

Consultation document and response form

# **Consultation on Code of Practice 15: Authorisation and supervision of master trusts**

Draft Code of Practice no: 15

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## Scope of the consultation exercise

We are consulting on our new Code of Practice no: 15, which relates to the authorisation and supervision of master trusts. We are also consulting on the related procedure for making authorisation decisions.

We welcome comments on any aspect of the draft code and draft procedure. We have provided some specific questions on areas in which we have a particular interest. We will be publishing the first tranche of guidance during the consultation period and we invite users who wish to comment on the guidance to do so through their response to this consultation. Further guidance will be published following the conclusion of our forthcoming readiness review.

Following the consultation, we will consider any representations made on the draft and make any appropriate changes before laying the code in Parliament and publishing the procedure.

## Who is this consultation for?

We are particularly interested to hear from anyone to whom the provisions of the Pension Schemes Act 2017 apply and/or to those involved with master trusts. This is not only trustees, but also includes others such as scheme funders, scheme strategists, service providers, employers, professional advisers and members of master trusts.

## Impact assessment

We will be liaising with the Department for Work and Pensions (DWP) and the verification body designated by the Department for Business, Energy and Industrial Strategy (BEIS) for the Business Impact Target. The DWP have impact assessed the regulations at consultation stage. They estimated that the net cost to business per year (equivalent annual net direct cost to business (EANDCB on 2014 prices) was £2.6m. They will be updating this after their consultation. We will be liaising with the DWP following the consultation on regulations and code regarding producing a separate impact assessment for the code.

## Government consultation principles

For the purposes of this consultation paper, we are following the government's consultation principles at <http://bit.ly/ContPrin>. The key principles state that consultations should:

- ▶ be clear and concise
- ▶ have a purpose
- ▶ be informative
- ▶ be only part of a process of engagement
- ▶ last for a proportionate amount of time
- ▶ be targeted
- ▶ take account of the groups being consulted
- ▶ be agreed before publication
- ▶ facilitate scrutiny

## Background

The Pensions Regulator is the UK regulator of work-based pension schemes. Our objectives as set out in legislation are:

- ▶ to protect the benefits of members of occupational pension schemes and personal pension schemes (where there is a direct payment arrangement)
- ▶ to promote and to improve understanding of the good administration of work-based pension schemes
- ▶ to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF)
- ▶ to maximise employer compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008
- ▶ to minimise any adverse impact on the sustainable growth of an employer (in relation to the exercise of our functions under Part 3 of the Pensions Act 2004 only)

In exercising our functions to meet our statutory objectives, we seek to be risk-based and proportionate, while minimising burdens on the regulated community (including trustees, managers, employers and advisers) where possible.

Our operational approach is to **educate, enable** and **enforce**. We recognise that we can support the regulated community to understand and fulfil its obligations by providing appropriate guidance and tools.

Where there is non-compliance with legal requirements we have a number of enforcement options, including imposing monetary penalties and additional powers granted to us in relation to master trusts.

## Consultation

The Pension Schemes Act 2017 (the Act) ensures that savers are appropriately protected by increasing the regulation of master trusts, which account for almost 10 million members in around 80 schemes (as at January 2018). The Act seeks to provide members of master trust schemes with a level of protection equivalent to that of members of personal pension schemes.

This consultation is in respect of the draft new code of practice for master trust schemes, and the related procedure we expect to follow in deciding whether or not authorisation should be granted to a master trust. We will separately publish guidance to accompany this code and the authorisation and supervision regime. This consultation also seeks to gain views on what should be included in guidance.

This new code represents a significant departure from previous such documents as it outlines a new way of operating for us. For the first time we will be directly authorising and supervising particular pension schemes. The purpose of the new code is therefore to provide master trusts with the clarity they need on how they apply for authorisation and the matters that will be taken into account in deciding whether a master trust should be authorised and should remain so.

This new code is in addition to all other codes and legislation that are relevant to master trusts and we expect those using this code to already be familiar with their existing obligations and our expectations in this regard. The draft code does not cover the risk based approach that we will take to supervision, and this will be published separately.

## Consultation: General questions

The code is set out in a number of sections, each of which relates to one of the authorisation criteria. This is intended to help the user through the authorisation process and to make clear the standards that authorised schemes must continue to meet to remain authorised. We recognise that master trusts differ in a number of ways, such as size, focus, objective and history. Therefore, while all master trusts must meet the same standards in an authorisation environment, the ways in which they can demonstrate that they do so are left flexible.

### **Question 1: In your view, are there any barriers to meeting the expectations set out in the new code, and if so, what are they?**

The Act sets out that master trusts must satisfy us that they meet the criteria to be authorised. For this reason the language we have chosen to use is that schemes are, for example, “more likely”, “less likely” or “unlikely” to satisfy us. This allows for circumstances where master trusts may be able to justify a particular or different approach.

### **Question 2: Is the language used in the code clear and unambiguous? If not, what would provide clarity?**

We have drafted a code that is intended to provide master trusts with sufficient detail to understand how their scheme can meet the criteria to be authorised. The code is structured around the criteria as they appear in the relevant legislation. We are aware that there is a significant interplay between the various authorisation criteria. Our intention is that users should be able to clearly identify places where they may need to consider other elements of the authorisation criteria.

### **Question 3: Do you consider that any important areas of the authorisation criteria have been missed in the new code?**

While there is significant detail in the code it is our intention to publish guidance in due course. We intend to provide a first batch of guidance in the weeks after the publication of this consultation, with further elements of guidance added as requirements for further assistance are identified. The first elements of guidance will include matters related to the calculation of financial sustainability and assurance statements for systems and processes.

### **Question 4: Are these the right areas to cover in the first batch of guidance? If not, what additional areas of the authorisation criteria should we consider covering?**

The feedback received from stakeholders since the Act and regulations were published was that there was a desire for the code to provide clarity on a number of issues and therefore give certainty to the market. Therefore, the code needs to set out our expectations, particularly in terms of the detail we will be expecting to see. As a result, this draft code contains detailed information on meeting each of the authorisation criteria.

As a document that sets out our expectations in relation to both authorisation and supervision of master trusts, the code contains a lot of information. It is our intention that the primary means by which users will access this code will be online and to this end we intend to include indexing and links to aid navigation between related sections. We are also considering whether content can be layered so that additional detail is shown in drop down sections or away from the main flow of the document

### **Question 5: What other methods should we consider to ensure that the information contained in the code is accessible to users?**

We are mindful of the need for the regime to keep pace with industry developments. We have therefore tried to balance the level of detail needed to provide clarity on our expectations, with the need to ensure that in future we can capture developments in the way schemes operate appropriately.

**Question 6: Are there any parts of the code which require additional flexibility because they cover areas which are likely to experience significant change in your business?**

**Question 7: Is the level of detail we have set out useful? Is further detail needed, and if so, in which areas?**

## **Consultation: Section-specific questions**

We set out below the main points of each section of the code. We ask specific questions in relation to some of these sections. We are also seeking views on the following questions in relation to each section.

- a. Question: Does the code make our expectations clear?
- b. Question: Is it clear what evidence is required to meet our expectations?
- c. Question: Are there any particular barriers to meeting the expectations in the code?

## **Identifying key roles**

Stakeholders have told us that they need clarity on how to identify their strategist and funder as these are new roles defined in the legislation. In the draft code we have tried to provide additional information to help master trusts identify these roles.

**Question 8: Does the code provide sufficient clarity on how to identify who carries out the role of strategist and funder within a master trust? If not, what further detail would help?**

## Fitness and propriety

The Act specifies certain roles that must be assessed for all master trusts, including the scheme trustees, scheme funder and scheme strategist. Additionally, the code sets out criteria for trustees to apply in identifying who to put forward for assessment in other categories where we can choose whether to assess.

Because different roles have different influences on the scheme, the thresholds for this criterion will reflect the nature of the particular role. Where a role or function is undertaken by a corporate entity, we may assess individuals performing core functions on their behalf such as board members or trustee directors.

In contrast to other regulatory environments, we may look at a person in relation to the function they perform within a larger group. In particular, a trustee board must be able to demonstrate that it has, and functions with, a broad range of competencies at a collective level.

**Question 9: Is there sufficient clarity on the persons to be identified?**

**Question 10: Does the code provide sufficient clarity on how competence for trustees and strategist will be assessed?**

## Systems and processes

Master trusts have to confirm that their systems can provide a minimum functional capability, and we may require them to demonstrate this to us. They will also be expected to demonstrate that they have effective processes for running and governing the scheme and its operations. Where a master trust is administered by third parties, evidence will need to be obtained from the third party to show the authorisation criteria can be satisfied. We will not mandate that a master trust should obtain an assurance report, although we will be publishing guidance as to how various assurance standards might support an authorisation application.

## Continuity strategy

A continuity strategy is a high level plan which sets out how member benefits will be protected following a triggering event. It needs to set out the principles by which decisions will be made, paid for and the timescales over which this will take place. The continuity strategy must also set out a master trust's administration charges and the code explains how this can be done.

**Question 11: Are there other ways that the code could allow the legislative requirement in relation to the statement of charges to be met?**

## Scheme funder

The scheme funder must be able to demonstrate that it is able to provide the necessary financial support to the master trust. The scheme funder must be a body corporate or partnership that is a legal person, and only carry out activities directly related to the master trust, unless they can demonstrate that they meet an exemption.

A scheme may not have a scheme funder, and is not limited to having only a single scheme funder.

**Question 12: Does the code provide clarity on how an exemption in respect of a scheme funder carrying out non-master trust related activities will be considered? If not, what more would help?**

## Financial sustainability

A key feature of the new regulatory environment for master trusts is that they must be able to demonstrate that they have access to sufficient financial resources to cover their set up and running costs, and also financial reserves sufficient to cover the costs arising from a triggering event. The financial sustainability assessment will need to take account of the evidence presented in relation to other authorisation criteria.

We indicate that master trusts may use either a basic or detailed method when calculating the amount required for their financial reserves. The basic method will require a scheme to hold financial reserves equivalent to a set amount for each member. The intention is to allow master trusts to have a simple method of meeting this element of the authorisation criteria.

**Question 13: Should use of the basic method be restricted to particular types of master trusts, and if so, why?**

**Question 14: Should we set out in code or guidance the factors we may consider in revising the amount used in the calculation of the basic method?**

## Business plan

Following the consultation on The Occupational Pension Scheme (Master Trust) Regulations 2018 the decision was made to move Schedule 3 (Business Plan) from regulations to the code. We have therefore included this as a separate element within the code.

A business plan will be a comprehensive narrative document, prepared by the scheme strategist, which sets out what the objectives of a scheme are and how these will be achieved.

## Supervision

The supervision section covers the legal requirements that apply once a scheme is authorised, notably in respect of significant and triggering events. Our intention is that the supervisory regime will be driven by risk and we will publish guidance separately on this, and on our expectations of schemes during a triggering event.

## Application

In order to become authorised the trustees of a master trust must make an application. An existing master trust must do so within an application window set out in legislation, while a new master trust must receive authorisation before it starts to operate. This section will be supported by guidance.

## Consultation: Decision-making procedure

We are also consulting on the procedure that we expect to follow in deciding whether or not to grant authorisation.

**Question 15: Does the proposed procedure provide sufficient and clear information, and if not, how could it be improved?**

**Question 16: Are there any areas not covered by the procedure (taking into account any guidance on the application process) which you think should be included?**

## Responding to the consultation

We have provided a template form for responses which can be completed electronically and submitted to us. We will however be happy to accept paper responses as well. Your response can be sent:

- ▶ by email to [MTPolicy@tpr.gov.uk](mailto:MTPolicy@tpr.gov.uk)
- ▶ by post to **Victoria Holmes, Regulatory policy, The Pensions Regulator, Napier House, Trafalgar Place, Brighton, BN1 4DW**

We may need to share the feedback you send us with other government bodies. We may publish this feedback as part of a response to the consultation. If you wish your comments to remain anonymous, please state this explicitly in your response. If you do not wish your response to be shared more widely, please make this known and we will take the necessary steps to meet your request.

However, please be aware that, should we receive a formal request under the Freedom of Information Act, we may be required to make your response available. When responding, please tell us whether you are responding as an individual or on behalf of an organisation (and, if the latter, which organisation).

## Closing date

This consultation document was published on 27 March 2018. The closing date for responses is **12 noon on 8 May 2018**.

## Appendix: Consultation questions and response form

This form is interactive. Please save the whole consultation pdf to your computer, fill in your response to the questions as appropriate and return it to the following email address by **12noon** on **8 May 2018**: [MTPolicy@tpr.gov.uk](mailto:MTPolicy@tpr.gov.uk)

### Your details

Your name:

Organisation (if applicable):

Job title (if applicable):

Postal address:

Telephone:

Email:

Which category best describes you or your organisation?

Please select one category from the drop down menu above.

If you answered 'Other', please specify:

### Confidentiality

We may need to share the feedback you send us within our own organisation or with other government bodies. We may also publish this feedback as part of our response to the consultation. If you wish your response, in whole or in part, to remain confidential, please tick the box below:

Yes, I wish my response to remain confidential.

If so, please specify which part of your response you wish to remain confidential and why:

## Part 1: General questions for all respondents

We invite all respondents to consider the new code in full and provide a response to the following questions:

- 1. In your view, are there any barriers to meeting the expectations set out in the new code, and if so, what are they?**

Yes                      No

Please give your reasons.

- 2. Is the language used in the code clear and unambiguous? If not, what would provide clarity?**

Yes                      No

Please give your reasons.

- 3. Do you consider that any important areas of the authorisation criteria have been missed in the new code?**

Yes                      No

Please give your reasons.

**4. Are these the right areas to cover in the first batch of guidance? If not, what additional areas of the authorisation criteria should we consider covering?**

Yes

No

Please give your reasons.

**5. What other methods should we consider to ensure that the information contained in the code is accessible to users?**

Yes

No

Please give your reasons.

**6. Are there any parts of the code which require additional flexibility because they cover areas which are likely to experience significant change in your business?**

Yes

No

Please give your reasons.

**7. Is the level of detail we have set out useful? Is further detail needed and if so, in which areas?**

Yes

No

Please give your reasons.

## Part 2: Section-specific questions on the code

We ask specific questions in relation to some sections of the code below. We are also seeking views on the following questions in relation to each section:

- a. Does the code make our expectations clear?
- b. Is it clear what evidence is required to meet our expectations?
- c. Are there any particular barriers to meeting the expectations in the code?

### Authorisation criteria: Identifying key roles

- a. Does the code make our expectations clear?

Yes                      No

Please give your reasons.

- b. Is it clear what evidence is required to meet our expectations?

Yes                      No

Please give your reasons.

- c. Are there any particular barriers to meeting the expectations in the code?

Yes                      No

Please give your reasons.

## Section-specific question

8. Does the code provide sufficient clarity on how to identify who carries out the role of strategist and funder within a master trust? If not, what further detail would help?

Yes                      No

Please give your reasons.

## Authorisation criteria: Fitness and propriety

- a. Does the code make our expectations clear?

Yes                      No

Please give your reasons.

- b. Is it clear what evidence is required to meet our expectations?

Yes                      No

Please give your reasons.

- c. Are there any particular barriers to meeting the expectations in the code?

Yes                      No

Please give your reasons.

## Section-specific questions

### 9. Is there sufficient clarity on the persons to be identified?

Yes No

Please give your reasons.

### 10. Does the code provide sufficient clarity on how competence for trustees and strategist will be assessed?

Yes No

Please give your reasons.

## Authorisation criteria: Systems and processes

#### a. Does the code make our expectations clear?

Yes No

Please give your reasons.

#### b. Is it clear what evidence is required to meet our expectations?

Yes No

Please give your reasons.

c. Are there any particular barriers to meeting the expectations in the code?

Yes No

Please give your reasons.

### Section-specific question

**11. Are there other ways that the code could allow the legislative requirement in relation to the statement of charges to be met?**

Yes No

Please give your reasons.

### Authorisation criteria: Continuity strategy

a. Does the code make our expectations clear?

Yes No

Please give your reasons.

b. Is it clear what evidence is required to meet our expectations?

Yes No

Please give your reasons.

c. Are there any particular barriers to meeting the expectations in the code?

Yes                      No

Please give your reasons.

### **Authorisation criteria: Scheme funder**

a. Does the code make our expectations clear?

Yes                      No

Please give your reasons.

b. Is it clear what evidence is required to meet our expectations?

Yes                      No

Please give your reasons.

c. Are there any particular barriers to meeting the expectations in the code?

Yes                      No

Please give your reasons.

## Section-specific question

**12. Does the code provide clarity on how an exemption in respect of a scheme funder carrying out non-master trust related activities will be considered? If not, what more would help?**

Yes                      No

Please give your reasons.

## Authorisation criteria: Financial sustainability

a. Does the code make our expectations clear?

Yes                      No

Please give your reasons.

b. Is it clear what evidence is required to meet our expectations?

Yes                      No

Please give your reasons.

c. Are there any particular barriers to meeting the expectations in the code?

Yes                      No

Please give your reasons.

## Section-specific questions

**13. Should use of the basic method be restricted to particular types of master trusts, and if so, why?**

Yes                      No

Please give your reasons.

**14. Should we set out in code or guidance the factors we may consider in revising the amount used in the calculation of the basic method?**

Yes                      No

Please give your reasons.

## Business plan

a. Does the code make our expectations clear?

Yes                      No

Please give your reasons.

b. Is it clear what evidence is required to meet our expectations?

Yes                      No

Please give your reasons.

c. Are there any particular barriers to meeting the expectations in the code?

Yes No

Please give your reasons.

## Supervision

a. Does the code make our expectations clear?

Yes No

Please give your reasons.

b. Is it clear what evidence is required to meet our expectations?

Yes No

Please give your reasons.

c. Are there any particular barriers to meeting the expectations in the code?

Yes No

Please give your reasons.

## Application

a. Does the code make our expectations clear?

Yes

No

Please give your reasons.

b. Is it clear what evidence is required to meet our expectations?

Yes

No

Please give your reasons.

c. Are there any particular barriers to meeting the expectations in the code?

Yes

No

Please give your reasons.

### Part 3: Questions on the decision-making procedure

**15. Does the proposed procedure provide sufficient and clear information, and if not, how could it be improved?**

Yes                      No

Please give your reasons.

**16. Are there any areas not covered by the procedure (taking into account any guidance on the application process) which you think should be included?**

Yes                      No

Please give your reasons.

## How to contact us

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