Westminster Pension Schemes Act 2017 and the equivalent provisions within the Northern Ireland Pension Schemes Bill are aimed at building upon reforms such as automatic enrolment and ensuring that members of pension schemes can access "pension freedoms" without being unfairly financially penalised. However, further pension reform proposals may be introduced in the near future. Another Pension Schemes Bill is currently making its way through Westminster (introduced in the House of Lords on 30 June, at the time of writing the Third Stage of the Bill was yet to be scheduled). The Bill contains a number of provisions including, for example,:

- establish a framework for regulating collective money purchase schemes;
- strengthen the power of The Pensions Regulator so that they can respond earlier when employers put the viability of their pension scheme at risk; and
- setting up a system for pensions dashboards (i.e. consumer-friendly digital interfaces that display information about an individual's pension savings in one place).

[82] See Financial Conduct Authority. Press Release. FCA introduces cap on early exit pension charges. 15 November 2016. www.fca.org.uk/news/press-releases/fca-introduces-cap-early-exit-pension-charges

If enacted in Northern Ireland and Great Britain, such measures contained within the proposed new legislation would change the pensions landscape further by introducing new protections and improve access to pensions information.

Further background information on the new Pension Schemes Bill is available from the House of Lords Library here and the House of Commons Library here.