EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (MASTER TRUSTS) REGULATIONS (NORTHERN IRELAND) 2024

S.R. 2024 No. 78

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Communities to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under sections 1(3)(b), 4(5), 7(3)(b) and (4)(a), 8(4), 9(2), 10(4), (6) and (7)(b), 11(2), 12(5) and (6), 15(2), 16(3), 17(3)(a), 18(5)(a), 22(6)(b) and (7), 24(1)(b), (3), (4)(a) and (c) and (5), 25(4), 26(5), 27(4) and (6), 28(2), 30(2) and (4)(b) and (c), 33(4), 36(1), 38(2) and (3), 39(5), 40(1) and (2) and 42(1) of, and paragraphs 1(6) of Schedule 1 and 5(c) of Schedule 2 to, the Pension Schemes Act (Northern Ireland) 2021 and is subject to the confirmatory procedure.

2. Purpose

2.1 These Regulations revoke and re-enact the Occupational and Pension Schemes (Master Trusts) (No. 2) Regulations (Northern Ireland) 2023 which would otherwise cease to have effect by virtue of section 42(2) to (4) of the Pension Schemes Act (Northern Ireland) 2021 (“the Act”). They set out the authorisation and supervision regime for Master Trust pension schemes under the provisions of the Act.

3. Background

3.1 The Pensions (No. 2) Act (Northern Ireland) 2008 and corresponding provision in the Pensions Act 2008 introduced a duty on employers to automatically enrol eligible workers into a qualifying workplace pension scheme.

3.2 Many employers have chosen to enrol their workers into a Master Trust pension scheme rather than setting up their own pension scheme. A Master Trust scheme is one which is used by more than one employer, provides money purchase pensions, and is not a public sector scheme or used only by connected employers (for example, by one profession or a group of companies). This led to a considerable expansion of the Master Trust market.

3.3 Master Trust scheme structures create specific risks that were not addressed by the previous legislation which was designed for other types of pension scheme. These risk factors include the size and scope of the schemes, the relative lack of employer engagement, diverse business models and other factors that influence their financial resilience and viability.

3.4 The Regulations recognise the evolving nature of the Master Trust market. They aim to address the potential impact of the risks for Master Trust scheme members by providing an authorisation and supervision regime administered by the Pensions Regulator ("the Regulator"). They allow flexibility in applying the authorisation regime to the wide range of different Master Trust scheme business models and to enable the Regulator to provide more practical details of what will be required in its Code of Practice.

3.5 The authorisation regime requires all Master Trust schemes that wish to remain in or join the Master Trust market to be authorised by the Regulator. Any Master Trust scheme that does not apply for authorisation, or applies but fails to meet the authorisation criteria specified in the Act, will be required to transfer its members to another authorised Master Trust scheme and wind up. There is currently one Master Trust here, the Workers Pension Trust, which was authorised by the Regulator under the Pension Schemes Act 2017 (the Great Britain analogue to the Act) as it has a number of members in Great Britain.

3.6 The Regulator's ongoing supervision regime will ensure that Master Trust schemes continue to meet the authorisation criteria. It also gives the Regulator greater powers to engage with and, if appropriate, intervene if a Master Trust scheme is in danger of failing to meet the authorisation criteria.

Scope

3.7 The Regulations specify the pension schemes that the authorisation and supervision regime apply to. The authorisation regime is disapplied to some types of schemes that have specific characteristics which mean that while they would technically fall within the definition in the Act, they do not face the same risks as Master Trust schemes. For example, in certain small schemes where the members are only investing for themselves such schemes will only have authorisation disapplied if they only have a single member or if the majority of the trustees are members of the scheme.

Authorisation Process

3.8 The Regulator will assess each Master Trust scheme against five authorisation criteria aimed at addressing the risks specific to Master Trusts. These are:

- the persons involved in running the scheme are fit and proper;
- the scheme is financially sustainable;
- each scheme funder meets specific requirements. A scheme funder is a legal person (a corporate body or partnership) responsible for financing the Master Trust scheme where its administration charges are not enough to cover its costs, or who is entitled to receive profits where the scheme's income exceeds its expenditure. While there is no legal requirement for a Master Trust to have a scheme funder it is expected that in the majority of Master Trust schemes there will be one or more persons that come within this definition. Schemes that do not have a scheme funder will be expected to show how their business model meets the financial sustainability criteria;

- the systems and processes used in running the scheme are sufficient to ensure that it is run effectively; and

- the scheme has an adequate continuity strategy – a document showing that the scheme's trustees and strategist have thought about what actions and decisions they would need to take should their scheme experience a triggering event.

3.9 Authorisation is a one-off application process with the onus on the Master Trust scheme to provide all the information needed to satisfy the Regulator that they meet all of the authorisation criteria. The Regulations include the detail of what Master Trust schemes must include in their application for each of the criteria.

3.10 The application for authorisation will incur a fee. The fee is necessary to enable the Regulator to recover the costs of processing applications without indirectly placing these costs on the wider pensions industry. For example, the fee of £23,000 for a new scheme represents the amount of work the Regulator will need to do to process the application for this type of scheme.

3.11 Under provisions of the Act and the Pension Schemes Act 2017, the Regulator is required to maintain and publish a list of authorised Master Trust schemes.

Supervision Regime

3.12 Once authorised, Master Trust schemes will be required to continue to meet the authorisation criteria. The Act puts in place processes for the Regulator to monitor compliance and specifies the actions to be taken should a Master Trust scheme experience any events that might stop it complying with the authorisation criteria.

3.13 Master Trust schemes will be required to keep the Regulator informed of any changes by providing revised business plans and continuity strategies and their annual accounts. The Regulator will also be able to require trustees to provide certain information in the form of a supervisory return. The Regulations set out the information which the Regulator may require to be included in the supervisory return. This could include details of how the trustees' competence is being maintained and details of the scheme's current position in relation to its objectives in the business plan.

3.14 As part of the supervision regime, Master Trust schemes will be required to notify the Regulator of any significant events as detailed in the Regulations. This could be where a trustee is convicted of an offence or a failure of the systems and processes used in running the scheme.

3.15 Where a person fails to comply with a request for information, the Regulator can impose fixed and escalating penalties. The Regulations set the fixed penalty at £500 and the escalating penalty starting at £1,000, then escalating by £1,000 a day to a maximum of £10,000 per day. This is broadly consistent with other penalties which can be imposed by the Regulator.

3.16 The Act also requires Master Trust scheme trustees to notify both the Regulator and the employers using their scheme that a triggering event has occurred. If the triggering event is a scheme being refused authorisation or having its authorisation withdrawn, its trustees must pursue continuity option 1 and transfer their members to another suitable pension scheme and wind up. If a Master Trust scheme experiences one of the other triggering events, for example a scheme funder decides to end its relationship with the scheme, its trustees can decide to pursue continuity option 1 or continuity option 2. Under continuity option 2, trustees must attempt to resolve the triggering event and notify the Regulator when they consider it has been resolved.

3.17 The Regulations set the deadline for these notifications to take place and the information to be included in them.

3.18 If a triggering event has occurred, schemes are required to submit an implementation strategy to the Regulator setting out the actions they are going to take to either resolve the situation or transfer their members to another scheme and wind up. The Regulations detail the information that the implementation strategy must include and require that it is submitted within 28 days of the triggering event having occurred.

3.19 Administration charges in relation to members are restricted during this period to protect members from having their pension "pots" used to pay for the additional costs that the scheme has as a result of having a triggering event. Schemes are required to provide information on their administration charges in both their continuity and implementation strategies. The Regulations give more detail on what information must be included in both strategies and how it should be presented.

3.20 Once the Regulator has approved a Master Trust scheme's implementation strategy the scheme's trustees will be required to submit regular periodic reports detailing the actions and decisions they have taken to progress their implementation strategy. The Regulations give the deadline by which they must submit their first periodic report and the information to be included in it.

Transfer out and winding up

3.21 The Regulations set out the steps the trustees will need to take to bulk transfer scheme members, without their consent, to another authorised Master Trust scheme where this is appropriate. These requirements aim to ensure that members' interests are protected and their pension "pots" are moved out of the scheme as quickly and safely as possible. This includes requiring that employers and members are kept informed and know what their options are.

3.22 The Regulations also give the Regulator the power to direct the trustees to take certain actions if they consider members' rights are being put at risk through failure to comply with the Regulations.

Fraud Compensation Fund

3.23 The Regulations make adjustments to the Fraud Compensation Fund to make it more applicable to Master Trust schemes. Instead of all the employers having to be insolvent for the Master Trust scheme to make an application to the Fund, only the scheme funder has to be insolvent.

4. Consultation

4.1 There is no requirement to consult on these Regulations. They make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain.

5. Equality Impact

5.1 The Act was subject to a full Equality Impact Assessment. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals for the Regulations. The Department has concluded that they do not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment on the authorisation and supervision of Master Trust pension schemes was completed for the Act and the Regulations. The key cost for Master Trust schemes is the need to make changes to be authorised by the Regulator. These costs include those associated with meeting scheme requirements, the cost of the fee for applying for authorisation and familiarisation costs. There is a cost to schemes to fund the Regulator to conduct the authorisation and supervision process and on-going levy charges for supervision made on all Master Trusts. The main beneficiaries of the authorisation regime are members of Master Trust schemes who benefit from better protection of their assets.

7. Financial Implications

7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department is content that this Order complies with section 24 of the Northern Ireland Act 1998 (Convention rights, etc.).

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The Great Britain Regulations are the Occupational Pension Schemes (Master Trusts) Regulations 2018 (S.I. 2018/1030) as amended by the Occupational Pension Schemes (Master Trusts) (Amendment) Regulations 2022 (S.I. 2022/277).

10.2 These Regulations were made on 26th March 2024 and brought into operation on 27th March 2024. They revoke and re-enact the Occupational Pension Schemes (Master Trusts) Regulations (Northern Ireland) 2023 which came into operation on

29th September 2023, and which would otherwise cease to have effect by virtue of section 42(2)(b) of the Act. Under section 42(2) to (4) regulations cease to have effect unless approved by resolution of the Assembly within six months of coming into operation.