



Law Society  
of Scotland

# Consultation Response

## Occupational Pension Schemes (Master Trusts) Regulations 2018

January 2018



## Introduction

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The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Pensions Law Sub-committee welcomes the opportunity to consider and respond to the Department for Work and Pensions' consultation on the *Draft Occupation Pension Schemes (Master Trusts) Regulation 2018*.<sup>1</sup> The Sub-committee would like to put forward the following comments on the drafting of the Regulations for consideration.

## Response

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**Regulation 4(2)(a)(iii) &(iv)** – It is unclear why this information is necessary given that individuals concerned are already trustees.

**Regulation 4(2)(b)(i)** – This is too broad as it would cover individuals undertaking administrative activities for which the trustee is ultimately responsible. The scope should be confined to directors.

**Regulation 4(5)** – The consultation paper it appears that this is intended to refer to 'cost-recovery' across the separate processes for all existing schemes and then new schemes but the regulation as drafted reads as cost recovery for the individual application.

**Regulation 13(c)** – Earmarked schemes are exempt from the production of accounts: 'where' should therefore be changed to 'except'.

<sup>1</sup> <https://www.gov.uk/government/consultations/draft-occupational-pension-schemes-master-trusts-regulations-2018>

**Regulation 14(i)** – This information is going to change on a frequent basis so it is more sensible to have an update every three years.

**Regulation 18** – See comment on regulation 30.

**Regulation 18(2)** – Whilst ‘pro rata’ is sensible for most charges, it is problematic for charges that are deducted by third-parties as part of an annual fee (eg for auditing a set of annual accounts).

**Regulation 19(1)(f)** – The ‘to’ in ‘will to comply’ should be deleted.

**Regulation 25(2)(b)** – This extension of the meaning of ‘new member’ is unclear. If an individual is a former member, they will have ceased to be a member by taking or transferring out all of their benefits so they would be ‘new’ members. It would be better to state explicitly that the scheme may nevertheless accept new members who have been subject to TUPE arrangements.

**Regulation 26(4)** – The draft provision uses the term ‘non-money purchase members’ but this is not a defined term and, given the context, these members have money purchase benefits. We are not persuaded that the reference to ‘non-money purchase’ is in fact required given the opening words of the paragraph.

**Regulation 30** – It is not clear whether paragraph (a) is intended to have a different meaning from the term ‘transaction costs’ which is used in regulation 2 of the Charges cap regulations. Where a scheme invests in property, it should also exclude costs in maintaining the properties. We would also suggest that it should include the broader category of third party charges within investments held by the Scheme given the wide scope of the definition of third party charges.

**Schedule 1, paragraph 1(a)(i) and (b)(i)** – The wording is potentially wider than intended in that it is presumably to cover ‘individual voluntary arrangements’ in England and the equivalent in Scotland. ‘Arrangement’ is also a defined term in these regulations although it is clear from the context that the defined term is not intended.

**Schedule 1, paragraph 1(h) and (i)** – The reference to ‘a regulator’ is very wide and could cover regulators that are not concerned with financial services. The ‘regulator’ would also be international whereas the reference to the ‘registrar of companies’ applies only to the UK.

**Schedule 1, paragraph 1(j)(i)** – It is not clear whether this paragraph is intended to apply to a person’s role in relation to the master trust being authorised, any master trust or any occupational pension scheme.

**Schedule 2, paragraph 3(k)** – It is not clear why a Part 7 transfer is relevant here. (In any event, it is unlikely that the scheme would be transferred under Part 7 (given that it has a separate legal status) and the reference to ‘activities’ is incorrect.)

**Schedule 3, paragraph 27** – It is not clear why a Part 7 transfer is relevant here. (As noted in relation to Schedule 2, paragraph 3(k), it is unlikely that the scheme would be transferred under Part 7 (given that it has a separate legal status) and the reference to ‘activities’ is also incorrect.)

**Schedule 4, paragraph 5(a)** – We consider that this should cover the directors of a corporate trustee as well.

**Schedule 5, paragraph 4(3)** – For active members, they should also be told that their employer can select a default and the date on which contributions will stop.

**Schedule 5, paragraph 6** – The definition of ‘arrangement’ (in the context of ‘default arrangement’) suggests that the default investment option in a trustee or employer default scheme must be a ‘strategy’ ie a lifestyle profile or target fund. It would be helpful to have clarification as to whether this is the intention.

**Schedule 5, paragraph 6(3)(c)** – In our view ‘the member’s employer’ should be replaced with ‘an active member’s employer’.

**Schedule 5, paragraph 6(3)(e)** – The member should be told how they can go about making their own investment choice.

**Schedule 5, paragraph 7(1)(a)** – It is not necessary for the members to provide an instruction for a transfer into the default scheme and it may create an impression that the transfer ought to be done early (rather than as an organised bulk exercise where the costs can be managed).

**Schedule 5, paragraph 7(2)** – These members are likely to have a statutory transfer right and the paragraph would not remove that right where the option period has expired. The notice will therefore be misleading.

**Schedule 5, paragraph 7(3)** – These members are likely to have a statutory transfer right and this paragraph will not remove that right to select an occupational scheme that is not a master trust (or a QROPS). The notice will therefore be misleading.

**Schedule 5, paragraph 9** – Given that the second notice contains the proposed transfer date for the default transfers, a third notice is unnecessary. Where the member has made their own selection, the transfer should not be delayed by a month to enable this requirement to be met so it should not apply to this circumstance.

**Schedule 5, paragraph 10(1)** – As suggested above, the second trustee notice should be extended to make this requirement unnecessary. When coupled with paragraph 10(2), it would suggest that the member’s fund should not be invested until the notice period has expired which is not a good member outcome and may well be contrary to the expectation set in the second trustee notice that the transfer payment would be invested in the default on the transfer date.

**Schedule 5, paragraph 10(2)** – If this requirement is retained, this paragraph includes an alternative scheme selected by the member so the scheme needn't include a default investment arrangement.

**Schedule 5, paragraph 11(1)** – This paragraph should be restricted to a default scheme and therefore exclude an alternative scheme selected by the member.

**Schedule 5, paragraph 11(2)** – The intention of this paragraph needs to be clarified. Where an individual is not capped because they became paid up before 6 April 2015, it is not clear whether they are capped after the transfer. Where an individual is not capped because they chose their fund/profile under the transferring scheme, there is also a question as to whether they are capped after the transfer if fund/profile mapping has been applied. Under these regulations, the transfer could be with or without the member's consent and the receiving scheme could have received an investment choice. A further question as to whether the member would be capped arises if the transfer is made without the member's consent but the individual has selected their own fund/profile.

**Schedule 5, paragraph 12** – This should include insurers authorised by the Prudential Regulation Authority.

**Schedule 5, paragraph 14(b)** – We are of the view that 'trustee default scheme' should be 'applicable scheme' for this sub-paragraph (but not sub-paragraph (a) as the employer would be making such arrangements).

**For further information, please contact:**

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