Northern Ireland Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Pension Schemes Bill: Department for Communities Briefing

23 September 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Paula Bradley (Chairperson)
Ms Kellie Armstrong (Deputy Chairperson)
Mr Andy Allen
Mr Jonathan Buckley
Mr Mark Durkan
Ms Sinéad Ennis
Mr Fra McCann
Mr Robin Newton

Witnesses:

Mr Gerry McCann	Department for Communities
Ms Doreen Roy	Department for Communities

The Chairperson (Ms P Bradley): I welcome Gerry McCann and Doreen Roy from the Department for Communities.

Mr Gerry McCann (Department for Communities): Thank you very much for having us here today. We have actually got a wee short opening statement. We are going to go through the Bill again for you to outline the various things in it, and afterwards we should, hopefully, be able to answer any questions that you have for us.

Ms Doreen Roy (Department for Communities): Once again, we are pleased to have the opportunity to speak to you about the Assembly's Pension Schemes Bill. The Bill corresponds to the Westminster Pension Schemes Act 2017. The main purpose of the Bill is to introduce a new regulatory framework for master trusts in Northern Ireland. The Bill is divided into three parts. Part 1, which forms the majority of the Bill — 40 clauses and three schedules — introduces an authorisation and supervision regime for master trusts, which are a form of multi-employer occupational pension schemes. Part 2 introduces a cap on early exit charges and a ban on member-borne commission charges that arise under existing arrangements, as well as new arrangements. Part 3 contains general provisions relating to interpretation, commencement, Assembly control etc.

We have already provided the Committee with a fairly comprehensive written briefing on the Bill. If members are content, I will run through the main provisions of the Bill.

The Chairperson (Ms P Bradley): Yes, please.

Ms Roy: Part 1 deals with master trusts. The pensions landscape has changed significantly over recent years and, as a result, the way in which people can save and access their pension savings has

been transformed. Automatic enrolment has resulted in a significant increase in the number of people being enrolled into a workplace pension. Master trusts have become a popular vehicle for employers, particularly small and micro employers, who are seeking to enrol employees into an occupational pension scheme. A master trust is a form of multi-employer occupational pension scheme for unconnected employers where, instead of the employer setting up their own pension scheme, the scheme is provided by an external organisation that runs a pension scheme for numerous employers. Such schemes offer benefits to both employers and members. They can spur competition in the market and allow for economies of scale, providing value for money. They are also an efficient solution for small employers for whom setting up an individual pension scheme would be difficult and prohibitively expensive.

Currently, in Northern Ireland law, master trusts are regulated in accordance with occupational pension legislation. However, that legislation was developed with single-employer pension schemes in mind and, consequently, does not take into consideration the different structures and dynamics of master trusts, which give rise to different risks. The Bill is a response not to a fundamental problem with master trusts, but rather to the exponential growth in membership. In 2010, across the UK there were 200,000 members of master trusts. By November 2019, there were 16 million members across the UK in 37 master trust schemes, holding more than £36 billion in assets. The introduction of a new authorisation regime is designed to address a legislative gap and to try to prevent problems arising in the future. The aim is to ensure that essential protections are put in place in a way that is proportionate to the risks that are experienced by master trusts.

The Bill defines a master trust as an occupational pension scheme that offers money purchase benefits, either alone or in conjunction with other benefits, to be used by two or more employers who are not connected to each other. In broad terms, money purchase benefits are derived from a pot of contributions, together with investment returns from the contributions. Where a scheme offers a combination of money purchase and other benefits, the requirements generally only apply to the extent that it provides money purchase benefits. The definition is broad, which is designed to discourage schemes from changing their structure to avoid having to seek authorisation.

Under the new regime, master trusts will be prohibited from operating unless authorised by the Pensions Regulator. The Bill sets out specific requirements that must be met in order for a scheme to be authorised: for example, that the persons involved with the scheme are fit and proper persons; that the scheme is financially sustainable; that the scheme funder has met specific requirements; that the systems and processes that are used in relation to the scheme's governance and administration are sufficient to ensure that the scheme runs effectively; and that the scheme has an adequate continuity strategy. Under the fit and proper persons requirement, the regulator must be satisfied that those who are carrying out key roles meet the necessary standards. For example, the regulator will assess whether they have the knowledge and skills to carry out the roles, their connections to the employer etc, and whether they have been disqualified as a trustee or director, or been insolvent, or failed to comply with regulatory requirements. The key roles are: a person who establishes the scheme; a trustee of the scheme; a person who has power to appoint and remove trustees; a person who has the power to amend the scheme; a scheme funder; and a scheme strategist.

With regard to financial sustainability, the regulator must be satisfied that the master trust has an a sound business strategy and sufficient resources not only to run the scheme, but to protect members where the scheme winds up. The scheme must prepare, and annually review, a business plan and submit it to the regulator. With regard to the scheme funder requirement, the scheme funder must be a separate legal entity and will make its financial position, and the financial arrangements between it and the master trust, more transparent. The system and processes requirements mean that the regulator must be satisfied as to the adequacy of the master trust's administration and governance arrangements. The intention is that these will cover matters such as IT systems, administrative processes and processes relating to the appointment and removal of trustees etc. The Bill also provides that the master trust has a continuity strategy which will set out that members will be protected in the event that something happens which puts the sustainability or viability of a master trust in jeopardy. This is known as a "triggering event". The strategy must also set out the level of administration charges that apply to members. The strategy must be submitted to the regulator for authorisation.

I turn to the ongoing supervision of master trusts. The regulator is being given new powers to supervise master trusts, enabling it to intervene where schemes are at risk of falling below the required standards. The aim is to ensure that the regulator is satisfied that the master trust continues, on an ongoing basis, to meet the authorisation criteria and other obligations, including relevant legislation and codes of practice. To facilitate this, master trusts will be required to submit annual

accounts and supervisory returns, and to notify the regulator of significant events. The scheme funder will also be required to submit annual accounts. The submission of annual accounts to the regulator is necessary for the regulator's ongoing financial supervision of the scheme. It also enables the regulator to risk-assess the solvency of the scheme funder and the funder's ability to provide funds to the master trust. Similarly, the supervisory return, which is to be submitted to the regulator on request, is an important tool for the regulator to be able to assess, on an ongoing basis, the master trust against the authorisation criteria. It is intended that the regulator may require information to be included in the supervisory returns, such as how the trustee's competence is being maintained, details of the professional development of the scheme's strategist, the scheme's position in relation to the objectives set out in the business plan etc.

The regulator must be notified in writing if significant events occur with regard to an authorised master trust scheme. The intention is that the list of significant events will capture events which could affect the ability of a master trust to continue meeting the authorisation criteria. For example, the scheme may have a change of trustee. As the fitness and propriety of a trustee is linked to the authorisation criteria, the regulator must be informed of such a change so that the new trustee may be assessed against the relevant standards. Other significant events could include, for example, a significant change to the investment principles or business plan, or where someone carrying out a key role is convicted of an offence, enters bankruptcy or is disqualified as a company director etc.

A key part of the new regime for master trusts is a requirement to take specific actions where a key risk events occurs in relation to the scheme. These are known as "triggering events". They include: the regulator issues a warning notice in respect of a decision to withdraw the scheme's authorisation; the regulator issues a determination notice that the scheme's authorisation is withdrawn; the regulator issues a notification that a master trust is operating without authorisation; an insolvency event occurs in relation to the scheme funder; the scheme funder is unlikely to be able to continue as a going concern; the scheme funder decides to end the relationship with the master trust; the scheme funder ends the relationship with the master trust; the scheme funder, scheme strategist or trustees decide that the master trust should be wound up; an event has occurred which allows or requires the master trust to be wound up; and the trustees decide that the master trust is at risk of failure. When a triggering event occurs, the trustees must pursue one of two continuity options. Under continuity option 1, the trustees transfer members' accrued rights to another scheme, and the master trust is wound up. Under continuity option 2, the trustees seek to resolve the triggering event. The trustees must submit an implementation strategy to the regulator, setting out how the interests of members are to be protected following the occurrence of a triggering event. When the regulator approves the implementation strategy, the trustees must pursue the continuity option set out in the implementation strategy.

The regulator will always seek to support and assist those involved in the running of a pension scheme. However, there need to be clear consequences for schemes which fail to comply with their duties. The Bill therefore provides for civil penalties to apply where there is a failure to comply with duties under the Bill. As information gathering is an important part of the regulator's toolkit, and the Pensions (Northern Ireland) Order 2005 already makes it a criminal offence for individuals to fail to provide information requested by the regulator, the Bill extends these powers to include those involved in the running of master trusts. Ultimately, the regulator also has the power to withdraw a scheme's authorisation, essentially forcing it to leave the market. These powers are designed to ensure that those managing master trust schemes continue to work to protect the interests of members.

I turn to the remaining provisions in the Bill. Part 2 covers administration charges. Since the introduction of the new pension freedoms in April 2015, which enabled many people aged 55 and over to access their pension savings more flexibly, individuals faced a range of potential barriers, including incurring early exit charges, when seeking to access their savings. Schedule 18 to the Pensions Act (Northern Ireland) 2015 allows the Department to make regulations that restrict the charges or impose requirements on certain pension schemes. The Bill amends the 2015 Act to allow the Department to make regulations to provide that any term in a contract which is inconsistent with something in the regulations made under schedule 18 is overridden. For example, if a contract that is in place between the trustees or managers of the scheme and a person who provides services to the scheme permits an early exit charge that is higher than the level of the early exit charge cap when it is introduced, this will allow that term to be overridden. This supports the policy and pension of capping early exit charges in occupational pension schemes and banning member-borne commission arising under existing contracts, that is, those which were entered into before 6 April 2016.

In conclusion, the pensions market is continually evolving and modernising. It is clear that there is a need to ensure that there is adequate regulation for master trusts, given how they have developed

since the introduction of automatic enrolment. An equality impact assessment on the proposals was consulted on between December 2016 and February 2017.No adverse impacts were identified.

By most standards, automatic enrolment can be considered a success. The Bill aims to ensure that members are only enrolled in high-quality schemes which look after their interests. Well-managed schemes will help to secure pension incomes in retirement. The Bill, therefore, is firmly centred on further safeguarding workers pensions. We look forward to working with the Committee as it completes its scrutiny of the Bill. Today has been very much an overview, and no doubt the Committee will wish to examine the detail of some of these provisions during the clause-by-clause scrutiny. Thank you. We will do our best to answer any questions.

The Chairperson (Ms P Bradley): Thank you, Doreen. This is extremely technical, so thank you for your very in-depth explanation. I just have a couple of questions. First, do we know how many people in Northern Ireland at the moment are already part of master trusts?

Secondly, we know that, just over a year ago, a local pension provider, the Workers Pension Trust, became the first in Northern Ireland to be awarded master trust by the regulator. How was that doable without us having the legislation here? Was that passed by Westminster?

Mr G McCann: The trust that you are talking about has members here, in Northern Ireland, and also members in England, Scotland and Wales. Therefore, for it to be able to have members in England, Scotland and Wales, it had to be authorised under the law in England, Scotland and Wales.

The Chairperson (Ms P Bradley): That allowed it to operate here as well?

Mr G McCann: From our point of view, we were very happy because we knew that they would meet the standards that we were hoping to bring in, once the Assembly came back. So we were quite happy with that situation.

The Chairperson (Ms P Bradley): Do we know how many people in Northern Ireland are already part of master trusts?

Mr G McCann: The overall numbers?

The Chairperson (Ms P Bradley): Yes.

Mr G McCann: For the scheme that you mentioned, I think that there are around 100,000.

The Chairperson (Ms P Bradley): Really? OK.

Mr G McCann: With regard to the overall numbers, we actually do not know, because some people could be in other schemes that are based in England, for example, so we do not have an accurate figure for that.

The Chairperson (Ms P Bradley): OK. That is all I wanted to ask.

Ms Armstrong: Thank you very much for the overview. It is quite technical. Please forgive me if I am asking questions that seem quite simplistic, but I do not see the answers in what is in front of us. Can you confirm the Pensions Regulator's role in Northern Ireland? Is there a legislative piece that we can review, in advance of the work that we will be doing, on how they can control master trusts in Northern Ireland? I know that it is all spelt out here, but I am just not sure what their responsibility is here; it seems to differ from GB.

Mr G McCann: Once this Bill has been brought in, the role of the Pensions Regulator should be the same in England, Scotland, Wales and Northern Ireland; there should be no difference. The only difference that we have at the moment is that there are some things that the Pensions Regulator is not able to do here. For example, if we have a scheme here that falls under the master trust, the Pensions Regulator could not go into their premises and take documents if they thought they were up to no good. That is simply because we do not have this law here at the moment to allow them to enter the premises. That is one example where they do not have the full suite of powers available to them. As soon as we pass this Bill, I cannot think of any area where we would differ.

Ms Armstrong: That was another thing I wanted to check. The Pensions Regulator sets the criteria that a master trust has to fulfil. What happens if a master trust is not based in the UK?

Mr G McCann: For the purposes of these laws, it has to be based in the UK. These are schemes that are based inside the UK. I should check that point out to make sure, but I am absolutely certain that they have to be based in the UK.

Ms Armstrong: Opportunities could come up where master trusts could be from within Europe, USA or wherever. It would be great if our Pensions Regulator were to have the opportunity to protect people's pensions.

Mr G McCann: I think they have to be based in the UK, but I will check that out. With regard to cross-border schemes, in general, they are fairly rare. I think that the Committee asked us previously about the number of schemes operating between here and the South. In fact, there are only nine based in the UK that operate in the South. So, it is a fairly small number that are engaged in the overall pensions market now, not just *[Inaudible.]* However, I certainly will check that point out and return to you on it.

Ms Armstrong: It would be good in a situation where we have, for instance, businesses from outside the UK that have a branch here and their pensions are elsewhere.

I have two more questions. The capping of early-exit charges is fantastic. With private pensions, advice is provided to the person who is taking out their pension pot before their retirement age. The papers that we have do not mention specifically that there would be a requirement for the trust to provide advice to those people. I am concerned that someone could see a pot at £80,000 or £90,000, take that full amount early, which they can do now, and spend it on clearing an endowment mortgage, give it to their children or whatever. Is there built-in advice from the trusts?

Mr G McCann: Generally, in pensions law, if your pot is over a certain amount, you are required to take advice.

Ms Armstrong: Is that provided by the trust, or is it provided separately?

Mr G McCann: No, it is independent advice. In general though, if you are moving money from a pension scheme — this is something that we are working on more and more — the scheme has to make sure that that money is not going into a scam; or, at least, they have to ask the member whether they have taken advice on that point to make sure that it is not going off to buy some hotel that does not exist.

Ms Armstrong: Exactly.

Mr G McCann: Scams are a major problem that we face.

Ms Armstrong: Thank you. This is my last question. Obviously, given the numbers that are potentially moving towards them, these master trusts will have a huge wealth of assets. What protections will there be for people's pensions? I know that we are taking about how, within the life of the master trust, there are certain criteria that they have to meet. There are responsibilities to report, and if anything is going wrong, of course they have to take actions. However, some of these master trusts could be investing in weird and wonderful places. Will government build in protection there? We have seen banks collapse. It is not outside the realms of possibility — not now but in 10 years — that a master trust could collapse.

Mr G McCann: If you are asking me whether they would have access to the Pension Protection Fund, the answer is, in general, no. The only schemes that can normally apply are those that are linked to an assets-defined benefits system, which are those where you know that you will get a set amount at the end. These schemes are actually based on the amount of money that you earn from your pension pot, so they do not have the same level of security. However, there is a safety net in the event of fraud. If, for example, the master trust scheme ends up being underfunded because of fraud and there is no scheme funder etc to get the money from, there will be a fall-back scenario there. However, they would not have access to the normal Pension Protection Fund, which, I think, is what you are really asking me about.

Ms Armstrong: Yes, it is. I was a bit concerned about that. When we are going through the detail, we will certainly —

Mr G McCann: I have to say that there is a good reason for that. The Pension Protection Fund is already facing huge challenges, as I am sure you know. As part of COVID as well, very many people will end up out of work etc.

Ms Armstrong: Absolutely.

Mr G McCann: I expect a number of firms to end up not being solvent. Therefore, the fund is already facing pretty stark challenges.

Ms Armstrong: I have one last question that I forgot about. I cannot see how this is within the scope of the draft legislation that we are presented with, but does the Bill allow the Government to place additional criteria on master trusts? For instance, if the Government, in future, were to decide a zero-emissions policy and they want master trusts not to invest carbon-emitting companies or whatever, can that happen through this Bill?

Mr G McCann: We do not have anything in this for climate change. However, we sent you up papers on the Westminster Pension Schemes Bill yesterday, which will no doubt come to you in due course. One of those amendments deals with climate change and how schemes invest money. It states that they have to be aware of climate change and the move towards a low-carbon economy and what that might mean for the future of the scheme. That issue is part of the Westminster Pension Schemes Bill, but, as I say, those papers came up yesterday, so you will see them in due course.

Ms Armstrong: I am thinking about future-proofing. Climate change is one aspect, but, if something were to happen, later down the line, and the Government say, "We think these would be good criteria to bring in", can the Government change the criteria halfway through?

Mr G McCann: I would have to read the clause that deals with the criteria again. It could be that there is a power, by regulations, to tweak, but I would not like to tell you that there is when, in fact, there is not. I would rather read the clause again to make sure. As I am sure you realise, there is quite a lot in this.

Ms Armstrong: There is.

Mr G McCann: It is hard to keep in mind every last line of it.

Mr F McCann: On that last point, we have found out lately that the Government can do whatever they want when they want to change something. Look at the Brexit debacle. Many years ago, there were serious problems with pension funds and how people raided pension funds to cover other things. We asked some questions to try to ensure that there was added security there. In the last debate that we had on housing, we talked about funds like this, the likes of trade union funds and credit unions. They have huge amounts of money and, if they were allowed, could assist you to deal with the housing crisis and other crises.

The Chairperson (Ms P Bradley): That is a good point. Members, does anybody else want to ask a question? I do not see anybody's hand raised, so that is fair enough. That is grand, Gerry and Doreen. It is very good to see you. I have been told that the paperwork that you sent will be in our packs next week.

Mr G McCann: It will be, yes, and I think that we will be back to brief you on the issues with the Westminster Bill.

The Chairperson (Ms P Bradley): I cannot find it here, but the pension provider that I spoke about earlier will be coming to brief us next week as well.

Mr G McCann: Yes, the Workers Pension Trust.

The Chairperson (Ms P Bradley): Yes, that is it. My paperwork is everywhere at the minute. Thank you. We will see you again shortly.