

Occupational Pensions Schemes (Master Trust) Regulations 2018



Response from NEST Corporation

Introduction

NEST strongly welcomes and supports the Department for Work and Pensions's (DWP) introduction of additional protections for members of master trust pensions schemes through an authorisation and supervisory regime. We are pleased to offer this response to the DWP's consultation on the draft Occupational Pensions Schemes (Master Trust) Regulations 2018 ("the draft regulations").

We believe that the draft regulations are a natural extension of the foundations laid down by the Pension Schemes Act 2017. The regulations are broadly in line with our expectations and we believe they provide an appropriate framework on which the Pensions Regulator (TPR) can base a Code of Practice for the regime. We look forward to the publication of the draft Code by TPR in the Spring setting out how master trust authorisation will work in practice and from which we anticipate most of our detailed questions and comments on the new regime will emerge.

About us

NEST is a great UK success story.

Established in 2010, NEST is a critical pillar of the government's auto enrolment programme, with a public service obligation (PSO) to accept any employer wishing to use the scheme to discharge their auto enrolment duties.

From a standing start, we have delivered a high quality, low cost pension scheme, open to all, which has not only delivered on its mission but has also helped to drive up standards and best practice across the industry. Now with over 6 million members and well over half a million participating employers, NEST is playing a critical role in helping people save for their retirement. Many of them are low to moderate earners who may be saving for the first time, and moving jobs frequently.

NEST now occupies an important place in the pensions market and has great potential to deliver high quality pensions to mass market consumers for many years to come, leveraging scale to offer low cost, modernised services in the context of strong trustee governance.

Response to specific questions

Below are NEST's responses to the specific questions.

Question 1 - The scope of the authorisation regime is intended to ensure that multiple employer, mixed benefit schemes are captured and that the members are protected by existing pension legislation in respect of any defined benefits and by the Master Trust authorisation regime in respect of any money purchase benefits. Do the disapplications undermine this intention?

Since NEST is not a mixed benefit scheme, we have no comment to make in response to this question.

Question 2 - For all the regulations in this section is it clear to the schemes concerned whether they are required to be authorised or not?

Yes. NEST is clear that it will be required to be authorised.

Question 3 - Is it clear who will fulfil the roles subject to the fit and proper assessment in your scheme? Have we captured the important roles?

NEST's position as the only master trust pension scheme whose trustee is an arm's-length body makes our structure unique in the market. This poses questions in determining who fulfils some of the roles subject to the fit and proper assessment. However, we believe these questions are best resolved through discussing the application of the regulations with TPR and DWP leading up to and following the publication of the draft Code. In our view, no changes to the regulations are needed.

Question 4 - Are there any significant practical barriers to schemes meeting these requirements?

At this stage, we do not anticipate any practical difficulty in meeting these requirements subject to the detailed requirements which will be set out in TPR's Code.

Question 5 - Are there any significant practical issues for Master Trust schemes in providing the information required for the business plan?

We do not foresee any significant issues in providing the information required for the business plan.

However, we note that no clear definitions of the terms "active members", "deferred members" and "pensioners" have been provided in connection with the requirement to provide that information under paragraph 13 of Schedule 3 to the draft regulations. Given the wide variety of possible scheme structures and the ever-increasing range of statuses members can have once decumulation has begun, we believe it is essential that these definitions should be provided and that this could be achieved by referring to the definitions in section 124 of the Pensions Act 1995.

We note that the business plan requires the provision of information which NEST and, we assume, other master trusts would consider commercially sensitive. For example, paragraph 13 of Schedule 3 to the regulations requires details of existing and expected borrowing to be provided. We would like to understand if there will be any circumstances, including a relevant request under Freedom of Information (FOI) law, in which TPR would disclose this information. If, as we understand, the intention is that confidentiality of information provided to TPR under the regime should be preserved, does legislative provision need to be made to ensure that this is possible?

Question 6 - How can we improve the clarity, coherence and comprehensibility of the list of information to be included in the Business Plan across the spectrum of scheme models?

We do not have any particular concerns regarding the clarity, coherence or comprehensibility of the list of information. We do believe that guidance on the breakdown of costs and income will be necessary and should take account of differing corporate structures, but anticipate that this will be a part of TPR's Code.

Question 7 - Should the detailed requirements in relation to the business plan be set out in code of practice rather than regulations?

It is often sensible to set out detailed requirements in a code or guidance as these lend themselves to a more practical and purposive interpretation. This approach may be useful for a new regime which will need to adapt quickly to fit the needs of a relatively new and evolving part of the pensions landscape.

Question 8 - What, if any, other lines of business do scheme funders carry out that do not undermine the transparency of their financial arrangement with the scheme?

A final conclusion has not yet been reached as to who is considered the scheme funder for NEST. However, since NEST Corporation is only concerned with its trusteeship of the NEST scheme, we have no comments in response to this question.

Question 9 - What, if any, disclosures of the matters in regulation 7, scheme funder requirements would be disproportionate to provide and why?

We do not believe that any of the matters relating to scheme funder requirements in regulation 7 are disproportionate.

Question 10 - What, if any, alternatives could we consider to make the scheme funder's financial arrangements with the Master Trust sufficiently transparent to the regulator for its financial assessment?

For the same reasons as question 8, we have no comments in relation to this question.

Question 11 - Are there any circumstances where scheme funders would not be able to comply with the requirement to submit their accounts no later than nine months after the end of the financial year to which they relate and if so why?

Although we can only comment for NEST's specific situation, we are not aware of any reasons why the proposed timescale should not be achievable.

Other comments

Fraud compensation

Regulation 23 of the draft regulations makes changes to the application of the Fraud Compensation Fund (FCF) and Fraud Compensation Levy (FCL) to authorised master trusts (AMTs). It also removes NEST from the list of prescribed schemes which are not eligible for FCF compensation and are not required to pay the FCL.

We support DWPs proposal to extend the circumstances in which FCF compensation is payable in relation to AMTs. We believe it is a necessary change in order for members of AMTs to benefit from a level of protection comparable to that enjoyed by members of other occupational schemes.

We also accept the Department's argument that this is a 'greater good' levy, and that whilst it is highly unlikely that members of NEST would ever have cause to draw on the levy, schemes such as ours have a role to play in safeguarding all DC savers.

However, we also believe it is important that the costs are attributed fairly and proportionately. We welcome Government's recognition - in the proposal to cap AMTs' liability at 30p per member - that the risk profiles of AMTs are lower than those of other occupational pension schemes - particularly in the light of the new authorisation regime.

However, we do not believe a cap on per member liability is the right solution.

For the most part, defined contribution master trusts like NEST have only recently come into being; they have been born out of the Government's automatic enrolment program and exist to support that regime. At present, these nascent schemes tend to hold very small average pot sizes and, by their nature, those pots are predominantly held by people with low to moderate incomes. Our estimates (based on 2016 numbers) show that, had we not been subject to an exemption, NEST could have been expected to pay over 10 per cent of the total levies raised at a time when the assets it held represented less than 0.5 per cent of those of schemes eligible for FCF compensation (and this would not have been changed by the existence of the 30p per member cap). We expect that the cost of the FCL to other AMTs is likely to be similarly disproportionate. In our view, this disproportionate allocation of costs to AMT members places an unfair share of the burden on a new developing part of the industry which exists to serve the needs of a Government initiative and typically low-to-moderate earners. We are concerned that the cap and the level it has been set at has been arrived at from the perspective of delivering the funds the PPF needs, rather than an assessment of which members should pay, and how much.

The levy has only ever been charged at 25p per head. If this trend continues, the cap would be entirely cosmetic. We would like assurance that any levy will reflect the lower risk profile and per member assets of the AMT sector regardless of the amount the PPF aims to raise.

We therefore propose that DWP consider replacing the cap with a regulation that makes members of AMTs liable for a proportion of the member fee charged to other schemes - set at 25%. On this basis, NEST would still have paid around 4% of the total levy, based on 2016 values.

When parliamentary time allows, we would also welcome a fuller review of the levy to consider how it interacts with other levies; what it is typically being used for, and how the profile of claims is expected to develop over time - and on that basis apportion liabilities across DC savers fairly and proportionately.

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