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Baroness Fookes
Delegated Powers and Regulatory
Reform Committee
House of Lords
London
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21 November 2016

Dear Janet,

I am grateful to the Committee for its careful consideration of the merits of the Pension Schemes Bill and I would like to take this opportunity to respond on the three areas to which the Committee drew attention in order to help the House with its deliberations on these points.

Clauses 7, 8 and 11 – Authorisation criteria

The powers referred to in clauses 7, 8 and 11 allow the Secretary of State to make Regulations that will set out the matters that the Pensions Regulator can take into account when making its assessment of whether a Master Trust pension scheme meets the relevant authorisation criteria and are all subject to a negative resolution procedure. Having considered the original memorandum submitted to the Committee on 19th October you asked for further information on why the made affirmative procedure was not appropriate for these powers and for further examples of the circumstances in which the Government envisages the powers might be used. Our response to your queries was provided in a supplementary memorandum on 4th November.

I note that the Committee have concluded that the negative procedure may offer an appropriate level of Parliamentary scrutiny for these powers, but suggested that the House takes the extra information provided in that supplementary memorandum into account. I welcome this and also note that we have received amendments from the opposition to the Bill at Committee stage that will allow that debate to take place. I will give further consideration following that debate to whether negative procedure is appropriate in relation to all of these powers.

Clause 16 – Duty to notify the Pensions Regulator of significant events

In your consideration of powers under clause 16 you draw the House's attention to the power in clause 16(3) you concluded that we had not justified the scope of the power. The Clause places a duty on the Secretary of State to make Regulations to set out the events that constitute a significant event for the purposes of the duty on certain persons to report such an event. You stated that it appeared to you that the Government has not yet decided on the policy relevant to this power. I would like to assure you this is not the case, and provide the following additional information as I believe it will assist the House's consideration of this power.

Part 1 of the Pension Schemes Bill has been introduced to address particular risks that arise in Master Trust pension schemes. Master Trusts have developed, in part in response to the success of the automatic enrolment programme, emerging as a different kind of beast to the traditional structures that have existed in the occupational pensions sphere. There has been a general acknowledgement that further regulation of Master Trusts is both desirable and necessary.

In considering what form the new regulation should take the Government has worked with the industry, the Pensions Regulator and the Financial Conduct Authority to consider how existing regulatory regimes apply and what more is required. The Government concluded that the first aim of this regime should be to avoid disruption to members and employers by seeking to avoid scheme failures; hence the Bill will establish an authorisation and supervisory regime.

As part of the supervisory regime there is a requirement for certain key people to notify the Pensions Regulator of certain key risk events, referred to as triggering events (Clauses 20, 21 and 22). These events have been selected as the potential precursors to a scheme failure or that will lead to the scheme no longer being able to meet the authorisation criteria (whilst not necessitating a failure). The triggering events are listed on the face of the Bill, as are those responsible for reporting them as they are critical nature of this requirement to the effectiveness of the regime.

The significant events which may be prescribed under clause 16 are also essential to the effective operation of the supervisory regime, once it is established. However, they are of a lower order than a triggering event. The Government's intention is that a significant event in a Master Trust scheme should be sufficiently important to merit the attention of the Pensions Regulator, justify the costs to the scheme of providing information and be relevant to the ability of the scheme to meet the authorisation criteria. However a significant event will not necessarily be one which results in the scheme failing to meet the authorisation criteria.

For example, schemes will periodically change trustees. The fitness and propriety of a trustee is linked to the scheme's authorisation, so the Pensions

Regulator must be informed and the new trustee will be assessed against the relevant standard. Other significant events might be a change to the continuity strategy, changes to the business plans, a change to the scheme administrator or capital adequacy falling within a certain percentage of the threshold. The Government wishes to hold further consultation with industry prior to making the regulations setting out what constitutes a significant event. While the list of significant events will not be subject to frequent change, it is appropriate for the future for there to be sufficient flexibility for the list to be adjusted to reflect market developments and potentially new Master Trust structures and processes.

The power is akin to an existing power in section 69 of the Pensions Act 2004 which requires the reporting to the Regulator of a notifiable event in relation to certain non- money purchase schemes, with power to prescribe what constitutes a notifiable event in regulations.

I hope that this explanation will assist the House to understand the nature of the power that we propose.

We have received an amendment to the Bill at Committee stage on the procedure for the power in this clause as well as notification of a clause stand part debate which will give opportunity to hear all views on the scope of the power and procedure and I will consider further whether there is anything more that we can do to meet any concerns that are raised.

Clause 39(1) – Power to modify the scope of Part 1 of the Bill

You have also drawn attention to the regulation-making powers in clause 39(1) which you have concluded are inappropriate. These allow for Regulations to (a) apply some or all of the provisions of Part 1 of the Bill to pension schemes that would not fall within the definition of a Master Trust or (b) to disapply some or all to those that do. You raise concerns that there is nothing to limit the use of these powers. You make the separate point that these powers also allow for partial application and disapplication of the authorisation regime in Part 1 of the Bill and the memorandum does not set out the circumstances in which this aspect of the power is intended to be used.

While I recognise your desire that powers should be as constrained as possible, I remain convinced that the powers are required.

It is the Government's intention that the measures in this Bill are limited to addressing the specific risks that arise in Master Trust pension schemes. However, while the term "Master Trusts" is in common use in the industry, in practice it encompasses a range of schemes, which include sub-groups with characteristics that may overlap with schemes that do not carry the same risks. Therefore, the delegated powers here will allow us to capture the right schemes and ensure the legislation does not unnecessarily bite where it would be disproportionate for it to do so.

Parliament will have an opportunity to debate any regulations made using these powers as they will be subject to the affirmative procedure. The need for regulation of Master Trusts is pressing and we have sought in this Bill to ensure that such schemes are captured; however this is a market in which scheme designs have already developed and proliferated in response to Government intervention. Therefore, while I take note of the Committee's concern I continue to believe that the flexibility provided by these powers, along with the appropriate provision for Parliamentary scrutiny, is required to achieve the policy aim and future-proof the legislative provisions.

I will place a copy of this letter in the House libraries.

Yours sincerely,

David

Lord Freud
Minister of State for Welfare Reform