Sackers

Pension Schemes Act 2017 – new regulatory regime for master trusts

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Introduction

The Pensions Schemes Bill 2017 (“the Bill”) received Royal Assent on 27 April 2017 and is now the Pension Schemes Act 2017 (“the Act”). The Act’s primary aim is to provide for the greater regulation of master trusts.

Key points

- The Act will introduce an authorisation regime for master trusts which provide DC benefits (whether alone or in conjunction with other benefits).
- Master trusts will have to demonstrate to TPR that they meet certain key criteria on establishment (or, for existing master trusts, when the relevant provisions are brought into force).
- TPR will be given new supervisory powers to authorise and de-authorise master trusts according to strict criteria, ensuring that master trusts continue to meet the required standards throughout their existence.
- The Act will also introduce specific trustee requirements on wind-up or closure of master trusts.
- The Act makes provision for regulations to be laid to introduce further measures on 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 pension scheme on a large scale.

Rationale for an authorisation regime

By introducing higher operating criteria for master trusts, the Act intends to address concerns that members may currently be at risk from schemes which do not meet minimum governance standards.

Compared with other occupational pension schemes, master trusts are seen as having specific areas of risk such as employer engagement, profit motives, the volume of savers involved, and the potential impact on confidence in pension savings should a scheme fail.

Authorisation criteria

For a master trust 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
- the “scheme funder” must meet set requirements. Broadly, it must be a body corporate or a partnership and, subject to exceptions which will be specified in regulations, must only carry out activities that relate directly to the master trust scheme of which it is the scheme funder or prospective scheme funder
- the systems and processes used in running the scheme are sufficient to ensure it is run effectively
- the scheme must have an adequate continuity strategy.

Many details of the authorisation regime are still to be decided and we are not expecting it to come into force until later in 2018.

TPR will publish and maintain a list of schemes that have been authorised.

Ongoing supervision

The scheme and the scheme funder will be required to submit their annual accounts to TPR. In addition, certain key persons will be required to notify TPR, in writing, when they become aware that a “significant event” (to be defined in regulations) has occurred in relation to an authorised master trust.

TPR will be able to require the trustees of an authorised master trust to submit a “supervisory return” once in any 12 month period. The contents of such a return will be specified in regulations.

“Triggering events”

In specified circumstances, to be known as “triggering events” (eg an insolvency event occurs in relation to the scheme funder or the trustees decide the scheme is at risk of failure), the trustees will have to comply with certain notification obligations and, depending on the situation, pursue either:

- continuity option 1 – broadly, transfer members’ accrued rights and benefits to another scheme, or
- continuity option 2 – resolve the event to TPR’s satisfaction.

The aim of these provisions (and supporting measures which govern what happens when a triggering event has occurred) is to “ensure an orderly exit where a scheme fails or otherwise chooses to leave the market”. In turn, this is intended to provide “continuity of member saving and support to employers in continuing to fulfil their automatic enrolment duties”.

TPR’s powers

TPR will have powers to intervene where a master trust is at risk of failing (for example, by issuing penalty notices) and, ultimately, will be able to withdraw authorisation where it is satisfied that a scheme no longer meets the authorisation criteria.

Transitional arrangements for existing schemes

With the aim of providing members of existing master trusts with immediate protection, transitional arrangements are set out under the Act which apply from the date of Royal Assent (ie 27 April 2017) until the new authorisation regime comes into force (see above).

Under the transitional arrangements, trustees will need to take certain specified actions where a “triggering event” occurred/occurs on or after 20 October 2016 (the date the Bill was first published).

Next steps

As is clear from the above, much of the detail of the new regime will be set out in regulations.

We understand that the Government intends to consult on policy this autumn, with draft regulations to follow in early 2018. Whether this will continue to be the case following the General Election remains to be seen.

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