PENSION SCHEMES BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for Communities in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. This Bill makes provision for Northern Ireland corresponding to provisions of the Pension Schemes Act 2017 which was passed by the Westminster Parliament.

4. The Pension Schemes Bill aims to build on reforms such as automatic enrolment in workplace pensions. Since completion of the roll-out of automatic enrolment in 2018, 10.2 million people are newly saving or saving more for their retirement. This Bill seeks to ensure that savers are appropriately protected, regardless of the sort of pension scheme they are saving in, by increasing the regulation of Master Trusts.

5. Following the coming into force of the pension freedoms in April 2015, many members of pension schemes aged 55 and over were able to access their retirement savings more flexibly. The Westminster Government sought to protect these people from excessive exit charges through the Bank of England and Financial Services Act 2016, which gave the Financial Conduct Authority powers in this respect from April 2017. This Bill seeks to provide members of occupational pension schemes with a level of protection equivalent to that of members of personal pension schemes.

CONSULTATION

6. The measures outlined in the Bill were consulted on in Northern Ireland as part of the Westminster consultation process and the details are outlined below.

7. The Government issued a consultation paper, "*Pension transfers and early exit charges*", in July 2015 to gather stakeholders' and consumers' views on whether early exit charges applied by schemes were preventing consumers from accessing their pension savings.

8. A separate consultation, *"Capping early exit charges for members of occupational pension schemes*", which ran between 26 May and 16 August 2016, outlined proposals to introduce a cap on early exit charges imposed by providers of occupational pension schemes when a member leaves the scheme early in order to access their pensions flexibly. The response document *"Government response to the consultation on capping early exit charges for members of occupational pension schemes"* was published in November 2016.

OPTIONS CONSIDERED

9. As detailed below, many of the provisions in the Bill were developed following comprehensive options appraisals.

Master Trust authorisation

10. Three options were considered –

- Option 1 – Do nothing: retain the existing voluntary process for accreditation by independent audit (Master Trust Assurance Framework).
- Option 2 - Master Trust Assurance Framework (MTAF) – make the existing framework for MTAF accreditation compulsory.
- Option 3 - Master Trust Authorisation Process – introduce a new compulsory authorisation process with additional requirements compared to the MTAF.

11. Neither Option 1 nor 2 would meet the policy objectives; therefore Option 3 is the preferred option.

Banning member-borne commission in occupational pension schemes used for automatic enrolment

12. Four options were considered -

- Option 1 – Do nothing.
- Option 2 – Place a duty on trustees requiring them to ensure that members of pension schemes they are managing are not bearing the costs of commission.
- Option 3 – Place a duty on service providers requiring them to prevent and remove new and existing commission arrangements.
- Option 4 –Place a duty on both trustees and service providers.

13. The preferred option is Option 4 which places requirements on both trustees and service providers. This is because service providers are best placed to prevent commission; but the provider and trustee hold different pieces of information which need to be shared in order for the ban to be effective.

Cap on administrative charges

14. Six options were considered –

- Option 1 – Do nothing: current exit charges will continue to apply in trust-based occupational pension schemes.
- Option 2 - introduce an exit charge at 1% of funds under management.
- Option 3 – introduce an exit charge at 2% of funds under management.
- Option 4 – introduce an exit charge at 3% of funds under management.
- Option 5 – introduce an exit charge at 5% of funds under management.
- Option 6 – introduce an exit charge at 7% of funds under management.
- Option 7 – introduce an exit charge at 10% of funds under management.

15. The introduction of an exit charge at 1% of funds under management was the preferred option.

OVERVIEW

16. The Bill is in three parts:

Part 1 – Master Trusts

17. The introduction of automatic enrolment into workplace pension schemes under the Pensions (No. 2) Act (Northern Ireland) 2008 made it compulsory for employers to automatically enrol eligible workers into a qualifying workplace pension scheme.

18. The pensions market has responded to this and the Master Trust market has developed significantly. This Bill aims to ensure that those saving into a Master Trust scheme, a form of multi-employer occupational pension scheme which employers are able to select for their workers rather than needing to set up their own pension scheme, are protected.

19. The Bill provides that:

- an authorisation and supervision regime for Master Trusts will be introduced, so that Master Trusts would have to demonstrate to the Pensions Regulator that they meet certain key criteria on establishment, and then continue to do so;
- existing Master Trusts will be brought into the regime and required to meet the new criteria;

- requirements will be placed on trustees to act in certain ways in the event of wind-up or closure of a Master Trust to protect members in those circumstances; and

- the Pensions Regulator is provided with greater powers to take action where the key criteria are not met.

20. The authorisation regime and criteria aim to target specific areas of risk that arise from the structures and dynamics in Master Trusts compared to other occupational pension schemes - including employer engagement with the scheme, the profit motive for most Master Trusts, the volume of savers involved in these schemes, and the potential impact on confidence in pension savings should a scheme fail and its exit is not managed. The provisions in the Bill focus on the authorisation regime process and the Pensions Regulator's powers to operate it, the authorisation criteria, and the introduction of measures intended to ensure an orderly exit where a scheme fails or otherwise chooses to leave the market. The focus on an orderly exit is aimed at providing continuity of member saving and support to employers in continuing to fulfil their automatic enrolment duties where applicable.

Part 2 – Administration Charges

21. The Bill amends existing legislation to allow regulations to be made which override terms of certain contracts which conflict with the regulations. This seeks to support a cap on early exit charges in certain occupational pension schemes.

22. This change will also support a ban on member-borne commission charges arising under the existing arrangements in certain occupational pension schemes. Member-borne commission charges under new arrangements were banned from April 2016.

Part 3 – General

23. These clauses make general provision in respect of regulations, interpretation, the commencement of provisions in the Bill and the short title of the Bill.

COMMENTARY ON CLAUSES

PART 1 – MASTER TRUSTS

Definition of a Master Trust scheme

Clause 1: Master Trust schemes: definition

Clause 2: Relevant public service pension schemes

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

Clause 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 Bill. This is subject to a few exceptions as set out in clause 39(2) to (4). Clause 39(2) provides that references to scheme accounts are to the accounts of the scheme as a whole. Clause 39(3) provides that in clause 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. Clause 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 clause are subject to the confirmatory procedure.

Clause 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

Clause 3: Prohibition on operating a scheme unless authorised

Clause 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 clause 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.

Clause 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 clause 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 clause 21) and the scheme is required to pursue the first continuity option (see clause 24).

Clause 4: Application for authorisation

Clause 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 clause 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 clause would be subject to negative resolution.

Clause 5: Decision on application

Clause 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 clauses of the Bill. 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. Clauses 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 clause 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.

Clause 6: Referral to Tribunal of refusal to grant authorisation

Clause 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

Clause 7: Fit and proper persons requirement

Clause 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.

Clause 8: Financial sustainability requirement

Clause 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 clauses 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 clause are subject to the confirmatory procedure and that any subsequent regulations are subject to negative resolution.

Clause 9: Financial sustainability requirement: business plan

Clause 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 clause are subject to the confirmatory procedure and that any subsequent regulations are subject to negative resolution.

Clause 10: Scheme funder requirements

Clause 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.

Clause 11: Systems and processes requirements

This clause 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 clause 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 clause are subject to the confirmatory procedure and that any subsequent regulations are subject to negative resolution.

Clause 12: Continuity strategy requirement

Clause 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 clause 5).
Triggering events are set out in clause 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 clause are subject to the confirmatory procedure and that any subsequent regulations are subject to negative resolution.

Ongoing supervision of Master Trust schemes

Clause 13: List of authorised schemes

Clause 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.

Clause 14: Requirement to submit annual accounts

Clause 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 clause.

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

Clause 15: Requirement to submit supervisory return

This clause 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 clause are subject to negative resolution.

Clause 16: Duty to notify Regulator of significant events

This clause 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 clause 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.

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

Clause 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 Bill.

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 clause are subject to negative resolution.

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

Clause 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 clause 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 clause 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 clause are subject to negative resolution.

Clause 19: Withdrawal of authorisation

Clause 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 clauses 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

Clause 20: Triggering event: duties of trustees

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

Clause 21: Triggering events

The table in clause 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 clause 24) the triggering event period ends when the scheme is wound up. Where the trustees pursue continuity option 2 (see clause 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 clause 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 (clause 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 clause 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.

Clause 22: Notification requirements

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

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 clause.

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

Clause 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 (clause 24), and option 2 which allows for the triggering event to be resolved (clause 25). The continuity options are required elements of the implementation strategy described in clauses 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 clause 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 clause.

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

Clause 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 clause 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 clause are subject to the confirmatory procedure and that any other regulations made under this clause are subject to negative resolution.

Clause 25: Continuity option 2: resolving triggering event

Clause 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 clause 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 clause a penalty under Article 10 of the Pensions (Northern Ireland) Order 1995 applies.

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

Clause 26: Approval of implementation strategy

This clause 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 clause 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 clause 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 clause 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 clause (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 clause overrides any provision of the Master Trust scheme to the extent there is a conflict.

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

Clause 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 (clause 21). The implementation strategy must set out the continuity option (clauses 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 clause 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 clause are subject to negative resolution.

Clause 28: Duty to pursue continuity option

This clause 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 clause are subject to negative resolution.

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

This clause creates a new requirement that Master Trust schemes can only be wound up in accordance with continuity option 1 (clause 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.

Clause 30: Periodic reporting requirement

This clause 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 (clauses 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 clause.

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

Clause 31 and Schedule 1: Pause orders

This clause creates a power for the Pensions Regulator to pause certain Master Trust activities, once that Master Trust has experienced a triggering event (clause 21). The power may only be exercised if it will help (subsection (3)) the trustees follow their implementation strategy (clauses 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 clause 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.

Clause 32: Prohibition on new employers during triggering event period

Where a Master Trust has entered a triggering event period (clause 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.

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

Clause 33 places restrictions on trustees increasing or imposing administration charges when a Master Trust scheme is in a triggering event period (clause 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 clause 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 clause 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 clause.

Under subsection (6), regulations can apply some or all of the provisions in this clause to an "alternative scheme" as specified in regulations under clause 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 clause are subject to negative resolution.

Decisions on withdrawal of authorisation: timing

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

This clause 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 clause 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.

Clause 35: When a decision to withdraw authorisation becomes final

This clause 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 clause 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

Clause 36: Fraud compensation

Clause 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 clause 40) of the Bill 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.

Clause 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 clause 40.

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

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

This clause introduces Schedule 2, which includes provisions affecting Master Trusts that are in operation before clause 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 clause 3 (the prohibition on operating a Master Trust without authorisation). The intention is that this clause 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 clause 3 (prohibition on operating a scheme unless authorised) comes into operation.

Paragraph 2 modifies clause 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 clause 33 to apply the prohibition during a triggering event period under clause 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 clause, clause 33A, for Master Trusts in existence on 20 October 2016. Under this clause 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 clause 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 clauses 20 to 33).

Paragraph 8 also inserts a new clause 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 clause 4, provided the decision on that application has not yet become final under clause 35.

Subsections (3) and (4) mean that a pause order made under this clause is to be treated as though it is made under clause 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 clause 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 clauses 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 clauses 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)).

Clause 38 and Schedule 3: Minor and consequential amendments

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

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

This clause 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 clauses 21, 23, 26, 28, 29 and 33 and Schedule 1.

Paragraphs 5 to 13 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 Bill. 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 clauses 21, 23, 26, 28, 29 and 33 and Schedule 1.

Article 9 of the 2005 Order is amended to include reference to this Bill by paragraph 7 to ensure that the Pensions Regulator can issue improvement notices to trustees where there are breaches of the Bill 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.

Paragraph 10 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 Bill in the definition of "pensions legislation" for the purposes of that Article.

Paragraph 11 amends Article 88(2) of the 2005 Order to make the power to give a direction under clause 26(7) of this Bill (direction to submit implementation strategy) subject to the Pensions Regulator's internal 'standard procedure'.

Paragraph 12 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 Bill.

Paragraph 13 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 14 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 clause 31 of this Act.

Clause 39: Interpretation of Part 1

Interpretation of various terms used in Part 1 of the Bill are given in clause 39.

Clause 40: Regulations modifying application of Part 1

Clause 40 provides the Department with a regulation-making power to apply some or all of the provisions in Part 1 of the Bill 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 clause are subject to the confirmatory procedure.

PART 2: ADMINSTRATION CHARGES

Clause 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 clause 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 (clause 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

Clause 42: Regulations: general provisions

Clause 43: General interpretation

Clause 44: Commencement

Clause 45: Short title

These clauses make provision about the scope of regulation-making powers in the Bill, the interpretation of terms used in the Bill, the commencement of provisions in the Bill and the short title of the Bill.

FINANCIAL EFFECTS OF THE BILL

24. The phased introduction of the Master Trust authorisation regime and the cap on early exit charges and ban on member-borne commission charges will be enforced by the Pensions Regulator. These new responsibilities will impact on its future business plans, which given its existing responsibilities are not being reduced, may involve increased expenditure against its projected baseline. Its funding is recovered by a levy on eligible pension schemes. There will be no impact on Departmental expenditure.

25. The Master Trust measures introduce the power for the Pensions Regulator to charge a fee for the authorisation process which it will retain to fund that service (see clause 4(5) which allows the Department to make regulations setting out the application fee payable to the Pensions Regulator).

26. Further detail is contained in the Regulatory Impact Assessment.

HUMAN RIGHTS ISSUES

27. The provisions of the Bill are compatible with the provisions of the Human Rights Act 1998.

EQUALITY IMPACT ASSESSMENT

28. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted an Equality Impact Assessment. The consultation period ran from 16 December 2016 until 9 February 2017.

29. Copies of this Assessment have been laid in the Northern Ireland Assembly Business Office and placed in the Library of the Northern Ireland Assembly. It can be accessed at https://www.communities-ni.gov.uk/consultations/proposals-pension-schemes-bill.

30. The proposals make provision for Northern Ireland corresponding to provision contained in the Westminster Pension Schemes Act 2017.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

Master Trusts authorisation

31. The introduction of a new regulatory framework for Master Trusts addresses gaps and weaknesses in the current regulatory environment which may otherwise result in scheme members' benefits having a lower level or missing elements of protection compared to other types of pension scheme arrangements.

32. The measure potentially increases costs for Master Trusts. The key cost is that all existing and future Master Trust schemes are required to be authorised under a new process. These costs include costs associated with meeting authorisation requirements including holding certain financial reserves, the costs of going through the new authorisation process, on-going costs of compliance and familiarisation costs.

33. There is a potential additional cost to schemes to fund the Pensions Regulator to conduct the new authorisation and supervision processes. The intention is that the structure includes an authorisation fee charged to those applying for authorisation as well as on-going levy charges.

34. All members of Master Trusts benefit from improved protection, reduced likelihood of Master Trust failure and associated loss of savings (and consequently future retirement income) and protection from costs incurred in closing down the scheme.

Ban on member-borne commission charges

35. Automatic enrolment is designed to increase the number of people saving into a pension. In most cases employees will be automatically enrolled into a defined contribution pension scheme. One specific feature of the existing market is commission

arrangements agreed between a service provider and an adviser, or an employer and an adviser, where the charge is passed on to the members who are required to pay for advice and services they may not use or benefit from.

36. The introduction of a ban on member-borne commission charges ensures that members of schemes used for automatic enrolment are protected from these hidden charges. This increases transparency and fairness of member-borne charges and maintains confidence in automatic enrolment.

37. It is estimated that one-off familiarisation costs for service providers, trustees and financial advisers total £85,000. There is also a one-off administrative cost of £45,000 for service providers who need to remove existing commission arrangements.

38. Financial advisers may be impacted by the future loss or reduction in recurring income streams they receive from existing commission arrangements. These costs are expected to be on-going and are estimated at £1.16 million per year to the adviser industry.

39. As with the ban on new arrangements, members benefit from the ban on existing commission arrangements by no longer having to pay for services they may not have been in receipt of, and only paying for such services when they elect to do so. All else being equal, members will see an increase in the value of their pension pot at retirement if providers reduce their charges after removing any commission payments.

Capping early exit charges in occupational schemes

40. The Bill does not set out the level of the cap as this will be set out in secondary legislation. The FCA imposed a 1% cap on early exit charges in relation to contract-based schemes with effect from March 2017. To be effective the cap on early exit fees needs to apply equally across the contract and trust-based market and be clearly enforceable by both regulators (FCA and TPR). The impact analysis has been carried out on that basis.

41. A cap on exit charges, whether as a percentage or cash amount paid, benefits affected members who wish to withdraw their pension funds or seek to move them between pension funds by reducing the charges paid and removing a potential barrier to being able to access the pension freedoms. It is estimated that a 1% cap results in total benefits to affected members of £0.72 million in the first year.

42. Pension schemes or their third party providers that charge an exit fee above the level of the cap face a loss of revenue. The costs to business from charges foregone is calculated as the difference between the total amount of exit charges paid with and without a cap. It also includes the difference in value of the Annual Maintenance Charge due to the reduction in the number of members as a result of the cap. Assuming schemes do not attempt to recoup this revenue by other means, £0.72 million is estimated as the total costs to business of the charges foregone in the first year.

43. One-off administrative costs to pension schemes and third party providers from familiarisation with the new rules is estimated to total £0.22 million. There are also estimated annually recurring costs of £0.11 million to administer the cap.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

44. A Data Protection Impact Assessment has been carried out. This noted that the Department for Communities will not collect, use, store or share any personal data arising from the provisions of the Bill. However, the Pensions Regulator will need, as part of the authorisation process, to collect and process personal data on those holding key posts in Master Trust schemes in order to decide if they are fit and proper to act in their roles. The data will be processed in line with the robust procedures and protocols already in place for the authorisation of other pension schemes.

RURAL NEEDS IMPACT ASSESSMENT

45. A Rural Needs Impact Assessment has been carried out. It noted that there would be no difference in the impact between people living in urban or rural areas.

LEGISLATIVE COMPETENCE

46. The Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

> *"In my view the Pension Schemes Bill would be within the legislative competence of the Northern Ireland Assembly."*

SECRETARY OF STATE CONSENT

47. The Secretary of State has consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering the Bill.