

SCHEDULE 2

Regulation 6

FINANCIAL SUSTAINABILITY REQUIREMENT

PART 1

Matters which the Regulator must take into account

1. The Regulator must take account of the following matters in deciding whether it is satisfied, for the purposes of section 8(2)(a) of the Act, that the business strategy relating to a Master Trust scheme is sound—

- (a) the structure of the scheme and its target market, including any plans to acquire or merge with other schemes;
- (b) the objectives for the scheme and the strategy for achieving them, including delivery milestones;
- (c) the robustness and prudence of the assumptions in the scheme's business plan about membership, contributions, income, and costs;
- (d) the scheme's requirements for planned expenditure, its purpose, and how it will be funded;
- (e) the terms, security and affordability of loans and other funding provided to the scheme, and the identity of each associated lender;
- (f) information about the market in which the scheme operates or is to operate;
- (g) the experience and professional competence of the individuals involved in running the scheme;
- (h) any revisions to the business plan as a result of a significant change of information;
- (i) whether the scheme has a scheme funder which is not a participating employer in the scheme;
- (j) where regulation 27(1) does not apply to the scheme and the scheme has a scheme funder which is engaged in activities which do not relate directly to the scheme, the scheme's position in any corporate group and any associated impact on the scheme's financial sustainability;
- (k) where the scheme has no scheme funder, the scheme's strategy for meeting the costs mentioned in section 8(3) of the Act;
- (l) any provision made by the trustees and each scheme funder to fund contingent liabilities in respect of the scheme.

2. The Regulator must take account of the following matters in deciding whether it is satisfied, for the purposes of section 8(2)(b) of the Act, that a Master Trust scheme has sufficient financial resources to meet the costs mentioned in section 8(3)(a) of the Act—

- (a) the structure of the scheme and the business strategy relating to it;
- (b) the scheme's sources of income;
- (c) the estimated cost of setting up and running the scheme;
- (d) the trustees' strategy for meeting any shortfall between its income and the costs mentioned in section 8(3)(a) of the Act;
- (e) where the scheme has one or more scheme funders that is an employer, the financial position of each scheme funder that the Regulator considers relevant;
- (f) the security and enforceability of loans and other funding commitments provided to the trustees in respect of the scheme;

- (g) the scheme financing arrangements mentioned in the business plan and entered into between the trustees and each scheme funder that the Regulator considers relevant;
- (h) where the scheme has an arrangement with a service provider under which the service provider accepts the risk that its costs will exceed any fee paid to it, the provisions made to secure this service and any limitations on the service provider's liability for those costs;
- (i) any insurance held by the scheme or the scheme funder in respect of the costs mentioned in section 8(3)(a) of the Act, including details of—
 - (i) the insurance provider;
 - (ii) the policy holder;
 - (iii) the beneficiary of the policy;
 - (iv) any limitations on the insurer's liability.

3. The Regulator must take account of the following matters in deciding whether it is satisfied, for the purposes of section 8(2)(b) of the Act, that a Master Trust scheme has sufficient financial resources to meet the costs mentioned in section 8(3)(b) of the Act—

- (a) the extent and manner in which the trustees have made provision to meet those costs;
- (b) the amount and classes of assets held by, or available to, the trustees to meet those costs;
- (c) the robustness and prudence of the estimates and strategy for meeting those costs in the scheme's business plan;
- (d) the amount of the scheme's assets under management or administration;
- (e) the number of members and participating employers in the scheme;
- (f) whether the scheme rules impose liability on any persons for the costs of winding up the scheme, and if so the identity of those liable;
- (g) the alignment between the actions in the scheme's continuity strategy and the estimated cost of taking those actions as identified in the business plan;
- (h) any requirement imposed by a financial regulator for any scheme funder to hold prudential margins of capital or otherwise to have made provision for its financial liabilities to the scheme;
- (i) any requirement imposed by a financial regulator for any service provider to hold prudential margins of capital or otherwise to have made provision for its financial liabilities to the scheme;
- (j) any insurance held by the scheme or the scheme funder in respect of the costs mentioned in section 8(3)(a) of the Act (financial sustainability requirement), including details of—
 - (i) the insurance provider;
 - (ii) the policy holder;
 - (iii) the beneficiary of the policy;
 - (iv) any limitations on the insurer's liability;
- (k) the quality of the scheme's records and data;
- (l) whether the scheme requires, and has received, the sanction of the court under Part 7 of Financial Services and Markets Act 2000⁽¹⁾ for any of its activities;
- (m) whether the members are eligible for compensation in the event of a scheme failure and, if so, details of—
 - (i) the compensation provider;

(1) 2000 c. 8.

- (ii) the basis on which the compensation is payable;
 - (iii) any limits on the amount of compensation payable.
4. The Regulator must take account of the following information in deciding whether it is satisfied about the matters mentioned in section 8(2) of the Act—
- (a) the scheme’s business plan, including any supporting documents and information;
 - (b) the scheme’s accounts;
 - (c) the statement of investment principles prepared by the trustees in accordance with section 35 of the 1995 Act⁽²⁾ (investment principles);
 - (d) each scheme funder’s accounts and any financial information provided under regulation 8;
 - (e) other relevant documents set out in a Code.

PART 2

Requirements to be met by Master Trust schemes and scheme funders

5. A Master Trust scheme and each scheme funder must meet the following requirements in relation to the scheme’s financing—
- (a) any assets held by the trustees or a scheme funder to meet the costs mentioned in section 8(3) of the Act must be—
 - (i) of the classes and in the proportions set out in a Code,
 - (ii) valued in accordance with any discounted rates set out in a Code, and
 - (iii) available to be used when the relevant cost falls due;
 - (b) the scheme’s trustees must have first call on the assets referred to in sub-paragraph (a);
 - (c) any funding commitment made to the scheme by a scheme funder or an employer must be given in writing and duly executed by the party making the commitment;
 - (d) where a scheme funder operates more than one Master Trust scheme, the funds allocated to each scheme must be separately identified to the Regulator;
 - (e) where the assets include cash in a greater proportion than that set out in a Code, the Regulator may require trustees to hold a proportion of the assets set out in a Code in a separate account kept with a deposit taker as defined in section 49(8A) of the 1995 Act⁽³⁾ (other responsibilities of trustees, etc).
- 6.—(1) This paragraph applies in respect of a Master Trust scheme—
- (a) that was established before the commencement date,
 - (b) that provides both money purchase benefits and non-money purchase benefits,
 - (c) that has financial resources that are insufficient to meet the costs mentioned in section 8(3) of the Act, as estimated in the business plan, and
 - (d) where employers are required to meet those costs.
- (2) Where this paragraph applies, the amount by which the scheme’s financial resources are less than the costs mentioned in section 8(3) of the Act, as estimated in the business plan (“the shortfall”) must be guaranteed from the following sources—

⁽²⁾ Section 35 was substituted by section 244 of the 2004 Act.

⁽³⁾ Section 49(8A) was inserted by [S.I. 2001/3649](#) and amended by paragraph 82(2) of Schedule 18 to the Financial Services Act 2012 (c. 21) and [S.I. 2007/3014](#).

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Occupational Pension Schemes (Master Trusts) Regulations 2018 ISBN 978-0-11-117053-3

- (a) as to no less than 25% of the shortfall, in the form of assets that are available to be used when the relevant cost falls due;
- (b) as to a proportion of the shortfall determined by the Regulator, in the form of a binding guarantee from the participating employers; and
- (c) as to a proportion of the shortfall determined by the Regulator, in the form of assets that are available for use within a period agreed by the Regulator.