



## In Focus

### **Pension Schemes Bill [HL] (HL Bill 65 of 2016–17)**

#### Overview

The [Pension Schemes Bill \[HL\]](#) was introduced in the House of Lords on 19 October 2016 and is scheduled to have its second reading on 1 November 2016. The Bill seeks to “[protect] savers and [maintain] confidence in pensions savings” by increasing the regulation of master trusts and providing members of occupational pension schemes with a “level of protection equivalent to that of members of personal protection schemes”.<sup>1</sup> The Bill consists of two parts and its provisions apply to Great Britain only. Northern Ireland will bring forward parallel legislation.

Part one focuses on the implementation of an authorisation process for establishing master trusts, which are a form of multi-employer occupational pension scheme, the Pension Regulator’s powers to operate it, and the introduction of measures intended to ensure an “orderly exit” where a scheme fails or chooses to leave the market.<sup>2</sup> The provisions in part 1 would introduce:

- An authorisation and supervision regime for master trusts. The trusts would have to demonstrate to the Pensions Regulator (TPR) that they meet certain criteria on establishment and demonstrate that they continue to do so.
- A requirement that existing master trusts be brought into the new regime and would make it mandatory for them to meet the new criteria.
- Requirements to be placed on trustees to act in a certain way in the event of wind up or closure of a master trust.
- Greater powers for the TPR to take action where key criteria were not met.

Part two seeks to “support the Government’s intention to introduce a cap on early exit charges” in certain occupational schemes and implement its commitment to ban member-borne commission charges.<sup>3</sup> It would amend existing legislation to allow regulations to be made which override the terms of certain contracts which conflict with the regulations.

The [Government briefing on the Queen’s Speech 2016](#), which was delivered on 18 May 2016, stated that a Pensions Bill would be introduced which would include provisions to: implement a new regulation regime for master trusts; cap early exit fees charged by trust-based occupational schemes; merge the Pension Advisory Service, Pension Wise and Money Advice Service into one body; and create a new financial advice body.<sup>4</sup> This Pension Schemes Bill would implement the first two measures. The Government announced on 9 October 2016, that it would take forward plans to develop a single public financial guidance body responsible for delivering debt advice, money and pensions guidance to the public. It stated that it would consult further on these measures and therefore legislation to create a new body would not be in the Pension Schemes Bill.<sup>5</sup>

## Master Trust Authorisation

### Background

The introduction of automatic enrolment into workplace pension schemes, under the provisions of the Pensions Act 2008, made it compulsory for employers to automatically enrol eligible workers into a qualifying workplace scheme.<sup>6</sup> The reforms are being phased-in between October 2012 and February 2018.<sup>7</sup> The Government estimates that by 2018, approximately nine million workers will be newly saving or saving more into a workplace pension scheme as a result of automatic enrolment.<sup>8</sup>

According to the Government, the pensions market has responded to the introduction of automatic enrolment and as a result the master trust market has developed.<sup>9</sup> A master trust scheme is a form of multi-employer occupational pension scheme which employers are able to select for its workers rather than setting up their own pension scheme. The Government has reported that as at January 2016, master trusts account for over four million members and £8.5 billion assets in 84 schemes. In May 2014, TPR published a master trust assurance (MTA) framework, developed with the Institute of Chartered Accountants in England and Wales (ICAEW). Accreditation enables schemes to demonstrate that adequate standards of governance and administration have been met and, in turn, TPR signposts employers to such schemes.<sup>10</sup> Such accreditation schemes are voluntary and TPR has no power to compel trusts to meet MTA standards.

In May 2016, the House of Commons Work and Pensions Committee published its [report examining the introduction of auto-enrolment](#). It found that the master trust model was a “good fit” with auto-enrolment because they could provide the “ongoing oversight of investments provided by a trustee board at lower operating costs than single employer schemes”.<sup>11</sup>

However, the Committee noted the concerns expressed by a number of bodies that the level of regulatory scrutiny was not sufficient. TPR stated that it was “not able to exercise stronger regulation”.<sup>12</sup> It highlighted that the Financial Conduct Authority (FCA) had the authority to enforce rigorous standards and “act as barriers to entry” for contract-based pensions, as well as powers to “issue legally binding rules to support its regulatory functions”. However, the TPR, it stated, “just learn about a master trust being set up through the Revenue” and relies on “non-binding guidance”. The then Minister for Pensions, Baroness Altmann, and the Chief Executive of the Pensions and Lifetime Savings Association (PLSA), Joanne Segars, expressed concern that there was no protection for members of a scheme if a master trust failed and was wound up.<sup>13</sup> The Committee recommended that legislation was introduced that provided TPR with stronger regulatory powers over the establishment and supervision of master trusts.<sup>14</sup>

The Government announced in May 2016, that it would introduce a Pensions Bill which would include provisions relating to the regulation of master trusts.<sup>15</sup>

### Provisions in the Bill

#### *Authorisation*

Clause 1 defines a master trust scheme as one that provides money purchase benefits (whether alone or in conjunction with other benefits). The scheme must be used by, or intended to be used by two or more employers. However, it excludes from the definition, any scheme which is used only by employers that are connected to each other. Clause 3 prohibits the operation of a master trust scheme unless the scheme has been authorised by TPR.

Clause 4 makes provision regarding the application to TPR for authorisation, and clause 5 sets out the criteria that the applicant master trust has to meet.

There are five authorisation criteria:

- The persons involved in the scheme are fit and proper persons.
- The scheme is financially sustainable.
- The scheme funder must be constituted as a legal entity.
- That the systems and processes used in running the scheme are sufficient to ensure that it is run effectively.
- That the scheme has an adequate continuity strategy, which would address how the interests of members of the scheme are to be protected if a master trust has a triggering event (triggering events are set out in clause 21).

Clause 5 stipulates that TPR must make its decision regarding authorisation within six months of receiving the application. If authorisation is given, the scheme will be included on TPR's published list of authorised master trusts (clause 13). Clause 6 sets out the process whereby a refusal to grant authorisation can be appealed to the First Tier or Upper Tier Tribunal in accordance with the [tribunal procedure rules](#).<sup>16</sup>

Clause 14 requires master trusts to submit annual accounts of both the scheme funder and the master trust to TPR. Clause 16 creates an obligation on master trusts to notify TPR of significant events as soon as it is reasonably practical, and gives the Secretary of State power to make regulations setting out a list of the significant events that would have to be reported.

#### *Triggering Events and Winding Up*

Clauses 20 to 33 deal with triggering events, and the continuity options that master trusts must pursue. Clause 21 sets out a list of the triggering events and defines a triggering event period. Included in the list are events which would lead to the failure and winding up of a scheme; withdrawal of authorisation from TPR; an insolvency event; or if the scheme funder had decided to end the relationship or arrangement with the master trust scheme. Clause 20 places three sets of duties on trustees when a triggering event has occurred:

- To notify TPR (clause 22).
- To pursue a continuity option (clause 23).
- To prepare and submit an implementation strategy to TPR for approval (clauses 26 and 27).

Where a master trust experiences a triggering event, there are two continuity options available.<sup>17</sup> Trustees must choose a continuity option when setting out their implementation strategy. Once TPR has approved the strategy, the trustees must pursue the chosen continuity option and take the steps identified (clause 28).

Clause 24 makes provision for continuity option one, under which trustees would transfer out all accrued rights and benefits in the scheme and then wind up the remaining structure of the scheme. It requires the Secretary of State to make regulations about how continuity option one is to be pursued. The trustees must identify one or more master trust schemes which are able to accept the accrued rights and benefits of their master trust scheme. The trustees are required to notify employers and members of the master trust that the transfer is taking place. Members will retain their right to transfer to a scheme of their own choosing. If a master trust has been de-authorised and all appeals have been exhausted, the master trust must pursue continuity option one.<sup>18</sup>

Clause 25 sets out the second continuity option, which is to be pursued when the master trust scheme has decided to resolve the triggering event.<sup>19</sup> The trustees are to notify TPR when they consider the triggering event has been resolved, and must also set out how they consider that it has been

achieved. TPR is then required to notify the trustees of whether they are satisfied that the triggering event has been resolved.

During a triggering event, trustees of a master trust scheme must submit periodic reports to TPR (clause 30), providing an update on the progress of the implementation strategy. TPR have the authority to pause certain master trust activities if it considers it will help the trustees follow their implementation strategy, or if it is in the interests of the scheme members (clause 31).<sup>20</sup> Clause 33 places restrictions on trustees increasing or imposing administration charges during the triggering event period. They must not impose charges on members above the level set out in the implementation strategy. The trustees of a receiving scheme cannot increase the administration charges above the level originally set out to the TPR by the transferring scheme.<sup>21</sup> In addition, the trustees of a receiving scheme must not impose administrative fees on its members for the purpose of meeting the costs for which it is liable in respect of costs incurred by the transferring scheme, or those which relate directly to the transfer of members' accrued rights or benefits.<sup>22</sup>

### *Existing Master Trusts in Operation*

Schedule 2 sets out the provisions affecting master trusts in existence before the commencement of clause 3, which prohibits a master trust scheme from operating prior to authorisation from TPR. Schedule 2 introduces transitional modifications.<sup>23</sup> It enables schemes which are already operating to continue to function until its application is received by TPR, or the regulator determines that the scheme should not be authorised.<sup>24</sup> If TPR has not received an application for authorisation or a notification that the scheme is to be wound up then it must notify the scheme that is not authorised. This is a triggering event and the notification must explain the trustees duties.

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## **Administrative Charges**

### **Background**

#### *Member-borne Commission Charges*

In March 2014, the Coalition Government announced a range of control measures to protect savers automatically enrolled into a workplace pension scheme, including a ban on member-borne commissions.<sup>25</sup> Member-borne commissions are arrangements agreed between a service provider and an advisor, or an employer and an advisor, where the charge is passed onto members who are required to pay for advice and services they may not use or may not benefit from.<sup>26</sup> The Government introduced the Occupational and Pensions Schemes (Charges and Governance) (Amendment) Regulations 2016, which from April 2016 banned member-borne commissions in relevant occupational pension schemes that were under new arrangements (those agreed on or after 6 April 2016).

#### *Capping Early Exit Charges in Occupational Schemes*

In the 2014 Budget, the Coalition Government announced that it would change the rules to enable individuals with defined contribution (DC) pension savings to withdraw them "at a time of their choosing, subject to their marginal rate of income tax".<sup>27</sup> The necessary changes to pension tax legislation were introduced by the Taxation of Pensions Act 2014.<sup>28</sup> From 6 April 2015, people aged 55 and over would be able to access their DC pension "how they wanted, subject to their marginal rate of income tax", either via their current scheme or by transferring their savings to a scheme that offered flexible access options.<sup>29</sup>

However, concerns were raised that individuals were finding it difficult to access the new pension flexibilities easily and at a reasonable cost. On 13 June 2015, the then Secretary of State for Work and

Pensions, Iain Duncan Smith, said that he was concerned that “some firms still appear to be dragging their feet”.<sup>30</sup> Lord Bradley, the then Shadow Spokesperson in the House of Lords for Work and Pensions, questioned the Government on whether they had made an assessment of charges on drawn-down pension products,<sup>31</sup> and in a debate in the House of Lords, Baroness Drake (Labour) called for the issue of charges by providers to be addressed.<sup>32</sup> However, the Association of British Insurers (ABI) stated that introducing the “biggest overhaul of pensions in a generation in just a year was always going to be a challenge”.<sup>33</sup> It highlighted that “nearly nine out of ten customers eligible for pension freedoms” did not face an early exit fee, and those older schemes which did charge a fee “reflect[ed] the expenses involved in setting up the policy”.

On 17 June 2015, the then Chancellor of the Exchequer, George Osborne, announced an investigation into how to remove the barriers to people accessing their money and a possible cap on charges.<sup>34</sup> Between July and October 2015, the Government ran the consultation, [Pension Transfers and Early Exit Charges](#), to gather stakeholders’ and consumers’ views on whether early exit charges applied by schemes were preventing consumers from accessing their pension savings.<sup>35</sup> To support the consultation, the FCA and TPR conducted an [evidence gathering exercise](#).<sup>36</sup> They found that overall the majority of consumers appeared to have been able to take advantage of the new flexibilities, although there were some situations where this was not the case.<sup>37</sup> In February 2016, [in response to the consultation](#), the Government concluded that the early exit charges were presenting “significant barriers” to those who incurred them, “potentially prohibiting individuals from accessing their pension benefits flexibly”.<sup>38</sup> As a result, under the provisions of the Bank of England and Financial Services Act 2016, a duty was placed on the FCA to impose a cap on early charges in relation to contract-based schemes.

In May 2016, the Department for Work and Pensions launched a consultation on [Capping Early Exit Charges for Members of Occupational Pension Schemes](#).<sup>39</sup> It set out the approach the FCA had adopted to determine the level of the cap in relation to personal pensions. It considered the definition of early exit charges that should be applied in occupational pension schemes, statutory exclusions from that definition and how the cap should be implemented in occupational pension schemes. In response to the proposals, the PLSA said that it was pleased that the cap on early exit fees had been designed to capture those fees which “explicitly penalise” those looking to access their benefits before the scheme’s “normal retirement age” and did not prohibit schemes from recouping administrative fees.<sup>40</sup> The Government are currently reviewing the responses to the consultation.

## **Provisions in the Bill**

Clause 40 makes provision for the Pensions Act 2014 to be amended to allow regulations to be made to provide that any term in a ‘relevant contract’ which is inconsistent with the regulations would be overridden.<sup>41</sup> A relevant contract is one that is between the trustees or managers of a pension scheme and a person providing services in relation to that scheme.<sup>42</sup> The Government states that this clause seeks to support its intention to introduce a cap on early exit charges in certain occupational pension schemes and to ban member-borne commission charges. The scope of the cap will be set out in secondary legislation.<sup>43</sup> The Government intends to use the powers set out in the regulations in conjunction with existing powers to introduce the cap on early exit charges and the ban on member-borne charges that arise under existing contracts, as well as under new contracts.

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- <sup>1</sup> [Explanatory Notes](#), p 4.
- <sup>2</sup> *ibid*, p 5.
- <sup>3</sup> *ibid*.
- <sup>4</sup> Cabinet Office, [Queen's Speech 2016: Background Briefing Notes](#), 18 May 2016, p 26.
- <sup>5</sup> HM Treasury and Department for Work and Pensions, ['New Public Body Offering Debt Advice, Money and Pensions Guidance to be Set Up'](#), 9 October 2016.
- <sup>6</sup> [Explanatory Notes](#), p 4.
- <sup>7</sup> The House of Commons Library briefing, [Pensions: Automatic Enrolment 2010 Onwards](#) (18 May 2016) provides further information on the eligibility criteria and the progress of its implementation.
- <sup>8</sup> National Audit Office, [Automatic Enrolment to Workplace Pensions: Summary](#), November 2015, p 4.
- <sup>9</sup> [Explanatory Notes](#), p 4.
- <sup>10</sup> The Pensions Regulator, ['Master Trust Assurance'](#), accessed 20 October 2016; and House of Commons Work and Pensions Committee, [Automatic Enrolment](#), 15 May 2016, HC 579 of session 2015–16, p 9.
- <sup>11</sup> House of Commons Work and Pensions Committee, [Automatic Enrolment](#), 15 May 2016, HC 579 of session 2015–16, p 7.
- <sup>12</sup> *ibid*, p 8.
- <sup>13</sup> *ibid*.
- <sup>14</sup> *ibid*, p 10.
- <sup>15</sup> Cabinet Office, [Queen's Speech 2016: Background Briefing Notes](#), 18 May 2016, p 26.
- <sup>16</sup> [Explanatory Notes](#), p 8.
- <sup>17</sup> *ibid*, p 13.
- <sup>18</sup> *ibid*.
- <sup>19</sup> *ibid*, p 14.
- <sup>20</sup> *ibid*, p 16.
- <sup>21</sup> In this instance, a receiving scheme is the master trust scheme receiving the rights and benefits of members of the scheme being wound up; and a transferring scheme is one which is pursuing continuity option one.
- <sup>22</sup> [Explanatory Notes](#), p 17.
- <sup>23</sup> *ibid*, p 18.
- <sup>24</sup> *ibid*, p 19.
- <sup>25</sup> Department for Work and Pensions, [Better Workplace Pensions: Further Measures for Savers](#), March 2014.
- <sup>26</sup> Department for Work and Pensions, [Pensions Scheme Bill: Impact Assessment Summary](#), October 2016, p 6.
- <sup>27</sup> HM Treasury, [Budget 2014](#), March 2014, HC 1104 of session 2013–14, p 44. Defined contribution pensions build up a pension fund using contributions, investment returns and tax relief.
- <sup>28</sup> House of Commons Library, [Pension Flexibilities: The 'Freedom and Choice' Reforms](#), 29 September 2016, p 1.
- <sup>29</sup> Department for Work and Pensions, [Pensions Scheme Bill: Impact Assessment Summary](#), October 2016, p 6.
- <sup>30</sup> Iain Duncan Smith, ['Iain Duncan Smith: I'll Make Sure the Pension Freedoms Work'](#), *Telegraph*, 13 June 2015.
- <sup>31</sup> [HL Hansard, 9 June 2015, col 273](#).
- <sup>32</sup> [HL Hansard, 18 June 2015, col 1261](#).
- <sup>33</sup> Association of British Insurers, ['Insurers Dealing with Unprecedented Customer Demand Following the Introduction of the Pension Reforms'](#), 10 June 2015.
- <sup>34</sup> [HC Hansard, 17 June 2015, cols 309–10](#).
- <sup>35</sup> HM Treasury, [Pension Transfers and Early Exit Charges](#), July 2015.
- <sup>36</sup> The Pensions Regulator, ['Statement on Evidence-gathering in Support of Government Consultation on Flexible Pension Access'](#), 1 July 2015.
- <sup>37</sup> Financial Conduct Authority, ['The New Pension Flexibilities—Update from the FCA'](#), 1 July 2016. The House of Commons Library briefing, [Pension Flexibilities: The 'Freedom and Choice' Reforms](#) (29 September 2016) provides further details about the introduction of a cap on early exit fees in relation to contract-based schemes.
- <sup>38</sup> Department for Work and Pensions, [Pensions Scheme Bill: Impact Assessment Summary](#), October 2016, p 6.
- <sup>39</sup> Department for Work and Pensions, [Capping Early Exit Charges for Members of Occupational Pension Schemes](#), May 2016.
- <sup>40</sup> Pensions and Lifetime Savings Association, [Response to Capping Early Exit Charges for Members of Occupational Pensions Schemes](#), August 2016.
- <sup>41</sup> [Explanatory Notes](#), p 5; and Department for Work and Pensions, [Pensions Scheme Bill: Impact Assessment Summary](#), October 2016, p 7.
- <sup>42</sup> [Explanatory Notes](#), p 5
- <sup>43</sup> Department for Work and Pensions, [Pensions Scheme Bill: Impact Assessment Summary](#), October 2016, pp 6–7.

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