

# **PENSION SCHEMES BILL 2020**

## **Delegated Powers Memorandum from the Department for Communities**

### **Introduction**

1. The Pension Schemes Bill was introduced in the Northern Ireland Assembly on 23 June 2020.
2. This memorandum identifies the provisions for delegated legislation in the Pension Schemes Bill. It explains:
  - the purpose of the powers;
  - the reason why matters have been left to delegated legislation;
  - the procedure selected for the exercise of these powers, and
  - why that procedure has been chosen.

### **Background and summary**

3. The Pension Schemes Bill contains measures to protect savers and maintain confidence in pension savings in the light of market developments prompted by pension reforms in recent years.
4. The pensions landscape has changed significantly over recent years and as a result the way in which people can save and access their pension savings has been transformed. In addition, the roll-out of automatic enrolment has resulted in a significant increase in the number of people being enrolled into a workplace pension. Following the completion of roll-out of the process in 2018, at end of December 2019, 10.2 million workers are newly saving or saving more into a workplace pension, generating around £38.5 billion in additional pension saving thanks to the policy.
5. The Bill is organised into the following parts:
  - Part 1 (clauses 1 to 40) – Master Trusts
  - Part 2 (clause 41) – Administration Charges
  - Part 3 (clauses 42 to 45) – General
  - Schedule 1 – Pause Orders
  - Schedule 2 – Master Trusts operating before commencement: Transitional provision
  - Schedule 3 – Minor and consequential amendments
6. The measures in the Pension Schemes Bill make provision for Northern Ireland corresponding to provision in the Westminster Pension Schemes Act 2017 (c. 17).

## **Part 1 - Master Trust Authorisation regime**

7. The introduction of automatic enrolment into workplace pension schemes under the Pensions (No. 2) Act (Northern Ireland) 2008 made it compulsory for employers to automatically enrol eligible workers into a qualifying workplace pension scheme.
8. The pensions market has responded to this and the Master Trust market has developed. This Part of the Bill aims to ensure that those saving into a Master Trust scheme, a form of multi-employer occupational pension scheme which employers are able to select for their workers rather than needing to set up their own pension scheme, are protected.
9. The Bill provides that:
  - an authorisation and supervision regime for Master Trusts will be introduced, so that Master Trusts would have to demonstrate to the Pensions Regulator that they meet certain key criteria on establishment, and then continue to do so;
  - existing Master Trusts will be brought into the regime and required to meet the new criteria;
  - requirements will be placed on trustees to act in certain ways in the event of wind-up or closure of a Master Trust to protect members in those circumstances; and
  - the Pensions Regulator is provided with greater powers to take action where the key criteria are not met.

## **Part 2 - Administration charges**

10. Since the introduction of the new pension freedoms in April 2015, which enable many people aged 55 and over to access their pension savings more flexibly, it has become apparent that individuals are facing a range of potential barriers, including incurring early exit charges, when seeking to access their savings under the pension freedoms.
11. This Part of the Bill amends existing legislation to provide the Department with a regulation-making power which allows the Department to introduce regulations which provide that any term in a contract which is inconsistent with something in the regulations is overridden. This supports the policy of capping early exit charges in occupational pension schemes and the intention to ban member-borne commission arising under existing contracts (those that were entered into before 6 April 2016).

## **Assembly Scrutiny**

12. The Department for Communities has considered in each case the appropriate procedure to be followed in exercising the delegated powers under the Bill. The

Assembly procedure selected for the exercise of the delegated powers takes account of the parliamentary procedure that applies to the corresponding delegated powers in the Westminster Pension Schemes Act 2017. The commentary below on each power sets out which Assembly procedure has been proposed and why that procedure is considered appropriate.

## **Other Matters**

13. All of the delegated powers are to be exercised by way of statutory rule, made by the Department for Communities. A list of the provisions of the Bill containing powers to make delegated legislation is contained in the Annex to this memorandum.

## **Analysis of delegated powers by clause**

### **Part 1 – Master Trusts**

#### **Clause 1 subsection (3)(b): Master Trust schemes: definition**

14. Clause 1 provides a definition of a Master Trust scheme. The essential aim is to ensure that the provisions within the Bill apply only to those schemes in relation to which the risks arise and that such schemes fall within the definition of a Master Trust.
15. Schemes where employers are connected in certain ways are more akin to single employer occupational pensions, and as such do not give rise to the risks associated with the form of Master Trusts this regime seeks to address. Clause 1 therefore provides that a scheme is not a Master Trust if it is only used or intended to be used by employers which are connected.
16. Subsection (3) sets out the circumstances under which two employers - (A) and (B) - are considered to be connected with each other for the purposes of the definition. Subsection (3)(a) sets out those employers that are considered to be connected by reference to “group undertakings” in the Companies Act 2006. Subsection (3)(b) delegates authority to the Department to make regulations specifying further circumstances in which an employer (A) can be considered connected to employer (B) for the purposes of the definition provided by this clause.
17. It is important that the Department is able to add to the circumstances in which two employers are connected. This is so that other relationships between employers can be specified as being connected if it becomes apparent through practice that schemes only open to employers with such relationships do not carry the risks which this legislation was introduced to deal with.
18. Regulations made under these powers will have significant implications for members, trustees and founders of any pension schemes to which some or all of the Master Trust provisions are disapplied as a result of the addition of other circumstances in which two employers can be considered connected. To

ensure the appropriate level of Assembly scrutiny for the regulations, it is considered that the confirmatory procedure is appropriate.

#### **Clause 4 subsection (5): Application for authorisation**

19. The Bill introduces an authorisation regime for Master Trust schemes, under which all Master Trust schemes must apply to the Regulator for authorisation in order to legally operate. Clause 4(2) identifies the key information which must be included in an application. It is important to ensure that the authorisation process is robust and that the Regulator is able to obtain all the information it requires to make a fully informed decision when deciding whether to authorise a scheme.
20. Subsection (5)(a) delegates authority to the Department to make regulations specifying other information to be included, in order to provide for the flexibility needed to respond to developments in the market as it responds to this requirement.
21. Subsection (5)(b) provides for regulations to set the application fee payable to the Regulator. This is to contribute to the cost of carrying out the new authorisation function introduced through these clauses. The policy intent is to introduce a one-off application fee paid to the Regulator by schemes seeking to become authorised at the point of application. The level of the fee may need to change over time and delegating this power to secondary legislation allows for this flexibility.
22. The regulation-making powers in this clause will be subject to the negative resolution procedure. As any ensuing regulations are designed to provide additional operational detail which may need to be changed from time to time, this is considered to be the appropriate procedure.

#### **Clause 7 subsections 2(h), 3(b) and 4(a): Fit and proper persons requirement**

23. The Bill requires the Regulator to decide whether it is satisfied that the scheme meets certain authorisation criteria, in order to authorise the scheme (clause 5).
24. Clause 7 sets out matters in relation to the first of the authorisation criteria – that the persons involved in the scheme are fit and proper persons. Subsection (2) obliges the Regulator to assess that persons acting in certain capacities in relation to the scheme are fit and proper, and subsection (3) provides that the Regulator may assess certain others.
25. Subsection (2)(h) provides a power for the Department to make regulations, the effect of which would be to add to the categories of person involved with a Master Trust whose fitness and propriety must be assessed by the Regulator for the purposes of authorisation. Subsection (3)(b) provides a power which allows the Department to also add to the list of people whom the Regulator may decide to assess for the purposes of authorisation while subsection (4)(a) allows for the Department to make regulations requiring the Regulator to take

into account certain matters when assessing whether a person is a fit and proper person to act in any capacity.

26. The intent is to ensure that there is an assessment of the competence and financial fitness and propriety of those key functions involved in these types of schemes. This is an important requirement in relation to the effective operation of Master Trust schemes generally, as well as reducing the potential for scams. The regulation-making power to add to the lists therefore provides flexibility to respond to what can be a fast-changing market.
27. Although the persons who are considered to be central to the running of a Master Trust currently have been identified and are listed on the face of the primary legislation in this section, the landscape of Master Trusts is constantly evolving as are the methods of those who seek to set up fraudulent schemes. Therefore it is important that the requirements on the Regulator to assess the fitness & propriety of those involved in a Master Trust are responsive and that the categories of person whom the Regulator is required, or can choose to assess can be added to over time to reflect changes in the Master Trust market.
28. This clause also makes provision to allow the Department to specify in regulations the matters which the Regulator must take into account in carrying out an assessment of a person's fitness and propriety. It is envisaged that these regulations will include matters in relation to competence and experience across the trustee board, as well as matters of propriety. It is important for schemes seeking authorisation that there is transparency over how the fitness and propriety will be assessed. In view of the wide range of considerations that may be relevant where different categories of person are acting in relation to a Master Trust, as well as the level of detail that might be required, these requirements cannot be appropriately set out on the face of the primary legislation. Therefore clause 7(4)(a) provides a power for the Department to set this out in regulations.
29. To ensure the appropriate level of Assembly scrutiny for the initial regulations, it is considered that the confirmatory procedure is appropriate for the first time the power is used. Given their technical nature, it is considered that the negative resolution procedure is appropriate for any subsequent regulations.

#### **Clause 8 subsection (4): Financial sustainability requirement**

30. Clause 8 relates to the second of the authorisation criteria – that the scheme is financially sustainable. The clause requires that the Regulator must be satisfied that the business strategy relating to the scheme is sound, and that the scheme has sufficient resources to meet certain costs outlined in subsection (3). The power at subsection (4) is to enable regulations to set out matters that the Regulator must take into account when deciding whether it is satisfied about these matters.
31. Subsection (5) provides a non-exhaustive list of matters about which the regulations may make provision, for instance, specifying the information the

Regulator must take into account (such as the scheme's business plan and supporting documents, and the scheme's and the scheme funder's accounts) and requirements which are to be met by the scheme or the scheme funder in relation to its financing, such as requirements relating to assets, capital, or liquidity.

32. It is envisaged that this regulation-making power could be used to, for example, require the Regulator to take into account the scale, nature and security of the sources of funding available to the scheme, as compared to its expected scale. In relation to the financial resources required to enable the scheme to meet its costs following a triggering event (key risk events, set out in clause 21), the Regulator will also be required to take into account the extent to which those resources are separated from or otherwise protected from the risk of the scheme funder's insolvency. The regulations are expected also to set out the factors that the Regulator will need to consider in assessing whether the business plan is sound, such as the reasonableness of the calculation of the costs set out in subsection (3).
33. Master Trust schemes have been set up under a number of different structures and funding arrangements. The regime in the primary legislation is aimed at identifying and mitigating key risk areas. This clause focuses on the financial sustainability of the scheme, and the financial resources available to provide against certain risks to members (insolvency of the funder and the winding up of the scheme).
34. To ensure the appropriate level of Assembly scrutiny for the initial regulations, it is considered that the confirmatory procedure is appropriate for the first time the power is used. Given their technical nature, it is considered that the negative resolution procedure is appropriate for any subsequent regulations.

#### **Clause 9 subsection (2): Financial sustainability requirement: business plan**

35. This clause also relates to the financial sustainability requirement – it requires that the scheme strategist must prepare a business plan for the scheme. The power allows the Department to make regulations which set out information that must be included in a business plan and any other requirements with which a business plan must comply. These are matters of detail which are appropriate for regulations.
36. The business plan is a key document for Master Trust scheme authorisation and will form part of the Regulator's assessment as to whether it is satisfied that the scheme has met the financial sustainability criteria.
37. The regulations are intended to set out requirements on matters of detail such as the time periods the business plan needs to cover, so as to make sure it is looking sufficiently far into the future, and this period may change over time or be different for certain types of scheme. It is intended that the regulations will require that information about certain assumptions be disclosed in the plan – such as anticipated member growth in the scheme, the charge levels, the availability of financial resources to comply with clause 8(2) and how those

resources are held, projected growth of the scheme and how and when it will reach self-sustainability or otherwise be funded.

38. To ensure the appropriate level of Assembly scrutiny for the initial regulations, it is considered that the confirmatory procedure is appropriate for the first time the power is used. Given their technical nature, it is considered that the negative resolution procedure is appropriate for any subsequent regulations.

#### **Clause 10 subsections (4) and (6): Scheme funder requirements**

39. This clause sets out the third authorisation criterion which concerns the satisfaction of certain requirements by the scheme funder. It is to ensure that there is sufficient financial and legal transparency in relation to the scheme funder, so that the Regulator can be satisfied that the financial sustainability criteria are met.
40. The clause requires that the scheme funder is constituted as a separate legal entity and that it only carries out activities which directly relate to a Master Trust scheme for which it is a scheme funder or prospective scheme funder.
41. The regulation-making power at subsection (4) allows the Department to prescribe the circumstances in which a scheme funder is not required to limit its activities to those directly relating to the Master Trust(s), for instance by specifying other requirements that the scheme funder must meet to ensure that its financial position and its financial arrangements with the Master Trust are sufficiently transparent for the Pensions Regulator's financial assessment of the scheme.
42. Subsection (6) allows regulations to set out requirements relating to a scheme funder's accounts. The intent is that the regulations will require the scheme funder to produce full audited annual accounts, if it is not otherwise required to do so (for instance in accordance with the Companies Act 2006). The detailed requirements will need to be adapted to apply appropriately to the range of different types of entities that a scheme funder may be, and this detail is considered more suitable for inclusion in secondary legislation.
43. New structures may evolve over time. Therefore, it is important that there is sufficient flexibility to adapt the requirements from time to time. To ensure the appropriate level of Assembly scrutiny for the initial regulations, it is considered that the confirmatory procedure is appropriate for the first time the power in subsection (4) is used. Given their technical nature, it is considered that the negative resolution procedure is appropriate for any subsequent regulations under subsection (4) and any regulations under subsection (6).

#### **Clause 11 subsection (2): Systems and processes requirements**

44. This clause requires that the systems and processes used in the running of the scheme are sufficient to ensure that it is run effectively. Subsection (2) provides a power to enable the Department to make regulations regarding the factors that the Regulator must take into account in deciding whether it is satisfied that

the scheme's systems and processes are sufficient to ensure the scheme is run effectively. Subsections (3) and (4) provide a non-exhaustive list of the matters concerning systems and processes about which the Department may make regulations. These include, but are not limited to, the standards, functions and maintenance of IT systems, and processes relating to the appointment and removal of trustees and service providers.

45. The Government intends to set out in regulations what systems and processes need to be considered by the Regulator, and may specify minimum standards which need to be reached by the scheme. This is due to the technical nature of the provisions, and the fact that the adequacy of a scheme's systems and processes is likely to depend on a scheme's circumstances.
46. To ensure the appropriate level of Assembly scrutiny for the initial regulations, it is considered that the confirmatory procedure is appropriate for the first time the power is used. Given their technical nature, it is considered that the negative resolution procedure is appropriate for any subsequent regulations.

#### **Clause 12 subsections (5) and (6): Continuity Strategy requirement**

47. Clause 12 provides for requirements in relation to the fifth and final authorisation criterion – the continuity strategy – a document setting out how members' interests will be protected in the event of a scheme experiencing certain high risk events (triggering events – set out in clause 21). This, and other associated clauses, is aimed at ensuring that there is continuity of savings for the member and for employers to fulfil their automatic enrolment duties. It is about ensuring schemes consider at the outset what would happen in the event of a scheme closure or other events such as the insolvency of a scheme funder.
48. Subsection (4) provides that the continuity strategy must include a section setting out the levels of administration charges that apply in relation to members of the scheme. Subsection (5) requires that those levels of charges must be set out in the manner specified in regulations made by the Department. Subsection (6) provides that the continuity strategy must contain such information as may be specified in regulations and be prepared in accordance with regulations made by the Department.
49. The intent is that the regulations will include requirements for information such as the roles and responsibilities of people in the event of a triggering event, the options provided for later in the Bill and how the scheme would consider those, in what priority order, and providing the basis on which to calculate those costs for that strategy (linking into the financial sustainability and business plan requirements).
50. The Regulations would also set out the main areas that trustees will need to take action on following a triggering event. This might include tasks such as checking membership information, communication strategy, reports to the Regulator and actuarial, accounting and auditing tasks. Some schemes already have some form of 'discontinuance plan', so government intends to work



closely with them to ensure the requirements do not have an unintended impact.

51. This continuity strategy forms the basis from which, if a scheme experiences a triggering event, it will need to develop an implementation strategy (clause 26) about how it will deliver its protection for members.
52. Regulations may also set out how the continuity strategy is prepared – this is to ensure that the Regulator can assess easily whether the required matters are all covered sufficiently.
53. The nature of issues schemes might have to face, and the way they are structured may change over time. As such it is important that there is sufficient flexibility to amend the requirements as the market evolves.
54. To ensure the appropriate level of Assembly scrutiny for the initial regulations, it is considered that the confirmatory procedure is appropriate for the first time the power is used. Given their technical nature, it is considered that the negative resolution procedure is appropriate for any subsequent regulations.

#### **Clause 14 subsection (4)(b): Requirement to submit annual accounts**

55. As part of the ongoing supervision of Master Trusts, this clause requires trustees to send the scheme's accounts, and the scheme funder to send its accounts, to the Regulator.
56. The regulation-making power is to specify the time period within which the scheme funder's accounts must be provided to the Regulator. In the absence of such regulations, subsection (4)(a) provides that the accounts must be provided no later than nine months after the end of the financial year to which they relate. However, as there are regulations to be made in relation to the scheme funder's accounts at clause 10 and as different structures may have different needs and different risks, regulations may be needed to specify an alternative period.
57. The provision allows for additional operational detail which may need to be changed from time to time. The negative resolution procedure is therefore considered appropriate.

#### **Clause 15 subsection (2): Requirement to submit supervisory return**

58. Once authorised, Master Trust schemes will be required to submit supervisory returns to the Regulator at a frequency determined by the Regulator. This can be no more than once a year, and schemes judged to be lower-risk may be required to submit returns less frequently than this. These returns will be used by the Regulator to help determine whether it remains satisfied that an authorised Master Trust scheme continues to meet the authorisation criteria.
59. Subsection (2) allows the Department to make regulations specifying the information which the Regulator may require be included in such a return. The

detailed nature of this information means that it is appropriate to specify this within secondary legislation. As the market evolves, the information that may be required may change. Delegating this power to secondary legislation allows more readily for this flexibility.

60. The regulation-making powers in this clause will be subject to the negative resolution procedure. This is considered appropriate because the provision made under this power relates to operational detail.

**Clause 16 subsections (2)(i) and (3): Duty to notify Regulator of significant events**

61. An authorised Master Trust scheme will be subject to ongoing supervision by the Regulator, who must remain satisfied that the scheme continues to meet the authorisation criteria. A scheme that can no longer satisfy the Regulator of this may be de-authorised.
62. Clause 16 puts a duty on specified persons involved in running an authorised Master Trust scheme to notify the Regulator when they become aware that a “significant event” has occurred. The persons on whom the duty is placed are listed in subsection (2) and, at paragraph (i), includes a person acting in a capacity of a description specified in regulations. The rationale for this is to give as much clarity as possible to those involved in running Master Trust schemes now as to who will be subject to this duty, while retaining flexibility by allowing the Department to add to this list in the future. This is necessary because as the market evolves, it may become apparent that there are further persons other than those listed in subsection (2) whom the Department would wish to be subject to this duty in order to ensure the policy is effective.
63. Subsection (3) confers a duty on the Department to set out in regulations the events that constitute significant events for the purposes of the clause. For the purposes of this memorandum, it is envisaged that a significant event will be an event of the type that may affect the ability of the scheme to meet the authorisation criteria. For example, events such as a change of trustee, or a change of the scheme administrator are likely to be considered significant events for this purpose.
64. In order to ensure that the policy achieves its intent, there needs to be flexibility for the Department to make additions to the list of ‘persons’ for the purposes of subsection (2) of this clause in regulations. It is also necessary to establish a degree of flexibility when specifying which events are ‘significant events’ for the purposes of subsection (3) of this clause. It is important that the Department can be responsive in making regulations under these powers.
65. To ensure the appropriate level of Assembly scrutiny for the initial regulations, it is considered that the confirmatory procedure is appropriate for the first use of the power in subsection (3). Given their technical nature, it is considered that the negative resolution procedure is appropriate for any regulations under subsection (2) and any subsequent regulations under subsection (3).

**Clause 17 subsection (3): Fixed penalty notice for failure to comply with request for information**

66. Information gathering is an important part of the Pension Regulator's toolkit. Article 67 of the Pensions (Northern Ireland) Order 2005 allows the Regulator to require a specified person to provide information which is relevant to the exercise of the Regulator's functions. Failure to comply is a criminal offence under Article 72 of the 2005 Order. The Bill creates new functions for the Regulator, and to fulfil these functions the Regulator will make greater use of this power to gather information. For example, the Regulator will be able to use this power to gather further information from Master Trust schemes which are seeking to become authorised during the application process.
67. This clause provides that where the Regulator uses the power under Article 67 of the 2005 Order to request information that relates specifically to the authorisation of Master Trusts, and where there is a failure to comply, the Regulator has the additional power to issue a fixed penalty notice rather than proceeding to prosecution. This mirrors existing provision made in section 43 of the Pensions (No. 2) Act (Northern Ireland) 2008, where failure to comply with an Article 67 request where the information requested relates to automatic enrolment functions can result in the Regulator issuing a fixed penalty notice.
68. The provision is included because under the new authorisation regime it may be more proportionate and effective for the Regulator to be able to issue a fixed penalty notice in certain cases, rather than proceeding to prosecution.
69. Subsection (3)(a) delegates power to the Department to make regulations setting out how the amount of the penalty is to be determined. It is appropriate to legislate for these provisions through secondary legislation to allow for changes to be made over time, and this follows the approach taken in the Pensions (No. 2) Act (Northern Ireland) 2008.
70. Regulations made by these provisions will be subject to the negative resolution procedure. This is appropriate because these regulations will largely mirror the existing regulations which set out these matters for the purpose of section 43 of the Pensions (No. 2) Act (Northern Ireland) 2008.

**Clause 18 subsection (5): Escalating penalty notice for failure to comply with request for information**

71. The provisions of this clause are very similar to those provided by clause 17, discussed above. This clause mirrors existing provision made at section 41 of the Pensions (No. 2) Act (Northern Ireland) 2008 and it allows the Regulator to issue an escalating penalty notice instead of a fixed penalty notice in the same circumstances.
72. The provision is included because there may be circumstances in which it will be more appropriate and effective for the Regulator to issue an escalating penalty notice rather than issuing a fixed penalty notice.

73. The regulations are subject to the negative resolution procedure. This mirrors the approach taken in relation to section 41 (escalating penalty notices) of the Pensions (No. 2) Act (Northern Ireland) 2008 which any regulations under subsection (5) are likely to replicate.

#### **Clause 22 subsections (6) and (7): Notification requirements**

74. Clauses 20-35 of the Bill make requirements in relation to Master Trusts which have experienced a key risk event. The purpose is to protect members' rights and provide for continuity of members' savings and for continuity for employers meeting their automatic enrolment duties.
75. Clause 22 covers the notification of a triggering event. Triggering events are set out in clause 21. They are events that put a scheme at risk of failure or closure. They include events such as the Regulator warning that the scheme is at risk of having its authorisation withdrawn, the scheme funder becoming insolvent, the scheme funder deciding to end its relationship with the scheme or the trustees deciding that the scheme is at risk of failing.
76. Clause 22 sets out who should notify the Regulator if such an event occurs. For instance, if it is the insolvency of the scheme funder, the scheme funder should inform the Regulator. There are additional measures provided in the clause to ensure the Regulator is informed of the event. So, if for example, the scheme funder becomes insolvent, but fails to inform the Regulator that this has happened, the scheme strategist (if there is one) and the trustees are under an obligation to inform the Regulator. This provides additional protection that the Regulator will be informed of events that put a Master Trust at risk of failing.
77. In this clause trustees are also required to inform the employers participating in the scheme of the triggering event. The regulation-making power at subsection (6) allows the Department to set out additional matters trustees have to notify employers of where a triggering event occurs. The detail of these matters is more appropriate for regulations. It is anticipated that these regulations would cater for the fact that much of what the trustees inform employers about will depend on which triggering event has happened. For instance, if the Regulator has issued a warning notice to the Master Trust that it is at risk of having its authorisation withdrawn then the trustees would be expected to inform participating employers of the reason for the warning notice. They may also explain what they intend to do to rectify the issue, steps to achieve this and likely timings.
78. Subsection (7) also requires the Department to set a time period in which the notifications required under clause 22 must be given.
79. Where a scheme experiences a "triggering event" the objective is to try to ensure that members of the scheme continue to save in a pension arrangement and that employers continue to meet their automatic enrolment duties, where this is relevant. For this to happen it is important that members and employers are notified of important developments. Further consultation will be undertaken with the industry to ensure that the timescale and the information required to be

provided to employers reflects not just acceptable current processes, but can also be altered in a timely manner as the market evolves.

80. Providing this detail in regulations allows for greater detail and flexibility. What happens after a triggering event will greatly depend upon which triggering event has occurred. Some triggering events will pose more of a risk to the scheme's future than others, and this will affect what steps the trustees take and the information that they should provide to participating employers. For instance, the steps a scheme takes to deal with the insolvency of its scheme funder will differ from the steps it takes to deal with a warning notice from the Regulator.
81. Regulations made under this section will be subject to the negative resolution procedure. This is considered appropriate given that the nature of the regulations is to provide for matters of operational detail and to allow the flexibility for timely changes if necessary.

**Clause 24 subsections (1)(b), (2)(b), (3) and (4): Continuity option 1: transfer out and winding up**

82. Clause 23 provides that where a triggering event occurs in relation to a Master Trust scheme, the scheme must pursue one of two continuity options. It also provides that option 1 requires that the scheme must transfer out all members' accrued rights and benefits and then wind up. Clause 24, follows from this and describes option one. This option would be pursued under circumstances where a Master Trust scheme can no longer satisfy the Regulator that it meets the authorisation criteria, or where for any other reason it can no longer continue to operate. To protect the rights that members have accrued in the scheme it is necessary that these rights are transferred to alternative schemes or pension arrangements. Clause 24 therefore requires that under option 1 the trustees of the scheme must identify a Master Trust scheme to which members can be transferred, and notify employers and members of the proposed transfer.
83. Subsection (1)(b) delegates authority so that the Department may make regulations which set out the matters which must be included in such a notification. When a scheme is going to wind up, both members and employers have the opportunity to make a decision over what happens to their rights. It is therefore important that the notification contains the right information set out in a clear format.
84. Subsection (3)(a) requires the Department to make regulations specifying the manner in which this notification must be given and subsection (3)(b) requires that the Department make regulations specifying the time period in which this notification must be given. This is a matter of operational detail which is more appropriate for regulations.
85. Subsection (4)(a) provides that the Department must make regulations about how continuity option 1 is to be pursued, and subsection (4)(b) provides that regulations may be made for the purpose of otherwise giving effect to continuity option 1. Subsection (5) of this clause then sets out an extensive list of matters

that must be included in the regulations made under (4)(a), setting out how continuity option 1 is to be pursued.

86. These regulations will cover several aspects. The regulations are intended to provide that members in the failing scheme will be able to select an alternative scheme to which they wish to transfer their accrued rights. Also, where the member is in receipt of a pension from the failing Master Trust they will have the right to transfer their benefits to an alternative appropriate arrangement. For example, this could include a drawdown arrangement or the purchase of an annuity.
87. The regulations will also provide that where participating employers do not wish to have their current employees transferred to the new Master Trust selected by the trustees, they will be given the right to choose an alternative authorised Master Trust.
88. It is intended that the regulations will impose a duty on employers and the trustees to inform members where employers select an alternative Master Trust. This will ensure members are kept informed, know where their rights have been transferred and which scheme they will be saving into in the future. The regulations will set out how these rights may be exercised and the time periods within which they may be exercised.
89. The regulations will specify that if members and employers do not make alternative arrangements, members will be transferred to the Master Trust selected by the trustees, and that they may be transferred using a bulk transfer.
90. They will also specify the requirements that will have to be met by a scheme proposed by the trustees or an employer. This will cover aspects such as the scheme being authorised by the Regulator and the scheme meeting the conditions required in legislation for it to be used for automatic enrolment. It is also intended that the scheme proposed by the trustees or an employer will have to provide the Regulator with a document setting out the level of its administration charges (calculated in accordance with the regulations) that will apply in relation to members of the scheme and demonstrate how costs of any transfer will be met by the receiving scheme.
91. The regulations will also set out more detail about the winding up of the failing Master Trust. This may cover steps trustees must undertake as part of the process of closing down a scheme.
92. Where trustees are not taking the steps which the Regulator considers they should take, the regulations will provide that the Regulator will have the power to direct the trustees to take certain actions. This is particularly important where the Regulator considers members' rights are being put at risk.
93. Subsection (9) allows regulations made under clause 24 to apply Article 10 of the Pensions (Northern Ireland) Order 1995 (civil penalties) to those who do not comply with a requirement imposed by regulations made under this clause. For example, the regulations could provide that if trustees failed to take steps they

should have as part of transferring members' rights out or winding up the scheme, or keeping members and employers informed they are subject to a civil penalty. This is appropriate because it is a situation where the scheme, and hence the rights of scheme members are at risk and it is essential that trustees take the correct action.

94. The regulations therefore cover a number of matters of operational detail. Regulations will cover matters to ensure: schemes get the right information at the right time to members and employers for them to make an important decision about the future of their pension rights or those of their employees, giving adequate time to employers and members to make the decision, and allowing sufficient time for schemes to service a large number of employers and employees.
95. Regulations made under subsections (1)(b) and (3), which relate to notifying employers and members of the proposed transfer and other matters, are subject to the negative resolution procedure.
96. Regulations made under subsection (2)(b) and (4) are subject to the confirmatory procedure. This is because the regulations made under these powers are potentially broad in their scope and have a significant influence on the manner in which the Master Trust authorisation regime operates. They include detail which will be essential to protecting the rights of members of Master Trust schemes, and the regulations made under these powers will have a clear impact upon trustees, employers and members.

#### **Clause 25 subsection (4): Continuity option 2: resolving triggering event**

97. This clause sets out the process where the trustees have pursued option 2 and consider that the triggering event has been resolved. The clause requires that trustees must inform the Regulator and explain how the triggering event was resolved – and also that if the Regulator is satisfied the triggering event has been resolved it must issue a notification to this effect to the trustees.
98. Subsection (4) gives the Department a power to make regulations setting the timescale for schemes to notify the Regulator that the triggering event has been resolved. This is a matter of operational detail which is more suitable for regulations than primary legislation.
99. As the operational detail may need to change from time to time the negative resolution procedure is considered appropriate.

#### **Clause 26 subsection (5): Approval of implementation strategy**

100. Clause 26 sets out the duty on the trustees, where a triggering event occurs, to submit an implementation strategy to the Regulator. An implementation strategy is a document setting out how the interests of members are to be protected following the occurrence of the triggering event. The Regulator can only approve the implementation strategy if it is satisfied it is adequate.

101. Subsection (5) gives the Department a power to make regulations setting the timescale in which this Strategy has to be submitted.
102. The regulations made under this clause are subject to negative resolution. The provision allows for additional operational detail, which may need to be changed from time to time, and the negative resolution procedure is therefore considered appropriate.

#### **Clause 27 subsections (4) and (6): Content of implementation strategy**

103. Clause 27 allows the Regulator to decide whether it is satisfied that an implementation strategy submitted to it is adequate.
104. The implementation strategy will contain similar information to that in the continuity strategy, but will contain more detail, specific actions that have to be taken and deadlines. This information will be specific to the particular scheme and its circumstances.
105. The clause outlines what such a strategy should cover. This includes the continuity option which the trustees are taking, the scheme to which they are intending to transfer rights and the timescale for this, if they are pursuing continuity option 1 (transfer out and winding up), and how they expect to resolve the triggering event if they are pursuing continuity option 2 (resolving triggering event). It is also to include a section setting out the level of administration charges in relation to the members of the scheme (subsection (3)). These levels relate to the prohibition under clause 33(1)(a).
106. Subsection (3) provides that the implementation strategy must include a section setting out the levels of administration charges that apply in relation to members of the scheme. Subsection (4) requires that the levels of administration charges must be set out in the manner and as at the date specified or described in regulations made by the Department. The power in subsection (6)(a) provides that the Department may add other information, through regulations, to the existing information to be included in the implementation strategy, while the power in (6)(b) allows the Department to make regulations to set out how the strategy is to be prepared.
107. These are matters of detail which are appropriate for regulations, and which may need to be changed from time to time. As the market evolves and more schemes are subject to triggering events, there may be a need to specify that the implementation strategy should contain more detail and is set out in a different manner.
108. The regulations made under this clause are subject to negative resolution. The provision allows for additional operational detail, which may need to be changed from time to time, and the negative resolution procedure is therefore considered appropriate.



### **Clause 28 subsection (2): Duty to pursue continuity option**

109. This clause places a requirement on trustees to pursue the continuity option which is set out in their implementation strategy once the Regulator has approved the strategy. It also requires the trustees to undertake the steps they have identified as being needed in the strategy.
110. Subsection (2) places a power on the Department to make regulations setting the timescale in which this strategy has to be made available to employers. It is crucial that participating employers are kept informed of the plans of the trustees as they may wish to choose to make alternative arrangements for the future of their current employees' rights. Many members see their employer as the first point of contact about their pension.
111. This time period may need to be adjusted to respond to events in the industry and market evolution.
112. Regulations under this subsection are subject to negative resolution. The provision allows for additional operational detail, which may need to be changed from time to time, and the negative resolution procedure is therefore considered appropriate.

### **Clause 30 subsections (2) and (4): Periodic reporting requirement**

113. Clause 30 requires trustees to provide periodic reports to the Regulator during a triggering event period. The intent is that the Regulator is kept up to date with progress and key decisions and events during this period.
114. Subsection (2) confers a power on the Department to set the timescale of the first of these reports while subsection (3) allows the Regulator to determine the frequency of subsequent reports. It is expected that the regulation-making power will be used to specify a time period relating to the time the strategy is approved by the Regulator and from that point the Regulator will expect a report at regular (possibly monthly) intervals unless it feels that events have necessitated a report sooner or less frequently. As the length and content of reports will depend on the particular scheme and its circumstances it would not be appropriate to be prescriptive about this issue in the primary legislation.
115. Under subsection (4)(b) the Department can, by regulations, determine which events and decisions should be recorded in the report. The expectation is that this would include events such as a decision to effect a bulk transfer without member consent or when another authorised and suitable Master Trust into which the members' rights can be transferred has been found. It could also include progress on areas such as work on getting membership information into a satisfactory state or whether auditing requirements have been completed.
116. The detailed framework for the periodic report is a matter of operational detail which is considered more appropriate for secondary than primary legislation.

117. This rationale also applies to subsection (4)(c) which allows the Department to make regulations requiring additional information to be included in the report. The aim is to ensure that the periodic reports are an accurate and current reflection of progress, including all the information that the Regulator needs, rather than a tick-box exercise.
118. Subsection (5) provides that a civil penalty under the Pensions (Northern Ireland) Order 1995 applies to a person who does not comply with a requirement imposed by this clause.
119. Regulations made under this clause are subject to negative resolution. The provision allows for additional operational detail, which may need to be changed from time to time, and the negative resolution procedure is therefore considered appropriate.

**Clause 33 subsections (4) and (6): Prohibition on increasing charges etc during triggering event period**

120. This clause prohibits the increasing of charges within a scheme which is within a triggering event period. The effect is to limit the extent to which members' rights can be used to pay for the winding up of the scheme or to pay for other measures that apply when a scheme enters a triggering event period.
121. The clause also prohibits a scheme which takes on a bulk transfer of members from a scheme in a triggering event period, from increasing charges in its own scheme to pay for costs relating to the transferring schemes winding up costs or costs in relation to its triggering event. This is to ensure that the protection provided for members in the transferring scheme is not undone by the same costs being applied to their rights once they move schemes.
122. The regulation-making power specifies that the regulations may make provision about how the levels of scheme administration charges are to be calculated for the purposes of this clause. It is expected that the regulations will set out how the scheme establishes the level from which charges must not be increased – a fixed charge level in effect. The calculation will also likely include a look-back period – to protect members from any avoidance activity that might be possible if the period were instead to start from immediately before or at the triggering event. For example, a scheme may know it is in trouble, but delay any triggering event that might be within its control, in order to increase charges before declaring the event. In this way the charges, taken from members rights, could be used to pay for winding up and associated costs. Therefore the look-back period will need to be set out in detailed regulations.
123. It is possible that some 'receiving' schemes will want to take on members from failing schemes, and to broker the deal they may offer to pay the costs of the transferring scheme. This is allowable under this clause, but the passing on of those costs to members is not permitted. The intent of the prohibition is to ensure that, if another Master Trust takes a transfer of members from a Master Trust which has experienced a triggering event, and that receiving Master Trust

decides to take on the costs of the winding up or associated costs of the transferring scheme, then it may not pass those costs onto members.

124. Subsection (4)(b) therefore provides that regulations may also make provision about how to determine the purposes for which charges are increased or imposed to meet the costs in subsection (3). This is considered appropriate for regulations because this matter is technical and detailed.
125. Further, subsection (4)(c) enables regulations to be made to set out how the costs can be identified as falling under subsection (3)(a) or (b). These regulations may stipulate the costs related to those incurred or applicable to the activities of the exiting scheme in delivering the winding up activities, or other activities under option 1, and also option 2 if there is a preceding triggering event.
126. These are matters of technical detail that are more appropriate for secondary than primary legislation. The requirements will also need to be flexible and responsive to an ever evolving market – to ensure that the risks continue to be mitigated. As the provision allows for additional operational detail which may need to be changed from time to time, the negative resolution procedure is considered appropriate.
127. Subsection (6) provides that where the receiving scheme being a Master Trust that is pursuing continuity option 1 is not a Master Trust (ie it is an ‘alternative scheme’), regulations could be made that apply some or all of the provisions under this clause to those alternative schemes also. Regulations made under this subsection are subject to the confirmatory procedure in line with regulations relating to provision made for transfers to ‘alternative schemes’ under clause 24.

### **Clause 36 subsections (1): Fraud compensation**

128. This clause provides a regulation-making power enabling the Department to modify Articles 165 to 170 of the Pensions (Northern Ireland) Order 2005, which relate to the Fraud Compensation Fund, in relation to Master Trust schemes and other pension schemes to which all or some of the provisions of Part 1 of the Bill apply in consequence of the powers in clause 40 (regulations modifying the application of Part 1).
129. Articles 165 to 170 of the Pensions (Northern Ireland) Order 2005 enable fraud compensation payments to be made to occupational pension schemes where certain conditions are met. These conditions include that -
  - the value of the scheme’s assets has been reduced and there are reasonable grounds for believing this was due to dishonesty; and
  - the employer has gone out of business or is unlikely to continue as a going concern.

130. The Fraud Compensation Fund is funded by a levy on occupational pension schemes and is administered by the Pension Protection Fund.
131. As occupational pension schemes, Master Trust schemes should qualify for fraud compensation payments. However, as they are schemes that are used, or intended to be used, by multiple employers who do not have a connection to each other, they would be likely to have difficulty meeting the statutory condition that all the participating employers would have to become insolvent or be unlikely to continue as a going concern.
132. The fraud compensation provisions in the Pensions (Northern Ireland) Order 2005 have previously been modified using negative regulation-making powers, to remove statutory requirements relating to employer insolvency. The intention is to make similar provision for Master Trusts using the powers in this clause.
133. Whilst Article 280 of the Pensions (Northern Ireland) Order 2005 would allow the fraud compensation provisions to be modified for Master Trusts with two or more participating employers, it does not obviously apply to all types of Master Trusts to which the Bill applies (see clause 1(1)(b), the scheme is intended to be used by two or more employers).
134. The intention is to also use the regulation-making powers in clause 40 to apply some or all of the provisions of Part 1 to other types of occupational pension schemes. This clause provides for the fraud compensation provisions to be modified in such cases, to ensure members of these schemes could benefit from fraud compensation cover.
135. Regulations made under this clause are subject to negative resolution. This is considered appropriate given that the intended nature of the regulations is to provide for matters of operational detail to ensure that the fraud compensation provisions (which already apply to occupational pension schemes) are capable of being applied to Master Trusts and to other pension schemes to which the authorisation regime in Part 1 applies in a way which takes account of the particular characteristics of all such schemes.
136. Further, the negative resolution procedure is consistent with the existing powers to modify the fraud compensation scheme in Article 280 of the Pensions (Northern Ireland) Order 2005 and paragraph 1(6) of Schedule 1 to the Welfare Reform and Pensions (Northern Ireland) Order 1999.

#### **Clause 38 subsection (2): Minor and consequential amendments**

137. This clause inserts a regulation-making power allowing the Department to make minor and consequential amendments to any primary or secondary legislation made before the passing of the Bill as a result of Part 1.
138. The principle of amending primary legislation is considered to be sufficiently serious to warrant scrutiny under the confirmatory procedure when this power is exercised. However, when the power is exercised so as to make consequential

amendments to secondary legislation, the negative resolution procedure is considered appropriate.

### **Clause 39 subsection (5): Interpretation of Part 1**

139. Clause 39 provides the interpretation for a number of terms used throughout Part 1 of the Bill.
140. Subsection (5) provides a regulation-making power in respect of one of these terms: 'scheme funder'. It allows for regulations to provide for other descriptions of person to be treated as scheme funders and for those who would otherwise be treated as scheme funders not to be so treated.
141. In the Bill certain key requirements are placed on the 'scheme funder' – such as the requirement to provide their accounts to the Regulator and the requirement to be a separate legal entity.
142. The meaning of 'scheme funder' as outlined in clause 39 caters for the types of structures understood to exist currently in the market. However, there is the possibility, given the variety of forms of Master Trust schemes already in the market, and the propensity for further evolution of structures and arrangements, that the definition may need to be adjusted over time, to address any avoidance loop holes and to keep the definition live to market changes.
143. As there is a significant impact on those who are considered to be scheme funders, and some key requirements fall upon them for the protection of members, it is important that any changes are subject to the confirmatory procedure.

### **Clause 40 subsections (1) & (2): Regulations modifying application of Part 1**

144. Subsection (1)(a) provides a regulation-making power to apply some or all of the provisions relating to Master Trust schemes to pension schemes that do not fall within the definition in clause 1, whilst subsection 1(b) is a power to disapply some or all of those provisions to schemes that do fall within that definition.
145. The power in subsection (1)(a) allows the Department to respond to changes and undesirable innovation in the pensions market as it rapidly develops. It allows for the application of the Master Trust authorisation regime in cases where schemes develop in a way that they are not caught by the Master Trust definition but it is considered that the regime should apply to that description of scheme.
146. Given the very large number of occupational pension schemes which are in existence and the great diversity of benefits and scheme rules, it is possible that there are some schemes which will meet the definition in clause 1, although it was not the intention that they be caught by the Master Trust authorisation regime. The power in subsection (1)(b) permits some or all of the provisions to be disapplied from schemes which have characteristics set out in regulations. This is appropriate because it would be disproportionate and

burdensome for such schemes to be subject to the authorisation regime pending the making of new primary legislation which removed them from scope.

147. Subsection (2) provides a regulation-making power to treat two or more schemes as a single Master Trust scheme. Such schemes might consist of a group of schemes with one or more of a common founder, board of trustees or scheme rules. For clarity, a non-exhaustive list of examples of circumstances in which regulations may treat two or more schemes as one are provided in subsection (3).
148. This power, as with that in subsection (1)(a), is necessary to respond to development and proliferation in scheme designs, and to ensure that members continue to be protected in line with the intention as the market develops. Master Trust schemes have developed in recent years in response to automatic enrolment. Their development as occupational schemes has in part been due to the lower level of regulation of such schemes compared to Group Personal Pensions. This authorisation regime has been developed to correct that imbalance and the intention behind these provisions is so that other scheme designs which might emerge in the future can be brought within the regime where appropriate.
149. Including provision such as this in Regulations will also allow for full consultation with industry on matters of detail and to take full account of the wide diversity of pension scheme structures.
150. Regulations made under these powers will have significant implications for members, trustees and founders of any pension schemes to which some or all of the Master Trust provisions are applied or disapplied as a result. Therefore the confirmatory procedure is considered appropriate.

## **Part 2: Administration Charges**

### **Clause 41 subsection (2): Power to override contract terms**

151. Clause 41 amends existing powers (Schedule 18 to the Pensions Act (Northern Ireland) 2015 – power to restrict charges or impose requirements in relation to schemes) to allow the Department to make regulations to provide that any term in a contract which is inconsistent with something in the regulations made under Schedule 18 is overridden. For example, if a contract that is in place between the trustees or managers of the scheme and a person who provides services to the scheme permits an early exit charge that is higher than the level of the early exit charge cap when it is introduced, this would allow that term to be overridden.
152. The Financial Conduct Authority has been given a new duty (in section 35 of the Bank of England and Financial Services Act 2016) to make rules to ban or cap early exit charges for members of personal and stakeholder pensions. This clause will enable the Department to make regulations to apply the same standards and protections for members of occupational pension schemes.

153. Paragraph 6 of Schedule 18 enables regulations to be made that provide that specified provisions of regulations made under that Schedule override any provision of a relevant scheme to the extent that it is in conflict with them. However, member-borne commission charges arise under the contract between the person who provides administrative services to the scheme and trustees and not the scheme itself. This clause provides a power to make regulations that will allow certain provisions of the regulations made under Schedule 18 to override a term of a contract between those parties to the extent of any conflict.
154. The pensions market is continually evolving and modernising and this extends to charging practices. It may be necessary to change the charges requirements at pace to reflect any changes to charging practices in the pensions market that may disadvantage members. Without legislative intervention the market would be unlikely to resolve these issues quickly. The negative resolution procedure is considered appropriate.

### **Part 3: General**

#### **Clause 42 subsection (1): Regulations: general provisions**

155. Clause 42 makes further provision in relation to regulation-making powers contained in Part 1 of the Bill. It provides that such regulations may include incidental, supplementary, consequential, transitional, transitory or saving provision and confer discretion on a person.
156. Such provisions are common in pensions legislation to ensure that there is flexibility for implementation to work as intended with existing legislation and to allow for a smooth process during the early stages of implementation.
157. The power to confer discretion on a person is likewise commonly found in pensions legislation (for example, the Pension Schemes (Northern Ireland) Act 1993, the Pensions (Northern Ireland) Order 2005, the Pensions (No. 2) Act (Northern Ireland) 2008 and the Pension Schemes Act (Northern Ireland) 2016). This might be used, for example, to make regulations under clause 7 specifying particular qualifications which might be expected to be held by certain persons, but leaving discretion to the Regulator in respect of whether other qualifications or experience are equivalent to these. The power might be relied on to allow for regulations under clause 24 to provide for trustees to choose between different permissible options for transfer.
158. The provisions in subsection (1) are not a stand-alone regulation-making power, and the procedure will be determined according to the procedure which applies to the substantive regulation-making power being used.

#### **Clause 44 subsections (2) and (3): Commencement**

159. Clause 44 provides for the commencement of the provisions within the Bill.

160. Clause 44(1)(a) provides that the clauses relating to the definition of a Master Trust scheme (clauses 1 and 2), penalty notices (clauses 17 and 18), the triggering events (clauses 20 to 22, 25 and 33 (as modified by Schedule 2)), certain information powers (paragraphs 5 and 9 of Schedule 3 (and clause 38 in so far as it applies to those paragraphs)) and interpretation (clause 39), will come into operation on the day after Royal Assent in so far as they relate to existing Master Trust schemes.
161. Clause 44(1)(b) provides that paragraphs 1 to 7 of Schedule 2 (Master Trusts in operation before commencement: transitional provisions), as well as clause 37 (transitional provision), as it applies to those paragraphs, will also come into operation on the day after Royal Assent.
162. Clause 44(1)(c) provides that paragraphs 1 to 6 of Schedule 3 (minor and consequential amendments), as well as clause 38 (minor and consequential provision), as it applies to those paragraphs, will also come into operation on the day after Royal Assent.
163. Clause 44(1)(d) and (e), provides that clause 41 (power to override contract terms), and Part 3 (General), will also come into operation on the day after Royal Assent.
164. Clause 44(2) provides that the provisions in Part 1 that are not mentioned in subsection (1) will come into operation on such day(s) as appointed by order.
165. Clause 44(3) provides that the Department may by order make incidental, supplementary, transitional, transitory or savings provision in connection with the coming into operation of any provision of the Bill.
166. In common with commencement provisions in previous legislation, these powers will be subject to no Assembly procedure. This is considered appropriate because the provisions to which they relate will have been fully debated as part of the Pension Schemes Bill.

## **Schedules**

### **Schedule 1, paragraph 1(6): Pause Orders**

167. Clause 31 introduces a new “pause” power for the Regulator. The Regulator has a similar power already in relation to non-money purchase schemes under Article 19 of the Pensions (Northern Ireland) Order 2005 (freezing orders). However, the new pause power is specifically for use in respect of Master Trust schemes which are in a triggering event period. It enables the Regulator to stop certain activities in relation to the scheme which is in the triggering event period if one of two conditions is established. Those conditions are, broadly, that the use of the pause power will help the trustee carry out the implementation strategy or that there is or is likely to be an immediate risk to members or assets and the making of the order is necessary to protect the interests of the generality of members.



168. The pause power includes being able to direct that no new members, no new contributions, and no transfers can be made from the scheme, and thereby impacts other rights. Therefore the regulation-making power in Schedule 1, paragraph 1(6) allows the Department to modify the legislation in relation to members' rights in respect of transfers, early leavers, cash transfers and contributions refunds in other pension legislation in respect of the pause power. This directly replicates a regulation-making power that appears in Article 20(7) of the Pensions (Northern Ireland) Order 2005 in relation to the Pension Regulator's freezing order power for non-money purchase schemes.
169. These regulations are subject to negative resolution. Although the powers allow for modification of primary legislation which would usually indicate the confirmatory procedure, the negative procedure is considered appropriate in this instance as the power is narrowly drawn in scope and the nature of the regulations will be to provide technical detail to ensure that the interaction with existing legislation on transfers is workable. This also mirrors the procedure for the regulation-making power in Article 20(7) of the Pensions (Northern Ireland) Order 2005.

#### **Schedule 2, paragraphs 4 & 5: Master Trusts operating before commencement: transitional provision**

170. This Schedule deals with provision for existing schemes where modifications are required to the provision in the main Bill. Paragraph 4 modifies clause 22 and paragraph 5 modifies clause 25. The modifications retain the regulation-making powers in clauses 22(7) and 25(4) allowing the Department to prescribe the period within which notifications under those sections must be given where a triggering event occurs after the commencement date (the date on which the full authorisation regime is brought into operation). This allows for parity for all schemes whether pre-existing or new after the commencement date.

#### **Schedule 3 paragraph 10: Minor and consequential amendments**

171. Paragraph 10 of Schedule 3 to the Bill amends Article 85 (codes of practice) of the Pensions (Northern Ireland) Order 2005 placing a requirement on the Regulator to issue codes of practice in relation to the process for making an application for authorisation and the matters which it expects to take into account in deciding whether it is satisfied that a Master Trust scheme meets the authorisation criteria.
172. It is crucial that Master Trust schemes applying for authorisation have as much detail and clarity about the authorisation process and what may be required of them as possible and that there is transparency about how the Regulator proposes to operate the process in practice, within the bounds of the primary and secondary legislative requirements. As the body responsible for authorising Master Trust schemes, it is right that this requirement falls on the Regulator and that there is flexibility for change to reflect operational changes over time.
173. Codes of practice under Article 85 of the Pensions (Northern Ireland) Order 2005 are subject to the procedure set out in Article 86 involving consultation,

laying before the Assembly and an order made by the Department to bring the code into operation (in accordance with Article 288(4), such an order is not required to be laid before the Assembly). The codes of practice in relation to authorisation will also be subject to this provision which is considered appropriate to ensure parity with other Article 85 codes of practice.

## Delegated powers in the Pension Schemes Bill

### Part 1 – Master Trusts

<b>Provision</b>	<b>Heading</b>	<b>Assembly procedure</b>
Clause 1	Master Trust schemes: definition	Confirmatory
Clause 4	Application for authorisation	Negative
Clause 7	Fit and proper persons requirement	Confirmatory and negative
Clause 8	Financial sustainability requirement	Confirmatory and negative
Clause 9	Financial sustainability requirement: business plan	Confirmatory and negative
Clause 10	Scheme funder requirements	Confirmatory and negative
Clause 11	Systems and processes requirements	Confirmatory and negative
Clause 12	Continuity strategy requirement	Confirmatory and negative
Clause 14	Requirement to submit annual accounts	Negative
Clause 15	Requirement to submit supervisory return	Negative
Clause 16	Duty to notify Regulator of significant events	Confirmatory and negative
Clause 17	Fixed penalty notice for failure to comply with request for information	Negative
Clause 18	Escalating penalty notice for failure to comply with request for information	Negative
Clause 22	Notification requirements	Negative
Clause 24	Continuity option 1: transfer out and winding up	Confirmatory and negative
Clause 25	Continuity option 2: resolving triggering event	Negative
Clause 26	Approval of implementation strategy	Negative
Clause 27	Content of implementation strategy	Negative
Clause 28	Duty to pursue continuity option	Negative
Clause 30	Periodic reporting requirement	Negative
Clause 33	Prohibition on increasing charges etc during triggering event period	Confirmatory and Negative
Clause 36	Fraud compensation	Negative
Clause 38	Minor and consequential amendments	Confirmatory and negative
Clause 39	Interpretation of Part 1	Confirmatory
Clause 40	Regulations modifying application of Part 1	Confirmatory

## Part 2: Administration Charges

<b>Provision</b>	<b>Heading</b>	<b>Assembly procedure</b>
Clause 41	Power to override contract terms	Negative

## Part 3: General

<b>Provision</b>	<b>Heading</b>	<b>Assembly procedure</b>
Clause 42	Regulations: general provisions	Confirmatory and Negative

## Schedule 1: Pause Orders

<b>Provision</b>	<b>Heading</b>	<b>Assembly procedure</b>
Paragraph 1(6)	Consequences of a pause order	Negative

## Schedule 2: Master Trusts operating before commencement: transitional provision

<b>Provision</b>	<b>Heading</b>	<b>Assembly procedure</b>
Paragraphs 4 & 5	Modifications having effect from the date this Act is passed	Negative