Pension Schemes Bill

Alert | 21 October 2016

Introduction

The Pension Schemes Bill 2016-17 ("the Bill") was published on 20 October 2016, receiving its first reading in the House of Lords the previous day. The primary aims of the Bill are to provide for the greater regulation of master trusts and to strengthen existing legislation on exit charges, helping to remove barriers for consumers who want to access their retirement savings flexibly.

The Bill is expected to receive Royal Assent next year and, once passed, will be known as the Pension Schemes Act 2017.

Key points

- The Bill is aimed at boosting consumer protections, which includes introducing an authorisation regime for master trusts so that they have to demonstrate to TPR that they meet certain key criteria on establishment.
- TPR will also be given new supervisory powers to authorise and de-authorise master trusts according to strict criteria, ensuring that master trusts continue to meet standards throughout their existence.
- Current master trusts will be brought into the regime and will be required to meet the new criteria.
- Specific trustee requirements on wind-up or closure of master trusts will also be introduced.
- The Bill also contains further provisions in relation to administration charges (the cap on early exit charges and the ban on member-borne commission charges).

Background

Since the introduction of automatic enrolment, a number of master trusts have entered the pensions market, providing a solution for employers who want the advantages of a trust based scheme without the cost and time of setting up and running their own arrangement.

Some master trusts are run by industry bodies, others have been set up by insurance companies and investment / administration managers. What they all have in common is the ability to operate as a multi-employer occupational scheme on a large scale.

At the start of 2016, there were over four million members in master trusts.

Master trust authorisation

The Bill looks to address concerns that members may currently be at risk from schemes which do not meet minimum governance standards, aiming to strengthen master trusts by requiring them to meet higher operating criteria. Compared with other occupational pension schemes, master trusts are seen as having specific areas of risk, including employer engagement, profit motives, the volume of savers involved, and the potential impact on confidence in pension savings should a scheme fail.

Approval criteria

Under the new legislation, a master trust will need to be authorised. To become authorised, TPR must be satisfied that the scheme can demonstrate that it meets the following key criteria:

- persons involved in the scheme must be “fit and proper” to act in their roles
- the scheme must be financially sustainable, and must possess an approved business plan
- the “scheme funder” must meet set requirements so as to provide assurance about its financial situation, including having separate legal identity
- its systems and processes must meet adequacy requirements, relating to the administration and governance of the scheme
- the scheme must have an adequate continuity strategy.

Existing master trusts will be brought into the regime and will be required to meet these criteria, and TPR will publish and maintain a list of schemes that have been authorised.

Ongoing supervision of master trusts

TPR will also be given new powers to intervene where schemes are at risk of failing, including issuing penalty notices, and the ability to withdraw authorisation from schemes that do fail. TPR has welcomed the proposals to introduce its new supervisory powers.

Exit

Requirements “to ensure an orderly exit” will be placed on trustees in the event of wind-up or closure of a master trust, with the aim of protecting members in those circumstances. The focus is on providing continuity of member saving and support to employers in continuing to fulfil their automatic enrolment duties.

Administration Charges

The Government also wishes to ensure that people are able to access their retirement benefits flexibly without being unnecessarily penalised by early exit fees.

The Bill will therefore make changes in relation to the existing legislation on charges. The charges will allow regulations to be made which could override conflicting contract terms (e.g. where a contract provides for a prohibited type or level of charge).

The Government has already protected against excessive exit fees in relation to personal pensions, giving the FCA powers in the contract-based sphere from April 2017. The Bill seeks to provide members of occupational pension schemes with an equivalent level of protection.

The amendments will also support the commitment the Government made to ban member-borne commission charges arising under existing arrangements in certain occupational pension schemes. Member-borne commission charges under new arrangements (or pre-existing arrangements which are varied or renewed) were banned from 6 April 2016.

Public financial guidance

The Queen's Speech delivered in May 2016 had suggested that the new Bill would restructure the delivery of financial guidance. However, on 9 October 2016, HMT and the DWP announced that they had agreed to take forward plans to develop a single public financial guidance body and that, as further consultation on the best way to design the single body would be required, the relevant legislation would no longer be included in the Bill.

We await further developments in this area.

Next steps

The Bill puts in place the framework for the introduction of the master trust authorisation system, but much of the detail will be set out in regulations which will follow in due course.

The second reading of the Bill – the general debate on all aspects of the legislation – is scheduled for 1 November 2016.

Sacker & Partners LLP
20 Gresham Street
London EC2V 7JE
T +44 (0)20 7329 6699
E enquiries@sackers.com
www.sackers.com