

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Twelfth Delegated Legislation Committee

## DRAFT OCCUPATIONAL PENSION SCHEMES (SCHEME ADMINISTRATION) (AMENDMENT) REGULATIONS 2016

*Thursday 3 March 2016*

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**Monday 7 March 2016**

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY  
FACILITATE THE PROMPT PUBLICATION OF  
THE BOUND VOLUMES OF PROCEEDINGS  
IN GENERAL COMMITTEES

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**The Committee consisted of the following Members:**

*Chair:* MR PETER BONE

- |   |   |
|---|---|
| † Allan, Lucy ( <i>Telford</i> ) (Con)                                    | † Loughton, Tim ( <i>East Worthing and Shoreham</i> ) (Con)                                 |
| † Berry, James ( <i>Kingston and Surbiton</i> ) (Con)                     | † Lynch, Holly ( <i>Halifax</i> ) (Lab)   |
| † Black, Mhairi ( <i>Paisley and Renfrewshire South</i> ) (SNP)           | † Philp, Chris ( <i>Croydon South</i> ) (Con)   |
| † Blenkinsop, Tom ( <i>Middlesbrough South and East Cleveland</i> ) (Lab) | † Pursglove, Tom ( <i>Corby</i> ) (Con)   |
| † Field, Mark ( <i>Cities of London and Westminster</i> ) (Con)           | † Rayner, Angela ( <i>Ashton-under-Lyne</i> ) (Lab)   |
| † Greenwood, Margaret ( <i>Wirral West</i> ) (Lab)                        | † Rutley, David ( <i>Macclesfield</i> ) (Con)   |
| Hepburn, Mr Stephen ( <i>Jarrow</i> ) (Lab)                               | † Vara, Mr Shailesh ( <i>Parliamentary Under-Secretary of State for Work and Pensions</i> ) |
| † Huq, Dr Rupa ( <i>Ealing Central and Acton</i> ) (Lab)                  | Robert Cope, John-Paul Flaherty, <i>Committee Clerks</i>                                    |
| † Kennedy, Seema ( <i>South Ribble</i> ) (Con)                            |   |
| † Kirby, Simon ( <i>Brighton, Kemptown</i> ) (Con)                        | † <b>attended the Committee</b>   |

# Twelfth Delegated Legislation Committee

Thursday 3 March 2016

[MR PETER BONE *in the Chair*]

## Draft Occupational Pension Schemes (Scheme Administration) (Amendment) Regulations 2016

11.30 am

**The Parliamentary Under-Secretary of State for Work and Pensions (Mr Shailesh Vara):** I beg to move,

That the Committee has considered the draft Occupational Pension Schemes (Scheme Administration) (Amendment) Regulations 2016.

As always, it is a great pleasure to serve under your chairmanship, Mr Bone. The draft regulations, which were laid before the House on 1 February, respond to stakeholders and interested parties and clarify the Government's requirements to ensure that regulations work as intended. From April 2015, new governance requirements were introduced in the Occupational Pension Schemes (Charges and Governance) Regulations 2015 for occupational pension schemes providing money purchase benefits. They include: annual statements regarding governance; certain requirements for processing financial transactions; appointing a chair of trustees responsible for signing the annual statement; and further requirements relating to the default arrangement. Additional requirements were imposed on relevant multi-employer schemes to strengthen the independent oversight of schemes used by multiple employers.

Relevant multi-employer schemes must have at least three trustees and a majority of all trustees, including the chair, must be independent of providers of services to the scheme. Trustees must be appointed for limited terms through open and transparent recruitment processes. Those requirements do not apply when the employers are part of the same corporate group, as we consider such schemes to be closer in nature to single employer schemes and thus less likely to require such additional member protections.

We also made a temporary exemption from the additional requirements, until April this year, for schemes set up by statute. That was to enable us to carry out further work on their existing governance requirements before deciding whether the exemption should continue. The National Employment Savings Trust, known as NEST, is also exempt from the additional requirements as it already has rigorous governance requirements set by law.

The governance measures cover occupational schemes offering money purchase benefits regardless of whether they are used for automatic enrolment or not. They also exclude schemes where the only money purchase benefits offered are additional voluntary contributions.

Since those regulations came into force last April, we have received representations that the definition of "relevant multi-employer scheme" had unintended consequences by bringing some corporate group schemes within the scope of the additional governance requirements. The draft

regulations will amend the definition of a multi-employer scheme to ensure that normal corporate activity does not bring a corporate group scheme within the additional requirements unless it promotes itself as open to unconnected employers.

The draft regulations will not extend the temporary exemption for multi-employer schemes set up by statute. On balance, we considered that there was no significant reason to provide a further exemption from good governance standards. However, we will give such schemes up to six months to comply with the requirements for the appointment of independent trustees.

The draft regulations will make other minor changes to ease the practical application of the governance standards. They will remove the requirement for the chair of NEST to be appointed within a three-month timeframe, as that appointment is already covered by other statutory requirements. NEST has to comply with the public appointments process. The draft regulations also allow a person or deputy chair appointed by the trustees to sign the annual statement if there is no chair in place—for example, if the chair resigns or is removed.

For some schemes, certain provisions governing the appointment of trustees are set out in their trust deeds and rules, which may conflict with the governance requirements regarding the appointment of independent trustees. To make it easier for those schemes to comply, the draft regulations will apply a statutory override where provisions in trust deeds and rules conflict with the requirements for the appointment of independent trustees in multi-employment schemes. The draft regulations also correct a typographical error in the definition of "default arrangement" in the 2015 regulations, which were inserted into the Occupational Pension Schemes (Investment) Regulations 2005.

Consideration has also been given to the Small Business, Enterprise and Employment Act 2015, so the regulations include a review clause. The review's conclusions will be set out in a report, to be published within five years after the regulations come into force. Subsequent reports will be published at intervals not exceeding five years. The review will cover both the original governance requirements and the amendments in this instrument. The draft regulations will make important changes to clarify the scope of the governance requirements and will ensure that they are practicable for occupational pension schemes.

11.35 am

**Angela Rayner** (Ashton-under-Lyne) (Lab): It is a pleasure to face the Minister again under your chairmanship, Mr Bone. It is rather unfortunate that, as I think one of the *Guardian* columnists has said, as soon as people see "pensions" in the title of anything in the media today, they glaze over. However, I hope that the Minister will not glaze over during my contribution today, because although the Opposition will not oppose these measures, we want to touch on several important concerns that are related to these regulations.

To put the measure into context, employers have a choice about the kind of pension they make available for their employees, with some choosing to use schemes based on a trust with trustees. Others choose schemes provided by insurance companies, which result in contracts between the providers and the employees. Such schemes

include personal pension schemes and stakeholder pension schemes, which employers use for auto-enrolment or otherwise make available to their employees. There is no board of trustees and no fiduciary duty to the scheme member.

The market for multi-employer schemes, known as master trusts, is relatively new and has undergone rapid expansion in the last couple of years. The major players have been open for business only since 2011 and barriers to entry have historically been low. While no official list of providers exists, *Professional Pensions* sought to compile a definitive list in August 2015 and identified 57, but there could be as many as 70 or even 80 master trust providers in the UK. Employers have to try to distinguish between many offerings of varying quality, and there are concerns across the sector about regulation and governance.

In its evidence to the Select Committee on Work and Pensions' current enquiry on auto-enrolment, the Association of British Insurers made the point that trust-based schemes, including master trusts, are not "subject to the same stringent regulatory standards as contract-based schemes, which are regulated by the FCA."

Instead, master trusts are supervised from a distance by the Pensions Regulator, which does not have the power to check how the pensions are sold or to shut down companies that fall short of basic standards. The Pensions Regulator highlighted the issue to the Work and Pensions Committee:

"94% of employers who chose a trust-based scheme opted for a master trust. Due to their scale, commercial purpose and design for use by multiple employers, master trusts represent different risks to members and consumer protection when compared to other occupational schemes. Unlike pension providers regulated by the FCA, the master trusts themselves are not authorised prior to market entry and the regulatory framework is not designed for similar levels of ongoing supervision. As a way of mitigating this risk, we introduced the master trust assurance (MTA) in May 2014, developed in partnership with the Institute of Chartered Accountants in England and Wales (ICAEW). However, it is a voluntary arrangement".

Only five master trusts are part of the master trust assurance framework, meaning that they are independently audited.

Andrew Warwick-Thompson, executive director for regulatory policy at the Pensions Regulator, warned that some of the other schemes were too small and had no safeguards protecting their members. Alarming, he added:

"There is a risk of these schemes falling over; there is a risk that members might lose their money."

He went on to warn that the lack of requirements for qualifications or assets meant that some master trusts "may not be run by competent people".

The so-called fit and proper person test appears to be even less stringent than that applied by the Football League. HMRC's guidance suggests that it will automatically assume that anyone who applies is fit and proper. Perhaps the Minister will tell us whether the Government have any plans to change HMRC's practice or guidance in that regard. Even when directors are qualified, providers do not always make it clear where the savings are invested and who owns the schemes.

The BBC programme, "The World Tonight", also discovered that at least one master trust seemed to be providing misleading information online. The website, myworkplacepension.com, claims to have £50 million of pensions under management managed by the City firm,

Old Mutual. When the BBC scrutinised the whereabouts of that money, myworkplacepension.com admitted it had no such assets. Subsequently, Old Mutual denied handling the company's account and asked for its name to be removed from its publicity.

According to Companies House records, My WorkPlace Pension Ltd is 50% owned by Gavin McCloskey, who, with an associate, Anthony Okeke, was previously a director of a firm that sold sports fashion clothing. Incredibly, its trading name was Wide-Boys R Us.

**Simon Kirby** (Brighton, Kemptown) (Con): Yeah! [Laughter.]

**Angela Rayner:** We may laugh, but it will hardly be amusing to someone who finds their employer has invested their pension with a dubious scheme and without safeguards. Alarming, the programme also cited one industry expert who suggested that only around 10 existing master trust schemes could be considered completely safe and reliable. There is a view, therefore, that strengthening the requirements to enter the market, such as with authorisation or licensing, should filter out the least desirable operators. We would like to know more about the regulatory framework within which the Minister envisages today's regulations will sit.

This issue was raised by my hon. Friend the Member for Wolverhampton South West (Rob Marris), who, as shadow Financial Secretary to the Treasury, represented the Opposition during the Committee stage of the Bank of England and Financial Services Bill. The Economic Secretary to the Treasury responded that the Government would bring forward regulations as soon as practically possible. Can the Minister tell us today what discussions the Department for Work and Pensions has had with the Treasury about that legislation and give us an update? Perhaps he will tell us how such legislation relates to the comments of his colleague, the Minister of State for Pensions, in the press on 1 March. She complained that the Government would not give the Department parliamentary time for pensions legislation specifically in relation to master trusts. She said:

"We need legislation and have been bidding for a bill, a pensions bill but it has been refused. It was refused at the end of last year and it has still not happened...I am hoping we will get one because we can't do anything properly without it."

We seem to be in the extraordinary position of the Minister for Pensions admitting that she cannot do anything properly on this issue because she cannot get parliamentary time from her own Government, whose legislative agenda is hardly full. However, this seems to be flatly contradicted by the remarks of the Economic Secretary, so is the Treasury more up to date on pensions policy than the Minister for Pensions, or is that just where the power lies in this Government? Perhaps none of them knows what is going on.

If the Minister knows anything about his own Department's legislative agenda, perhaps he would clarify whether we can expect a Bill and, if so, when. There are a number of questions about the regulatory framework on which it would also be helpful to hear his views.

**Chris Philp** (Croydon South) (Con): With great respect to the hon. Lady, whose comments are interesting, we seem to have strayed a long way from the regulations before us. Does she plan to get back to the matter at hand in the near future?

**The Chair:** Order. If the hon. Lady had been out of order, I would have said so. I do not need any help from the hon. Gentleman, thank you.

**Angela Rayner:** I thank the hon. Gentleman for his comments. This is not just interesting; it is alarming for people with pension provision, who want to know that things are being done to ensure that their pensions are protected, so I will carry on.

It may be that some of these issues I am raising could be addressed in the legislation, but I hope the Minister can enlighten us. To start with an obvious point, master trusts are exactly that: trusts. A trustee board sounds friendlier than a governance committee, but there are no requirements for at least one third of the trustee board to be member nominated. Some voices in the sector are calling for a level as high as 50%. Will the Minister give us his view on that?

Master trusts are cheap to join. Currently, large master trusts are subsidising the installation costs from reserves, which gives them a competitive edge in the market. However, like credit cards, master trusts are for life, not just for their initial rates. Does the Minister believe there is any cause for concern there?

The regulations that apply to retail funds do not apply to master trusts, nor does the Financial Conduct Authority have jurisdiction over them. Given the Government's pension freedoms agenda and the arrival of 1.3 million small and micro-employers, the traditional boundaries between institutional and retail are blurring. That brings us back to the question of who the appropriate regulator is. Are the Government considering giving the FCA regulatory powers or changing the powers of the Pensions Regulator, as the Minister with responsibility for pensions reform seemed to suggest in the media earlier this week?

Unlike insurance arrangements, master trusts are not subject to solvency II and do not even have to undergo the capital adequacy test needed to run an advisory firm. In theory, that makes them nimble and cheap to run, but in practice it means they have little margin for error. If the controls in the master trust assurance framework are not adopted, can the Minister assure us they are as safe as contract-based arrangements? If not, what steps will he take to protect members from failure?

Members of master trusts are not protected by the Financial Services Compensation Scheme or the Pension Protection Fund. Have the Government given any thought to changing that or providing another failure regime? As I said earlier, the Minister with responsibility for pensions reform suggested in the press this week that a compulsory insurance scheme is her preferred solution and that she wants to introduce one in a pensions Bill. Can the Minister confirm whether that was a statement of Government policy?

Similarly, master trusts are not subject to permitted links regulations, which restrict where insurers may invest. That gives master trusts more flexibility, but could make them an ideal vehicle for pension scams. What assurances can the Minister give us that the Government are dealing with that risk?

It has been suggested that employers could use master trusts to de-risk unwanted liabilities from defined contribution schemes. They are taken to be a safe haven for employers but, contrary to what employers may

suppose, they cannot just offload their company's pensioners into somebody else's master trust and wash their hands of the liability. They remain a participating employer of the master trust for as long as their former members are in it. Is the Minister confident that this issue is being addressed? Master trusts may be being used for auto-enrolment, to de-risk existing schemes, or even as a template for collective DC, but they are not a universal solution and should surely be subject to the same scrutiny as other structures.

As a result of master trusts' unusual structure, certain practical challenges have emerged with no easy solutions. Given the scale of the operations and the sheer number of employers and members involved, is it not uncommon for contributions to be paid late or in error, or not paid at all? However, the obligation to report late contributions is the same, as are the trustees' legal obligations to chase up late payments. Is the Minister confident that those obligations are being fulfilled?

Some master trusts have no mechanism to bulk transfer-out members once they are in if the scheme does not perform as expected. Does that issue need regulatory action? The default fund for an employer may not be chosen by trustees who are familiar with their membership. Indeed, how can it be possible for a default fund to be appropriate for more than 1 million members from diverse industries, of different ages and with different earning capacities? In short, can one size fit all? I would welcome the Minister's observations and any answers to how that fundamental question can be addressed.

Rapid growth in the last four years has been fuelled by a steadily increasing market of employers who need providers. That will likely dry up in 2018, once auto-enrolment has been rolled out fully. After that, only acquisition will fuel growth, and we can expect consolidation, which makes the question about size all the more important, while also raising concern at the other end of the market about any weaker performers who may be too small for safety while not presenting an appealing target for acquisition. In the battle for market space, both the contract providers and the master trusts are in danger of cutting corners and taking risks that will compromise scheme members.

Given that DC scheme members should be the beneficial owners of their assets, the Government have left too many pension futures in doubt without a clear plan to deal with the issues. On top of that, we are in a situation in which no scheme member can know the true costs. How much someone pays to invest has a huge impact on the net returns they receive when they retire. Indeed, some analyses suggest that, after costs, only a small minority of managers actually deliver any value at all, and just 25 out of more than 200 fund houses have signed up to a statement of principles, introduced by the Investment Association, that included a commitment to put the interests of clients ahead of their own.

The Government, the IA and the FCA have been talking about transparency for some time, but when can we expect action? What steps are the Government taking to protect the security and fiduciary interests of scheme members in both master trusts and contract-based schemes? Does the Minister agree that DC schemes should have boards of trustees in which scheme member representatives should be in the majority and that they should be chosen by the scheme members themselves? That would be one way to give scheme members assurances that

their money and their assets were being looked after in their interests. That is vital to the people who are listening to this.

In contract-based DC schemes, there are no requirements for trustees to act in the fiduciary interests of members, and in his recent written answers the Minister fell short of pledging any action to rectify this. Given the history of financial services scandals, is that not one way in which we could prevent the abuse of scheme members' money? The Government have also failed to legislate for cost transparency for pension scheme members. In DC schemes, all costs are borne by the individual member. Will the Minister encourage the Investment Association to provide the data sets needed for transparency and say where he stands on new legislation?

Finally, as a former Unison shop steward in local government, I note that the Minister's colleagues in the Department for Communities and Local Government have moved to require scale and cost transparency in the local government pension scheme, so will the Department for Work and Pensions act to provide the same protection for other savers? The measure before us today is technical, and we do not intend to oppose it, but the wider context of these regulations is of far greater concern. I hope the Minister can address those concerns for us all now.

11.53 am

**Mr Vara:** Those who take the trouble to look at the regulations before us will find that they are specific and narrow. I intend to address the issue before us, rather than go into a general debate on pensions.

The revisions proposed today are a specific response to stakeholders and interested parties, and they are intended to improve the system that exists at the moment. I like to think that the public will welcome them, given that we are responding to the points made by them.

**Mark Field** (Cities of London and Westminster) (Con): A relevant point was brought up by the Opposition spokesman in relation to a "fit and proper person". Although I appreciate that the Minister wants to go on to a specific area, it would be useful for the Committee to be aware of some of the potential concerns. I suspect that whatever the Government are doing in this regard will be rather more robust than it is for the Football Association, for whom "fit and proper person" seems an almost meaningless phrase. None the less, given the large sums of money being held on trust for many of our constituents, it is important that at least some thought is put into that, so I look forward to hearing the Minister's views on the matter.

**Mr Vara:** My right hon. Friend makes a good point, and I did intend to touch briefly on the governance of

master trusts and fit and proper individuals. The hon. Member for Ashton-under-Lyne spoke at length about master trusts and raised several concerns, so I assure her that master trusts already have to meet a number of governance requirements under the current law. A voluntary master trust assurance framework has been developed by the Institute of Chartered Accountants in England and Wales in partnership with the Pensions Regulator. It is designed to help trustees to assess the quality of their scheme against an industry-wide quality benchmark. It also helps employers to find a well run pension scheme that can be used to comply with their automatic enrolment duties. The Department for Work and Pensions and the Pensions Regulator are exploring whether additional protections would be appropriate for the future regulation of this part of the market.

Well run master trusts can and do offer good deals for consumers and employers, and we are keen that the market develops in the right way. We are aware that potential issues have been suggested and we are working with the Pensions Regulator to ensure that the right protection is in place. Once the measures are firmed up, we will inform the public.

**Angela Rayner:** Does the Minister know how many master trusts have signed up to the voluntary arrangement and how many are yet to do so?

**Mr Vara:** I do not have a specific figure to hand. The hon. Lady suggested a number of figures, but I want to be careful before I commit myself to any specific number—*[Interruption]*—although it is my understanding that it may be five. That is my present assumption.

The Government agree that it is important that members' interests are represented and their views considered. Requirements from April 2015 ensure that independent governance committees and multi-employer scheme boards have arrangements in place to ensure that members' views are directly represented. Annual chair statements must also include the details of those arrangements. As for contributions paid, the Pensions Regulator works with the industry to monitor the ongoing payment of contributions.

I am grateful for Members' contributions this morning. The regulations that we have put forward will improve the management of the pensions industry generally. Good governance is fundamental in securing good outcomes for members, and the regulations will help ensure that schemes are well run in members' interests.

*Question put and agreed to.*

11.58 am

*Committee rose.*

