These notes refer to the Pension Schemes Act (Northern Ireland) 2021 (c.6) which received Royal Assent on 9 August 2021

Pension Schemes Act (Northern Ireland) 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Master Trusts

Definition of a Master Trust scheme

Section 1: Master Trust schemes: definition

Section 2: Relevant public service pension schemes

These sections define in legislation a type of occupational pension scheme, known as a "Master Trust scheme".

Section 1 sets out the criteria that must be met by an occupational pension scheme for it to constitute a Master Trust scheme. The scheme must provide money purchase benefits (whether alone or in conjunction with other benefits), as defined in the Pension Schemes (Northern Ireland) Act 1993. Money purchase benefits are generally derived from a pot of contributions, together with any investment returns on those contributions.

Under subsection (1)(b) the scheme must be used by, or be intended to be used by, two or more employers. Employer for these purposes is defined in subsection (4) as a person who employs or engages persons who are, or are entitled to become, members of the scheme.

Subsection (1)(c) excludes from the definition of Master Trust scheme any scheme which is used, or intended to be used, only by employers that are connected to each other. Subsection (3) sets out the circumstances in which an employer is connected to another employer. An employer will be connected to another employer if they are, or have been, "group undertakings" in relation to each other within the meaning of section 1161(5) of the Companies Act 2006. Two employers will also be connected if they are connected in a way specified in regulations made by the Department. Subsection (1)(d) excludes public service pension schemes from the Master Trust scheme definition.

Subsection (2) sets out that where a Master Trust scheme provides money purchase benefits and other benefits, it is only insofar as the scheme relates to money purchase benefits that it falls under the provisions in the Act. This is subject to a few exceptions as set out in section 39(2) to (4). Section 39(2) provides that references to scheme accounts are to the accounts of the scheme as a whole. Section 39(3) provides that in section 10 "activities that relate directly to a Master Trust scheme" means activities relating to the scheme as a whole and not just the money purchase part of the scheme, ensuring that the scheme funder is able to engage in activities in relation to any part of the scheme. Section 39(4) makes provision so that where a scheme provides money purchase benefits and other benefits and has no power to wind up the part of the scheme that relates to money purchase benefits only, references to winding up the scheme are to be read as references to that part of the scheme ceasing to operate.

Subsection (5) provides that any regulations made under this section are subject to the confirmatory procedure.

Section 2 defines public service pension schemes by reference to existing legislation in the Pension Schemes (Northern Ireland) Act 1993, the Pensions (Northern Ireland) Order 2005 and the Public Service Pensions Act (Northern Ireland) 2014.

Authorisation: applications etc

Section 3: Prohibition on operating a scheme unless authorised

Section 3 sets out the prohibition # that a person cannot operate a Master Trust scheme unless that scheme is authorised. To become authorised the Pensions Regulator must be satisfied that the scheme meets certain criteria which are set out in section 5(3). A scheme is considered to be operating in the market when it takes pension contributions from employers and employees, receives fees or enters into contracts with employers (subsection (5)). An example of this is where a scheme agrees to provide a scheme for automatic enrolment purposes to an employer.

Section 3(2) provides that if a person does operate a Master Trust scheme that is not authorised, they may be subject to a civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995.

Subsections (3) and (4) of section 3 provide that where the Pensions Regulator becomes aware that a Master Trust scheme is operating without authorisation, it is required to issue a notice to the trustees of the scheme. This notice must set out that the scheme is not authorised and as a result there has been a triggering event (see section 21) and the scheme is required to pursue the first continuity option (see section 24).

Section 4: Application for authorisation

Section 4 makes provision regarding the application for authorisation, which is to be made to the Pensions Regulator, and the information which must be included in the application. The section also provides a power for the Department to make regulations setting out other information to be provided in an application and setting the application fee payable to the Pensions Regulator.

In order for a Master Trust to become authorised, the trustees will need to apply for authorisation according to the process specified by the Pensions Regulator.

Subsection (3) provides that after an application has been made, the Pensions Regulator may, if it considers it appropriate to do so, take into account additional information or changes to information made in the application.

Subsection (6) provides that any regulations made under this section would be subject to negative resolution.

Section 5: Decision on application

Section 5 sets out that where the Pensions Regulator receives an application from a Master Trust to be authorised, it must make its decision regarding authorisation within six months of receiving the application. The Pensions Regulator will need to decide if it is satisfied that the Master Trust has met the five authorisation criteria set out in subsection (3), which are further expanded in later sections of the Act. The criteria relate to: the persons who are involved in the scheme; the scheme's financial position; requirements on the scheme funder; the scheme's systems and processes; and its strategy if the scheme withdraws from the market or fails. All of the authorisation criteria must be met for a Master Trust to be authorised, and they must continue to be met for the Master Trust to remain authorised. Sections 7 to 12 set out further detail about each of the criteria and the matters that the Pensions Regulator must take into account when satisfying itself as to whether the scheme meets the criteria.

Where the Pensions Regulator is satisfied that the criteria have been met, it is required to authorise the scheme and notify the trustees of its decision. The scheme will also be included on the Pensions Regulator's published list of authorised Master Trusts (see section 13).

If the Pensions Regulator is not satisfied that the criteria have been met, it is required to refuse authorisation of the scheme and to notify the trustees of its decision, the reasons for it and the right of referral to the First-tier or Upper Tribunal.

Section 6: Referral to Tribunal of refusal to grant authorisation

Section 6 sets out the process whereby a refusal to grant authorisation by the Pensions Regulator can be appealed to the First-tier or Upper Tribunal in accordance with the Tribunal Procedure Rules.

A referral to the Tribunal can be made by the trustees of the scheme, or any other person that the Tribunal considers is directly affected by the Pensions Regulator's decision not to grant authorisation.

Authorisation criteria

Section 7: Fit and proper persons requirement

Section 7 sets out a requirement that the Pensions Regulator must decide if key persons in the scheme are fit and proper to act in their roles. These roles are: a person who establishes the scheme, a trustee of the scheme, a person who has the power to appoint and remove trustees, a person who has the power to amend the scheme, a scheme funder and a scheme strategist. Additional roles subject to a fit and proper test may be added by regulations under subsection (2)(h).

In addition, subsection (3) enables the Pensions Regulator to determine the fitness and propriety of further persons in the capacities mentioned in that subsection. Under this provision the Regulator may assess persons who promote or market a Master Trust scheme and other roles that may be set out in regulations made under subsection (3)(b).

Under subsection (4), when the Pensions Regulator makes its assessment, it must take into account any matters that are specified in regulations made by the Department (subsection (4)(a)).

The Pensions Regulator may also take into account other matters, including matters relating to a person who is connected with that person (subsection (4)(b)). Subsection (5) sets out the circumstances in which persons can be considered to be connected with each other, for example, persons who are directors, or shadow directors, of the same company or where a trustee is able to exercise a power under the trust to benefit a specific person.

Subsection (7) provides that the first regulations made under subsection (4) are subject to the confirmatory procedure.

Subsection (8) provides that any subsequent regulations made under subsection (4) and any regulations made under subsections (2) and (3) are subject to negative resolution.

Section 8: Financial sustainability requirement

Section 8 provides that the Pensions Regulator must be satisfied that a Master Trust has a 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 sections 20 to 33 in relation to triggering events and continuity options).

Subsection (4) provides a power for the Department to make regulations on matters that the Pensions Regulator must take into account in deciding if it is satisfied that a Master Trust meets the financial sustainability authorisation criteria. These regulations may include, but are not limited to, the information the Pensions Regulator must take into account (such as the scheme's business plan and accounts) under subsection (5)(a), and also the financial requirements to be met by the scheme or the scheme funder under subsection (5)(b).

Subsections (6) and (7) provide that the first regulations made under this section are subject to the confirmatory procedure and that any subsequent regulations are subject to negative resolution.

Section 9: Financial sustainability requirement: business plan

Section 9 provides that a Master Trust must have a business plan prepared by the scheme strategist (subsection (1)) and approved by the scheme funder, any other scheme strategist and the trustees (subsection (5)). Subsection (2) provides a power for the Department to make regulations setting out information to be included, and other requirements, in relation to the business plan. The business plan must be reviewed by the scheme strategist at least annually and revised if appropriate, and must be revised at any time in the event of a significant change to the information set out in the plan.

Subsection (6) sets out that the business plan, and supporting documentation, must be provided to the Pensions Regulator by the scheme strategist or trustees when the scheme applies for authorisation, and within three months of the plan being revised or on request by the Pensions Regulator.

Subsections (7) and (8) provide that the first regulations made under this section are subject to the confirmatory procedure and that any subsequent regulations are subject to negative resolution.

Section 10: Scheme funder requirements

Section 10 makes provision about a Master Trust's scheme funder and the requirements that it must meet for authorisation.

Subsection (2) requires the scheme funder to be a body corporate or partnership that is a legal person under the law by which it is governed.

Subsection (3) requires the scheme funder only to carry out activities that relate directly to the Master Trust (or Trusts) for which it is the scheme funder or prospective scheme funder.

Subsections (4) and (5) provide a regulation-making power for the Department to make exceptions to the requirement in subsection (3) if the scheme funder meets additional requirements specified in the regulations. These regulations may, for example, provide an exception where the scheme funder meets additional requirements in relation to its financial position or business activities or provides specified information to satisfy the Pensions Regulator of the Master Trust's financial sustainability.

Subsection (6) provides a power for the Department to make regulations that set out requirements in relation to the scheme funder's accounts. The first regulations made under subsection (4) are subject to the confirmatory procedure while any subsequent regulations and regulations made under subsection (6) are subject to negative resolution.

Section 11: Systems and processes requirements

This section provides a power for the Department to make regulations in relation to the adequacy of a Master Trust's systems and processes. Having adequate systems and processes is one of the five authorisation criteria which a Master Trust must meet to be authorised, and to remain authorised. The Pensions Regulator must take into account the matters set out in these regulations when satisfying itself as to whether the scheme meets the systems and processes authorisation criterion.

The section also provides a non-exhaustive list of the matters concerning systems and processes about which the Department may make regulations. These include, but are not limited to, the standards, functions and maintenance of IT systems, and processes relating to the appointment and removal of trustees.

Subsections (5) and (6) provide that the first regulations made under this section are subject to the confirmatory procedure and that any subsequent regulations are subject to negative resolution.

Section 12: Continuity strategy requirement

Section 12 provides that the scheme strategist must prepare a continuity strategy which sets out how members will be protected if a Master Trust has a triggering event; the strategy must also include a section setting out the levels of administration charges that apply in relation to members of the scheme (subsection (4)). The Pensions Regulator will need to determine if it is satisfied that the strategy is adequate as part of the authorisation decision (see section 5).

Triggering events are set out in section 21 and are events which are likely to lead to the scheme failing or being de-authorised. Subsection (6) provides a power for the Department to make regulations on other information that may be required, for example, the detail to be included in relation to levels of administration charges, and how the strategy must be prepared (subsection (5)).

The scheme strategist is also required to review the strategy and revise it as appropriate (subsection (7)). The strategy, and any revisions, must be approved by the trustees, any other scheme strategist and each scheme funder (subsection (8)).

The continuity strategy must be submitted to the Pensions Regulator by the scheme strategist or trustees when applying for authorisation, and within three months of revising the strategy, or on request by the Pensions Regulator.

Subsections (10) and (11) provide that the first regulations made under this section are subject to the confirmatory procedure and that any subsequent regulations are subject to negative resolution.

Ongoing supervision of Master Trust schemes

Section 13: List of authorised schemes

Section 13 places a requirement on the Pensions Regulator to publish and maintain a list of Master Trusts that have been authorised. The list will include the name of the Master Trust and other information the Pensions Regulator considers appropriate.

Section 14: Requirement to submit annual accounts

Section 14 provides that the annual accounts of both the scheme funder and the Master Trust scheme must be submitted to the Pensions Regulator annually. Subsections (1) and (2) require the trustees to send the schemes accounts to the Pensions Regulator no later than two months after they are obtained by the trustees. Subsections (3) and (4) provide that the accounts of the scheme funder must also be submitted to the Pensions Regulator within nine months of the end of the financial year to which they relate or a period specified in regulations.

Subsection (5) provides that a civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies where there is a failure to comply with the requirements of this section.

Subsection (6) provides that regulations made under this section are subject to negative resolution.

Section 15: Requirement to submit supervisory return

This section provides a requirement for a supervisory return to be submitted to the Pensions Regulator by the trustees, on request. Subsection (4) specifies that the return may not be required more frequently than once a year. Subsection (5) provides that a civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies where there is a failure to submit the return.

Subsection (2) provides a power for the Department to set out in regulations the information to be included in the supervisory return.

Subsection (6) provides that any regulations made under this section are subject to negative resolution.

Section 16: Duty to notify Regulator of significant events

This section creates a requirement for specified persons to notify the Pensions Regulator of significant events as soon as is reasonably practicable. Subsection (3) sets out that the Department must make regulations setting out the significant events that are required to be reported.

Subsection (2) sets out the persons who are required to notify the Pensions Regulator of significant events and includes the majority of those who must be assessed under the fit and proper test (see section 7) as well as those who provide legal, financial or actuarial advice to the scheme and the manager of the scheme's administration services.

Subsections (7) and (8) provide that the first regulations made under subsection (3) are subject to the confirmatory procedure and that any subsequent regulations under subsection (3) and any regulations under subsection (2) are subject to negative resolution.

Section 17: Fixed penalty notice for failure to comply with request for information

Section 17 gives the Pensions Regulator a power to impose a fixed penalty on any person who has failed to provide information requested in a notice issued under Article 67 of the Pensions (Northern Ireland) Order 2005 for the purposes of the Pensions Regulator's functions under Part 1 of the Act.

Subsection (3) provides that the penalty, which must not be more than £50,000, is to be determined in accordance with regulations.

Subsection (4) sets out requirements for what a fixed penalty notice must contain. These include the amount of the penalty, the date by which the penalty must be paid, the period and failure to which the penalty relates, and details of how to appeal the penalty.

The provision mirrors the provision in section 40 of the Pensions (No. 2) Act (Northern Ireland) 2008 where there is a failure to provide information in relation to automatic enrolment. Subsection (5) applies provisions from the Pensions (No. 2) Act (Northern Ireland) 2008 relating to the recovery and review of penalty notices and their referral to a tribunal.

Subsection (6) provides that any regulations made under this section are subject to negative resolution.

Section 18: Escalating penalty notice for failure to comply with request for information

Section 18 gives the Pensions Regulator a power to impose an escalating penalty on any person who has failed to provide information requested in a notice issued under Article 67 of the Pensions (Northern Ireland) Order 2005.

Under subsection (2) an escalating penalty may not be imposed on a person if a fixed penalty imposed on them under section 17 has been referred to a tribunal and the tribunal has not yet made a decision.

Subsection (4) describes an escalating penalty as a penalty calculated in accordance with a daily rate. Regulations that will set out the calculation of the escalating penalty are required by subsection (5)(a). The daily rate is to be determined in accordance with regulations and must not be more than £10,000 (subsection (5)(b)).

Subsection (6) sets out requirements for what an escalating penalty notice must contain. These include the daily rate of the penalty, the date by which the penalty must be paid, the failure to which the penalty relates, and details of how to appeal the penalty. Under subsection (6)(d) the period over which an escalating penalty is imposed may not overlap any period covered by a fixed penalty notice issued under section 17.

Subsection (7) applies provisions from the Pensions (No. 2) Act (Northern Ireland) 2008 relating to recovery and review of penalty notices and their referral to a tribunal.

Subsection (8) provides that any regulations made under this section are subject to negative resolution.

Section 19: Withdrawal of authorisation

Section 19 provides that where the Pensions Regulator is no longer satisfied that a scheme meets the authorisation criteria it may withdraw the scheme's authorisation.

Subsection (2) provides that when the Pensions Regulator issues a warning notice that it intends to de-authorise a scheme under the standard procedure or a determination notice under the special procedure, the notice must include a statement that the issue of the notice is a triggering event together with an explanation of the trustees' duties under sections 20 to 33.

Subsection (3) sets out that where a scheme is de-authorised the Pensions Regulator must notify the trustees of this and remove the scheme from the published list of authorised Master Trusts.

Triggering events: continuity

Section 20: Triggering event: duties of trustees

Section 20 places three sets of duties on trustees where there is a triggering event: to notify the Pensions Regulator and employers (section 22); to pursue a continuity option (section 23); and to prepare and submit an implementation strategy to the Pensions Regulator (sections 26 and 27).

Section 21: Triggering events

The table in section 21(6) sets out the triggering events and when they occur.

Subsection (4) defines a 'triggering event period' as the period starting with the date on which the triggering event occurred and ending on the earliest of the dates set out under subsection (5). The second column in the table in subsection (6) makes provision for the date on which the triggering event occurs. As for when the triggering event period ends, a triggering event can end in one of two ways. Where the trustees pursue continuity option 1 (see section 24) the triggering event period ends when the scheme is wound up. Where the trustees pursue continuity option 2 (see section 25), the triggering event period will end on the date the trustees receive notification from the Pensions Regulator that the Pensions Regulator is satisfied the triggering event (and any other event that has occurred since the occurrence of the triggering event under subsection (6) of section 25) has been resolved.

Subsection (5)(c) makes provision for where there is notice of a decision by the Pensions Regulator to withdraw authorisation (an event within items 1 and 2 of the table at subsection (6)). The triggering event period will end where it becomes clear that authorisation will not be withdrawn (section 34).

Subsection (1)(b) provides that where an event falling in the table occurs within an existing triggering event period it is not a triggering event. The exception is provided for at subsection (2). If it is an event within item 1, 2 or 3 of the table at subsection (6), it is a triggering event even if it occurs within an existing triggering event period. Item 1 is the issue of a warning notice under the standard procedure by the Pensions Regulator in respect of a decision to withdraw the scheme's authorisation. Item 2 is a determination notice under the special procedure by the Pensions Regulator in respect of a decision to withdraw the scheme's authorisation. Item 3 is where the Pensions Regulator gives a notification under section 3(3) (scheme not authorised).

Subsection (7) permits a decision under item 10 of the table at subsection (6) to be made by the trustees even if the scheme rules do not.

Section 22: Notification requirements

Subsections (1) to (5) of section 22 set out who has responsibility for notifying the Pensions Regulator of events set out in the table in section 21(6).

Subsection (6) creates a requirement for the trustees to notify employers of the triggering event and other matters to be determined by regulations.

Regulations under subsection (7) will set out the time periods for notifications under this section.

Subsection (10) provides that a civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies where a person fails to comply with the notification requirements under this section.

Subsection (11) provides that regulations under this section are subject to negative resolution.

Section 23: Continuity options

Where a Master Trust has a triggering event, subject to the circumstances set out in subsection (2), there are two continuity options available: option 1 which allows for members' accrued rights to be transferred out and the scheme to be wound up (section 24), and option 2 which allows for the triggering event to be resolved (section 25). The continuity options are required elements of the implementation strategy described in sections 26 and 27. Trustees must choose a continuity option when setting out their implementation strategy.

Under subsection (2), if a Master Trust has been de-authorised by the Pensions Regulator, and all appeals have been exhausted, or the scheme has received a notification under section 3(3) (scheme not authorised), the only option available to the trustees is option 1.

Subsection (8) provides that a civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies where a person fails to comply with the requirements of the section.

Section 24: Continuity option 1: transfer out and winding up

Section 24 makes provision for continuity option 1 under which trustees will transfer out all accrued rights and benefits in the scheme and then wind up the remaining structure of the scheme. Subsection (4) requires regulations to be made which set out how continuity option 1 is to be pursued where a proposed transfer is to a Master Trust scheme. The regulations must include provision for the matters set out at subsection (5). Under subsection (4)(b) regulations may be made about how continuity option 1 is to be pursued in a case where a proposed transfer is to "an alternative scheme" (as specified in regulations under subsection (2)(b)). Under subsection (4)(c) regulations may also be made for the purpose of otherwise giving effect to continuity option 1, in either case.

The trustees must identify one or more other pension schemes which are able to accept the accrued rights and benefits of their Master Trust scheme. These schemes can be either a Master Trust or, in circumstances set out in regulations, an alternative scheme that has characteristics set out in regulations. Members of the Master Trust scheme will retain their right to transfer to a scheme of their own choosing if they do not wish to transfer to the trustees' choice (see subsection (5)(b) and (d)).

The trustees must also (subsection (1)(b)) notify employers and members of the transfer, and of other details specified in regulations. Subsection (3) allows for regulations which will set out the way in which the notification in subsection (1)(b) must be made, and the timing of the notification.

The matters under subsection (5) to be addressed in regulations under subsection (4)(a) address a comprehensive range of issues including information requirements, duties on trustees, the duties of trustees of receiving schemes and the rights of members to opt#out of a transfer in favour of their preferred receiving scheme. Regulations must also confer powers on the Pensions Regulator to direct the trustees to do things permitted or required by the regulations.

Subsection (6) allows regulations under subsection (4)(b) to include any provision mentioned in subsection (5) as well as provisions to deem a member whose rights or benefits have been transferred to have entered into an agreement with a person of a description specified in the regulations.

A penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies to anyone who fails to comply with any requirement imposed by this section and the regulations may also make provision for the application of Article 10 of the Pensions (Northern Ireland) Order 1995 to requirements in the regulations.

Subsections (10) and (11) provide that any regulations made under subsections (2)(b) and (4) of this section are subject to the confirmatory procedure and that any other regulations made under this section are subject to negative resolution.

Section 25: Continuity option 2: resolving triggering event

Section 25 sets out continuity option 2 which is for the triggering event to be resolved.

The trustees are required to notify the Pensions Regulator (subsection (2)) when they consider the triggering event has been resolved. They must also set out how they consider that it has been resolved. The Pensions Regulator is then required (subsection (5)) to notify the trustees of whether it is satisfied that the triggering event has been resolved. Under subsection (6), the Pensions Regulator must also be satisfied that any other event within the table at section 21(6) that has occurred in relation to the Master Trust scheme since the occurrence of the triggering event has also been resolved.

Subsection (7) provides that where a trustee fails to comply with a requirement imposed by this section a penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies.

Subsection (8) provides that any regulations made under this section are subject to negative resolution.

Section 26: Approval of implementation strategy

This section requires the trustees of a Master Trust to submit an implementation strategy to the Pensions Regulator for approval if a triggering event occurs. This is a document setting out how the interests of members of the scheme are to be protected following the occurrence of the triggering event and section 27 sets out the content to be included in an implementation strategy.

Under subsection (2), in relation to item 1 or 2 of the table in section 21(6), the implementation strategy must only be submitted if the decision to withdraw has become final.

Under subsection (3), if a triggering event within item 1, 2 or 3 of the table in section 21(6) occurs within an existing triggering event period, the trustees must submit another implementation strategy and any implementation strategy which has already been approved for an earlier triggering event ceases to have effect.

The Pensions Regulator may approve the implementation strategy only if it is satisfied that it is adequate (subsection (4)).

The implementation strategy must be submitted before the end of a period specified in regulations (subsection (5)).

The Pensions Regulator may direct the trustees to comply with the requirements of this section (subsection (7)).

Where a person fails to comply with a direction under subsection (8), a civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies.

Subsection (9) provides that this section overrides any provision of the Master Trust scheme to the extent there is a conflict.

Subsection (10) provides that any regulations made under this section are subject to negative resolution.

Section 27: Content of implementation strategy

The implementation strategy is a document that specifically sets out how the interests of members of the scheme are to be protected following the occurrence of the triggering event (section 21). The implementation strategy must set out the continuity option (sections 24 and 25) that the trustees are required or decide to pursue, as well as certain details of the particular option (subsection (5)).

The implementation strategy must include a section setting out the levels of administration charges that applied in relation to members of the scheme (subsection (3)). This relates to the prohibition on increasing charges levels during a triggering event period at section 33.

Regulations made under subsection (6) may specify further information to be included in the implementation strategy and the way in which it is prepared.

Subsection (7) provides that regulations made under this section are subject to negative resolution.

Section 28: Duty to pursue continuity option

This section requires that when the Pensions Regulator has approved the implementation strategy, the trustees must pursue the continuity option identified in the strategy and take such steps as are identified in the implementation strategy to carry out the continuity option. Where they fail to do so, the Pensions Regulator has the power to direct the trustees to pursue the continuity option identified in the strategy and take the steps identified in the strategy to carry it out (subsection (4)). A penalty for failure to comply under Article 10 of the Pensions (Northern Ireland) Order 1995 applies to anyone who fails to comply with a direction made by the Pensions Regulator (subsection (5)).

The trustees must also make the strategy available to employers under subsection (2). The time period for doing so must be set out in regulations.

The effect of subsection (6) is to override any provisions of the Master Trust scheme or any contracts that the scheme has entered into, to the extent that there is a conflict with the trustees pursuing the continuity option.

Subsection (7) provides that any regulations made under this section are subject to negative resolution.

Section 29: Prohibition on winding up except in accordance with continuity option 1

This section creates a new requirement that Master Trust schemes can only be wound up in accordance with continuity option 1 (section 24). The effect of subsection (2) is to override any provisions of the Master Trust scheme to the extent there is a conflict with this requirement.

The Pensions Regulator may still by order direct the scheme to wind up under Article 11 of the Pensions (Northern Ireland) Order 1995 (subsection (3)).

Subsection (4) provides that where a person fails to comply with subsection (1) a penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies.

Section 30: Periodic reporting requirement

This section requires that during a triggering event period the trustees of a Master Trust scheme must submit periodic reports to the Pensions Regulator. The reports must record events or decisions and contain such other information to be set out in regulations under subsection (4). The trustees must report on progress in carrying out the implementation strategy (sections 26 and 27).

The timing for the submission of the first report must be set out in regulations under subsection (2), and subsequent reports will be submitted at intervals to be specified by the Pensions Regulator (subsection (3)). Under subsection (4), the report will need to report on progress in carrying out the implementation strategy and regulations will set out further detail of the content required in the report, and the form in which it is made.

A penalty for failure to comply under Article 10 of the Pensions (Northern Ireland) Order 1995 applies to a person who fails to follow the reporting requirements imposed by this section.

Subsection (6) provides that regulations under this section are subject to negative resolution.

Section 31 and Schedule 1: Pause orders

This section creates a power for the Pensions Regulator to pause certain Master Trust activities, once that Master Trust has experienced a triggering event (section 21). The power may only be exercised if it will help (subsection (3)) the trustees follow their implementation strategy (sections 26 and 27), or if the Pensions Regulator believes that doing so is necessary to protect the interests of the generality of the scheme members and that there is an immediate risk to the interests of members under the scheme or the assets of the scheme (subsection (4)).

A pause order may prevent a scheme from carrying out any or all of a number of actions which are specified in subsection (5). These include accepting new members, making payments, accepting contributions and discharging benefits.

The pause may relate to all such actions, or those related to specified members, employers, payments or groups of such actions.

There is further provision about pause orders in Schedule 1.

Paragraph 1 of Schedule 1 sets out the consequences of a pause order on a Master Trust. Sub-paragraph (1) states that any action in breach of a pause order is void, that is, it has no legal effect.

A scheme which is under a pause order may still be wound up in accordance with Article 11 of the Pensions (Northern Ireland) Order 1995 (sub-paragraph (2)).

Sub-paragraph (3) includes a provision that if a pause order prevents a Master Trust from accepting any contributions then affected contributions are treated as if they are not payable. The pause order may include provisions under section 31(5) that where such contributions have already been deducted from pay, they are to be repaid to affected scheme members.

Sub-paragraphs (4) and (5) create exceptions to a pause order to allow schemes to follow the requirements of pension sharing and pension earmarking orders. These orders are placed on member assets following divorce, dissolution and nullity proceedings in accordance with the relevant pieces of legislation in England and Wales, Scotland and Northern Ireland.

Sub-paragraphs (6) and (7) allow the Department to make regulations modifying specified areas of existing legislation where there is a pause order preventing transfers of members rights to ensure that the legislation works as intended.

Sub-paragraphs (8) to (10) apply the civil penalties under Article 10 of the Pensions (Northern Ireland) Order 1995 in relation to non-compliance with these provisions.

Sub-paragraph (11) provides that regulations made under this paragraph are subject to negative resolution.

Paragraph 2 states that any pause can take effect for a maximum of three months (sub-paragraph (1)), and can be extended for further periods of up to three months (sub-paragraph (2)). A pause will automatically end if a triggering period ends while it is in force (sub-paragraph (3)).

Paragraph 3 allows the Pensions Regulator to validate any action that is taken in contravention of a pause order on application from the trustees, or a person directly affected by the action.

Paragraph 4 provides for notifications between various parties in respect of a pause order, or validated action in contravention of a pause order under paragraph 3. The Pensions Regulator is required to inform the trustees, scheme strategist and scheme funder of any pause order as soon as is practicable (sub-paragraph (2)). The Pensions Regulator may also require the trustees to inform employers and members of the pause order within a specified time period. This may apply to all employers and members, or only those affected by the pause (sub-paragraph (3)).

Sub-paragraph (5) provides that civil penalties under Article 10 of the Pensions (Northern Ireland) Order 1995 apply to any trustee who has not taken all reasonable steps to ensure compliance with sub-paragraph (3).

Paragraph 5 allows pause orders and orders under paragraph 2, 3 or 4 to override existing law or scheme rules which would operate to prevent the order being made.

Section 32: Prohibition on new employers during triggering event period

Where a Master Trust has entered a triggering event period (section 21), neither the trustees, a scheme funder nor a scheme strategist may allow the participation of any new employer until the triggering period ends. Further, they may not enter into an agreement under which a new person will become an employer in relation to the scheme after the end of the triggering event period.

A civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies to a person who fails to comply with this.

Section 33: Prohibition on increasing charges etc during triggering event period

Section 33 places restrictions on trustees increasing or imposing administration charges when a Master Trust scheme is in a triggering event period (section 21). The trustees may not impose charges on, or in respect of, members above the level set out in the implementation strategy (subsection (1)(a)) and trustees may not impose new administration charges on, or in respect of, members (subsection (1)(b)). Further, trustees cannot impose administration charges on, or in respect of, members in consequence of a member leaving, or deciding to leave, the scheme during the triggering event period (subsection (1)(c)).

Subsection (2) provides for a corresponding prohibition on a Master Trust scheme which receives a transfer of rights or benefits of members from a transferring scheme which is pursuing continuity option 1 and was proposed by trustees or participating employers. The trustees of a receiving scheme cannot increase administration charges above the level set out in the document provided to the Pensions Regulator by virtue of regulations under section 24(5)(i) and they cannot impose any new charges on members to meet costs set out under subsection (3). The costs set out under subsection (3) are the costs for which the receiving scheme is liable which were incurred by the transferring scheme or relate directly to the transfer of members' accrued rights or benefits from the transferring scheme.

Under subsection (4), how levels of administration charges are to be calculated for the purposes of the section may be set out by regulations as well as how the purposes are determined for which charges are increased or imposed under subsection (2) (subsection (4)(b)). Under subsection (4)(c), regulations may make provision as to how to determine whether costs for which a receiving scheme is liable fall within subsection (3).

Subsection (5) overrides any provisions of the Master Trust scheme and any contracts that the scheme has entered into where there is a conflict with the requirements of this section.

Under subsection (6), regulations can apply some or all of the provisions in this section to an "alternative scheme" as specified in regulations under section 24(2)(b).

A civil penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies to a trustee who fails to comply with the prohibition.

Under subsection (9), regulations made under subsection (6) are subject to the confirmatory procedure. Subsection (10) provides that any other regulations made under this section are subject to negative resolution.

Decisions on withdrawal of authorisation: timing

Section 34: When it becomes clear that authorisation not to be withdrawn

This section sets out when it becomes clear that authorisation is not to be withdrawn for the purposes of a triggering event within item 1 or 2 of the table in section 21. The date on which it becomes clear that authorisation is not to be withdrawn for each item is set out in the table under subsection (3) in the third column for the circumstances set out in the second column.

The circumstances provided for are where:

- the Pensions Regulator makes a determination not to withdraw authorisation (and there is no referral to the Tribunal within the time period allowed) (item 1);
- there is a compulsory review by the Pensions Regulator under Article 94 of the Pensions (Northern Ireland) Order 2005 and it makes a determination that authorisation should not be withdrawn (and there is no referral to the Tribunal within the time period allowed) (item 2);
- there is a referral to the Tribunal and it determines that authorisation should not be withdrawn (and either no appeal is brought within the time period allowed, or an appeal is brought but later withdrawn) (item 1 or 2);
- there is an appeal against the Tribunal's determination, and the effect of the appeal is that the scheme's authorisation should not be withdrawn.

Section 35: When a decision to withdraw authorisation becomes final

This section determines the date on which a decision to withdraw authorisation becomes final for the purposes of a triggering event within item 1 or 2 of the table in section 21. The date on which it becomes final is set out in the table under subsection (3) in the third column for the circumstances set out in the second column.

The circumstances provided for are where:

- the Pensions Regulator makes a determination to withdraw authorisation and there is no referral to the Tribunal within the time period allowed (item 1);
- there is a compulsory review by the Pensions Regulator under Article 94 of the Pensions (Northern Ireland) Order 2005 and it makes a determination that authorisation should be withdrawn (and there is no referral to the Tribunal within the time period allowed) (item 2);
- there is a referral to the Tribunal and it determines that the Pensions Regulator should withdraw a scheme's authorisation (and either no appeal is brought within the time period allowed, or an appeal is brought but later withdrawn);
- there is an appeal against the Tribunal's determination, and the effect of the appeal is that the scheme's authorisation should be withdrawn.

Supplementary

Section 36: Fraud compensation

Section 36 provides a regulation-making power enabling the Department to modify Articles 165 to 170 of the Pensions (Northern Ireland) Order 2005, which relate to fraud compensation. The regulations will make amendments to modify how fraud compensation under that Order applies to Master Trusts and other pension schemes to which all or some of the provisions of Part 1 (by virtue of section 40) of the Act apply.

Articles 165 to 170 of the Pensions (Northern Ireland) Order 2005 enable fraud compensation payments to be made to occupational pension schemes where certain conditions are met. These conditions include that:

- the value of the scheme's assets has been reduced and there are reasonable grounds for believing this was due to dishonesty; and
- the employer has gone out of business or is unlikely to continue as a going concern.

The Department proposes to use regulations to make adjustments to fraud compensation to make it more suitable for Master Trusts.

Section 36 also allows these modifications to apply to other types of occupational pension schemes should they become covered by the Master Trust authorisation scheme by virtue of section 40.

Subsection (2) provides that any regulations made under this section are subject to negative resolution.

Section 37 and Schedule 2: Master trusts in operation on commencement: transitional provision

This section introduces Schedule 2, which includes provisions affecting Master Trusts that are in operation before section 3 comes into operation.

Schedule 2 introduces transitional modifications in respect of those schemes that were in existence before the commencement date. The commencement date is defined by reference to the commencement of section 3 (the prohibition on operating a Master Trust without authorisation). The intention is that this section will be commenced once all regulations under the authorisation provisions are in operation. The modifications in paragraphs 2 to 7 take effect from the day after the Act is passed, whilst those in paragraphs 8 to 15 take effect from the date on which section 3 (prohibition on operating a scheme unless authorised) comes into operation.

Paragraph 2 modifies section 20 to impose 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.

As for time periods for notifying the Pensions Regulator, where the trustees consider the triggering event was resolved before the date the Act is passed, the notification must be given within the period of 14 days beginning with the date the Act is passed. Where the trustees consider the triggering event was resolved on or after the date on which the Act is passed but before the commencement date, or where the triggering event occurred before the commencement date but the trustees consider it was resolved after the commencement date, the notification must be given before the end of the period of 14 days beginning with the date on which the triggering event was in the opinion of the trustees resolved. Where a triggering event occurs after the commencement date, the period for notification will be set out in regulations.

Paragraph 6 modifies section 33 to apply the prohibition during a triggering event period under section 33 to a Master Trust scheme in relation to which a triggering event occurs on or after 20 October 2016 but before the commencement date. The prohibition is modified in the way it applies.

If a triggering event occurs on or after 20 October 2016 trustees must, before the end of the period of seven days beginning with the triggering event or the date on which the Act is passed (whichever is the later), provide the Pensions Regulator with a statement of the annual levels of administration charges that applied in relation to members of the scheme on 20 October 2016 according to each arrangement or fund within the scheme. Trustees must not then impose any administration charges on or in respect of members at levels above those.

Provision is also made so that trustees of a scheme receiving transfers of accrued rights from the Master Trust experiencing a triggering event must not impose administration charges on members above a level of charges in the receiving scheme as set out in a statement of annual charges on 20 October 2016.

Paragraph 7 creates a new section, section 33A, for Master Trusts in existence on 20 October 2016. Under this section 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 these costs do not fall elsewhere (taking into account the prohibition on increasing charges on members to pay for the costs of winding up).

Paragraph 8 modifies section 3 for schemes which are already operating when it comes into operation. The modifications are designed to allow a Master Trust to continue to operate until its application is received by the Pensions Regulator, or the Regulator determines that the scheme should not be authorised.

Paragraph 8 also provides that the trustees of a Master Trust scheme must, within the six month application period, either apply for authorisation or decide to wind up the scheme. The Regulator may allow an extension to the six month period of up to six weeks if the trustees satisfy the Regulator that there is a good reason for requiring an extension. Extensions can only be granted during the initial six month application period.

Under paragraph 8, if the Pensions Regulator is aware of a Master Trust scheme operating after the application period (as extended where applicable) and it has not received an application for authorisation or a notification that the scheme is to be wound up then it must notify the trustees that the scheme is not authorised. This is a triggering event and the notification must explain the trustees' duties (see sections 20 to 33).

Paragraph 8 also inserts a new section 3A which applies only to existing Master Trusts. It allows the Pensions Regulator to issue a pause order to a Master Trust scheme which has submitted an application for authorisation under section 4, provided the decision on that application has not yet become final under section 35.

Subsections (3) and (4) mean that a pause order made under this section is to be treated as though it is made under section 31, except that the provision which ensures that a pause order ceases to have effect at the end of a triggering event period does not apply (as under this specified circumstance, the pause order is not made within the triggering event period).

To issue a pause order under section 3A, the Regulator must be satisfied that there is, or is likely to be if a pause order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and that it is necessary to make a pause order to protect the interests of the generality of members of the scheme.

Paragraph 9 modifies section 5 so that where a decision is made not to authorise a Master Trust that is operating before the commencement date, the notice includes an explanation that it is a triggering event for the purposes of sections 20 to 33A (added subsection (7)). A decision to authorise or not authorise an existing Master Trust scheme which has submitted an application for authorisation must be taken by the Pensions Regulator's Determinations Panel (added subsection (8)).

Paragraphs 10 to 15 make amendments to sections 21, 23, 26, 28, 34 and 35 in relation to Master Trusts in operation at commencement. The effect of these amendments is to:

- replace references to authorisation being withdrawn with references to authorisation being refused to reflect that existing Master Trusts will not have been authorised previously; and
- add a triggering event (item 2A) to the table of triggering events in relation to existing Master Trust schemes (paragraph 10(c)).

Section 38 and Schedule 3: Minor and consequential amendments

Section 38 allows the Department, through regulations, to make amendments to legislation which are consequential on Part 1 of the Act. This applies to both primary and secondary legislation.

Subsections (4) and (5) provide that any regulations made under this section that contain provision amending primary legislation are subject to the confirmatory procedure and that any other regulations made under this section are subject to negative resolution.

This section also introduces Schedule 3 which sets out other minor consequential amendments.

Paragraphs 1 to 4 of Schedule 3 make amendments to sections 96B(2) and 97AI(7) of the Pension Schemes (Northern Ireland) Act 1993 and Article 67A(9) of the Pensions (Northern Ireland) Order 1995 to amend the definition of 'scheme rules' so that references to scheme rules in these provisions incorporate the legislative overrides included in sections 21, 23, 26, 28, 29 and 33 and Schedule 1.

Paragraphs 5 to 9, 15 to 17 and 19 make changes to the Pensions (Northern Ireland) Order 2005 ("the 2005 Order") to extend existing powers and functions of the Pensions Regulator to measures in this Act. The definition of "scheme rules" in Article 2(4) of the 2005 Order is amended so that references to scheme rules in these provisions incorporate the legislative overrides included in sections 21, 23, 26, 28, 29 and 33 and Schedule 1.

Article 9 of the 2005 Order is amended to include reference to this Act by paragraph 7 to ensure that the Pensions Regulator can issue improvement notices to trustees where there are breaches of the Act provisions (or regulations made under them).

Paragraph 8 amends Article 65 of the 2005 Order to include the scheme funder and scheme strategist within those who have a duty to report breaches of the law to the Pensions Regulator.

Paragraph 9 amends Article 67 of the 2005 Order so that a person required to give information under Article 67 for the purposes of the Pensions Regulator's authorisation functions can be required to explain any information or document, including by attendance in person.

Paragraphs 10 to 14 make amendments to Articles 68(2), 72A(6), 72B(8), 75(1)(c) and 75A(2)(c) of the 2005 Order, in consequence of the Pension Schemes Act 2021, to insert references to this Act into provisions in those Articles. The amendments correspond to amendments made to the relevant provisions in Great Britain by the Pension Schemes Act 2021, to maintain parity.

Paragraph 15 amends Article 85 of the 2005 Order to require the Pensions Regulator to publish Codes of Practice on authorisation criteria and the application for authorisation and adds a reference to the Act in the definition of "pensions legislation" for the purposes of that Article.

Paragraph 16 amends Article 88(2) of the 2005 Order to make the power to give a direction under section 26(7) of this Act (direction to submit implementation strategy) subject to the Pensions Regulator's internal 'standard procedure'.

Paragraph 17 extends the list of instances included in Article 92(5) of the 2005 Order showing where the special procedure can be used so that the special procedure can apply in relation to the power to make a pause order, the power to extend a pause order, the power to validate action in contravention of a pause order and the power to require notification of members or employers under paragraph 4(3) of Schedule 1 to this Act.

Paragraph 18 amends paragraph 2(2) of Schedule 1 to the 2005 Order to add in references to provisions in this Act relating to fixed penalty notices and escalating penalty notices, in consequence of the Pension Schemes Act 2021. The amendments correspond to amendments made to the relevant provisions in Great Britain by the Pension Schemes Act 2021, to maintain parity.

Paragraph 19 extends the list of functions exercisable by the Pensions Regulator's Determinations Panel in Schedule 2 to the 2005 Order by creating a new list headed Part 4A. These functions are the power to withdraw authorisation, the power to direct trustees to pursue a continuity option, power to make a pause order, power to extend the pause order, power to validate action taken in contravention of the pause order and power to direct notification of members or employers.

Paragraph 20 amends section 31 of the Pensions (No. 2) Act (Northern Ireland) 2008 which currently sets out the effect of freezing orders to include references to pause orders issued under section 31 of this Act.

Paragraphs 21 and 22 amend sections 17 and 18 of this Act, which relate to fixed penalty notices and escalating penalty notices, in consequence of the Pension Schemes Act 2021. The amendments correspond to amendments made to the relevant provisions in Great Britain by the Pension Schemes Act 2021, to maintain parity.

Section 39: Interpretation of Part 1

Interpretation of various terms used in Part 1 of the Act are given in section 39.

Section 40: Regulations modifying application of Part 1

Section 40 provides the Department with a regulation-making power to apply some or all of the provisions in Part 1 of the Act to schemes with specified characteristics which do not fall within the Master Trust definition. It also provides a power to disapply some or all of the provisions in relation to Master Trust schemes with specified characteristics. This will enable the Department to ensure that the authorisation regime applies appropriately and to address Master Trusts which might be structured in such a way that deliberately seeks to evade the Master Trust definition, or which exhibit the characteristics of a Master Trust without meeting the definition.

There is also provision under subsection (2) for regulations to allow two or more schemes to be treated as a single Master Trust under certain circumstances. The circumstances may include situations where schemes are under common control, influence, share common rules, or are provided by the same service provider.

Subsection (4) provides that any regulations under this section are subject to the confirmatory procedure.

Part 2: Adminstration Charges

Section 41: Power to override contract terms

Schedule 18 to the Pensions Act (Northern Ireland) 2015 allows the Department to make regulations that restrict charges or impose requirements on certain pension schemes.

This section 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 (section 41(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.

Part 3: General

Section 42: Regulations: general provisions

Section 43: General interpretation

Section 44: Commencement

Sections 42 to 44 make provision about the scope of regulation-making powers in the Act, the interpretation of terms used in the Act and the commencement of provisions in the Act.

Section 45: Short title

This section provides for the short title of the Act to be the Pension Schemes Act (Northern Ireland) 2021.