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Pension Schemes Bill 2016-17 – debates in Parliament

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Contents:

1. The Bill
2. How did we get here?
3. Proceedings in Parliament - overview
4. Debates on individual clauses
5. Pension scheme charges
6. Annex - glossary

Contents

Summary **3**

1. The Bill **6**

2. How did we get here? **7**
2.1 What are Master Trusts? 7
2.2 What was the regulatory framework before the Bill? 11
2.3 Why did the Government decide to intervene? 12
2.4 Expected impact of the Bill 15
2.5 Initial responses to the proposals 16

3. Proceedings in Parliament - overview **18**
3.1 The Lords 18
3.2 The Commons 22
3.3 Regulations 23

4. Debates on individual clauses **26**
4.1 Definition 26
4.2 Authorisation applications 28
4.3 Authorisation criteria 32
Scheme funder of last resort 37
Business plan 41
Scheme funder requirements 42
Continuity strategy 48
4.4 Ongoing supervision – clauses 14-20 49
4.5 Triggering events – clauses 20 to 33 51
4.6 Supplementary – clauses 36-40 62
4.7 Transitional provisions 62
Remaining provisions 64
4.8 Member engagement 65
4.9 Other issues 69

5. Pension scheme charges **70**
5.1 Background 70
5.2 Debates in Parliament 74

6. Annex - glossary **77**

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Summary

The *Pension Schemes Bill 2016/17* was introduced in the House of Lords on 19 October 2016, went through its Lords' stages before being introduced into the Commons on 17 January 2017. It received Royal Assent on 27 April.

The main focus of the debates was Part 1 – which established an authorisation and supervision regime for Master Trusts. There was limited discussion of Part 2 – which enabled restrictions to be applied to certain charges in occupational pension schemes.

Master Trusts – background

Master Trusts are pension schemes, set up by a provider such as an insurance company, for multiple employers which are unrelated.

The use of Master Trusts has grown in recent years - to 4 million members in September 2016, from 0.2 million members in 2010 - and is expected to grow further. The reason is that many employers have used them for auto-enrolment (new duties being phased-in between 2012 and 2018, requiring employers to auto-enrol their workers into a workplace pension scheme and made minimum contributions) (DWP Impact Assessment, para 11). Master Trusts are considered a "good fit" for auto-enrolment – removing the need for an employer to set up their own scheme, while at the same time providing ongoing oversight of investments at lower operating costs than single employer schemes (HC 579, March 2016). However, a consensus developed that existing regulation was inadequate because:

- It had developed with single-employer schemes in mind and assumed ongoing employer interest in the running of the scheme.
- Many Master Trusts were set up to make a profit, giving rise to the need for a different type of regulation to ensure member benefits were protected.
- Master Trusts operated on a scale unprecedented in occupational pensions and the collapse of a large scheme had potential to create a significant shock (Impact Assessment, para 15-19).

To improve member protection, *Pension Schemes Act 2017* provided for:

- An authorisation and supervision regime, requiring Master Trusts to demonstrate to the Pensions Regulator that they met certain key criteria;
- Trustees to be required to take certain actions to protect scheme members in the event of wind-up;
- The Pensions Regulator (TPR) to have greater powers to take action where key criteria were not met.

The Government planned to implement the new regime from October 2018 (HL Deb 19 December 2016, c1489). However, to protect members of existing schemes, some provisions took effect from October 2016 (when the Bill was introduced). These include requiring scheme trustees to notify TPR of certain events and restrictions on the charges member charges that can be imposed on members in the event of scheme failure (HC Deb 30 January 2017 c756).

Debate in Parliament

The main area of controversy – where an Opposition amendment was made to the Bill in the Lords but overturned in the Commons – related to the proposal that the Secretary of

State should be required to establish a **"scheme funder of last resort.**" The Government opposed the amendment, arguing that: the risk of catastrophic failure was low; there were provisions in the legislation to protect member benefits; and that it did not want to deter other Master Trusts from rescuing a failing scheme (HL Deb 19 December 2016 c1507). However, Labour Peer Baroness Drake – who had proposed the amendment – said that there was nothing in the Bill to show how members' benefits would be protected in the event of a Master Trust failing and not having the means to finance wind-up. (HL Deb 19 December 2016 c1504-9). The Lords' amendment was removed from the Bill at Commons Committee stage and an Opposition attempt to reinstate it at Report Stage was defeated on division (PBC Deb 7 February 2017 c42; HC Deb 29 March 2017 c337).

A change compared to the Bill as originally presented to Parliament is that changes were made to the existing Fraud Compensation Scheme to ensure that Master Trusts were protected by it (DEP 2016-0916; *Pension Schemes Act 2017*, s 36).

Other issues of debate included:

- **How to ensure member engagement -** given that there is an acknowledged 'principal-agent problem' with Master Trusts (in that the employer who chooses the pension scheme has less of an incentive than the member to pick one that will deliver good outcomes and value for money). The Government said regulations would be used to ensure the regulator took account of a scheme's systems and processes for member communications and engagement in making decisions on applications for authorisation. In the Commons, Shadow Pensions Minister Alex Cunningham proposed a number of amendments aimed at improving member engagement – including requiring Master Trusts to have member-nominated directors and to hold Annual Member Meetings.
- **The requirement for the scheme funder of a Master Trusts** only to carry out activities relating directly to it. The insurance industry was concerned that it would result in unnecessary cost and duplication because those schemes funded by an FCA-regulated entity already had to meet robust capital requirements and were able to benefit from economies of scale. However, the Government argued that the separation was necessary to enable the regulator to assess the financial position of the scheme with certainty. However, the Government made amendments in the Commons with the aim of minimising disruption to existing corporate structures and shared service arrangements. FCA-regulated companies would be exempt if they met requirements in regulations, which would be subject to consultation (PBC Deb 7 February 2017 c44-7).
- **The impact of a 'pause order' -** under which TPR can require schemes to pause certain activities – including receipt of contributions or payment of a pension – in certain circumstances. Members of both Houses were concerned about the potential impact on savers and pensioners. In response, Ministers responded that the purpose of the order was to allow the regulator to go in and make sure the problem was resolved. Opposition amendments aimed at providing for contributions and payments to continue during a pause order were defeated on division at Commons Committee stage (PBC Deb 9 February 2017 c85).

Part 2 – restrictions on charges

Part 2 of the Act provided for regulations to over-ride contractual terms in occupational pension schemes where these conflict with the regulations. The intention is enable the implementation of policies to restrict certain pension scheme charges in occupational pension schemes, i.e:

- A **ban on member-borne commission charges** (where a charge is passed on to members who are required to pay for advice and services they may not use or benefit from). The Government had already made regulations that from April 2016 prevent providers from imposing commission charges on members under new arrangements. Subject to Parliamentary approval, it intends to make regulations that introduce a ban on member-borne commission payments under existing contracts (DWP, Impact assessment, January 2017).
- A **cap on early exit charges** (i.e. charges incurred when an individual transfers funds out of their pension or accesses them before a date specified in the scheme rules). In November 2016, the Government announced that it intended to implement legislation to introduce a cap on early exit charges of 1% for existing members of occupational pension schemes and 0% for new members (Ibid).

The Pension Schemes Act 2017

The *Pension Schemes Act 2017* received Royal Assent on 27 April 2017.

Much of the detail was left to regulations, on which consultation is planned from autumn 2017 (HL Deb 19 December 2016 c1489; HL Deb 1 November 2016 c561). The Government expects to implement the new regime from October 2018. (HL Deb 19 December 2016, c1489). However, to protect members of existing schemes, some provisions (relating to requirements to notify TPR of key events and restrictions on increasing member charges in the event of scheme failure) took effect from October 2016, when the Bill was introduced to Parliament. (HC Deb 30 Jan 2017 c756).

1. The Bill

The *Pension Schemes Bill [HL Bill 67- 2016/17]* has two parts.

- **Part 1** was to establish an authorisation and supervision regime for Master Trusts. This was in response to concerns that the existing framework - which had developed with single-employer schemes in mind - was inadequate for this type of scheme, particularly given their scale, the rapid growth in the use of such schemes in recent years, and the fact that many had been set up to make a profit.
- **Part 2** was to enable the implementation of policies to restrict certain charges and fees relating to pension scheme members. The provisions were needed to allow regulations to over-ride contractual terms in occupational pension schemes where these conflict with regulations.

The Bill (in the form of HL Bill 65) was introduced in the House of Lords on 19 October 2016. It then had its Second Reading on 1 November 2016, followed by two days in Committee on 21 November and 28 November and Report Stage on 19 December. Third Reading was on 16 January 2017.

The Bill (in the form of HC Bill 125) was then introduced into the Commons on 17 January 2017 and its Second Reading on 30 January. It then had four sittings in Committee on 7 and 9 February. Report Stage and Third Reading were on 29 March 2017. The *Pension Schemes Act 2017* received Royal Assent on 27 April.

Information about the Bill and its progress is on the Parliament website.

DWP produced an updated Summary of Impacts following the Lords' stages. There is also a specific Impact Assessment for Master Trusts and a Memorandum and Supplementary Memorandum explaining how it intended to use the Delegated Powers.

The legislation applies to Great Britain. Northern Ireland is expected to bring forward parallel legislation (see Explanatory Notes, para 23-25).

2. How did we get here?

There are two main types of pension scheme:

- **Defined benefit (DB) pension scheme** – a scheme in which the member builds entitlement to pension benefits based on fixed factors such as salary and length of service.
- **Defined contribution (DC) pension scheme** – a scheme in which an individual builds up a fund based on contributions and investment returns.

DC schemes can be either:

- **Contract-based** - where an employer appoints a pension provider, often an insurance company, to run the scheme. The scheme members will sign a contract with the provider who will make the majority of decisions about the way the scheme is run; or
- **Trust-based** – where the scheme is sponsored by the employer but managed by a board of trustees (who have full responsibility for the management, administration and investment of the plan. The trustees have fiduciary duty to act in the best interests of members).

For more information, see the glossary.

2.1 What are Master Trusts?

Master Trusts are multi-employer, trust-based DC schemes, which employers can use for auto-enrolment without having to set up their own scheme. A 2010 review explained:

> Master Trusts are trust-based occupational schemes which seek to generate economies of scale by operating on a multi-employer basis, removing employer-specific trustee duties while retaining a single trustee structure. A product provider will have set up the trust and installed a group of trustees to run it. The provider will also supply administration and investment services to the trustees. These schemes can be set up from scratch explicitly with the purpose of serving multiple employers, who may be entirely unrelated.[1]

Why are they used for auto-enrolment?

Master Trusts are an industry response to auto-enrolment (the policy introduced under the *Pensions Act 2008* to address the fact that some people were not saving enough for an adequate income in retirement).[2]

In May 2016, the Work and Pensions Select Committee found that Master Trusts were a "good fit" with auto-enrolment because:

1 Johnson et al, *Making automatic enrolment work review*, October 2010, p84; see also, DWP, *Impact Assessment (IA)*, September 2016, p8; See also DWP, *Better workplace pensions: reducing regulatory burdens* etc, November 2015

2 For more detail, see SN-04847 Pensions: Automatic enrolment - background (September 2012) and SN-06417 Pensions: Automatic enrolment – 2010 onwards (February 2017)

> They 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 encouraged employers to consider large multi-employer schemes for AE because they were "better placed to meet the standards […] necessary for good outcomes for retirement savers" and expected Master Trusts to dominate the market.[3]

A review of auto-enrolment set up by the Coalition Government in 2010 noted that some commentators had suggested that well-regulated Master Trusts might serve as an alternative to NEST (set up under the *Pensions Act 2008* to support the policy of auto-enrolment). However, the review team concluded that NEST was a "necessary part of ensuring universal access to a pension scheme at an acceptable cost to the member". This was on the grounds that the pensions industry was not cohesive or united enough to provide "a holistic pension solution to less attractive savers":

> Overall, subsidising the pensions industry as it stands or even with the widespread introduction of master-trusts would not involve the same economies of scale as a single scheme with a public service obligation. Therefore, in the long term, the ongoing subsidies are likely to exceed the costs associated with setting up NEST.[4]

National Employment Savings Trust (NEST)

NEST was established under the *Pensions Act 2008.* This was on the recommendation of the Pensions Commission which had concluded that there was an important segment of the market (people on average and lower earnings, working in small and medium companies, plus many self-employed) that the financial services industry could not serve profitably except at charge levels that were a disincentive to save and substantially reduced the pension available at retirement. [5] A review of auto-enrolment set up by the Coalition Government concluded that For more information see the NEST website and Library Briefing Papers SN-04826 National Employment Savings Trust - background and SN-04826 NEST – 2012 onwards (October 2013).

To what extent are Master Trusts used?

The chart below shows the number of members of Master Trust schemes was around thirty five times greater than had been the case in 2010. In 2010, there were around 0.2 million Master Trust members; this rose to around 2.0 million in 2014, 3.9 million in 2015 and 6.9 million in 2016. The number of members in industry-wide schemes (i.e. only open to employers in a particular industry) has remained constant at 0.1 million since 2010.

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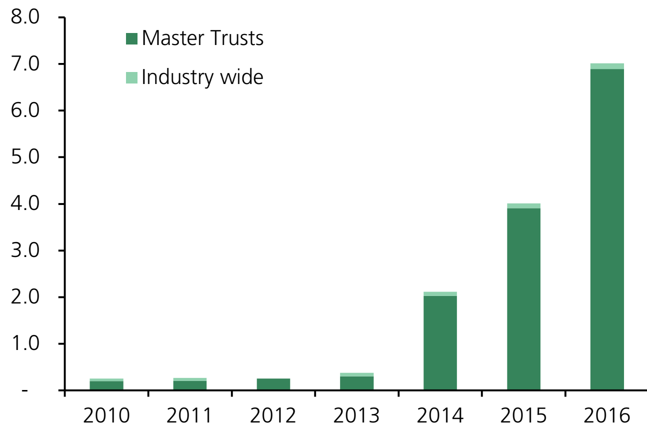
3 Work and Pensions Committee, Automatic enrolment, HC 579, May 2016, para 14

4 Making automatic enrolment work – a review for the Department for Work and Pensions, October 2010, p82 and 93

5 A New Pension Settlement for the Twenty-First Century. The Second Report of the Pensions Commission, December 2005, p6

DC members of Master Trust and Industry Wide schemes
Millions



Notes Data for industry wide schemes unavailable for 2012; figures do not include members of "hybrid" schemes that offer a mix of defined benefit (DB) and defined contribution (DC) benefits; figures do not include members of schemes with under 12 members. **Source** The Pensions Regulator; DC trusts: a presentation of scheme return data 2010-11 to 2015-16 and 2016-17

Almost all (99%) of Master Trust scheme members are members of a large Master Trust with over 5,000 members. Similarly, 96% of industry-wide scheme members are members of a scheme with over 5,000 members.

The number of Master Trust and industry-wide schemes has fluctuated in recent years, from a low of 44 schemes in 2011 to a high of 70 schemes in 2014 and 2016. In 2016, there were 70 such schemes in total (60 Master Trusts and ten industry-wide schemes).

Master Trust and Industry Wide schemes

Notes Data for industry wide schemes unavailable for 2012; figures do not include members of "hybrid" schemes that offer a mix of defined benefit (DB) and defined contribution (DC) benefits; figures do not include members of schemes with under 12 members

Source The Pensions Regulator; DC trusts: a presentation of scheme return data 2010-11 to 2015-16 and 2016-17

In 2016, the vast majority (99%) of members in Master Trusts were in automatic enrolment schemes. For industry-wide schemes, it was 87%.

However, this is not to say all Master Trusts are used for auto-enrolment. In 2016, half of them were not.

Master Trusts and Industry Wide DC schemes used for Auto-Enrolment (AE)

	2014		2015		2016	
	Industry Wide	Master Trust	Industry Wide	Master Trust	Industry Wide	Master Trust
Schemes						
Being used for AE	10	10	10	20	10	30
Total schemes	**20**	**50**	**20**	**40**	**10**	**60**
Percentage	*50%*	*20%*	*50%*	*50%*	*100%*	*50%*
Members						
Being used for AE	76,000	1,953,000	98,000	3,832,000	110,000	6,829,000
Total members	**85,000**	**2,028,000**	**106,000**	**3,908,000**	**126,000**	**6,892,000**
Percentage	*89%*	*96%*	*92%*	*98%*	*87%*	*99%*

Notes Figures do not include members of "hybrid" schemes that offer a mix of defined benefit (DB) and defined contribution (DC) benefits; figures do not include members of schemes with under 12 members; figures lower than 5 or rounded to lower than 1,000 marked with **; figures are as of 31 December of each year. **Source** The Pensions Regulator; DC trusts: a presentation of scheme return data 2010-11 to 2015-16 and 2016-17

According to the Pensions Regulator, there were 87 Master Trusts in total in 2016.[6] The figures differ from those in the table above as they include micro schemes (with under 12 members) and hybrid schemes (schemes offering mixed, DC and DB, benefits).

The Pensions Regulator has established a Master Trust assurance framework (see section 2.3 below). This is voluntary and designed to help trustees assess whether their scheme meets equivalent standards of governance and administration to those set out in TPR's DC code.[7] When the legislation was before Parliament, the Government estimated that 90% of savers in Master Trusts were in a scheme under this framework.[8]

In 2016, 13 Master Trusts had assured status and were on the TPR's public list.[9] These 13 trusts had around 6.6 million members and £5 billion of assets as of 2016. They appear relatively large, with roughly £390 million in assets and 509,000 members per scheme. However, the ratio of assets to members is low: across these schemes there was around £800 in assets for every member. Taken with the data displayed above, this may suggest the majority of members in these 13 schemes are newly auto-enrolled members who have, as yet, made relatively low contributions.

In contrast, there were 74 Master Trusts – 10 of which were closed – not on the published assurance list in 2016. These were comparatively small schemes with a rough average of £67 million in assets per scheme and 7,000 members per scheme. The ratio of assets to members was high (around £1,200 in assets per member) suggesting that the pool of 74 non-assured schemes included some longer-standing schemes with a

[6] The Pension Regulator's 2016 – 2017 DC Trust statistics

[7] TPR website – Master Trust assurance

[8] House of Commons Deposited Paper 2016-0535

[9] TPR 2016, Master trust assurance (archived version of website)

smaller number of members who have made relatively large contributions to their scheme.

Master Trust statistics, 2016

	Master Trust		
	On published assurance list	Not on published assurance list	Total
Schemes includes hybrids	**13**	**74**	**87**
Open schemes	13	64	77
Closed schemes	-	10	10
Assets excludes hybrids (£)	**5,067,000,000**	**4,966,000,000**	**10,032,000,000**
Members includes hybrids	**6,621,000**	**510,000**	**7,130,000**
Active DC memberships	4,076,000	320,000	4,396,000
DC members in schemes which reported assets	6,586,000	413,000	6,999,000
Estimated average…			
Assets per scheme	*390,000,000*	*67,000,000*	*115,000,000*
Assets per member	*800*	*12,000*	*1,400*
Members per scheme	*509,000*	*7,000*	*82,000*

Notes Includes micro schemes (schemes with under 12 members) and hybrid schemes (mixed benefit schemes); note some Master Trusts have achieved assurance with The Pension Regulator but did not wish to be included on the published list. "Estimated average…" figures are rough, mean-average calculations based on above data published by The Pensions Regulator. "Assets per scheme" assumes all schemes reported assets and were not hybrids. "Assets per member" is a ratio reflecting the value of assets should they be divided between all members equally and not, necessarily, each member's own entitlements or contributions. **Source** DC trust: presentation of scheme return data 2016 - 2017

2.2 What was the regulatory framework before the Bill?

As trust-based schemes, Master Trusts are regulated by the Pensions Regulator (TPR) (rather than the Financial Conduct Authority (FCA), which regulates contract-based schemes.[10])

In its impact assessment for the Bill, DWP explained that the regulatory framework for trust-based schemes was developed with single employer schemes in mind, some of the fundamental dynamics and influences for which did not apply to Master Trusts:

> 5. As a trust-based scheme, Master Trusts are subject to laws that have traditionally been designed for and applied to the single employer model (as this is how trust-based schemes have tended to be set up), and they are regulated by TPR. However, as multi-employer schemes for unconnected employers there are many ways in which Master Trusts share more in common with group personal pensions (a type of contracted-based scheme which is regulated by the FCA).

[10] MoU of Understanding between the Financial Conduct Authority and the pensions Regulator, April 2013

> 6. Contract law works in a different way to trust law and occupational pension law. The FCA regulate firms that offer personal pensions, including fit and proper person tests for key individuals delivering regulated activities. Also, the insolvency risk of insurance providers of personal pension schemes is regulated by the Prudential Regulatory Authority (PRA). Personal Pensions, along with other financial products and services, are covered by the Financial Services Compensation Scheme.
>
> 7. Some of the fundamental dynamics and influences that are assumed to be in place in occupational pensions – such as an employer having an ongoing interest in the running of the scheme and of the future of the scheme being aligned to the future of the employer – do not apply to Master Trusts. Also, many Master Trusts, unlike other occupational pension schemes are set up to create profit or to be self-sustaining. Alongside the transactional relationship with the employer, this gives rise to new risks which in turn gives rise to a need for a different type of regulation to ensure member benefits are protected.[11]

2.3 Why did the Government decide to intervene?

In May 2016, the Work and Pensions Committee called for stronger regulation of Master Trusts:

> 23. Gaps in pension law and regulation have allowed potentially unstable master trusts onto the market. Should one of these trusts collapse, there is a real danger that ordinary scheme members could lose retirement savings. There is also a risk that faith in auto-enrolment as a whole will be undermined. We support the Minister's call for a Pensions Bill to introduce stronger regulation of master trusts. We recommend the Bill makes provision for TPR (TPR) to have power 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 assurance framework mandatory; and
> - measures to protect member assets in the event of a Master Trust winding up.[12]

The Government also thought Master Trusts gave rise to new risks:

> In a single employer scheme, the employer is typically far more closely involved in the running of the scheme and tends to have a more active relationship with the trustees. With master trusts used for automatic enrolment, employer involvement is generally limited to paying over the employer contribution.[13]

In its impact assessment for the Bill, the Government identified the following risks:

> - Master Trusts have developed new types of business structures which create a significant alteration of the relationships (and the behavioural incentives) between key

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[11] DWP, Impact Assessment (IA), September 2016, p8-9
[12] Work and Pensions Committee, Automatic enrolment, HC 579, May 2016, para 23
[13] HL Deb 21 November 2016 c1738-9

players (member, employers, trustees, provider) which are integral to the current basis for existing law and regulation;

- Many Master Trusts are run on a profit basis. Introducing the profit motive into real of the occupational pensions introduces a significant new dynamic (and changes incentive structures) which existing occupational pension regulation does not take into consideration – to date this has been the domain of the FCA and regulation of group personal pensions and other financial products;
- Master Trusts operate at a scale which is unprecedented in occupational pensions. The collapse of a large scheme would create a greater shock to the confidence of savers generally than that of a single employer DC pension. The number of members and size of assets are heavily concentrated in a relatively small number of very large Master Trusts;
- Master Trusts have multiple employers to serve – the complexity involved in serving the customer base and the distance of removal from the end user poses a challenge to costs and exacerbates the principal-agent problem, and complicates the existing system of educating and enabling trustees to carry out their functions in a competent manner;
- Master Trusts are not subject to the regulation that applies to other financial products such as contract-based workplace pensions. This makes the scheme cheaper to set up and deliver for the provider; savings which could be passed onto members. But in taking this route, Master Trusts avoid key requirements that exist within the FCA regulatory remit, such as tests for financial stability and key personnel competence, yet the essential nature and relationships within a Master Trust appear to be more like a financial product such as a group personal pension.[14]

Its rationale for the provisions in the Bill was:

- To protect members from suffering financial detriment as a result of new and increased risks presented by Master Trusts which are not adequately covered by the existing regulatory framework, and to level the playing-field in what types of risk members are protected from both within the Master Trust market and between types of DC scheme.
- To promote quality based on a level playing-field in the Master Trust sector by ensuring that reputable Master Trust arrangements are not undercut by less reputable arrangements seeking to gain a competitive advantage by weakening member protections or by exploiting loopholes.
- To protect confidence in pension saving in the UK by reducing the risk of high profile failure or fraud in the Master Trust sector. Given the growing prevalence of Master Trusts in providing benefits it will also help protect the good reputation of the Automatic Enrolment programme, which is a key pillar of the Government's approach to ensuring people make adequate provision for their financial needs in later life.

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[14] DWP, Master Trust Authorisation – Impact Assessment, October 2016, p12

- The Office of Fair trading market study identified that the DC market had a very weak demand-side and that competition alone would not be relied upon to drive good outcomes for consumers. This is primarily the result of a principal-agent problem – the employer chooses a workplace scheme for their workers but has different incentives to the scheme members. The complexity of the market and products further complicates the ability of employers to make decisions in the best interest of workers. The OFT made recommendations for actions of different parties to take in response to its findings. One of the recommendations was for Government and regulators to ensure an equivalent level of protection between Master Trust and contract-based, off the shelf products.
- It is incumbent on Government to ensure that regulation is adequate in Master Trusts, as a large proportion of members have been automatically enrolled rather than actively choosing to participate in workplace pension saving.[…] [15]

External stakeholders agreed that tougher regulation was needed to address the risks of inadequately-resourced schemes collapsing and of scammers entering the market.[16] In fact, two Master Trusts had already failed. However, they were both relatively small schemes (with 7,500 members in total) which TPR indicated were straightforward to manage:

> […] the member assets were transferred into other pension schemes without any significant known member detriment, although this risk remains for other schemes.[17]

Another issue with Master Trusts is the quality of governance. Regulators had already identified a principal-agent problem in the auto-enrolment market, where:

> […] the employer selects the scheme on behalf of its employees but may not understand or act in the employees' best interests potentially automatically enrolling employees into poor value schemes.[18]

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[15] Ibid., pp12-13

[16] See, for example, All hail the Pension Schemes Bill, TPR blog, 20 October 2016; A People's Pension One Pager. Master Trust Regulation, October 2016; ABI, Pension Schemes Bill – Master Trusts, October 2016

[17] DWP, Master Trust Authorisation – Impact Assessment, October 2016, p17-8

[18] FCA, CP 14/24, p22

2.4 Expected impact of the Bill

In its October 2016 impact assessment, DWP said that there was significant uncertainty over the full impact of its proposals:

> …as costs will be determined by the details set out in subsequent secondary legislation. The impact assessment produced for validation at the primary legislation stage provides an indication of the possible scale of impacts but the level of uncertainty is too great to provide a meaningful estimate of the next cost to business per year (EANDCB). The Department for Work and Pensions will submit a full assessment of the EANCB in an updated impact assessment at the secondary legislation stage, following further consultation with industry on how the framework is to be designed and implemented.[19]

The key cost would be for existing and new Master Trusts, which would be required to be authorised under the new process:

> These costs will include costs associated with meeting authorisation requirements including holding certain financial reserves, the costs of going through the new authorisation process, on-going costs of compliance, and familiarisation costs. It is not possible to fully monetise costs at this stage as they are dependent on the specific standards that will be set out in more detail in subsequent secondary legislation.[20]

There was a potential additional cost to fund TPR to conduct the new authorisation and supervision regime.[21]

The Government expected its proposals to result in some consolidation of the market:

> The Bill also introduces a prohibition to protect members from increased costs as a result of a failure of a Master Trust. The prohibition is on increasing charges, introducing new charges, or charging a member for transfer during a specific period where the scheme is at risk. The prohibition may lead to some Master Trusts leaving/exiting the market, but it is not possible to predict how many and which Master Trusts might wind up solely due to this prohibition, or in comparison to other measures in the authorisation regime.[22]

TPR expects there to be some natural consolidation (from 84 Master Trusts in 2015, possibly to around 67). Some further exits from the market of Master Trusts that do not seek or fail to achieve authorisation, could reduce numbers to around 54.[23]

In its January 2017 summary of impacts, DWP said that all members of Master Trusts would benefit:

> […] from improved protection, reduced likelihood of Master Trust failure and associated loss of savings (and consequently future retirement income), and protection from costs incurred in closing down the scheme. There are currently around 4 m members in

Costs to business

The Government is committed to producing an assessment of the Equivalent Annual Net Direct Costs to Business (EANDCB) of qualifying measures. The EANDCB is an estimate of the average annual net direct costs to business in each year that the measure is in force. It is calculated as the present value of the net direct cost to business divided by the sum of the discount factors appropriate for the length of time the measure is in force (HCWS574 3 March 2016)

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[19] DWP, Pension Schemes Bill – Summary of Impacts, January 2017; See also DWP, Master Trusts – Impact Assessment, October 2016, para 41

[20] DWP, Pension Schemes Bill – Summary of Impacts, January 2017, para 33

[21] Ibid para 34

[22] Ibid

[23] DWP, Master Trusts – Impact Assessment, October 2016, para 42

> these schemes. There is uncertainty around future growth of Master Trusts, but modelling by the Pensions Policy Institute suggests that membership could reach 6.6m by 2030 if current trends continued. We have not monetised these benefits as we do not have a reliable baseline projection of how may schemes would have failed with and without a compulsory authorisation process.[24]

As indicated above, the Government intends to produce an updated impact assessment at secondary legislation stage. It expects to start initial consultation on regulations in autumn 2017.[25]

2.5 Initial responses to the proposals

The Pensions Regulator (TPR) welcomed the announcement of new powers to regulate Master Trusts:

> We have voiced concerns for some time about the need for stronger legislative standards for master trusts and have worked with government and other regulators to improve levels of protection for members. We have been calling for a significantly higher bar regarding authorisation and supervision, and we are pleased that today's announcement proposes to give us the power to implement these safeguards.[26]

Now: Pensions said the measures in the Bill were "much needed, if long overdue." However, it called for stricter capital requirements and for the Master Trust Assurance Framework to be made compulsory:

> It is disappointing that the master trust assurance framework won't be made compulsory as part of the licencing regime. The voluntary assurance framework was introduced as a quality standard to enable trustees of master trusts to demonstrate high standards of scheme governance and administration and making it compulsory and building on this existing framework seemed logical.[27]

The Association of British Insurers (ABI) was "supportive of the proposed direction set out in the Bill" and thought it was pragmatic to allow final details to be included in regulations. It raised the following issues:

- TPR would need to be adequately resourced to deliver on this 'significant change' in its role;
- It was unclear whether the authorisation regime would apply to Master Trusts set up purely for savers to access benefits ('decumulation only');
- As far as possible, there should be a level playing field between Master Trusts and group personal pensions; and
- In future, the Government should consider extending the Master Trust authorisation regime to other types of occupational pensions to avoid scams.[28]

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24 DWP, Pension Schemes Bill – Summary of Impacts, January 2017, para 37
25 HL Deb 21 November 2016 c1766 [Lord Freud]
26 TPR welcomes proposed new powers to regulate master trusts, PN16-25, May 2016
27 Measures in the Pension Schemes Bill today are much needed, if long overdue, says NOW: Pensions, 20 October 2016
28 ABI, Pension Schemes Bill – Master Trusts, October 2016

The Pension and Lifetime Savings Association (PLSA) welcomed the Bill as "essential to protect savers and ensure that only good Master Trusts operate in the market." However, scrutiny of the detail would be important – particularly regarding the capital reserving and financial sustainability provisions.[29] The PLSA had set up a committee to act as an advocate for Master Trusts as a model "of strongly governed and value for money schemes" and to help a strategic and proactive policy framework develop.[30]

[29] PLSA says new Pensions Bill on Master Trusts welcome but needs scrutiny, 20 October 2016
[30] PLSA launches Master Trust Committee, 19 October 2016

3. Proceedings in Parliament - overview

3.1 The Lords

This section aims to provide an overview of the provisions in Part 1 of the Bill (which relate to Master Trusts) and the main issues debated in the Lords. The main participants in these debates were:

- The then Work and Pensions Minister Lord Freud (who announced his retirement from the role in December)[31] and Treasury Minister Lord Young of Cookham;
- Conservative Peers, Lord Flight and former Pensions Minister Baroness Altman;
- Opposition spokesperson Lord McKenzie of Luton and Labour Peer Baroness Drake;
- Liberal Democrat spokespersons, Lord Stoneham of Droxford and Baroness Bakewell of Hardington Mandeville.

Second Reading

Opening the Second Reading debate on 1 November 2016, Lord Freud explained that the new provisions were to deal with the specific risks identified in Master Trusts:

> Master Trusts will now have to satisfy the regulator that they meet certain criteria before operating, and schemes must continue to meet the criteria to remain authorised. The criteria respond to specific key risks identified in Master Trust schemes. They were developed in discussion with the industry and include the kinds of risks that the Financial Conduct Authority regulation addresses in group personal pensions, with which Master Trust schemes have some similarities.
>
> Trusts will now be required to demonstrate that the persons involved in the scheme are fit and proper, that the scheme is financially sustainable, that the scheme funder meets certain requirements, that the systems and processes relating to the governance and administration of the scheme are sufficient to ensure its effective running, and that the scheme has an adequate continuity strategy.
>
> The Bill covers more detail on each of these criteria, and additional details will be set out in regulations following further consultation with the industry. The authorisation and supervision regime is likely to be commenced in full in 2018. However, the Bill also contains provisions which, on enactment, will have effect back to the day on which this Bill was published, 20 October 2016.
>
> These provisions relate to requirements to notify key events to TPR and constraints on charges levied on, or in respect of, members in circumstances related to key risk events or scheme failure. This is vital for protecting members in the short term and will ensure a backstop is in place until the full regime commences.

[31] DWP press release 1 December 2016

> We have worked closely with TPR and engaged with the pension industry to see what essential protections are needed, and we believe that the measures in the Bill will provide those protections. TPR, along with many pension providers, has welcomed the introduction of the Bill and these measures, saying that it "will drive up standards and give us tough new supervisory powers … ensuring members are better protected and ultimately receive the benefits they expect".[32]

For the Opposition, Lord McKenzie said the Bill set out a strong framework but he was concerned that much was left to secondary legislation, most of it subject to the negative resolution procedure in Parliament.[33] He commented that the arrangements involved a significant change in the role of TPR:

> […] with extensive powers and obligations being made available, including dealing with authorisation, determining fit and proper persons, judging financial sustainability and capital adequacy, deciding on adequacy of systems, having the power to initiate triggering events, and more.[34]

He asked what assessment the Government had made of TPR's "capacity and resources" to deal with this, particularly when the provisions were first introduced and all existing schemes needed to seek authorisation.[35]

Lord Stoneham said an opportunity had been missed to make the arrangements and proposals more proactive for the consumer and saver. He asked:

- What being a 'fit and proper person' would mean;
- The requirements for keeping scheme members informed – for example, where the 'pause provisions' are implemented;
- The Government's intentions for 'pot follows member'.[36] (This refers to a policy legislated for by the Coalition Government – to allow individuals' pension pots to follow them as they move jobs. In October 2015 the current Government announced that it had put the plans on hold in order to concentrate on other priorities such as the introduction of auto-enrolment.)[37]

Baroness Altmann welcomed the provisions in the Bill and said the issues which would need careful consideration included:

- How adequate the capital requirements really were;
- How the new regulations would dovetail with the existing Master Trust Assurance Framework;
- How the cost of wind-up would be covered;
- Employer and member communications to ensure that proper, clear warnings were in place about the impact of such things as

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32 HL Deb 1 November 2016 c561
33 Ibid c565
34 Ibid c565
35 Ibid
36 Ibid c568; For background, see Library Briefing Paper CBP-07202 (May 2015)
37 Cm 8184, Dec 2011, ch 4; *Pensions Act 2014*, s33; HLWS238, 15 October 2015; See Library Briefing Paper CBP-07202 (May 2015), p71

using a 'net pay arrangement' for workers earning under £11,000;

- How members of existing schemes would be protected, for example, if a scheme failed before the new rules were enacted; and
- Whether the requirement for Master Trusts to be established as a separate entity should apply to those run by insurance companies (which were already regulated by the FCA).[38]

Baroness Drake said there were compelling reasons for the Bill:

> As the impact assessment acknowledged, master trusts expose members to specific areas of risk. Master trusts can introduce a profit motive into a trust arrangement, but they fall outside FCA regulation. A master trust is set up by a provider raising concerns about the independence of trustees. In a traditional trust, trustees can replace their administrators or investment managers, but in a master trust they may not have that power. Currently, if a master trust fails, as the noble Baroness, Lady Altmann, spelled out, the costs are crystallised and met from members' savings. There is no Pension Protection Fund for defined contribution savings.
>
> Their multi-employer nature means lower individual employer engagement. They are growing in part because employers want to outsource pensions or discharge legacy DC trusts. They can increase complexity, exacerbate the principal-agent problem and when operating at scale mean a greater shock on failure—all compelling reasons for why the Government are right to introduce the Bill.[39]

Her focus was on whether the authorisation, supervision and wind-up regime was sufficiently robust. She was concerned that most of the detail would be in secondary legislation and signalled that she would press for more detail on a number of issues in Committee.[40]

Responding to the debate, Lord Young explained that:

- The Government was working with TPR to establish what resources it would need;
- Existing pots would be protected from the date the Bill was introduced; and
- There were existing regulation-making powers in relation to member communications.[41]

Committee stage – 21 and 28 November 2016

Peers conducted clause by clause scrutiny of the Bill at Committee stage, over two days. The Government made some amendments which did "not significantly alter the policy intent of the Bill." Rather they dealt with some of the details required to ensure that its intent was properly achieved.[42]

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38 HL Deb 1 November 2016 c576
39 Ibid c582
40 Ibid c582-4
41 Ibid c594
42 DEP 2016-0826

An overview of the main issues debated is below. A tracked changes version of the Bill as amended in Committee is on the Parliament website.

Report stage – 19 December 2016

The Government made amendments to the Bill at Report Stage:

- Regulations under clauses 7, 8, 10, 12, 13 and 17 would now be subject to the affirmative parliamentary procedure in the first instance (they were previously subject to the negative procedure);
- To enable regulations to allow consequential amendments to other legislation, including primary. This power would be "limited to amendments which are consequential to allow for necessary technical fixes and only apply to existing legislation and legislation passed in this session"; and
- To allow amendments to the existing fraud compensation scheme procedures to ensure members of Master Trusts were protected by it.[43]

The House of Lords also voted by 209 to 204 to accept an Opposition amendment that would require the Secretary of State to make provision for a funder of last resort.[44]

Third Reading – 16 January 2017

The Government made a technical amendment to clause 11 at Third Reading.[45]

Reflecting on the debates so far, Baroness Altmann identified the following issues as still needing attention:

- Provisions that could see Master Trust members "stripped of their pension rights" during a pause order (clause 32) needed to be reconsidered. Member and employer contributions and tax relief needed to be "collected and accrued rather than lost altogether as the Bill would permit."[46]
- Under clause 11(2), a scheme funder must be constituted as a separate legal entity that only conducts activities relating to the Master Trust. She said the Government should make special provision for those backed by an insurance company, given that they already had to meet tougher capital requirements than would apply under the Bill, were able to run at lower cost and were generally more secure than they would be if backed by a stand-alone business entity.[47]

She said the following issues should have been included in the Bill:

43 DEP 2016-0916
44 Bill 125, clause 9; HL Deb 19 December 2016, c1511-13
45 HL Deb 16 January 2017 c12
46 HL Deb 16 January 2017 c13
47 Ibid

- The application of the section 75 debt requirements of non-associated employer schemes – which meant some plumbers were facing "personal bankruptcy."[48]
- The position of people earning under the income tax threshold who were auto-enrolled into schemes using the 'net-pay arrangement' (which meant they missed out on tax relief). The schemes should be allowed to claim tax relief for them.[49]

Lord Kirkwood welcomed the Government amendments to allow many of the regulations to be subject to the affirmative procedure in the first instance. He stressed the importance of having an updated impact assessment to support consideration of regulations.[50]

Lord McKenzie described the Bill as "narrow" but with "significant implications, which is why we want to see it make speedy progress." He hoped that the "important" amendment brought forward by Baroness Drake to require there to be a scheme funder of last resort, would endure.[51]

3.2 The Commons

HC Bill 125 as brought from the Lords had its first reading in the Commons on 17 January 2017.

Introducing the Second Reading on 30 January 2017, Work and Pensions Secretary Damian Green said that there had been a very fast growth in the use of Master Trust schemes, giving rise to new risks to which the Bill was a proportionate response.[52]

Shadow Work and Pensions Secretary Debbie Abrahams said the Opposition recognised and supported the need to ensure that there is adequate regulation for Master Trusts. However, she thought the Bill was a "missed opportunity" to include some of the groups currently excluded from auto-enrolment (such as low earners and the self-employed) and to strengthen member representation.[53]

SNP pensions spokesperson Ian Blackford welcomed the Bill as "an important step forward" in delivering the appropriate level of protection for savers. He said some of its requirements could have "unintended consequences and require further attention." For example;

- it would be important that the Pensions Regulator was adequately resourced;
- there was little clarity about how the requirement for Master Trusts to have sufficient resources would be applied;
- the insurance industry was concerned about the requirement for the scheme funder to be a separate legal entity; and

[48] Ibid c14; See Library Briefing Paper CBP-07684 (August 2016)
[49] Ibid c14
[50] Ibid c14
[51] Ibid c15
[52] HC Deb 30 January 2017 c754
[53] Ibid c758-60

- there were concerns about the impact of a pause order on member savings.[54]

Winding up the debate, Shadow Pensions Minister Alex Cunningham talked about the importance of transparency on transaction costs and improving member engagement. Pensions Minister Richard Harrington thanked Members on "both sides of the House for general spirt of consensus on the basics of the Bill."[55]

This was followed by four sittings in Committee:

- 7 February 2017 – morning;
- 7 February 2017 – afternoon;
- 9 February 2017 - morning;
- 9 February 2017 – afternoon.

The Committee received written evidence from: the chair of the Trustee of Citrus Pension Plan; the Society of Pension Professionals; Welplan Master Trust; James Jones-Tinsely; Smart Pension ltd; and the Association of Pension Lawyers.

The Public Bill Committee voted to remove the Lords' amendment requiring a scheme funder of last resort.[56] (An attempt by the Opposition to restore this requirement at Report Stage was defeated on division).[57]

The Bill had its Third Reading and Report Stage on 29 March 2017.

The Lords considered the Commons' amendments on 5 April 2017 and the Bill received Royal Assent on 27 April. It is now the *Pension Schemes Act 2017.*

3.3 Regulations

The Act contains a substantial number of regulation-making powers.[58] The Government expects to conduct initial consultation on them in autumn 2017, followed by formal consultation, with implementation in October 2018.[59] Under the Bill as originally presented to Parliament, most regulations would have been subject to the negative procedure in Parliament.[60] Two House of Lords Committees were concerned that this would provide insufficient opportunity for parliamentary scrutiny.[61]

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54 Ibid c765-6
55 Ibid c777-9
56 PBC Deb 7 February 2017 c42
57 HC Deb 29 March 2017 c337
58 Delegated Powers and Regulatory Reform Committee, Pension Schemes Bill [HL] 2016-17, November 2016, para 3; DWP, Pension Schemes Bill – Delegated Powers Memorandum, January 2017; DWP, Pension Schemes Bill. Delegated Powers Memorandum, October 2016
59 HL Deb 19 December 2016 c1489; HL Deb 1 November 2016 c561
60 HL Deb 1 November 2016 c561; DWP, Pension Schemes Bill. Delegated Powers Memorandum, October 2016
61 Delegated Powers and Regulatory Reform Committee, Pension Schemes Bill [HL] 2016-17, November 2016; Letter from Chair of the Constitution Committee to Lord Freud, 11 November 2016

Statutory instruments

There are two types of SI:

- Affirmative: both Houses of Parliament must expressly approve them;
- Negative: become law without a debate or a vote but may be annulled by a resolution of either House.

For more information, see statutory instruments on the Parliament website and Library Briefing Paper SN-06509 (December 2012).

Parliamentary scrutiny

In its response to the Committees, published on 21 November 2016, the Government argued that the Bill contained sufficient detail for those affected, to understand who the provisions would apply to and what would be required, whilst leaving to secondary legislation those "matters that relate to the operational and technical detail or which may need to change over time."[62] There were some measures on which it had not been able to consult in advance:

> These measures require schemes to report a trigger event, such as an intention to close the scheme. They also provide a backstop to ensure schemes cannot increase their existing charges on members to pay for winding up of the scheme, and also place an obligation on the scheme funder to pay for these costs to the extent that these costs cannot be met from other funds. We were not able to formally consult on the detail of this proposal, because any such consultation could have caused the risk it is intended to prevent.[63]

However, in the course of debate, the Government said it would reflect further.[64] At Lords' Report Stage on 19 December 2016, it amended the Bill so that the first regulations made under some clauses would have to be approved by Parliament before becoming law (i.e. would be subject to the affirmative procedure).[65] Subsequent regulations under the same clause would be subject to the negative procedure.[66] Lord Freud explained that the regulations to which this applied represented "significant aspects of the authorisation regime." They were:

- **Clause 7** – relating to the need for individuals in the scheme to be fit and proper people. Subjection 4(a) allows the Secretary of State 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 a particular capacity";
- **Clauses 8 and 10** – relating to the financial sustainability of a Master Trust. Clause 8 would require 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. The power in clause 8(4) would "enable regulations to set out matters that the regulator must take into account when deciding whether it is satisfied" on these points. Clause 10 relates

62 HM Government's response to the Constitution Committee's letter on the Pension Schemes Bill, 21 November 2016
63 Ibid
64 HL Deb 21 November 2016 c1763
65 Now clauses 7 (4) (a), 8 (4), 10 (2), 12 (2), 13 (5) and (6) and 17 (3)
66 DEP 2016-0916

to the requirement for a scheme strategist to produce a business plan, and the power in Clause 10(2) would allow the Secretary of State to set out what information should be included.

- **Clause 11** – relating to systems and processes. It includes a regulation-making power to require the Pensions Regulator to take into account specified matters when deciding whether it is satisfied that the systems and processes adopted by schemes are sufficient to ensure that they are run effectively.
- **Clause 12** – relating to the requirement for the scheme strategist to prepare the continuity strategy. The powers in subsections (5) and (6) allow the Secretary of State "to determine the format in which the level of charges should be set out."
- **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.[67]

These changes were welcomed by Lord Kirkwood and Lord McKenzie.[68]

Power to make consequential amendments

Lord Freud introduced a further amendment that would insert a "power to make consequential amendments to other legislation, including primary legislation." It would be "narrow in scope":

> It is limited to amendments that are consequential to allow for necessary technical fixes and will apply only to existing legislation and legislation passed in this Session.[69]

Lord McKenzie questioned this, saying that:

> As originally explained to us, they will be constrained by being used only to make the implementation of the regulations effective. In the event, they seem to go further than that.[70]

Lord Freud responded that the provision would be limited to "consequential amendments to allow for necessary technical fixes" and would only "allow necessary amendments to make the Bill work." It incorporated "legislation that now exists and legislation that we will prospectively pass with this Bill."[71]

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[67] HL Deb 19 December 2016 c1489
[68] Ibid c1490-1
[69] HL Deb 19 December 2016 c1490
[70] Ibid c1491
[71] Ibid c1492

4. Debates on individual clauses

The sections below are a guide to the debates on individual clauses

4.1 Definition

Clause 1 (now section 1 of the *Pension Schemes Act 2017*) provides for a definition of Master Trusts as an occupational pension scheme which:

- Provides money purchase benefits (whether alone or in conjunction with other benefits);
- Is used, or intended to be used, by two or more employers;
- Is not used, or intended to be used, only by employers which are connected with other; and
- Is not a relevant public service pension scheme under **clause 2**.

One employer is connected to another if:

- They are connected by reference to 'group undertakings' in the *Companies Act 2006;* or
- In circumstances specified in regulations.[72]

The Government agreed that regulations under clause 1(3) (b) would be subject to the affirmative resolution procedure, because there would be would be:

> […] 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.[73]

Debate

Schemes with money purchase and non-money purchase benefits

At Committee Stage, Lord Flight raised concerns that certain industry-wide schemes (such as the Railways Pension Scheme, the Mineworkers' Pension Scheme and the Universities Superannuation Scheme) might be caught by the Bill because, although they were essentially defined benefit schemes, they gave members the option of building up money purchase benefits through additional voluntary contributions (AVCs). He argued that requiring them to comply with the Master Trust regime would cause difficulties and result in additional expense. It should be targeted at "only those schemes that are currently subject to inadequate regulation."[74]

Lord Freud said that there might be a case for excluding some industry-wide schemes operating on a not-for-profit basis, he was "wary of creating a loophole":

> […] we intend to consult on regulations under clause 39 (1) (b) to disapply some or all of the provisions of the regime for a mixed

72 Clause 3
73 Clause 1 (5); DWP, Delegated Powers Memorandum, para 21
74 HL Deb 21 November 2016 c1730-1

> benefit master trust scheme, where the only money purchase benefits are those related to additional voluntary contributions of non-money purchase members, but we will also be considering carefully the need to avoid creating any avoidance loopholes as we go through that process.[…] Our aim is to protect members from the risks that are particular to master trusts, and these may equally arise in industry-wide schemes. Similarly, although it is true that most master trusts are run for profit, and that this gives rise to certain risks which the regime seeks to protect, it is not this feature alone which determines the nature of master trusts.[75]

At Commons Committee stage, the Government amended the application of the Bill to schemes providing a mix of money purchase and non-money purchase benefits:

> The amendments, which we indicated in the other place that we would table, will fix the issue that he pointed out. Without them, where a scheme has a mix of money purchase benefits and non-money purchase benefits, a funder would not be able to conduct activities in relation to the non-money purchase benefits. That was clearly not our intention, but it was the effect of the interaction of clauses 1(2) and 11. Amendments 1 and 20 will amend clauses 1 and 40 respectively to fix that.
>
> Clause 1(2) provides that where a master trust scheme provides both money purchase benefits and non-money purchase benefits, the Bill's provisions will apply only to the money purchase benefits. Clause 11 requires the scheme funder to be set up as a separate legal entity that is defined, broadly, as a legal person whose only activities are in relation to the master trust. As a result of clause 1(2), for a scheme with mixed benefits, the reference to the master trust in clause 11 would cover only the money purchase elements, which could mean that schemes or scheme funders would have to be restructured for reasons that we did not intend.[76]

The Opposition welcomed this amendment.[77]

Retirement products

In the Lords, the Government said it was considering whether single-employer schemes offering decumulation-only benefits should be in the regime.[78] In the Commons, Richard Harrington said the Government had decided to use clause 40 (which allows the Secretary of State to make regulations applying some or all of the provisions in the Bill to schemes other than Master Trusts) to decumulation schemes.[79]

Baroness Drake was concerned that non-money purchase benefits in Master Trusts – including retirement products with an element of guarantee – were excluded from key protections:

> Clause 1 (2), taken together with other clauses, means that the Bill applies only to money purchase benefits provided through a master trust, and excludes non-money purchase benefits. This means that potentially some of the members' benefits provided by these schemes, including retirement products, are excluded from key protections in the Bill […] The Master trusts can provide a

75 Ibid, c1737; see also DEP 2016-0898
76 PBC Deb 7 February 2017 c14
77 Ibid c14
78 HL Deb 21 November 2016 c1738
79 PBC Deb 7 February 2017 c11

> variety of services both to employers under auto-enrolment and to individuals exercising pension freedoms. The Master trust may provide at-retirement products, such as guaranteed draw-down and investment products which include some guaranteed rate of return. How are savers protected in that situation? […] it is unclear what happens to those benefits and, importantly, the assets backing them when the scheme fails.[80]

She said this raised important questions:

- How would such retirement products be protected?
- Would Master Trusts be required to set out how members with non-money purchase benefits would be protected if a triggering event occurred?

She also asked whether the assessment of capital adequacy would disregard any assets related to non-money purchase benefits.[81] Lord Freud responded that the Bill was focused on addressing the risks around money purchase benefits. If the authorisation regime applied to non-money purchase benefits – for which there was already extensive regulation - this would create duplication and add to costs.[82] Where a Master Trust had a 'triggering event', the protection requirements in respect of money purchase benefits (such as transfer or wind up) might not be appropriate for non-money purchase benefits.[83]

This point was raised again by at Commons Committee stage by Alex Cunningham, who said:

> Pension freedoms are beginning to transform the market radically for guaranteed income products, but pension savers will still have an appetite for some form of guaranteed product. The Bill will not apply to non-money purchase benefits, so it is unclear what happens to those benefits and, importantly, the assets backing them when a master trust fails.[84]

Richard Harrington responded that there was already "extensive regulation" applying to non-money purchase benefits and the Government did not want to create duplication. [85]

4.2 Authorisation applications

Clauses 3 to 6 provide for an authorisation framework.[86] This was needed because – although people running schemes regulated by the FCA had to satisfy various criteria before they can register for tax relief - there was currently no equivalent process for Master Trusts.[87]

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80 HL Deb 21 November 2016 c1730-1
81 Ibid c1741
82 Ibid c1742
83 Ibid c1744
84 Ibid c6
85 Ibid c11
86 Now sections 3 to 6 of the Act
87 TPR welcomes proposed new powers to regulation Master Trusts, May 2016; HMRC, Pension Tax Manual, Registration: registering a pension scheme: applying to register

Prohibition on unauthorised schemes

Clause 3 provides that a person may not operate a Master Trust unless the scheme is authorised. To be authorised, TPR must be satisfied that the scheme meets criteria set out in section 5(3).[88]

Lord McKenzie questioned whether it should be possible to disapply some requirements in some cases.[89] In response, the Minister explained that all the criteria must be met for a Master Trust to be authorised. The intention was that the authorisation criteria would be modified only if there was a pre-existing regulation or piece of legislation covering the same need. However, as this was an evolving market, the Government wanted flexibility to respond to developments.[90]

In the Commons, Richard Harrington explained the Government's thinking:

> The requirement to become authorised creates a barrier to entry to the master trust market, so rather than us waiting for things to go wrong, the interests of scheme members will be protected in a proactive manner, because new master trust schemes will be prohibited from taking on members until they have satisfied the regulator that they meet essential quality standards. Existing schemes will have to become authorised to continue operating in the market. New schemes will have to be newly authorised.
>
> Introducing a requirement for authorisation is a proportionate response to the rapid development of master trusts, given the types of risks inherent in the structure of the schemes. Clause 3 prohibits a person—a "person" being an entity—from operating a master trust scheme, unless that scheme is authorised by the regulator, and so is the core and foundation of the whole authorisation regime.
>
> The clause also sets out the consequences of breaking the prohibition. It is important that those consequences are clear and firm. If the regulator becomes aware that a scheme is operating without authorisation, clause 3 requires it to issue a notice to the trustees of that scheme, explaining that the scheme is not authorised. Such a notification—I am sure we will discuss the effects of this later—is a triggering event that requires the scheme's trustees to transfer the scheme's members out and wind up the scheme. The risk of being shut down by the regulator is a strong deterrent that will ensure that the authorisation regime is taken seriously. The clause also gives the regulator the power to issue a civil penalty if the prohibition has been broken. This will act as an additional deterrent to anyone who may seek to operate a master trust scheme without authorisation.[91]

Applications and decisions

Clause 4 provided for an application for authorisation to include:

- The scheme's latest accounts;
- The latest accounts of each scheme funder;

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88 Bill 125 EN, para 39
89 HL Deb 21 November 2016 c1746
90 Ibid c1748-52
91 PBC Deb 7 February 2017 c15-16

- The scheme's business plan; and
- The scheme's continuity strategy.

The Secretary of State may make regulations setting out any other information to be included in the application and the application fee payable.[92]

These regulations would be subject to the negative resolution procedure.[93] The justification is that the provision allows for "additional operational detail, which may need to be changed from time to time."[94]

Under **clause 5,** TPR must make a decision (within six months) as to whether the scheme meets the authorisation criteria in clause 5 (3)). If authorisation is refused, the applicant must be notified of the reasons for this (clause 5 (6)).[95]

A decision to refuse authorisation may be referred to the Tribunal under **clause 6.**

Debate – member engagement

Lord McKenzie proposed an amendment to clause 4 that would require schemes to give details of their member engagement strategy in their applications for authorisation. He said:

> Understanding members' views and needs is essential to designing investment strategies and to the assessment of value for members. It is, or ought to be, an essential component of designing a pension scheme and something which is integral to its creation and continuance.[96]

Lord Young's initial response was that there were already minimum statutory standards for communication with members.[97] However, at Report Stage, he said the Government had decided to use regulations to ensure TPR took account of communications and engagement:

> I can confirm that the Bill as drafted allows the regulator to take into account the systems and processes relating to communications and engagement when assessing the adequacy of a scheme's systems and processes more broadly. I can also confirm that the Government would intend—subject, of course, to consultation—to use the regulations under Clause 11 to ensure that the regulator specifically considers a scheme's systems and processes in relation to these important communication matters when deciding whether the scheme is run effectively.[98]

In the Commons, Alex Cunningham tabled an amendment to ensure that there was a requirement for an application to include a member engagement and communication strategy:

> Our amendments seek to ensure that as part of the defined-contribution—DC—code of practice, there is a requirement for the authorisation process principally to ensure that the application

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92 Clause 4 (2)
93 Clause 4 (6)
94 DWP, Delegated Powers Memorandum, January 2017, para 25
95 For an overview of purpose of clause 5, see PBC Deb 7 February 2017 c25
96 HL Deb 21 November 2016 c1753-4
97 Ibid c1759
98 HL Deb 19 December 2016 c1487

> to the Pensions Regulator includes a member engagement strategy and a communication strategy. The Pensions Regulator's code of practice for DC pension schemes, published in July 2016, sets out the standards that pension trustees need to meet to comply with legislation. The code, which applies to all schemes offering money purchase benefits, is supported by a series of "how to" guides that provide more detail about how trustees can meet the standards in practice.
>
> The Pensions Regulator has also produced a tool to help trustees to assess their scheme against the standards in the code so that they can identify areas requiring improvement. The DC code sets out a number of areas in which an understanding of members is key, particularly those of gauging members' views to inform the design of investment strategies and the assessment of value for members. The regulator suggests:
>
> "Member nominated trustees in particular may be able to provide feedback, as might union representatives, other employee representatives or existing staff forums."
>
> It is because of the valuable role that scheme members can play that we have tabled the amendments on scheme member trustees. We need to improve the Bill to make it more scheme-member-friendly.[99]

He was supported in this by Ian Blackford who said it was "important to encourage as much member engagement as possible."[100]

Mr Harrington responded that it was not clear how this would increase protection for members. The Bill already required a scheme to satisfy the regulator that its "systems and processes are sufficient to ensure the effective running of the scheme." Regulations under clause 12 would "ensure that those matters are taken into account when considering a system's application for authorisation."[101]

Mr Cunningham said it was important to "communicate the full message to the people whose money we are dealing with." His amendment was defeated on division by 6 votes to 9.[102]

Notification requirements - triggering events

In broad terms, a "triggering event" is a type of "event that could put the scheme at risk."[103] The actual events that constitute triggering events were set out in clause 22. Trustees are required to inform the employers if a triggering event occurs (clause 22 (6)). In response to a proposal that members should also be informed, Lord Young said the Government "did not want to worry members unnecessarily and at a point when definitive information about the next steps may not be available."[104] The requirement on schemes under clause 28 was to pursue the continuity option set out in their implementation strategy, once approved by TPR, and to "make the strategy available to

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99 Ibid c18
100 Ibid c19
101 Ibid c20
102 Ibid 24
103 HL Deb 21 November 2016 c1815
104 HL Deb 21 November 2016 c1761

employers." Given the potential complexity of wind-ups, this struck the right balance.[105]

Funding

Lord Flight questioned whether an application fee would inevitably be payable by employers.[106] Lord Freud said the fee served two purposes:

> First, it ensures that TPR can recover the costs of processing applications from master trust authorisation without indirectly placing those costs on the wider pensions community it regulates. Without an authorisation fee it would have to recover these costs through the funding provided by the general levy, and this would not be fair given that a large number of the schemes which pay into this levy are not master trust schemes. Secondly, the fee ensures that schemes seeking to become authorised submit carefully considered applications by acting as a deterrent to submitting multiple applications.[107]

Consideration of the resources TPR would need would form part of the "annual business planning process in the normal way."[108]

4.3 Authorisation criteria

As stated above, clause 5(3) provided for TPR to decide whether a scheme met the authorisation criteria i.e:

- That the persons involved in the scheme are fit and proper;
- That the scheme is financially sustainable;
- The each scheme funder meets the requirements set out in section 11;
- That the systems and processes used in running the scheme are sufficient to ensure that it is run effectively; and
- That the scheme has an adequate continuity strategy.

The detail of the process and the standards applied will be set out in secondary legislation.[109]

The authorisation criteria are now in s 7-12 of the 2017 Act.

Fit and proper persons requirement

Clause 7 set out "a requirement that TPR must decide if key individuals in the scheme are fit and proper to act in their roles." This would apply to individuals in key roles, including:

- The person establishing the scheme;
- Trustees of the scheme;
- Individuals who have the power to appoint and remove trustees;
- Individuals who have the power to amend the trust deed;

105 Ibid c1762
106 Ibid c1764
107 Ibid c1766
108 Ibid c1767
109 DWP, Master Trust Authorisation – Impact Assessment, September 2016

- The scheme funder; and
- The scheme strategist.[110]

There is provision for additional roles to be set out in regulations.[111] In response to a question from the Delegated Powers Committee, DWP explained that this regulation-making power was residual – to allow a response to new structures evolving in the market.[112]

Clause 7 (4) provided that:

> In assessing whether a person is fit and proper to act in a particular capacity, the Pensions Regulator –
>
> (a) must take into account any matters specified in regulations made by the Secretary of State, and
>
> (b) may take into account such other matters as it considers appropriate (including, in particular, matters relating to a person connected with that person).

The first regulations under clause 7(4) will be subject to the affirmative procedure in Parliament.[113]

In its Delegated Powers Memorandum, DWP states that:

> The Government envisages 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 & 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, the Government considers that these requirements cannot be appropriately set out on the face of the primary legislation. Therefore clause 7(4)(a) provides a power for the Secretary of State to set this out in regulations.[114]

The Impact Assessment explained that:

> […] some Master Trusts may be able to demonstrate competence and integrity of their founders and trustees from existing processes they have already completed. Scheme return data held by TPR suggests that 41 schemes are part of a corporate group that has some existing FCA registration in other parts of its business. It is reasonable to assume that the founders of these Master Trusts may already have demonstrated their competence and integrity in relation to the financial history and integrity of the individual, although it is possible that requirements will differ from specific FCA criteria – depending on their function in the Master Trust. Others may incur costs to satisfy the criteria on competence and integrity. TPR intelligence based on preliminary assessment suggest that there may be a small number of schemes where there would be concerns about founder competence although these are not based on specific competence and integrity criteria that may be developed for Authorisation.[115]

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[110] Clause 7 (1) and (2); Bill 125 EN – para 44
[111] Clause 7 (2) (h)
[112] DWP, Pension Schemes Bill – Delegated Powers Memorandum, January 2017, p8-9
[113] Clause 7(7)
[114] DWP, Delegated Powers Memorandum, January 2017, para 32
[115] DWP, Master Trust Impact Assessment, September 2016, para 50

Debate

Lord McKenzie asked why the list of persons that would need to be assessed as 'fit and proper' referred to a person with power to vary a non-trust scheme.[116] Lord Freud responded that the Government wanted to ensure that it did not create an "avoidance loophole."[117] The intention was to cater for the very small number of occupational pension schemes which under existing legislation are not required to be set up under trust: public service schemes and certain small schemes.[118]

At Commons Committee Stage, Richard Harrington explained the importance of the requirement:

> The structure of the master trust scheme means that it is no longer the members' employers who set up the scheme or appoint the trustees. That changes the key relationship and the influences on the running of the scheme. Some master trusts are set up as a commercial enterprise and resemble something more akin to a conventional financial services product, but without being subject to the same regulatory requirements. It is therefore only right that we introduce the requirement of being fit and proper—fitness and propriety—in respect of those setting up and running master trusts.[119]

Financial sustainability requirement

Clause 8 provided that:

> […] the Pensions Regulator must be satisfied that a Master Trust has sound business strategy and sufficient financial resources to meet the costs of setting up and running the scheme, and to comply with requirements to protect members where an event occurs that may lead to the scheme closing or winding up (see clause 22 Triggering events and clause 24 Continuity options).[120]

The financial stability requirement is that the scheme has sufficient resources to meet the following costs, specified in clause 8(3):

> (a) the costs of setting up and running the scheme, and
>
> (b) in the event of a triggering event occurring –
>
> (i) the costs of complying with the duties in sections 20 to 33, and
>
> (ii) the costs of continuing to run the scheme for such period (which must be at least six months and no more than two years) as the Regulator thinks appropriate for the scheme.

The Government expects that the requirement to hold a certain amount of capital in case of failure may impose the "most significant costs for schemes." The impact would depend on the extent that capital was already held by the founder (for example, to comply with FCA requirements) and the level of capital required under the new rules. The key factor would be to:

> […] hold sufficient assets or backing to cover the period in which the scheme is building to sustainability, to cover circa 12 months'

116 HL Deb 21 November 2016 c1772
117 Ibid c1772
118 Dep 2016/0898
119 PBC Deb 7 February 2017 c26
120 Bill 125-EN, para 50

> operating costs, and to cover the costs of wind up/deliver their continuity of savings strategy, or other market exit.[121]

Clause 8(4) provided a power for the Secretary of State to make regulations on the matters that TPR must take into account in deciding if it is satisfied that a Master Trust meets the financial sustainability authorisation criteria. In its Delegated Powers Memorandum, DWP explained:

> 36. The Government envisages using this regulation making power 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 Government anticipates that 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 to also set out the factors that the Regulator will need to consider in assessing whether the business plan is 11 sound, such as the reasonableness of the calculation of the costs set out in subsection (3).[122]

The first regulations under this clause would be subject to the affirmative procedure.[123]

Comment

Providers took different views on the financial resource requirements. One was concerned that the Bill did not prescribe a minimum amount:

> The Bill does talk about a scheme having six months' worth of operating costs but when you set up a master trust that doesn't amount to very much at all. We would like to see £2m being set as a rock bottom for capital adequacy.[124]

However, another disagreed, saying that Master Trusts operated in different ways and that deciding on the right amount of capital should be a matter for the trustees.[125]

The ABI said that as far as possible there should be a level playing field between Master Trusts and group personal pensions. It argued that insurers which operated under both the FCA and TPR's regulatory regimes were therefore already subject to prudential rules requiring them to hold capital for this purpose.[126]

In the Commons, Ian Blackford proposed that the financial sustainability of the scheme funder must be taken into account when accessing a Master Trust scheme's financial capability:

> A number of insurance companies have told us that they already hold a very significant amount of capital under the European

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[121] DWP, Impact Assessment – Master Trust Authorisation, September 2016, para 52
[122] DWP, Delegated Powers Memorandum, January 2017
[123] Clause 8 (7)
[124] Now Pensions: Master trust capital adequacy should be £2m minimum, Professional Pensions, 14 November 2016
[125] Ibid
[126] ABI, *Pension Schemes Bill – Master Trusts*, October 2016

> regulatory framework for insurance insolvency. In this case, it seems unnecessary for insurers to be required to hold separate or additional capital on top of this in order to meet their new obligations as master trust providers under the Bill.[127]

Richard Harrington said the amendment was unnecessary:

> Clause 8 already sets out the two elements of the financial sustainability requirement: schemes must have a sound business strategy and sufficient financial resources to meet both their operating costs and costs following a triggering event, such as those of winding up in the event of scheme closure. The financial sustainability requirement is intended to mitigate the risk of a master trust being set up with inadequate planning and insufficient financial resources—that is its whole purpose. When the regulator assesses whether the scheme meets the requirement, it must take into account certain matters that will be specified in regulations, and our intention is that the regulations will include how the resources to cover the costs mentioned by the hon. Gentleman must be held. The scheme therefore includes a scheme funder.
>
> We are considering options for the regulations and will consult on them. Among those we will want to explore are holding the resources in escrow or as a guarantee, or other robust financial commitments. What the regulator will expect will differ greatly depending on the size of the company, varying from a massive multinational undertaking to a comparatively small one. It might involve a solicitor's client account or an escrow system. We want to consult on the options to get them absolutely right.
>
> Also, we can use the regulations to specify whether the resources could be held either by the scheme or elsewhere, such as with the funder. However, if they are held elsewhere, our intention is that there must be clear commitment and availability of the funds in a range of circumstances. We would not want the money to be held by the funder rather than by the scheme if there were not sufficient protections or commitments in the event of the funder's insolvency; the money must be readily available to do the job in whatever circumstances.
>
> It is absolute fair to say that the key risk for members is the financial sustainability of the scheme, so we have forcused on the requirement on the scheme, but the Bill and the regulation-making powers enable a variety of ways for the scheme to meet the requirements.[128]

The clause provides the Secretary of State power to prescribe matters that the regulator must take into account when assessing the scheme's financial sustainability. Such matters could include the scheme funder's solvency and whether it is subject to prudential capital requirements.[129]

Mr Blackford said he was relatively satisfied with the response, particularly given the ongoing consultation.[130]

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[127] PBC Deb 7 February 2017 c28
[128] PBC Deb 7 February 2017 c28-9
[129] Ibid c29
[130] Ibid c30

Scheme funder of last resort

An Opposition amendment to the Bill in the Lords – later removed at Commons Committee stage – would have provided for:

> […] the Secretary of State to make provision for a funder of last resort to manage any cases where the Master Trust has insufficient resources to meet the cost of complying with section 8 (3) (b) following a triggering event.[131]

The context is that there is a requirement for the Pensions Regulator to be satisfied that a Master Trust has sufficient financial resources to meet the costs of setting up and running the scheme and to comply with requirements to protect members in the event of wind up.[132]

Baroness Drake was concerned that much was left to regulations and she did not have the detail of the robustness of the capital adequacy or transfer-out regimes.[133] She said the Bill proposed "no contingency plan" for the situation where a Master Trust failed with insufficient resources:

> The Bill proposes no contingency plan for the failure of a master trust the records of which are in disarray, which has insufficient financial resources to comply with its duty when a triggering event occurs, and for which no master trust is willing to accept transfer of members' benefits. What will happen in those circumstances? How will all the members' funds be protected against increased charges? What liability for or immunity from the past provider's mistakes will a receiving scheme have?[134]

She was supported by Baroness Altmann, who asked:

> […] how will any regulator know in advance what capital is actually adequate? The circumstances in which wind-up could take away people's pensions, even if the assets are ring-fenced and protected for the members, are those in which there is no other mechanism for covering the wind-up costs. That is where the members' pensions would be at risk.[135]

She said Ministers needed to explain why the Government did not think a compensation fund was necessary or how proper protection for members in extremis could be provided.[136]

Lord Freud responded that the Government believed the provisions were adequate:

> First, the main provisions in the Bill requiring schemes to hold certain funds are in Clause 8, which provides that for the scheme to be authorised it must satisfy the regulator that it has sufficient resources to meet certain costs. This includes the costs of complying with the requirements under the Bill once the scheme experiences a triggering event and those of running the scheme for a period of between six months to two years, in the event of a triggering event occurring.[137]

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131 Bill 125-EN, para 53; HL Deb 19 December 2016 c1511-13; PBC Deb 7 February 2017 c45
132 Clause 8; Bill 125-EN, para 50
133 HL Deb 21 November 2016 c1772
134 Ibid c1776
135 Ibid c1778
136 Ibid
137 Ibid c1779

Members' benefits would be protected:

> The prohibition in relation to increasing members' charges applies during this period, so members are protected. If the funder should be in financial difficulty, the matter should be pursued via the normal court channels or insolvency processes. It is not the members' money which is at risk in these scenarios; it is the running costs of the scheme and payment for activities during the triggering event period.[138]

And the nature of the market meant there was less justification for Government intervention:

> We also know that other schemes may well rescue the failing scheme, as has happened before, to protect the reputation of the industry. This is a different dynamic from what would be the case in non-money purchase schemes, where the debt is about money needed to pay member benefits and where funding obligations to pay for the promised benefits would attach if another entity took over the scheme. The master trust industry can support the movement of members—some trusts are willing to do so—or take over failing master trusts, so government intervention is less warranted where an industry solution may be possible.[139]

He argued that the addition of a compensation fund would introduce moral hazard and, if funded by a levy, would add to the costs on schemes.[140]

Baroness Drake returned to the issue at Report Stage, introducing an amendment that would require the Secretary of State to make provision for funds of last resort. She argued that without this, the Government could not claim that the Bill would "protect scheme members and their pots from the costs of managing failure." Her reasons were that:

> The Bill places a prohibition on using members' pots to fund a wind-up, but that does not mean that it will all sort itself out. If providers go insolvent, who ultimately will ensure that the wind-up and transfer actually happens? Pots could be left in limbo for many months. Even if the trustees have a legal duty to make such a transfer, they will not be able to pay for advice and administrative services to enable it to happen […]
>
> The resolution regime when a trust fails provides for transferring members' pots to another master trust. The Government are relying on the industry to always step up to the plate, but they cannot be certain that it always will. I am sure that there are master trusts now that are already concerned about what that means and will not want to commit to being part of a panel or carousel of providers which will always guarantee to accept the transfer of members. They may consider the unknown future exposure to costs or the liability for the administrative errors or failures of a failed scheme too unpalatable. They may want to cherry pick, leaving a less-profitable section of the members stranded. It is not difficult to imagine the sorts of problems that could occur. The Government cannot assume that the increase in scale achieved from accepting a transfer of members from a failed

[138] Ibid c1779
[139] Ibid c1780
[140] Ibid c1781

> trust is a sufficient incentive for another provider to always volunteer to rescue.[141]

Her amendment was supported by Baroness Bakewell of Hardington Mandeville.[142]

Lord Freud responded that requiring the Secretary of State to make provision for a funder of last resort would be a "costly and disproportionate response."[143] The Bill contained a raft of measures to address the risks the amendment was seeking to address. In particular, schemes would be required to satisfy TPR that they had sufficient financial resources to comply with their continuity strategy following a triggering event.[144] Government intervention would be inappropriate:

> First, such an intervention might undermine member protection by creating a moral hazard that disincentivised schemes from protecting their members. Secondly, if the Secretary of State were required to make provision for a scheme funder of last resort, this could disrupt the normal operation of the market by deterring other master trusts, or scheme funders, from retaining public confidence in master trusts and rescuing a failing scheme. We already know of some master trusts that have been consolidated by being taken over by others. In the extreme, the taxpayer could end up having to pick up the tab for failed schemes. However, the essential argument is that Clause 33 protects members' savings from being used to pay for the costs of winding up or transferring.[145]

Baroness Drake responded that she was not seeking to tie the Government down to a particular provision but to answer the question that "no Government or regulator can guarantee that they can remove all risk of regulatory failure." In the event of regulatory failure and a trust not having the means to finance wind-up, there was "nothing in the Bill to show how a member is protected" and "no answer to the question of who will bear the costs."[146] The House of Lords voted to accept her amendment by 209 votes to 204.[147]

Debate in the Commons

Opening a debate on whether the clause should stand part of the Bill, Richard Harrington said he had concluded that requirement for a scheme funder of last resort was unnecessary – the risk of scheme members being left stranded was "absolutely minimal." Were a scheme to fail, it was very attractive for existing successful master trusts to take the members on as it allowed them to "add members without adding very much to their costs." The Government was working with the Pensions and Lifetime Savings Association, which was exploring establishing a panel of white knights." Furthermore, the clause was imprecise in nature and he was concerned that it could lead to

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141 HL Deb 19 December 2016 c1504
142 Ibid c1506
143 Ibid c1506
144 Ibid c1506
145 Ibid c1507
146 Ibid c1509
147 Ibid c1511-13

"perverse behaviour, with schemes shifting funds about, knowing that the taxpayer will pick up the bill."[148]

Alex Cunningham disagreed:

> It is not enough for the Government to argue that a failing scheme will always be successfully transferred. They instead must ensure that a funder of last resort is identified in the Bill. The Government argue that there is no need for a funder of last resort because the procedures laid out in the Bill will prevent it from reaching that far. Industry experts across the board insist that a funder of last resort or equivalent is needed.[149]

There were a number of options in regard to who or what the funder of last resort could be – it was the duty of the Secretary of State to ensure there was one. It was better to decide sooner rather than later, who would pay in the event of something going wrong. He asked the Minister to provide the Committee with "100% assurance that the Bill without this clause is enough to protect members" and said:

> In the absence of greater clarity about the Government's insistence that the Bill already addresses areas raised in this debate, it is vital that clause 9 is not removed. We should be covering every base in order to say confidently that we have taken every possible measure to protect members' money 100%.[150]

Ian Blackford said that in the absence of another solution, the Government should think about this clause remaining part of the Bill for now.[151]

Responding, Richard Harrington said that under the regime provided for in the Bill, after a 'triggering event' the regulator would be closely involved with how the scheme proceeded to resolve its difficulty or close. It had powers to support a scheme – for example, by appointing a trustee. Overall, the Bill struck:

> […] a delicate balance between prevention and self-regulation and Government intervention – something that is very hard to do. The clause would disrupt that balance and confuse the regulatory approach... It is not possible to give absolute guarantees, but we can reduce risk to the lowest possible level and that is what the Bill aims to do [...]. We are against creating a Government-backed scheme because we think it would create moral hazard.[152]

The Committee voted by nine votes to four to remove the clause from the Bill.[153]

Alex Cunningham returned to the issue in the Report Stage debate on 22 March arguing that:

> We need a funder of last resort because we must be able to predict what could happen, even if there is only the slightest chance of it happening, and ensure that we have a plan of protection in place. I ask again: why will the Minister not provide

148 PBC Deb 7 February 2017 c30-1
149 PBC 7 February 2017 c32
150 Ibid c34-6
151 Ibid c36
152 PBC Deb 7 February 2017 c40
153 Ibid c42

> people all over this country with a 100% assurance that the Bill without this provision is enough to protect members. If he is to ignore our sensible new clause, he must guarantee that no master trust will be in a situation in which it has failed and has insufficient resources to meet costs. In the absence of greater clarity, it is essential that this new clause remains in the Bill.[154]

Pensions Minister Richard Harrington responded that:

> The whole purpose of the regime introduced by the Bill is to mitigate the very risk about which the hon. Member for Stockton North is concerned. He is right to be concerned about it. Various clichés have been used at various points in proceedings on the Bill, usually involving nuts, sledgehammers and other such matters. I would prefer to say that it is a question of being proportionate, or not being disproportionate. I think that that sums it up.[155]

He said the market was currently responding well to dealing with existing Master Trusts wishing to exit before authorisation. The Government was:

> […] working with the regulator on non-legislative measures to address concerns about potential liabilities of trustees and receiving schemes that might arise if the record of a Master Trust in wind-up is poor.[156]

Mr Cunningham's amendment was defeated on division by 289 votes to 230.[157]

During the Lords consideration of Common's amendments, Baroness Drake described this as disappointing and asked for an update on what further action the Government had taken to address "the protection of scheme member benefits in the event of a master trust winding up with insufficient resources to meet the cost of complying with and obligations under the Bill."[158] The Minister responded that representatives of certain pension funds were "contemplating a system for allocation among themselves of any master trust that was going to wind up if the market did not provide a proper destination."[159]

Business plan

Clause 9 provided that a Master Trust must have a **business plan** prepared by the scheme strategist and approved by the scheme funder and the Trustees. The strategy must be reviewed at least annually and revised if appropriate. It must be provided to TPR on application for authorisation, within three months of any revision or on request by TPR.

In the Commons, Richard Harrington said that through the business plan, the regulator would be able to monitor the adequacy of the financial resources available to the scheme. The detailed requirements

154 PBC Deb 22 March 2017 c885
155 Ibid c898
156 HC Deb 22 March 2017 c898
157 HC Deb 29 March 2017 c 337
158 HL Deb 5 April 2017 c1081
159 Ibid c1085

will be in secondary legislation. The business plan would support risk-focused financial supervision.[160]

Scheme funder requirements

Clause 10 requires that the scheme funder of a Master Trust must be a separate legal entity. This means that:

> […] it must be a legal person which only carries out activities that relate directly to the Master Trust for which it is the scheme funder.[161]

The Government amended the clause at Third Reading in the Lords to make it clear that the regulator could require that the scheme funders' accounts were audited. This was important given that they would provide key information for TPR's assessment of the Master Trust's financial sustainability. The Government had always intended that this should be the case but had been advised that "specific provision about audit in existing legislation might cast doubt on the breadth of the power."[162]

Debate in the Lords

Lord McKenzie questioned the rationale for requiring the scheme funder to be a separate legal entity:

> In particular, the requirement for a scheme funder to operate only a single master trust would require a number of existing schemes to move from being supported by an FCA-regulated entity with significant financial resources to being supported by a single-purpose vehicle set up just to run the master trust. The policy rationale for this is unclear, and perhaps the Minister would clarify whether that really is the intention.[163]

The ABI had suggested that this should not apply when the scheme funder was an FCA-authorised insurer:

> As suggested under Solvency II, firms must hold capital against pension scheme risks. These capital requirements are onerous and it does not seem reasonable to require the holding of additional capital on top of them.[164]

However, Lord Young argued that the requirement was essential to enabling the regulator to assess the financial position of the scheme:

> To enable the regulator to assess the financial position of the scheme with certainty when deciding whether the master trust should be authorised or remain authorised, the scheme funder must be set up as a separate legal entity. This is defined in the Bill as meaning, in effect, a legal person whose only business activities are in relation to the master trust. Requiring scheme funders to be separate legal entities will make their financial position, and the financial arrangements between them and the master trust, more transparent to the regulator and provide greater clarity regarding the assets, liabilities, costs and income in relation to the master

160 PBC Deb 7 February 2017 c42-3
161 Clause 10 (2) and (3); Bill 125 EN, para 59
162 HL Deb 16 January 2017 c12 [Lord Henley]
163 HL Deb 21 November 2016 c1786
164 Ibid

> trust business. This will greatly assist the regulator in carrying out its assessment of schemes' financial sustainability.[165]

It would not prevent the Master Trust benefiting from support of the scheme funder's wider group:

> Support can be offered from the scheme funder's wider group explicitly through the provision of a legally enforceable guarantee or other formal arrangement from another group company of sufficient financial strength. Where the scheme funder currently conducts other businesses, a degree of cross-subsidy may already take place, and there is no intention to prevent this.[166]

Neither was it intended to "require the unpicking" of any shared service arrangements:

> Many financial services companies – indeed, many other companies – will use staff, systems and premises for multiple business lines, and usually allocate those costs as accurately as possible across the relevant activities.[167]

Groups of companies were used to restructuring their statutory account arrangements to reflect changes in focus and existing schemes would be allowed a transitional period to comply.[168]

Lord McKenzie returned to the issue at Report Stage, with a revised amendment that would require the scheme funder to be:

> […] constituted and carry out its activities in a manner that enables its financial position and the financial arrangements between it and the master trust to be transparent to the regulator.[169]

He questioned claims by the Minister made at Committee Stage that the requirements in the Bill were "not designed to require the unpicking of any shared service agreements"[170] He was concerned that the Government was at risk of "throwing the baby out with the bathwater" in circumstances where a "scheme is funded by an FCA-regulated entity with the robust capital requirements that this entails."[171]

Lord Flight said the fundamental issue for the insurance industry was that "the funder being a separate entity does not really work":

> The Bill will introduce additional cost on master trusts offered by insurers, potentially to the detriment of existing scheme members as these schemes already operate under stringent FCA and PRA regulation.[…] A key benefit of a master trust being part of a wider and well-capitalised entity is that the scheme can, if necessary, draw upon this capital. Members of master trust schemes offered by insurers currently benefit from this additional security.[172]

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[165] Ibid c1787-8
[166] Ibid c1789
[167] Ibid c1789
[168] Ibid c1789
[169] HL Deb 19 December 2016 c1514
[170] Ibid
[171] Ibid c1515
[172] Ibid c1515-6

He asked the Government to continue negotiations on this point, arguing that it was "not entirely satisfactory if the key provider industry is not comfortable with this issue."[173]

Lord Young repeated that the requirement was essential to TPR's assessment of the financial sustainability of the scheme. He went on to discuss possible underlying concerns, such as regards the cost of corporate restructuring:

> The practical and legal requirements for setting up a business entity should not of themselves be burdensome. It is quick and easy to incorporate a company in the UK, and the Government make a company's ongoing filing requirements as simple as possible to comply with. However, we recognise that to meet this requirement, some companies offering master trusts among other lines of business would have to undergo corporate restructuring. To address this, we are working with key stakeholders to develop a proportionate approach to regulation that minimises the burden on business without undermining the Pension Regulator's ability financially to supervise schemes through transparent financial structures and reporting.[174]

Regarding the potential for overlapping regulatory requirements:

> […] if we identify an overlap between our requirements and those of other regulatory regimes, the Secretary of State has a regulation-making power in Clause 8 that can require the regulator to take those regulatory requirements into account when assessing whether a scheme is financially sustainable. We believe that power to be sufficiently flexible to prescribe, for instance, that if the scheme funder has an enforceable guarantee from a financially sound parent company, such as one that the meets the PRA's capital requirements, the regulator must take that into account when assessing whether the scheme has sufficient resources to meet the specified costs.[175]

Lord McKenzie said the issue was "completely unresolved."[176]

Government amendment in the Commons

At Commons Committee stage, the Government made amendments to address the concerns raised in the Lords:

> The first would allow an entity to be a scheme funder and, therefore, carry out activities in relation to more than one master trust, and also carry out activities, such as due diligence, where it is considering becoming the scheme funder of a new master trust scheme. The second would provide a power for the Secretary of State to create exceptions to the requirement for the scheme funder's activities to be limited to the master trust. Scheme funders who meet the requirements that are to be prescribed in regulations will be able to carry out activities unrelated to master trusts—for example, providing shared services to other schemes.
>
> We hope that this easement will minimise disruption to existing corporate structures and shared service arrangements. In addition, enabling scheme funders to carry out activities in relation to more

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[173] Ibid c1515-6
[174] Ibid c1517
[175] Ibid c1518
[176] Ibid c1519

> than one master trust may facilitate consolidation in the market by making it easier for a scheme funder to rescue a failing master trust.[177]

Alex Cunningham welcomed this but asked for an assurance on whether "insurance companies that are already under strict regulation by" the FCA would be exempt from the separate legal entity clause.[178]

Ian Blackford asked for clarity on when and how the regulatory powers outlined in the amendment would apply and in what circumstances they might be used.[179]

Richard Harrington explained why the Government did not want exclude FCA-regulated insurance companies from the provisions.[180] They would be exempt if they met prescribed requirements in the regulations. In terms of the factors that would be considered when consulting on the regulations:

> They are the solvency of the entity, what regimes it falls under, transparency of arrangements and what connections there are between the funder and provider of the schemes.[181]

Alex Cunningham said it was important to send clear signals to the industry regarding the requirements.[182]

Report stage

At Report Stage, Ian Blackford proposed an amendment that the scheme funder should be able to carry out any activities apart from those that defined as "restricted":

> Amendment 7 makes provision for the Secretary of State to define "restricted activities" by regulation, including a list of specific activities restricted to minimise the risk of loss by master trust scheme funders. Through these amendments, we acknowledge that there may be circumstances in which the scheme funder requirements in the bill should not apply. The amendments state that the requirements need not apply to firms whose activities are already restricted by virtue of existing regulation.
>
> The ABI have said that, in particular, the Prudential Regulation Authority rules mean that insurance activities of the scheme funder that are not directly related to the master trust scheme are transparent and do not threaten the solvency or sustainability of the Master Trust. The ABI have said: "This is a sensible and pragmatic approach".[183]

Richard Harrington responded that Government amendments tabled in Committee meant that the scheme funder was "no longer restricted solely to activities relating to the Master Trust."[184]

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[177] PBC Deb 7 February 2017 c44
[178] Ibid c46
[179] Ibid c47
[180] Ibid c47
[181] Ibid c48
[182] Ibid c48
[183] HC Deb 22 March 2017 c865
[184] Ibid c900

Delegated Powers Committee

The Delegated Powers Committee did not think the Government had given an adequate explanation for allowing the regulations under the new clause 11 (3A) to be subject to the affirmative procedure in the first instance only:

> 6. Amendments 3 and 4 will have the effect of allowing the Secretary of State by regulations to provide for exceptions from the requirement that the scheme funder may only carry out activities that relate directly to the Master Schemes in relation to which it is a scheme funder. The Department explains in the supplementary memorandum (see paragraph 6) that during consideration of the Bill in the House of Lords concerns were raised that this requirement would give rise to significant costs and disruption for certain existing Master Trusts. The regulation making power has been inserted in response to these concerns.
>
> 7. This appears to be a significant power in that it will enable the Secretary of State to provide for exceptions from a requirement which currently appears on the face of the Bill.
>
> 8. The regulations are subject to the affirmative procedure in respect of their first exercise and thereafter subject to the negative procedure. In our view the first time affirmative procedure is only appropriate if there are good reasons why subsequent exercises of power do not require the same level of Parliamentary scrutiny.
>
> 9. There is only one sentence in the supplementary memorandum (see paragraph 10) to explain why the first time affirmative procedure has been chosen:
>
> "The first regulations made under the powers in clause 11(3A) will be subject to the affirmative procedure on first use of the power because they will introduce alternative additional requirements that scheme funders have to meet".
>
> 10. **In our view the Department's explanation is inadequate. It does not explain why the Department takes the view that the considerations affecting the first exercise of the powers are different from those affecting subsequent exercises so as to justify a different level of Parliamentary scrutiny.**
>
> 11. **In the circumstances the House may wish to ask the Minister to provide a fuller and more convincing explanation for the use of the first time affirmative procedure in this case.**[185]

On 5 April 2017 Lord Henley explained that the Government expected subsequent amendments to be relatively minor and therefore thought that the affirmative resolution procedure would be disproportionate for them further regulations.[186]

Systems and processes

Clause 11 would provide for the Secretary of State to make regulations in relation to the **adequacy of a Master Trust's systems and processes** (which is one of the five authorisation criterion which a Master Trust must meet to be and remain authorised). In deciding

[185] Delegated Powers etc Committee, Pension Schemes Bill 2016-17 [HL] Commons Amendments, 26th Report of Session 2016-17, 4 April 2017

[186] HL Deb 5 April 2017 c1078

whether these are satisfactory, TPR must take into account any matters specified in regulations by the Secretary of State.

In response to questions from the Delegated Powers Committee, the Government said that it anticipated "considerable market consolidation" in the early years of the new regime and that it would need to be able to respond. For example, it might need to set out the "standards of features that must be met by a scheme" or to "cover matters of principle or objectives."[187]

Baroness Bakewell asked whether there would be a specific requirement to assess so-called 'ESG risks' [ethical, social and governance]. She also asked whether there would be an obligation to manage conflicts of interest:

> Master trusts develop new types of business structures which alter the relationships between members, employers, trustees and providers, on which occupational pension law and regulation is largely based. There is no requirement to include member or employer representatives on the board, and providers have a significant influence over who they appoint.
>
> Many master trusts have been set up with a profit motive – something that existing occupational pensions' regulation does not cater for. As the OFT observed, this is a concern and a complex area as these companies have obligations to their shareholders and other stakeholders and, as with any company, seek to make a profit. IFAs and fund managers may be part of the provider group that set up that master trust.
>
> The trust deed in a master trust can inhibit the trustees from acting in the best interests of members if the rules fetter their powers. The master trust multiemployer characteristic can increase complexity and, with it, the potential for conflicts of interest.[188]

She referred to concerns expressed by TPR, to the effect that it was hard to understand when Master Trusts were acting as agents of the provider and when they were acting in the best interests of the member.[189]

Lord Young said ESG risks were already broadly taken care of through existing regulatory arrangements.[190] The issue of conflicts of interests was being addressed through additional governance requirements applying to occupational pension schemes generally.[191]

In the Commons, Alex Cunningham moved an amendment that would introduce annual reporting requirements for Master Trusts. The aim was to ensure that members had access to:

> […] an annual report of administration, fund management costs and transaction costs, so that they can see exactly how the fees

[187] DWP, Pension Schemes Bill – Supplementary Memorandum concerning the Delegated Powers in the Pension Schemes Bill p6
[188] HL Deb 21 November 2016 c1791-2
[189] HL Deb 21 November 2016 c1791-2; Master trust conflicts of interest not unmanageable for independent trustees, 20 November 2012
[190] TPR, Code of Practice 13, Governance and administration of occupational trust-based schemes providing money purchase benefits, July 2016; *Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005 No. 3378)*
[191] *Occupational Pension Schemes (Charges and Governance) Regulations 2015 (SI 2015/879)*

> are broken down and what they are actually paying for. It would also help satisfy the Financial Conduct Authority's desire to reveal all costs, which it believes will result in competition and potentially better performance for members.[192]

He suggested adopting the Local Government Pension Scheme cost template and its transparency code, although this was currently voluntary and measurable outcomes were still some way ahead.[193] On transaction costs, he referred to the FCA's report on the asset management industry, which highlighted concern about the information on transaction costs given to investors.[194]

Richard Harrington responded that he was committed to transparency but that the Government already had the powers it needed:

> The objective of the clause is to ensure that schemes are run effectively. It contains powers to make regulations that will specify what aspects of the scheme's systems and processes the regulator must take into account in deciding whether they are sufficient to ensure that the scheme is run effectively. Examples of what such regulations may cover are listed in the Bill. The list already includes processes relating to transactions and investment decisions. We have been clear that the examples given are not exhaustive and that regulations may include other matters relevant to systems and processes. A guiding principle in setting the scope for the authorisation regime has been ensuring that master trust regulation is proportionate.
>
> I should point out that existing legislative requirements already require trustees of occupational pension schemes offering money purchase benefits, including master trust schemes, to make an annual statement. The hon. Gentleman did not mention that: they are already required to make an annual statement regarding governance, which is known as the chair's statement. It is appended to the scheme's annual report and accounts.
>
> The Government have an obligation under section 113 of the *Pension Schemes Act 1993*, as amended, to make regulations requiring transaction costs and administration charges of money purchase schemes to be published. We intend to consult, because the subject is very complex, and we are not, as the hon. Gentleman asserted, kicking it down the line. It is not that the Department for Work and Pensions does not want to do it. We intend to consult this year about how this information is published and proactively reported to pension scheme members.[195]

Continuity strategy

The purpose of **clause 12** was to provide that a scheme strategist must prepare a continuity strategy which sets out how members will be protected if a Master Trust has a 'triggering event.'[196] The strategy must include a section setting out the levels of administration charges that apply in relation to scheme members. It must contain such other information to be specified in regulations and must be submitted to TPR

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192 PBC Deb 7 February 2017 c49
193 Ibid c50
194 Ibid c53
195 PBC Deb 7 February 2017 c56
196 Under clause 21, these are events likely to lead to a scheme failing or being de-authorised

(on authorisation, within three months of revision, or on request by TPR) to determine whether it is adequate.

The available evidence indicates that some existing Master Trusts already have some form of exit strategy or discontinuance plan in place. However, there is a wide variation in the level of detailed planning.[197]

Debate

Noting that continuity strategy must include "a section setting out the levels of administration charges" applying to members of the scheme, Baroness Drake proposed a cap on charges during a triggering event period. She said that although there was provision to protect members from the imposition of additional charges following a triggering event, it was "not at all clear what that baseline is, how it is set or, indeed, if it is fair value."[198] Lord Freud responded that the charge cap would apply in the same way as to other occupational pension schemes. There was also a specific prohibition on increasing charges following a triggering event.[199]

In the Commons, Richard Harrington explained that the aim of the clause was:

> […] to ensure continuity of pension saving for the members of the scheme when that scheme experiences an event that could put its future at risk. That also benefits employers using the scheme, particularly those using it to meet their automatic enrolment legal obligations. An adequate continuity strategy would demonstrate that careful consideration had been given to what the scheme would do if it were at risk of failing. That should make the closure of master trusts more orderly and managed, which is good for members and employers. We all agree that chaotic and unplanned closures would likely be detrimental to them.[200]

Nigel Mills asked why the schemes were allowed three months to send its continuity strategy to TPR following a revision. The Minister responded that this had come out of discussions with TPR.[201]

4.4 Ongoing supervision – clauses 14-20

Clauses 13 to 19 enabled ongoing supervision by TPR.

Clause 13 placed a requirement on TPR to publish and maintain a list of authorised Master Trusts.

Clause 14 provided for the annual accounts of both the scheme funder and the Master Trust to be submitted to TPR annually.

Clause 15 provided a requirement for a new supervisory return to be submitted to TPR on request. The details of what this needs to include would be in regulations.

197 DWP, Impact Assessment – Master Trust Authorisation, September 2016, para 55
198 HL Deb 21 November 2016 c1813; Clause 34
199 Ibid c1816-8
200 PBC Deb 7 February 2017 c57
201 Ibid

Clause 16 created a requirement for specified persons to notify TPR of 'significant events' (to be set out in regulations) as soon as is reasonably practicable.

Clause 17 gave TPR power to impose a fixed penalty on any person who failed to provide information requested for the purpose of TPR's authorisation functions. The amount of the penalty (not more than £50,000) would be set in regulations. The provisions mirror those in the *Pensions Act 2008* for a failure to provide information in relation to auto-enrolment.

Clause 18 gave TPR power to impose an escalating penalty on any person who failed to provide information requested in a notice issued under section 72 of the *Pensions Act 2004* (which allows TPR to issue a notice requiring specified persons to provide information to it). The daily rate (not more than £10,000) would be specified in regulations.

Clause 19 provided that where TPR was no longer satisfied that a scheme met the authorisation criteria, it could withdraw the scheme's authorisation.

Richard Harrington gave an overview of the provisions in these clauses at Committee Stage in the Commons.[202]

The provisions are now in s 13-19 of the 2017 Act.

Debate on clause 16 – significant events

As stated above, there is a duty to notify the Regulator of 'significant events' – to be defined in regulations.[203] The Delegated Powers Committee said the Government had not justified the scope of this regulation-making power:

> It appears to be needed because the Government have not yet decided on the policy or the purposes for which the power is to be used. In our view this does not provide a satisfactory basis for drafting such a wide power, particularly as deciding what constitutes a significant event is fundamental to determining the scope of the duty imposed by clause 16. Accordingly, we consider the power to be inappropriate in the absence of any convincing reasons to justify its scope.[204]

In its response, the Government said the intention was that 'significant events' would be of a lower order than 'triggering events'. It wanted to retain flexibility to respond to future developments:

> The Government's intention is that a significant event in a Master Trust scheme should be sufficiently important to merit the attention of the Pensions Regulator, justify the costs of the scheme of providing information and be relevant to the ability of the scheme to meet the authorisation criteria. However a significant event will not necessarily be one which results in the scheme failing to meet the authorisation criteria.
>
> For example, schemes will periodically change trustees. The fitness and propriety of a trustee is linked to the scheme's authorisation, so the Pensions Regulator must be informed and the new trustee

202 PBC Deb 7 February 2017 c58-9
203 Clause 17 (3)
204 Delegated Powers Committee, Pension Schemes Bill, November 2016, para 14

> will be assessed against the relevant standard. Other significant events might be a change to the continuity strategy, changes to business plans, a change to the scheme administrator or capital adequacy falling within a certain percentage of the threshold. The Government wishes to hold further consultation with industry prior to making the regulations setting out what constitutes a significant event. While the list of significant events will not be subject to frequent change, it is appropriate for the future for there to be sufficient flexibility for the list to be adjusted to reflect market developments and potentially new Master Trust structures and processes.
>
> The power is akin to an existing power in section 69 of the Pensions Act 2004 which requires the reporting of the Regulator of a notifiable event in relation to certain non-money purchase schemes, with power to prescribe what constitutes a notifiable events in regulations.[205]

Following concerns expressed by the opposition and two House of Lords Committees, the Government amended the Bill at Report Stage to provide that these regulations would be subject to the affirmative resolution procedure in the first instance.[206]

A civil penalty can be applied to persons failing to comply with the reporting requirement. In a letter to Peers, Lord Freud explained:

> The decision to issue a civil penalty for breach is a power of the Determinations Panel and is subject to appeal in the same was as other Determinations Panel decisions. The power to issue a civil penalty is a power, not an obligation, and TPR, as a public body, must exercise its powers in a way which is reasonable.[207]

Also in response to a question from Lord McKenzie, Lord Young said it was the Government's intention that the provision of an annual governance statement would be dealt with in regulations.[208]

4.5 Triggering events – clauses 20 to 33

A "triggering event" is a type of "event that could put the scheme at risk."[209]

Clause 20 provided for three sets of **duties on trustees** where there is a triggering event. These are to:

- notify TPR and employers (clause 22);
- pursue a continuity option (clause 23); and
- prepare and submit an implementation strategy to TPR (clauses 26).

The actual events that constitute triggering events are set out in a table in **clause 21.** They include:

- The Pensions Regulator issuing a notice in respect of a decision to withdraw authorisation;

205 DEP 2016-0849
206 Clause 17 (7)
207 HL Deb 21 November 2016 c1924; DEP 2016-0898
208 HL Deb 21 November 2016 c1821
209 HL Deb 21 November 2016 c1815

- An insolvency event occurring in relation to the scheme funder;
- A scheme funder deciding to end the relationship or arrangement with the Master Trust of which it is scheme funder;
- A scheme funder, strategist or trustees decide that a Master Trust should be wound up;
- An event occurs which is required or permitted by the scheme or its rules to result in the winding up of the scheme;
- The trustees decide that the Master Trust is at risk of failure and so it is necessary for one of the continuity options to be pursued.

Under clause 21 (5), a triggering event ends on either:

- The date the scheme is wound up;
- The date the trustees receive notification that TPR is satisfied that a triggering event has been resolved (section 25); or
- The date on which it becomes clear that authorisation is not to be withdrawn (section 34).

Clause 22 provided for **responsibility for notifying employers and TPR of trigger events** and other matters to be provided for in regulations and for a civil penalty to be applicable where there is failure to comply;

Clause 23 provided that when a Master Trust has a triggering event, there are **two continuity options** available:

- **option one** under which trustees with transfer out all accrued rights and benefits in the scheme and then wind up the remaining structure (clause 24); and
- **option two** which is for the triggering event to be resolved (clause 25).

Clause 24 provided for **continuity option one** (transfer out of members' accrued rights and benefits and winding up). The trustees must identify one or more other Master Trust schemes able to accept the accrued rights and benefits. Members will retain the right to transfer to a scheme of their own choosing. Details of the requirements will be in regulations and there will be penalties for failure to comply.

Clause 25 provided for **continuity option two** (the triggering event is resolved). Trustees are required to notify TPR when they consider it has been resolved and TPR must say whether it is satisfied. There will be penalties for failure to comply.

Clause 26 required the trustees to **submit an implementation strategy** to TPR for approval. This is a "document setting out how the interest of members of the scheme are to be protected following the occurrence of the triggering event." TPR would be able to approve it only if satisfied that it is adequate.

Clause 27 provided for the content of the implementation strategy. It must include a section setting out the levels of administrations that applied in relation to members of the scheme (in a manner and as at the date prescribed in regulations). It must also include information about:

- the continuity option to be pursued;
- in the case of continuity option one (transfer of accrued rights and benefits and winding up), the scheme to which rights and benefits are to be transferred (if known) and when this is to happen;
- in the case of continuity option two (resolving the triggering event), how the triggering event is to be resolved; and
- such other information as may be prescribed in regulations.

Clause 28 placed a **duty on trustees to a continuity option** once an implementation strategy has been approved by TPR. TPR may direct them to do so and civil penalties can apply. The requirements of this section override provisions any provisions in scheme rules or contracts that might conflict with it. The trustees must make the implementation strategy available to the employers.

Clause 29 provided that a **Master Trust can only be wound up in accordance with continuity option one** and creates an override to any scheme rules that might conflict with this requirement.

Clause 30 provided that a scheme must submit **periodic reports** to TPR during a triggering event.

Clause 31 created a **new power enabling TPR to make a pause order** requiring certain activities to be paused once a Master Trust has experienced a triggering event. This includes: accepting new members; making payments; accepting contributions; and discharging benefits.

- **Clause 32** would prevent a Master Trust from **accepting new employers during a triggering event** period.
- **Clause 33** would place **restrictions on trustees increasing or imposing administration charges during a triggering event** period.

Clause 34 provided for authorisation not to be withdrawn in certain circumstances following a triggering event.

Clause 35 set out when a decision to withdraw authorisation becomes final.

These provisions are now in sections 20 to 35 of the 2017 Act.

Debate – continuity options (cl 23-25)

A scheme that experiences a triggering event can pursue one of two continuity options: i) the transfer out of accrued rights and the wind-up of the scheme; or ii) resolving the triggering event.[210] Lord McKenzie proposed preventing trustees from pursuing the first of these options where TPR was satisfied that continuity would be best achieved by the substitution of a new funder.[211] Lord Young responded that such decisions should be the responsibility of the trustees, not the regulator:

> Where the sourcing of a new scheme funder is the most appropriate resolution of a triggering event, as suggested by the noble Lord, it should be up to the trustees to identify this funder.

[210] Clauses 23 to 24
[211] HL Deb 21 November 2016 c1824-5

> It should not be TPR's responsibility to decide what the resolution method should be, that the method should be a new scheme funder or to source that funder. That is not the regulator's role and it would be overruling the trustees, who rightly have ultimate responsibility for the scheme and its members.
>
> We consider it important that any resolution of the triggering event and continuation of the scheme be subject to the full requirements of option 2. These requirements include the preparation of a comprehensive and detailed implementation strategy by the trustees, having certain safeguards in place for members and employers, additional support and assistance for them, and greater protection for members. Further, there is oversight of the adequacy of the strategy by the regulator.[212]

Lord McKenzie returned to the issue at Report Stage asking the Minister to confirm that he would routinely expect the option of a substitute funder to be considered before authorisation was withdrawn.[213]

Lord Freud responded that the Regulator could encourage the scheme to substitute the scheme funder before it moved to withdraw authorisation. Adding a requirement that one option should be looked at before another would "probably reduce flexibility." The Government was satisfied there was adequate provision within the market overall:

> From our discussions with both master trusts and pension industry bodies, we are aware that they are keen to demonstrate the reliability of master trusts and for members to have confidence in them as a vehicle for pension saving, and there are therefore likely to be some available to take in transfers. For many master trusts, making themselves available to take a transfer would offer the opportunity to take in a number of members that they have not had to actively source—clearly, they get the benefits of scale.
>
> Employers and members also have reassurance provided by NEST. Although a master trust could not itself do a direct bulk transfer to NEST—as the employer must first establish a connection with NEST—an employer could chose to sign up to NEST and move its workers across. NEST is required to admit any employer and any worker enrolled by the employer to meet its automatic enrolment duties.[214]

Lord McKenzie still thought there was "still a bit of a gap in the Bill":

> As it stands, if you are in continuity 1 processes, you have to follow the route of transfer and wind-up; you cannot have a replacement scheme funder. The purpose of the probe is to try to understand why that is. One route to deal with it is that, before getting to a triggering event, 1, 2 or 3, the regulator will have a process with trustees and there can be a nudge which takes us into continuity 2. I understand that, but I think the Minister has confirmed that if it is just straight continuity then that is it, you have no hope of having a replacement scheme funder. I am still a little unclear as to why that would be so.[215]

In the Commons, Richard Harrington explained why continuity options were an important part of the new regime:

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212 Ibid c1827
213 [HL Deb 19 December 2016 c1520]
214 Ibid c1522-3
215 Ibid c1523-4

> Where a master trust experiences an event that could lead to its failure, there needs to be greater planning and control and more safeguards for members and employers. It is important that the scheme has done detailed planning so that what happens following a triggering event is thought through and the process is orderly and managed.[216]

Under the Bill as originally presented to Parliament, trustees pursuing continuity option one could only transfer members' benefits to another Master Trust. The Government amended the provisions at Commons Committee stage to enable trustees to choose another type of pension scheme, provided it meets certain conditions. Richard Harrington said:

> The non-master trust receiving scheme would be made subject to exactly the same restrictions on increasing or introducing the new charges as those to which master trust receiving schemes are subject.[217]

He explained that:

> Being able to increase the options in future might help reduce the risk that trustees of failing master trusts might not be able to find another master trust to take their members on.[218]

Alex Cunningham asked three questions:

- What conditions and regulatory standards the receiving scheme would need to meet?
- How the scheme funder concept would apply to a scheme that was not a Master Trust?
- Whether the prohibition on increasing charges would apply to any receiving scheme?[219]

He was concerned that providing the Secretary of State with broad regulation-making powers did not provide "a strong enough guarantee to scheme members that their benefits will not be eroded in the course of the transfer."[220] The Minister responded that the Government needed to retain flexibility to be able to respond to changes in the market. However, he was convinced that "this system will provide the most protection for members."[221]

When the Bill returned to the Lords, Baroness Drake asked for more reassurance:

> […] how will the Pensions Regulator apply the prohibition on increasing charges and police it after the transfer of members to a non-master trust, given that the receiving scheme will not be in its regulatory jurisdiction?[222]

Lord Henley responded that any receiving scheme would have to be regulated by the appropriate regulator. Furthermore, the Pensions

[216] PBC Deb 7 February 2017 c28-29
[217] Ibid
[218] Ibid c29
[219] Ibid c29
[220] Ibid c30
[221] Ibid c30
[222] HL Deb 5 April 2017 c1082

Regulator would have "oversight and powers" of the exiting master Trust's implementation strategy for continuity option one.[223]

Content of implementation strategy (cl 27)

Alex Cunningham proposed an amendment with the aim of requiring members to be given information about charges and any caps imposed on them.[224] The Minister responded that legislation already provided for a cap of 0.75% on the default fund of auto-enrolment schemes. This applied to Master Trusts in "exactly the same way as it applies to other pension schemes." The Government recognised that more needed to be done to improve transparency. It was consulting and would be:

> […] making regulations requiring charges and transaction costs for money purchase benefits in occupational pension schemes to be given to member and to be published.[225]

Debate – bulk transfers

Baroness Altmann asked if the Government intended to consider introducing measures that would facilitate bulk defined contribution transfers. In response, Lord Freud explained that there were two separate areas of legislation to mention: existing bulk transfer provisions and new measures provided for under option one where a Master Trust experiences a triggering event.

On the provisions in existing legislation, the Government published a Call for Evidence on provisions for DC to DC bulk transfers.[226] The intention was to see whether there was scope to simplify the arrangements without compromising member protection. The Minister explained that these provisions were entirely separate to those in the Bill. They might apply, for example, where a single employer wanted to transfer members to a Master Trust. For bulk transfers under clause 26, separate provisions would be made, appropriate to transfers in that context.[227]

Baroness Drake said that if Peers had draft regulations before them, they might have had many questions:

> Is it the Government's intention that bulk transfers will be able to take place during a triggering event before all past records are clarified? Post-transfer to the receiving scheme, who will bear responsibility for any administrative errors what existed at the point of transfer? Will there be circumstances where the regulations under this Bill will override other pension regulations in order to effect that bulk transfer? I have one small example. Under auto-enrolment, when members are in self-select funds and are transferred without their written consent, they are from then on treated as having been put in a default fund and the charge cap of 0.75% is applied. I do not want to go into too much detail, but that is to illustrate the question of whether there

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[223] Ibid c1085-6
[224] PBC Deb 9 February 2017 c75
[225] Ibid c76
[226] DWP, Bulk transfers of defined contribution pensions without member consent, 20 December 2016
[227] DEP 2016/0898 5 December 2016

> will be circumstances where the regulations under the Bill will override other pension-related regulations.[228]

Lord Freud responded that "master trust bulk transfer provisions will trump existing provisions on voluntary transfer."[229] He added that:

> When a transfer is made under the mechanisms of this Bill, after a triggering event when the regulator is looking at it, one of the main points is to make sure that there is adequate capital to fund such an event. […] What one would normally expect to see is a negotiation with the receiving scheme manager to ensure that it is able to fund the transfer because of the benefits of scale through putting together two systems.[230]

Debate - pause orders (cl 31)

The purpose of **clause 31** was to enable TPR to pause certain activities – such as accepting new members, making payments, accepting contributions and discharging benefits - once a Master Trust has experienced a triggering event.[231] To make a 'pause order', it would need to be satisfied that:

- It would help the trustees carry out the implementation strategy; or
- That there was an immediate risk to the interest of scheme members or assets and it was necessary to protect the interests of the generality of the members of the scheme.[232]

Baroness Drake proposed TPR should have greater discretion about when to issue one:

> The power to issue a pause order comes into effect only when there is a triggering event, when a failure of some kind has already occurred, which means that the likelihood of a risk to the assets or members crystallising is greater, so allowing a prudent approach in those circumstances seems sensible.[233]

Lord Freud said that because a pause order could have a significant impact on scheme members, it should only be used where necessary.[234]

Contributions during pause order

Baroness Drake, also proposed that any contributions due to the member over this period should be paid into an escrow account or some other arrangement until the pause order was lifted.[235]

Lord Freud was concerned that this would entail TPR having to hold the fund into which contributions were paid and was concerned about the

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228 HL Deb 28 November 2016 c47
229 Ibid c49
230 Ibid c48
231 HL Deb 28 November 2016 c21
232 Clause 32
233 HL Deb 29 November 2016 c15-6
234 Ibid c17
235 Ibid c16

cost and complexity of this.[236] Baroness Drake argued that the holder could be an alternative operator or provider.[237]

Baroness Altmann asked whether a pause order would put an employer in breach of its duties under auto-enrolment legislation and contract to pay employee pension contributions.[238] Lord Freud said a pause order would effectively trump these obligations while it was operating:

> Section 31 of the *Pensions Act 2008* makes provision in relation to freezing orders so that, in the event of such an order being made, the employee is still considered to be an active member of the scheme and the scheme is still a qualifying scheme notwithstanding that contributions are not being made into it. Schedule 3, paragraph 13 of the Pension Schemes Bill will amend section 31 of the Pensions Act 2008 to include reference to pause orders made under the Bill […] Under schedule 1 para 1 (3) (b) contractual obligations are treated as if they do not arise, so employers will not breach their contractual obligation to the employee to make contributions to the scheme when a pause order directs that they should not do so.[239]

Lord McKenzie said that tax relief for the period of a pause order would still be payable.[240] Lord Freud responded that tax relief did not apply where contributions were not collected:

> Tax relief can only be paid on contributions that are collected to be paid to the scheme – tax relief does not apply where contributions are not collected and paid into the scheme.[241]

Winding up the debate on the clause, Baroness Drake said she remained concerned about employees' rights to receive contributions and tax relief during the period of a pause order:

> […] the Government have not explained satisfactorily why the contributions cannot be held during the pause order without believing that this needs to be terribly complex. They have not addressed the issue that this will put individuals in a position where they are denied their statutory and contractual rights for a period, and an employer in breach of its statutory duties, and there remains a lack of clarity in thinking about the impact on vulnerable people in the manner in which the pause order is introduced.[242]

In the Commons, Ian Blackford moved an amendment aimed at ensuring that any paused payments were collected and held in a separate fund until the conclusion of the pause order.[243] Richard Harrington responded that this would be "extremely difficult in practice":

> Employers would have to negotiate with their employees to obtain their permission to take deductions from their pay and pay them into a different entity. The money would not actually be

236 Ibid c18
237 Ibid c22
238 Ibid c17
239 Ibid; DEP 2016-0898
240 Ibid c20
241 DEP 2016-0898
242 HL Deb 28 November 2016 c23-4
243 PBC Deb 9 February 2017 c81

> paid towards a pension scheme; it would have to go to a solicitor's client account, for example, or another account that had been set up. There are tax implications and many other implications.[244]

Mr Blackford responded that in terms of retaining confidence it was important that plan members continue to make payments, even after a triggering event. His amendment was defeated on division by eight votes to six.[245]

Mr Cunningham returned to the issue at Report Stage saying that:

> I have been assured that members' pots are protected in this situation, even in the event of a pause order. If that is the case, why would master trusts be unable to continue making payments to pensioners, who may be vulnerable and reliant on a regular payment from their pension pot? It is bizarre that the Government are so calm about the potential repercussions on the vulnerable if payments are stopped.
>
> The Pensions Minister has also said that the stopping of payments would happen only in the rarest of circumstances. I hope he will take this opportunity to tell the House what those circumstances could be, and that he will provide scheme members with the assurance that they would not lose out during a pause order.[…]
>
> While I agree that the master trusts will be in no fit state to continue taking contributions, I do not agree that, as a result, members will simply get their contributions back into their pay packet and employers will be let off making their contributions. Our amendment would ensure that, despite the pause orders being in place, the contributions made by the employee and the employer would not be lost.[246]

Mr Harrington responded that:

> […] the Government's position is that employees should retain the contributions that have been made during a period, and receive a refund from their employer if those contributions have already been deducted but cannot be paid over to the scheme. We have been clear and everyone agrees that this is a rare and time-limited situation, which has a low risk of occurring, yet quite a big burden would go with it.[247]

Payment of benefits during a pause order

The Government amended the clause to provide that a pause order could be used to prevent benefits being paid out but that members retained their entitlement to any benefits affected.[248]

Baroness Drake said there was a lack of clarity on how those with serious ill-health or real income dependency would be dealt with in a pause order situation.[249]

Lord Freud replied that the pause was to allow TPR to "go in and make sure the situation is sorted" and that "setting up a large

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[244] Ibid c82
[245] Ibid c85
[246] HC Deb 22 March 2017 c891
[247] Ibid c901
[248] HL Deb 28 November 2016 c18-19
[249] Ibid c22

paraphernalia…would not be the point."[250] Baroness Drake remained concerned that the Government had:

> […] not addressed the issue that this will put individuals in a position where they are denied their statutory and contractual rights for a period, and there remains a lack of clarity in its thinking about the impact on vulnerable people in the manner in which the pause order is introduced.[251]

In the Commons, Alex Cunningham moved an amendment that would remove the provision for payments to stop during a pause order, arguing that:

> We understand that there may be circumstances in which a master trust should no longer collect contributions from an employer, but it is unacceptable that elderly, vulnerable people who are dependent on their pension do not receive it.[252]

He asked what the Government would do "to ensure that those affected by a pause order will not face difficult and testing financial circumstances."[253] He was supported by Ian Blackford who said there was a "threat to confidence in Master Trusts and auto-enrolment if there is a pause in payments being made."[254]

Richard Harrington responded that a pause order would only be made in "very specific circumstances." It was intended to apply "in extremis". It might be used to concentrate people's minds on resolving the situation quickly. The length would be at the discretion of the regulator and "could also be for a short period – that is the intention."[255] The maximum period would be six months.[256]

Alex Cunningham remained concerned that there could be a failure in the system resulting in a loss of income to some of the most vulnerable people in society. His amendment was defeated on division by eight votes to six.[257]

Debate – notification of members

In the Commons, Alex Cunningham proposed that trustees should be required to notify members if there had been a "triggering event."[258] Richard Harrington responded that members would be informed well ahead of anything directly impacting on them:

> Our aim is for events to be resolved where possible. The scheme can then continue and members can keep saving in it. We have not required the trustees to notify members […]
>
> Remember, many members do not take an active decision to join; they join through their employer. They are not actively engaged in the scheme; their employer is the conduit, so providing

[250] Ibid c22
[251] Ibid c24
[252] PBC Deb 9 February 2017 c77-8
[253] Ibid c78
[254] Ibid c80
[255] Ibid c79-81
[256] Ibid c84
[257] Ibid c85
[258] PBC Deb 7 February 2017 c62

> incomplete information to members would cause undue distress and risk unintended consequences, such as members opting out of the scheme and stopping saving in a pension, when a resolution to the triggering event could very easily be agreed with the trustees or, indeed, opposed by the regulator […]
>
> If the scheme is going to wind up—I believe this is the relevant point—members will be informed well ahead of anything directly impacting on them, and will be given the information and options.[259]

Administration charges

Clause 33 provides a prohibition relating to member charges during a triggering event period. In debate in the Commons, Richard Harrington explained that it meant:

> Trustees must not increase charges above the level set out in the implementation strategy, introduce new charges on members or impose charges as a consequence of a member leaving or deciding to leave the scheme during a triggering period.[260]

Regulations would set out how charge levels were to be calculated:

> The Government intend that those levels will reflect what members paid towards the normal running of the scheme before the event happened. The charge levels will be calculated by looking back at previous charges in the scheme, and controls will be built in to protect against cases in which schemes increase charges shortly before a triggering event, so a scheme would not be able to get away with that one before the extra scrutiny.[261]

The effect of the measures would be that:

> […] members will not pay any more during a triggering event period than when the scheme was operating normally. That will protect the members; even though a scheme itself is likely to incur additional costs, the money to pay them will not come from members' pension pots. I hope that everyone will agree that that is most important. It will preserve the value of members' rights during a triggering event.[262]

The clause would also restrict the charges that can be imposed by a Master Trust receiving new members under continuity option one:

> Such a receiving scheme—a new scheme—will be prevented from increasing charges above the levels set out in a statement that it will give the regulator before the transfer happens, or from imposing new charges to meet the costs incurred by the transferring scheme. That means that members can join another scheme and continue to save in another pension without their pot being depleted to pay for costs incurred as a result of that happening. The clause keeps normality of charges and prevents schemes from taking advantage of a triggering event, and protect members' pots and maintains their value.[263]

[259] Ibid c63
[260] PBC Deb 9 February 2017 c86-7
[261] Ibid
[262] Ibid
[263] Ibid

4.6 Supplementary – clauses 36-40

Clause 36 (fraud compensation) was added to the Bill at Report Stage on 19 December 2016. It provides a regulation-making power enabling the Secretary of State to modify sections 182 to 187 of the *Pensions Act 2004*, which relate to the Fraud Compensation Fund. The intention was to remove one of the existing eligibility conditions - that the scheme's sponsoring employer had gone out of business – as this was likely to be difficult for Master Trusts to meet.[264]

4.7 Transitional provisions

Clause 37 and **Schedule 2** made provision for Master Trusts already in operation before the prohibition on operating an unauthorised scheme comes into force. They introduce transitional modifications in respect of those schemes that were in existence before the commencement date. They include

- A duty to comply with notification requirements on trustees of an existing Master Trust if a triggering event occurs on or after 20 October 2016 but before the commencement date;[265]
- If a triggering event occurs, notifying TPR of the annual level of administration charges, which must then not increase;[266]
- The scheme funder of a Master Trust experiencing a triggering event, or moving to wind up, is liable for the costs of winding the scheme up if those costs do not fall elsewhere (taking account the prohibition on increasing charges on members to pay for the costs of winding up);[267]
- Provision is made for existing Master Trusts to continue in operation until its application for authorisation is received by TPR or TPR determines that that the scheme should not be authorised;[268]
- The trustees of a Master Trust must, within a six month period, either apply for authorisation or decide to wind up the scheme. TPR may allow an extension of up to six weeks if there is a good reason;[269] and
- If TPR is aware of a Master Trust operating after the application period and it has not received an application for authorisation or notification that the scheme is to be wound up, it must notify the trustees that the scheme is not authorised. This is a triggering event imposing duties on the trustees (see clauses 20 to 33).

At Committee stage, the Government made a number of amendments:

- To align the process of deciding whether to grant authorisation to an existing Master Trust with the process specified in the Bill for making this decision for new schemes;

264 HL Deb 19 December 2016 c1508 [Lord Freud]
265 Bill 125-EN, para 173
266 Ibid para 176
267 Ibid para 178
268 Ibid para 179
269 Ibid para 180

- Provide that if TPR refused authorisation, a scheme would not have to commence the process of transferring members out and winding up until any appeals were disposed of;
- Allow TPR to issue a pause order to an existing master trust at any point between the scheme submitting an application for authorisation and the decision on that application becoming final, regardless of whether a triggering event had occurred. The rationale was that once an application had been received TPR would have "a significant amount of new information about the scheme; and
- Make other changes to procedure.[270]

Debate

Lord McKenzie asked how long an existing Master Trust could continue to operate without authorisation. He was concerned that given the two years before the provisions could be commenced, followed by the six months allowed for applications and the six months for TPR to make decisions, an existing Master Trust could continue in operation for some time without being authorised. He suggested reducing the time allowed for applications to three months.[271] Lord Young responded that there was a "compelling case" for allowing six months for schemes to apply:

> My expectation is that some schemes will have relatively little to do in order to align their businesses with the new requirements and, as a result, will be in a position to apply for authorisation early in the six-month application window. Others may face more of a challenge and may need time to consider the final legislation in full—including, of course, the regulations, which will come out next year—before they determine whether to apply for authorisation or withdraw from the market. We do not want to risk losing good schemes from the market because they have not had sufficient time to make the necessary changes to meet these new requirements. Having consulted the regulator, our view is that six months will give schemes the time they are likely to need.[272]

There was additional protection if a scheme experienced a triggering event after 20 October 2016:

> As I think the noble Lord recognised in his remarks, an additional key protection for members is set out in the Bill, which will apply from the beginning of the application window. This is in addition to the retrospective provisions in the Bill, which mean that a scheme that experiences a triggering event from 20 October this year will be unable to increase charges on members to pay for scheme wind-up. The additional protection is that if a scheme experiences a triggering event during this period, and the regulator has reason to believe that there is an immediate risk to the interests of scheme members, the regulator will have the ability to issue a pause order under Clause 31, which we have just been discussing, regardless of whether or not the scheme has submitted an application for authorisation.[273]

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[270] HL Deb 28 November 2016 c29
[271] Ibid c27-9
[272] Ibid c28
[273] Ibid

Remaining provisions

Clause 38 and Schedule 3 make minor and consequential amendments.

Clause 39 provides for the interpretation of various terms.

Clause 40 provides a power to make regulations modifying the application of Part 1 of the Bill, including the power to:

- Apply some or all of the provision of Part 1 to pension schemes that do not fall within the definition of Master Trust schemes in clause 1, and
- Disapply some or all of those provisions from schemes which do fall within the definition.

The Delegated Powers Committee concluded that the Department had failed adequately to explain the breath of the powers to be conferred.[274] In response, Lord Freud explained why the Government believed the power was needed.[275] Peers debated this in connection with clause 1 (see section 4.1 above).

Debate – definition of administration charges

At Report Stage, Baroness Drake proposed an amendment related to the definition of "administration charge." Clause 39 (1) would provide for it to have the meaning given in the *Pensions Act 2014* (Sch. 18 (10) which states that:

> "administration charge", in relation to a member of a pension scheme, means any of the following to the extent that they may be used to meet the administrative expenses of the scheme, to pay commission or in any other way that does not result in the provision of pension benefits for or in respect of members—
>
> (a) any payments made to the scheme by, or on behalf or in respect of, the member,
>
> (b) any income or capital gain arising from the investment of such payments, or
>
> (c) the value of the member's rights under the scheme.

Administration charges are significant because Master Trusts are required to set out the level of administration charges that apply to members in their continuity strategy (clause 12) and, if they have experienced a triggering event, in their implementation strategy (clause 27). Clause 33 would provide for a prohibition on increasing charges during a triggering event period.

Baroness Drake's amendment would have provided for the definition to include transaction costs (i.e. the costs that a scheme incurs as a result of buying, selling, lending and borrowing investments). She said:

> […] insofar as the Bill addresses the authorisation, supervision and resolution regime for master trusts, this amendment makes it clear that any reference to administrations in any provision in the Bill can include transaction charges, so ensuring that the Secretary of State and TPR have the fullest powers of intervention needed to

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[274] Delegated Powers Committee, Pension Schemes Bill, November 2016, para 21

[275] DEP 2016-0849

> protect members; savings in master trusts, particularly during triggering event periods.[276]

Lord Freud responded that the charges intended to be caught by the administration charge definition were "fees on set-up, entry, exit and regular and ad hoc fees." Trustees did not currently have access to information about transaction costs. The Government had taken the power in the *Pensions Act 2014* to make regulations requiring the disclosure of transaction costs. However, work on how to define them was ongoing:

> […] I should explain that there has never been a single agreed definition of transaction costs nor a way of calculating them. We have made progress in defining transaction costs, but until recently we made less progress on a way of calculating them. This is because many transaction costs are not explicit costs which appear on a scheme's balance sheet but implicit "frictional" costs from trading, which need to be calculated. The wide variety of approaches to calculating transaction costs are not simply disputes about the odd one-hundredth of a percent but quite significant differences in methodology, which can result in transaction costs differing by a factor of five.
>
> We clearly need to ensure that trustees of occupational schemes and the independent governance committees of workplace personal pension providers have complete, consistent and standardised cost and charges information before they can report it to members; at this point, they do not. The key stepping stone to putting this information into the hands of trustees and independent governance committees was laid down when the Financial Conduct Authority published in October of this year a consultation on proposals requiring asset managers to disclose information about transaction costs to trustees, and a detailed methodology for calculating those costs. Following the outcome of the FCA's consultation, we currently plan to consult on the publication and onward disclosure of costs and charges to members in 2017. In conclusion on this point, I can assure Peers that we remain wholly committed to discharging this duty in the course of this Parliament. We want pension scheme members to have sight of all costs and charges, regardless of how they are incurred, and to give members the confidence that there are no other hidden costs and charges.[277]

Baroness Drake said it was helpful to have this on the record.[278]

4.8 Member engagement

Alex Cunningham proposed a number of amendments (none of them accepted) on the broad topic of increasing member engagement.

Member-nominated directors

As discussed in section 3.5 above, the Government amended the Bill in the Lords to require TPR to take account of a scheme's systems and

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276 HL Deb 19 December 2016 c1526
277 HL Deb 19 December 2016 c1528
278 Ibid c1529

processes relating to communications and engagement when assessing applications for authorisation.[279]

Alex Cunningham proposed adding a new clause to the Bill, intended to ensure that "where companies hold the position of Trustee in a Master Trust, at least half of their directors are Member-nominated directors." He explained:

> The *Pensions Act 1995* introduced the requirement for company pension schemes to have member-nominated trustees, or MNTs. If the scheme's sole trustee is a company including the employer, rather than individuals, scheme members will have the right to nominate directors of that company, who will be member-nominated directors, or MNDs. In those circumstances, my references to MNTs apply equally to MNDs. Member-nominated trustees of pension schemes have been a part of UK pensions since the emergence of occupational pension plans in the middle of the last century.
>
> Under the *Pensions Act 1995*, following the Goode report, a rule was introduced that a third of trustees had to be nominated, although companies could opt out of that rule.[280]

He was concerned that Master Trusts lacked member input and that improving member representation could help to reassure members that they were "enrolled in schemes that are well governed by boards that have their best interests at heart." The Bill had nothing on a mandatory requirement for MNTs, but seemed the logical place to include it.[281]

Richard Harrington responded that the new clause was unnecessary. The Bill made alternative arrangements to ensure trustees act in the best interests of members:

> […]in many of the cases that the Pensions Regulator has dealt with, there have been plenty of member trustees, and they have been ignored, not listened to, not felt to be relevant or just bamboozled, so it is not a perfect system anyway. As he knows, the whole reason for the Bill is that master trusts, which are hugely complex, have evolved over a very short period in a very sophisticated way. They are not the same as individual trust-based pension schemes, which is why we need this extra legislation […]
>
> Although master trusts are exempt from the existing requirements for member-nominated trustees, they are subject to all other regulatory obligations. As I said, the scheme administration regulations ensure that the majority of trustees are non-affiliated trustees. The authorisation criteria in the Bill subject all trustees to a fit and proper person tests assessed by the regulator. Facts to be considered in that test include how the people running the scheme are connected with other companies or people.[282]

Mr Cunningham's amendment was defeated by ten votes to four.[283]

Alex Cunningham returned to the issue at Report Stage arguing that:

> The P*ensions Act 2004* enshrined the right to have at least one third scheme member trustees of a trust-based scheme. The

[279] HL Deb 19 December 2016 c1487
[280] PBC Deb 9 February 2017 c95
[281] Ibid c97
[282] Ibid c99
[283] Ibid c102

> pensions regulator is clear that master trusts are covered by this legislation, which is why some already have member-nominated trustees. What the pensions regulator offers in explanation is that there are exemptions that can be taken by master trust, giving the reasoning that having a pool of members greater than a single employer-based scheme poses problems of choice. We find that an inadequate reason for exemption. The greater the number of members, then surely the bigger the pool of choice.
>
> We do not agree that independent trustees can adequately represent the fiduciary interests of members if they have no stake in the investment process. What is more they are paid and chosen by the master trust. This exemption seems like a convenient way of denying the right to representation by those who do have a material interest in the performance of the master trust. We have returned today with an amendment that seeks to give the scheme members the law to which they should be automatically entitled. In these circumstances, my references to MNTs apply equally to MNDs.[284]

Richard Harrington responded that:

> the majority of Master Trusts are subject to the rules on trustees and the regulations of governance. Those regulations require that the schemes must have at least three trustees, and the majority have to be independent to provide services to the scheme.[285]

Investment strategy

Mr Cunningham also proposed that Master Trusts should have an investment strategy which outlined what it should consult members on in areas of investment. He explained that:

> The new clause seeks to create a world in which people feel that their savings give them a positive stake in the economy and a voice in how the companies in which they invest are run.[286]

He said transparency was "necessary but not sufficient for a more accountable investment system":

> Savers must also have the right to engage directly with decisions about their money, in the same way that shareholders engage with companies.[287]

Ian Blackford asked what form the reviews of the investment strategy proposed in the amendment would take and what role investment advisers would play.[288]

Richard Harrington argued that the amendment would duplicate existing provisions:

> […] pensions legislation already includes requirements for investment decisions to be transparent and in the best interests of members. The Government fully recognise the possible impact of investment decisions on members' retirement outcomes. Even without the new clause, the Bill will add to those requirements. Clause 12(4)(d) already sets out that regulations made by the Secretary of State

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[284] HC Deb 22 March 2017 c885
[285] Ibid c899
[286] HC Deb 9 February 2017 c111
[287] Ibid c113
[288] Ibid c114

> "may include provision about…processes relating to transactions and investment decisions",
>
> while clause 12(2) states:
>
> "In deciding whether it is satisfied that the systems and processes used in running the scheme are sufficient…the Pensions Regulator must take into account any matters specified in regulations".
>
> The new amendment would duplicate the provisions for master trust schemes that already exist under the *Occupational Pension Schemes (Investment) Regulations 2005.* The regulations require trustees of all schemes with 100 or more members to set out a statement of investment principles for their scheme. That statement must be made available to members on request and
>
> "must cover…their policies in relation to…the kinds of investments to be held…the balance between different kinds of investments…risks, including the ways in which risks are to be measured"
>
> and other key issues. The trustees must ensure
>
> "that the statement of investment principles…is reviewed at least every three years…and without delay after any significant change in investment policy."
>
> Most people who are automatically enrolled into pension schemes are likely to remain in their scheme's default fund and will not actively engage themselves in the governance of the scheme. That is why legislation makes requirements about governance and oversight of these matters, and why most schemes, including master trust schemes, need to provide a default strategy that covers similar areas.
>
> Finally, multi-employer schemes have a legal duty under the *Occupational Pension Schemes (Scheme Administration) Regulations 1996* to make arrangements to encourage members of the scheme or their representatives to report their views on matters that relate to the scheme, including areas about which the new clause proposes that the trustees should consult scheme members.[289]

Ian Blackford suggested that the statement of investment principles should be "mailed to members as part of the annual report."[290]

Annual member meeting

Alex Cunningham proposed that schemes should be required to hold an annual member meeting, as a way of ensuring that "trustees and administrators can be made human and accountable."[291]

Richard Harrington said he sympathised with the drive for member engagement but did not believe that making AGMs mandatory was the answer. There was provision in the Bill to encourage member engagement and communication. Schemes were developing their own methods of communicating with members. Some would want to hold an AGM but there could be "complex and expensive logistics" involved - the cost of which would be passed on to members.[292]

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289 Ibid c115-6
290 Ibid c116
291 Ibid c117
292 Ibid c119

4.9 Other issues

Asset protection for unincorporated business

Ian Blackford proposed an amendment to deal with issues facing plumbers in the Plumbers Pension Scheme, who are concerned about the way in which the employer debt provisions under section 75 of the Pensions Act 1995 apply to them. Richard Harrington agreed there was a problem but that it was a complex issue. The Government intended to consult on specific proposals in the very near future.[293]

In response to further questions on the issue at Report Stage, Richard Harrington said it was a "complex and technical problem" but the Government would make progress.[294]

For more detail, see Library Briefing Paper CBP-07684 Section 75 employer debt and multi-employer pension schemes (June 2017).

Review of participation

Mr Cunningham proposed review options for widening participation in Master Trust schemes for groups currently facing barriers, in particular groups not currently covered by auto-enrolment. He said:

> […] we recognise that that the upcoming 2017 review of auto-enrolment present the Government with an opportunity to take seriously the problem that certain groups are excluded from master trust savings. The new clause would guarantee that the Government engaged with these vital issues in a proper way.[295]

Richard Harrington said the review of auto-enrolment would be "very comprehensive and will go far beyond what the statute calls for."[296]

Duty on employers

Alex Cunningham proposed that employers should be required to "conduct basic checks before signing up to a Master Trust scheme."[297] The Minister responded that there was already a significant regulatory hurdle – given that the employer needed to choose a scheme that met criteria set out in legislation.[298]

[293] Ibid c108
[294] HC Deb 22 March 2017 c900
[295] HC Deb 9 February 2017 c120-1
[296] Ibid c123
[297] Ibid c124
[298] Ibid c127

5. Pension scheme charges

5.1 Background

The charges applying to an individual's pension fund can have a significant impact on the value of their pension pot over time. While the percentage taken in charges might appear small, the cumulative impact can be significant:

> An individual who saves throughout their working life into a scheme with a 0.5 per cent AMC [annual management charge] could lose 13 per cent of their pension pot from charges. By contrast, at the 1 per cent level, the individual could lose almost a quarter of their pot (24 per cent), and at the 1.5 per cent level could lose around a third (34 per cent).[299]

The introduction of auto-enrolment from 2012 has made it particularly important that workplace pension schemes deliver value for money. As DWP and the FCA explained in 2015, there was much to be done:

> 13. The introduction of automatic enrolment means that it is important to ensure that workplace pension schemes deliver the best possible value for money. However, the 2013 defined contribution workplace pension market study by the Office of Fair Trading (OFT) highlighted problems with the existing market, including poor outcomes for the buyer and the potential for conflicts of interest. The study covered both occupational and workplace personal pension schemes, since employers can choose either type of scheme for their employees.
>
> 14. In its report, the OFT found that the market for buyers was 'one of the weakest that the OFT has analysed in recent years'. Employers make most of the key decisions but may lack the capability and/or the incentive to ensure that members of their schemes receive value for money in the long term. Employees often take little interest in their pension savings and, with automatic enrolment, they make no active choice to join, are enrolled at a default contribution level, and do not need to choose the fund into which they save. The OFT concluded that neither employers nor employees can be expected to drive value effective value for money between firms. However, well-governed schemes are more likely to provide value for money by reviewing the quality of scheme administration, investment management services, costs and charges on an ongoing basis.[300]

Changes intended to provide "greater protection for people who have been defaulted into private pension saving" were implemented in stages, between April 2015 and 2016:

> Two of the charges measures were implemented in April 2015:
>
> • A charge cap on the default arrangements of qualifying DC workplace pension schemes. The annual cap is set at 0.75 per cent of funds under management or an equivalent combination charge.

299 DWP, Public consultation – Better workplace pensions: a consultation on charging, Cm 8737, October 2013, para 1.9

300 DWP, Transaction Costs Disclosure: Improving Transparency in Workplace Pensions, DP 15/2, March 2015

> • A ban on consultancy charges in all qualifying DC contract-based pension schemes. This followed a 2013 ban on any new consultancy charging arrangements being set up.
>
> Further reforms will be introduced in April 2016:
>
> • A ban on Active Member Discounts (AMDs) in qualifying DC workplace pension schemes.
>
> • A ban on charges relating to commission in qualifying DC workplace pension schemes. [301]

The Coalition Government legislated in the *Pensions Act 2014* to require disclosure of transaction costs (i.e. the costs that a scheme incurs as a result of buying, selling, lending and borrowing investments) The FCA has just finished consulting on how such costs can be disclosed in a standardised and comparable manner.[302] The Government is to consider whether transaction costs should be included in the charge cap in 2017.[303]

Particularly relevant to the provisions in the Bill are member-borne consultancy and commission charges and early exit fees.

Member-borne consultancy and commission charges

Pension scheme charges

For more detail, see Library Briefing Paper SN-06209 (December 2016).

The Impact Assessment explains that the provisions in the Bill were needed to enable the Government's proposed ban on member-borne commission payments:

> 22. One specific feature of the existing market is commission arrangements agreed between a service provider and an adviser, or an employer and an adviser, where the charge is passed on to members who are required to pay for advice and services they may not use or may not benefit from.
>
> 23. In order to ensure that members of schemes used for AE are protected from these hidden charges, the government intends to ban member-borne commission charges.
>
> 24. The government has already made regulations that, from April 2016, prohibit service providers from imposing commission charges on members of certain schemes under new arrangements (those agreed on or after 6 April 2016).
>
> 25. Subject to Parliamentary approval of the Bill, the government intends to fully implement the ban by making regulations that introduce a ban on member-borne commission payments that arise under existing contracts. This will increase transparency and fairness of member-borne charges, and maintain confidence in AE.[304]

Regarding the impact of a ban on member-borne commission payments, DWP states that the Bill would allow "full implementation of a ban on member-borne commission payments that arise under existing contracts entered into by trustees and managers of occupational pension schemes". It estimates that:

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301 DWP RR 910, Pension charges survey 2015, March 2015
302 CP16/30
303 HL Deb 19 December 2016 c1528 [Lord Freud]
304 DWP, Pension Schemes Bill – Summary of Impacts, January 2017

> … there will be a one-off administrative cost to service providers of stopping any existing deferred or trail commission arrangements. This cost will vary between different firms depending on factors such as the complexity of the systems that need updating. The total cost to service providers is expected to be £0.05m.
>
> 40. Financial advisers may be impacted by the future loss or reduction in recurring income streams they receive from existing commission arrangements. These costs are expected to be on-going and are estimated at £1.16m per year. Advisers will not be required to re-pay any commission they have received prior to the commencement of the ban.
>
> 41.As with the ban on new arrangements, members will benefit from the ban on existing commission arrangements by no longer having to pay for services they may not have been in receipt of, and only paying for such services when they elect to do so. All else being equal, members will see an increase in the value of their pension pot at retirement if providers reduce their charges after removing any commission payments.[305]

DWP produced more detailed analysis of the impact of banning member-borne commission in December 2015.[306]

Early exit charges

From April 2015, people aged 55 and over have had more choice about when and how to access their defined contribution pension savings. In the light of concerns that there were some barriers to people being able to access their savings flexibly, the Government consulted on proposals to ease the transfer process and to cap early exit charges (i.e. charges imposed by schemes when a member leaves before a specified date). The impact assessment to the Bill explained:

> 26. In April 2015, the government introduced pension freedoms enabling individuals aged 55 and over who are members of a defined contribution (DC) pension scheme to access their pension pot as and when they want to (subject to their marginal rate of income tax, typically 20% or 40%), either via their current scheme or by transferring their savings to a scheme that offers flexible access options.
>
> 27. Between July and October 2015 HM Treasury ran a consultation to gather stakeholders' and consumers' views on whether early exit charges applied by schemes were preventing consumers from accessing their pension savings flexibly.
>
> 28. The government's consultation concluded that early exit charges existed and were presenting significant barriers to those who incurred them, potentially prohibiting individuals from accessing their pension benefits flexibly. Subsequently, the government signalled its intention to cap early exit charges for members of contract-based schemes by legislating to give the Financial Conduct Authority (FCA) a duty to impose a cap on excessive early exit charges.
>
> 29. FCA's jurisdiction only applies to the contract-based side of the market. The government intends to legislate to introduce a

For background see…

Library Briefing Paper SN-06209 Pension scheme charges (December 2016) and SN-06891 Pension flexibilities: the 'freedom and choice' reforms (November 2016).

[305] Ibid

[306] DWP, Impact Assessment. Banning member-borne commission in occupational pension schemes used for automatic enrolment, December 2015

> cap/ban on early exit charges for members of occupational schemes to ensure they are also protected from excessive early exit charges which may limit their access to the pension freedoms. The government ran a consultation ("Capping early exit charges for members of occupational pension schemes"6) between May and August 2016, which sought views on whether there are any reasons why the same level of cap/ban should not apply to members of occupational pension schemes.
>
> 30. In November 2016, the government published its response to the consultation, confirming its intention to implement legislation that will allow a cap on early exit charges in occupational pension schemes for those members who wish to access the pension freedoms. In line with the proposals by the FCA in relation to personal and stakeholder pension schemes, the government intends to cap early exit charges for members of occupational pensions at 1% for existing members of occupational pension schemes and 0% for new members of occupational pension schemes.[307]

The level of the cap is to be set in secondary legislation. The Government has proposed a cap of 1% on early exit charges for existing members of occupational schemes and 0% for new members. Regarding the impact of this it states:

> 45. A cap on exit charges, whether as a percentage or cash amount paid, would benefit affected members who wish to withdraw their pension funds or seek to move them between pension funds by reducing the charges paid and removing a potential barrier from being able to access the pension freedoms. At a 1% cap, the estimated total benefits to affected members in the first year would be £4.66m; in subsequent years the benefits are expected to be £0.61m.
>
> 46. Pension schemes or their third-party providers that currently charge an exit fee above the level of the cap will face a loss of revenue. The costs to business from charges foregone are calculated as the difference between the total amount of exit charges currently paid with and without a cap. Assuming schemes do not attempt to recoup this revenue by other means, the total costs to business of the charges foregone would be £4.66m in the first year and £0.61m in subsequent years if a 1% cap is introduced.
>
> 47.There would also be some administrative costs to pension schemes and administrators from familiarisation with the new rules and implementation of the cap. The total estimated familiarisation costs are £280,000. The implementation costs will vary according to the level of the cap. It is estimated that these would be £0.42m in the first year and £0.06m in subsequent years if a 1% cap is introduced.[308]

DWP produced more detailed analysis of the impact of a cap on early exit charges in 2016.[309]

[307] DWP, Pension Schemes Bill – Summary of Impacts, January 2017

[308] Ibid

[309] DWP, Introducing a cap on early exit charges in trust-based occupational pension schemes, March 2016; DWP, Additional analysis of the impact of capping early exit charges for members of occupational pension schemes, May 2016

5.2 Debates in Parliament

The purpose of clause 41 was to amend existing powers to allow regulations to override contractual terms that conflict with provisions of the regulations. In conjunction with existing powers, this would enable the introduction of:

- a ban on member-borne commission charges that arise under existing contracts;
- a cap/ban on early exit charges in certain occupational pension schemes.[310]

The Explanatory Notes say:

> 205 Schedule 18 to the *Pensions Act 2014* allows the Secretary of State to make regulations that restrict charges or impose requirements on certain pension schemes.
>
> 206 This clause provides that regulations may be made to allow certain provisions within the regulations made under Schedule 18 to override terms of a 'relevant contract'. A 'relevant contract' is a contract between the trustees or managers of a pension scheme and a person providing services in relation to that scheme (clause 42(4)). For example, if a contract between those persons currently provides for a type or level of charge (such as member-borne commission, or an exit charge) which is prohibited under regulations made under paragraph 1 of Schedule 18. Schedule 18 already allows regulations to provide that a provision of a scheme will be overridden in the event of any conflict.[311]

Lords stages

In debate in the Lords, Lord Young explained the purpose of the clause:

> We intend to use [this clause] alongside existing powers in the *Pensions Act 2014*, to make regulations to cap or ban early exit charges. Early exit charges are any administration charges that are paid by a member for leaving their pension scheme early when they are eligible to access the pension freedoms, which they would not face at their normal retirement date. The Financial Conduct Authority intends to make rules by April 2017 to cap or ban early exit charges in personal and workplace personal pension schemes. Parliament has already approved amendments to the *Financial Services and Markets Act 2000*, which broadly allows contracts to be overridden.
>
> Together with the existing powers in relation to charges, [this clause]will enable us to make regulations that introduce similar protection to members of occupational pension schemes. It will also be used to override contractual terms that conflict with the ban on member-borne commission arising under existing contracts in certain occupational pension schemes. By "commission contracts" we mean the contracts between trustees or managers and a person who provides administrative services to the scheme, which permits the person to impose the member-borne commission charge. Existing contracts are those that were entered into before 6 April 2016. This will complete the ban that already exists for commission arrangements entered into on or after 6 April 2016.

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[310] DWP, Pension Schemes Bill – Summary of Impacts, January 2017
[311] Bill 125-EN

> The consultations that we undertook on early exit charges and on member-borne commission showed us that these charges generally arise in contracts between trustees or managers of certain occupational pension schemes and those who provide administration services to the scheme. Our existing powers in Schedule 18 to the Pensions Act 2014 enable us to make regulations that override any provision of a relevant scheme where it conflicts with a provision in those regulations. For example, we have used that power in relation to the appointment of service providers in the scheme administration regulations. The reason why we are taking this power is that this does not extend to the contracts under which the charges arise. [This clause] therefore extends the existing power in Schedule 18 to allow the overriding of a term of a relevant contract that conflicts with a provision of the regulations. The relevant contract is defined as those between a trustee or a manager of a pension scheme and someone providing services to the scheme. The regulations that we intend to make will apply to charges imposed from the date when the regulations come into force, even where they are charged under existing contracts. We expect them to come into force in October 2017.
>
> As noble Lords may be aware, the pensions market is continually evolving and modernising, and this extends to charging practices. It may be necessary to alter the charges requirements to reflect any changes in the pensions market that may disadvantage members. We intend to consult on the draft regulations early next year. In addition, any potential further regulations made under the power in [this clause] will be subject to public consultation. The requirement to do this is set out in paragraph 8 of Schedule 18 to the *Pensions Act 2014.*[312]

Baroness Bakewell questioned whether it was right to enable contracts to be overridden:

> Of course we want to be reassured that the interests of pensioners and their pension pots are protected, and we all want to ensure that all steps are taken to make that happen—but do we really need such a draconian step to facilitate this?[313]

She questioned whether this was "likely to generate trust and confidence in central government."[314]

However, Lord McKenzie thought it was important to "go ahead and get the ban on member-borne commission and the cap on early exit charges in place as soon as possible."[315]

Lord Young said the provisions were necessary to "deliver the commitments that the Government have made to the beneficiaries of pension schemes."[316]

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[312] HL Deb 28 November 2016 c35-6
[313] Ibid c33
[314] Ibid c34
[315] Ibid c34
[316] Ibid c35

Commons stages

In the Commons, Alex Cunningham asked the Minister to explain what consultation had taken place with providers and advisers and whether he was content that this part of the Bill was not open to challenge.[317]

The Minister responded that:

> The clause amends the existing legislation—the *Pensions Act 2014*—to allow regulations to be made that enable a term of a relevant contract on charges to be overridden if that contract conflicts with a provision in those regulations. I emphasise that the power will allow for a contract to be overridden only if it conflicts with a provision in the regulations, which will ensure that relevant contracts are consistent with regulations and will provide certainty to the parties involved.
>
> […]
>
> As has been mentioned, the Financial Conduct Authority will make rules to ensure that the cap or ban on early exit charges in personal and workplace pension schemes, which they regulate, will comes into effect on 31 March 2017. That has already been approved by Parliament through amendments to the Financial Services and Markets Act 2000, which broadly allows for a contract to be overridden. The consultations we undertook on early exit charges and member-borne commission showed that the charges generally arise in contracts between trustees or managers of certain occupational pension schemes and those who provide administration services to the scheme.
>
> Our existing powers in schedule 18 to the Pensions Act 2014 enable us to make regulations that override any provision of a relevant scheme where it conflicts with a provision in those regulations. For example, we have used that power in relation to the appointment of service providers in the scheme administration regulations. The reason we are taking this new power is that the existing power does not extend to the contracts under which these charges arise. That is why clause [41] contains a power to allow the overriding of a term of a relevant contract that conflicts with a provision of the regulations under schedule 18. What is a relevant contract? It is defined as one between a trustee or a manager of a pension scheme and someone providing services to the scheme.[318]

There had been public consultation in 2015 that concluded in August. Legislation to challenge capping contract-based schemes had already been passed. This was about creating parity.[319]

Ian Blackford asked the Minister to confirm that there would be no exit fee for an individual leaving a Master Trust. The Minister responded that when a Master Trust was closing it could not levy a charge.[320]

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[317] PBC Deb 9 February 2017 c91
[318] Ibid c91-2
[319] Ibid c93
[320] Ibid

6. Annex - glossary

General

Contract-based scheme - In a contract-based scheme an employer appoints a pension provider, often an insurance company, to run the scheme. The scheme members will sign a contract with the provider who will make the majority of decisions about how the scheme is run.

Defined benefit pension scheme – a scheme in which the member builds entitlement to pension benefits based on fixed factors such as salary and length of service.

Defined contribution pension scheme – a scheme in which an individual builds up a fund based on contributions and investment returns. This is not defined in pension tax legislation, which instead refers to money purchase arrangements.

Group Personal Pension - an arrangement made for the employees of a particular employer, or for a group of self-employed individuals, to participate in a personal pension scheme with the same pension provider. Each member has a separate policy with the pension provider, but contributions are collected together.

Trust-based scheme – A schemes that is sponsored by the employer but managed by a board of trustees. The trustees have full responsibility for the management, administration and investment of the plan. The trustee's fiduciary duty is to act in the interests of members.

Terms used in the Bill

Master Trust – an occupational pension scheme which provides money purchase benefits (whether alone or in conjunction with other benefits) and is used by multiple unconnected employers (clause 1).

Continuity strategy – as a condition of authorisation, Master Trusts must have a continuity strategy setting out how members will be protection if there is a triggering event (clause 13).

Implementation strategy – if a Master Trust has a triggering event, it must submit an implementation strategy to TPR for approval. This must set out how scheme members are to be protected and the continuity option to be pursued (clause 27 and 28).

Significant event- to enable ongoing supervision, Master Trusts, are required to notify the Pensions Regulator (TPR) of 'significant events', as defined in regulations (clause 17). The Government intends these to be sufficiently important to merit TPR's attention (such as a change of trustees) but of a lesser order than triggering events.

Triggering event –this is a type of event that could put the scheme at risk. As set out in clause 22, examples are TPR issuing a notice in respect of a decision to withdraw authorisation, or an insolvency event occurring in relation to the scheme funder.

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