

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

Pension Schemes Act (Northern Ireland) 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Master Trusts

Authorisation: applications etc

Section 3: Prohibition on operating a scheme unless authorised

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

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

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

Section 4: Application for authorisation

Section 4 makes provision regarding the application for authorisation, which is to be made to the Pensions Regulator, and the information which must be included in the application. The section also provides a power for the Department to make regulations setting out other information to be provided in an application and setting the application fee payable to the Pensions Regulator. In order for a Master Trust to become authorised, the trustees will need to apply for authorisation according to the process specified by the Pensions Regulator.

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

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

Section 5: Decision on application

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

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

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

Section 6: Referral to Tribunal of refusal to grant authorisation

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

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