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Master Trust Regulation

The Pension Schemes Act 2017 (the 2017 Act) introduces greater regulation of master trusts.

The introduction of automatic enrolment, combined with low barriers to entry, has seen a substantial increase in the number of master trusts in the pensions arena, run by an array of providers including industry bodies, insurers and scheme managers. It is therefore no surprise that the government has introduced a specific regulatory regime for master trusts that provide defined contribution (DC) benefits in whole or part.

Background

The advent of automatic enrolment heralded a sizeable increase in the number of defined contribution master trusts opened to provide employers with a trust-based solution to their new statutory duties, that did not involve employers in the time, cost and effort of running their own pension arrangements. These new master trusts were all aiming to operate on a large scale and, accordingly, to benefit from the large increase in pension membership and assets resulting from automatic enrolment.

While master trusts have a number of benefits, and are undoubtedly here to stay, they also have a number of risks associated with them. These risks include the lack of individual employer involvement, the fact that many are run for commercial benefit, and their size, which whilst an asset could also be a big issue if a trust were to fail. The 2017 Act is designed to address some of these concerns and, in particular, to ensure master trusts meet a minimum standard of governance, as well as minimising the risk to members of master trusts failing.

Master trusts are already expected to comply with the Pensions Regulator's DC code of practice and they are encouraged to obtain master trust assurance to help show they have governance and administration standards that meet the DC code.

What is a master trust?

A master trust, as defined by the 2017 Act, is an occupational pension scheme that:

a) provides money purchase benefits (whether alone or together with other benefits);
b) is used, or intended to be used, by two or more employers;
c) is not used, or intended to be used, only by employers which are connected with each other; and
d) is not a relevant public service pension scheme.

Authorisation

The 2017 Act introduces measures for authorising and supervising master trusts. New powers are accordingly given to the Regulator, which can and will impose civil penalties on anyone operating an unauthorised master trust when the new provisions come into force. **Authorisation will begin after regulations have been issued and is not expected to commence until the autumn of 2018.** Once authorisation begins, master trusts will have six months to meet the following criteria:

- Those involved in setting up and running the scheme must, in the opinion of the Regulator, be fit and proper persons to act in that capacity.
- The scheme must be financially sustainable.
- Whoever is responsible for making business decisions relating to the commercial activities of the scheme (the scheme strategist) must prepare and maintain a business plan for the scheme.
- The legal entity liable to provide funds to the scheme where member administration charges are not sufficient to cover a scheme's set-up or running costs (the scheme funder) must meet a number of requirements. The scheme funder must, for example, be a company or partnership that only carries out activities that relate directly to master trust schemes in relation to which it is the scheme funder or prospective scheme funder. Regulations, as yet undrafted, may add or make exceptions to these requirements.
- Any systems and processes used in running the scheme must be, in the Regulator's opinion, sufficient to ensure the scheme is run effectively.
- The scheme must have an effective continuity strategy, to address how members' interests will be protected if a triggering event occurs (see below).

The Regulator will maintain and publish a list of authorised master trusts. It will also have the power to intervene, and if necessary withdraw authorisation, where it is of the opinion that a scheme no longer meets the authorisation requirements.

Triggering Events

Reporting to the Regulator

Where certain triggering events occur those involved with master trusts have a duty to report the event to the Regulator within 7 days of the event occurring. The duty to report these events has retrospective effect from 20 October 2016 (when the Pension Schemes Bill was introduced to Parliament).

Triggering event	Date event occurs	Who must report
A scheme funder has an insolvency event	The date of the insolvency event	Scheme funder
A scheme funder becomes unlikely to continue as a going concern	The earlier of the date the scheme funder tells the Regulator or the date the trustees or scheme strategist become aware of the event	Scheme funder
A scheme funder decides to end the relationship or arrangement with the scheme	The date of the decision	Scheme funder

Triggering event	Date event occurs	Who must report
A scheme funder ends the relationship or arrangement with the scheme	The earlier of the date the scheme funder tells the Regulator or the date the trustees or scheme strategist become aware of the event	Scheme funder
A scheme funder, scheme strategist or the trustees, decide that the scheme should be wound up (where the person making the decision has the power to do so under the scheme rules)	The date of the decision	Decision maker
An event occurs which is required or permitted by the scheme rules to result in the scheme winding up	The date on which the event occurs	Trustees/scheme funder/scheme strategist
The trustees decide that the scheme is at risk of failure and cannot continue in its current state	The date of the decision	Trustees

If trustees, a scheme funder, or a scheme strategist, become aware of a triggering event that has not been reported by the responsible party to the Regulator they are under a duty to report it.

Charge Restrictions

During a triggering event trustees of a master trust cannot impose new charges, or increase charges, in respect of members. Members also cannot be charged for leaving or deciding to leave the scheme.

Master trusts receiving a transfer from a scheme that has experienced a trigger event since 20 October 2016 are also prohibited from increasing, or imposing, new charges on members in respect of the transfer. Trustees of master trusts receiving a transfer in such circumstances must within seven days notify the Regulator of the transfer and give set details showing they have complied with restrictions on charging. For transfer which happened on or after 20 October 2016 and before 27 April 2017 notification had to be made before 4 May 2017.

Resolving a Trigger Event

Once a trigger event has occurred the trustees of a master trust must either transfer all the members out of the scheme and wind it up, or resolve the event. Once trustees are of the opinion that a trigger event has been resolved they must notify the Regulator within 14 days. The Regulator will then issue a notice to confirm whether or not it is satisfied that the event has been resolved.

Pause Orders

During a triggering event period the Regulator will have the power to issue a pause order. The pause order could be quite draconian and not just stop further members being admitted to the scheme, or further contributions being made to the scheme. It may also stop transfers to and from the scheme or even direct that no benefits are to be paid from the scheme.

Requirement to Submit Annual Accounts

Both the trustees of a master trust and the scheme funder must submit their annual accounts to the Regulator. Trustees must submit accounts no later than two months after they are obtained. Scheme funders must submit accounts no later than nine months after the end of the financial year to which they relate.

Trustees of master trusts will also have to submit a "supervisory return" each year, the contents of which will be specified by regulations.

Comment

While we now have the bare bones of the new regulatory regime being applied to master trusts, much of the detail is still awaited in the form of regulations. A consultation, in the autumn of 2017, will be followed by draft regulations assuming, of course, the current plans are unchanged by June's General Election. In the meantime, transitional arrangements for existing master trusts have taken effect and, in some cases, are backdated to 20 October 2016.

Pensions are a long-term saving scheme and, therefore, the financial stability of the provider, or sponsor, is vital in ensuring schemes can meet the ongoing development costs of adapting to changing legislation and market developments, as well as providing the reassurance of being able to deliver a long term service commitment to members.

We have already seen master trusts close due to financial pressures, resulting in risks to member assets as well as the knock on risk of loss of trust in pensions and long term saving. The 2017 Act represents a significant increase in the level of governance and financial stability for master trusts and this is welcome.

Organisations participating in a master trust should explore how their scheme intends to meet the requirements of the Act, whilst organisations considering using a master trust in the future should include compliance with the 2017 Act within their wider due diligence for selecting a pension scheme.

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