Draft Occupational Pension Schemes (Master Trusts) Regulations 2018

RESPONSE FROM ICAS TO THE DEPARTMENT OF WORK AND PENSIONS

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Background

ICAS is a professional body for more than 21,000 world class business men and women who work in the UK and in more than 100 countries around the world. Our members have all achieved the internationally recognised and respected CA qualification (Chartered Accountant). We are an educator, examiner, regulator, and thought leader.

Almost two thirds of our working membership work in business; many leading some of the UK's and the world's great companies. The others work in accountancy practices ranging from the Big Four in the City to the small practitioner in rural areas of the country.

We currently have around 3,000 students striving to become the next generation of CAs under the tutelage of our expert staff and members. We regulate our members and their firms. We represent our members on a wide range of issues in accountancy, finance and business and seek to influence policy in the UK and globally, always acting in the public interest.

ICAS was created by Royal Charter in 1854.

Introduction

The ICAS Pensions Panel, on behalf of ICAS, welcomes the opportunity to comment on the 'Draft Occupational Pension Schemes (Master Trusts) Regulations 2018: Public consultation on the regulations to support the Pension Schemes Act 2017'.

Main comments

While we understand the importance of implementing a robust scheme for the authorisation and supervision of master trusts, particularly those already in existence and receiving contributions from millions of new savers under auto-enrolment, we are very concerned that the six-week consultation period is inadequate.

We believe the truncation of the timetable from the 12 weeks normally expected under the UK Government's Code of Practice on Consultations to six weeks, encompassing the Christmas period, will not enable stakeholders to consider fully the proposals.

ICAS has been unable to consider all aspects of the draft Regulations and we are therefore submitting comments on the proposed audit requirements for master trust scheme funders only. We have significant concerns that the proposals in this area may not assist in the delivery of the DWP's stated objectives for the new regulatory scheme.

Detailed comments on the proposed audit requirements for scheme funders

The proposal, in paragraph 56, that scheme funders provide The Pensions Regulator with full audited accounts irrespective of the requirements of the Companies Act 2006 to ensure that their financial reports are verified by an independent third party is flawed.

While we broadly support the withdrawal of certain accounts and audit exemptions available under the Companies Act 2006, which are specified in the draft regulations for funders of master trusts, we have not reviewed these exemptions in detail and cannot provide unequivocal support. However, we do not agree that an audit under the 2018 Regulations should diverge from the requirements of International Standards on Auditing (ISAs) UK or the legislation which underpins the audit requirements, which for the funders of master trusts will normally be the Companies Act 2006 or, for LLPs, in substance the Companies Act 2006.

The Financial Reporting Council (FRC) is the competent authority in the UK for setting auditing standards and we see no evidence that the FRC has been consulted prior to this public consultation. We recommend the DWP consults the FRC as a matter of urgency on the external scrutiny requirements proposed in these Regulations. Any divergence from ISAs (UK) could create additional costs and risks for both funders and their appointed auditors.

Broadly, under section 495 of the Companies Act 2006, auditors are required to give and opinion on:

(i) whether the accounts give a 'true and fair' view; and
(ii) have been properly prepared in accordance with the relevant financial reporting framework.

This includes consideration of going concern including, where relevant, the directors' identification of any events or conditions that constitute a material uncertainty that may cast significant doubt about the company's ability to continue to adopt the going concern basis of accounting.

In addition, the requirements in ISA (UK) 570: Going Concern paragraph 21-2(b) state that:

(i) for entities that do not follow the UK Corporate Governance Code, the auditor reports by exception if use of the going concern basis of accounting is not appropriate or if management has not disclosed any material uncertainties; or
(ii) for entities that follow the UK Corporate Governance Code, the auditor states whether there is anything material to add or draw attention to the directors' statement on the going concern basis of accounting and the directors' identification of any material uncertainties.

The requirement in proposed regulation 9(3)(a) that the auditor "confirms whether, in his or her opinion the entity is a going concern" is therefore inconsistent with Companies Act 2006 requirements and ISAs (UK).

If the DWP's intention is that auditors give a positive statement on a funder's continuance as a going concern, then this would likely need to be provided by the funder's auditor but under the terms of a separate assurance engagement with separate report. Further, any assurance to be provided on the receipt of financial support from another party would likely need to be undertaken under an engagement which is separate from the statutory audit. This would require the auditor to perform significant extra work with additional fees being charged to the funder: this is not reflected in the accompanying impact assessment.

Assurance over 'going concern'
The reference to 'going concern' would need to be more clearly defined than is currently the case under applicable financial reporting frameworks, which in the UK would include compliance with either International Accounting Standards or UK Generally Accepted Accounting Practice (GAAP) and any applicable legislation. For example, the time horizon for the directors' assessment of going concern would need to be specified.

It would also be necessary for the funder to provide an assertion in respect of its going concern upon which the auditor would report. Further, it would need to be clear as to the extent and nature of the work the auditor is expected to perform. This will require regulatory guidance for funders and professional guidance for auditors to be developed and put in place and we question whether it would be possible for this aspect of the Regulations to be complied with within the scope of the statutory audit engagement. Without more clarity, we are concerned that auditors may not be willing and able to accept engagements to perform this additional reporting; if this is the case, funders would be unable to comply with the proposed Regulations.

Assurance over financial support from another party
The requirement in proposed Regulation 9(3)(b) that the auditor "confirms whether the funder is receiving financial support from another party", is new and, again, would likely need undertaken outside the scope of an audit under ISAs (UK):

- A separate reporting framework would likely need to be developed, which would set out a requirement for a party (probably the funder) to make an assertion as to what financial assistance is being provided by a third party, and the process that the reporting accountant would follow to provide independent reporting on such a statement.

- Alternatively, if the information on financial assistance were included in the funder's annual accounts, then it would be subject to audit. The acceptability of this route to the auditing profession may depend on the development of new guidance for auditors.

The complexity of the issues raised above highlights the need for a longer consultation period and that prior consultation with key stakeholders, for example, the FRC would have been valuable. If the current proposals are implemented there is a risk that these will be unworkable.

It is also worth noting that provision C.1.3. of the UK Corporate Governance Code published by the FRC requires directors to state "whether they considered it appropriate to adopt the going concern basis of accounting … and identify any material uncertainties to the company's ability to continue to do so over a period of at least twelve months from the date of approval of the financial statements". The FRC has also published guidance along similar lines for directors of companies that do not apply the UK Corporate Governance Code, in Guidance on the Going Concern Basis of Accounting and Reporting on Solvency and Liquidity Risks.

In the light of the existing accounts preparation and audit requirements, it may be preferable to align the requirements in proposed regulation 9(3) with the Companies Act and ISAs (UK) or, indeed, not to include these requirements at all as the existing requirements may be considered sufficient. On the other hand, if the existing financial reporting and auditing requirements are deemed insufficient to meet the objectives of the new regulatory scheme for master trusts it may necessary to have a fundamental rethink of the external scrutiny requirements of funders under the new master trust regulatory scheme.

Scope of the entity

General purpose accounts, and accompanying reports, are prepared by an entity which is clearly defined, for example, an individual company or a group of companies. Another issue which may need to be considered is whether the master trust funder aligns with the entity preparing the general purpose accounts which are being subject to audit. Therefore, the DWP in considering whether statutory accounts audited under ISAs (UK) will deliver sufficient scrutiny of the funder for the purposes of the master trust regulatory regime will also need to consider whether the funder aligns with the audited entity.

Funders which are not UK entities

If the intention is to extend the existing reporting requirements to the audits of funders that are not performed in accordance with ISAs (UK), for example if the funder is incorporated outside the UK and audited by a non-UK auditor, then this needs to be clarified in the Regulations. For example, the regulations could refer to Companies Act 2006 and ISA (UK) accounts and audit requirements plus equivalent oversees accounts and audited requirements where relevant.

Charities which are funders to prepare accounts under the Companies Act 2006

Regulation 9(2) refers to funders which are charities. We do not know the extent to which funders are charities, either charitable companies or other legal forms. It is self-evident that a charity which is not a company should not prepare its accounts under the Companies Act 2006, therefore, this Regulation should be amended accordingly.

Any charity which would be large enough to be a master trust funder will likely be of sufficient size to have to prepare accounts which give a 'true and fair' view under UK GAAP. It should therefore be sufficient for a charity funder of a master trust which is not a company to prepare its accounts under charity law, but it may be worth specifying for completeness that such a non-company charity cannot prepare receipts and payments accounts. There are three charity law jurisdictions in the UK: England and Wales; Northern Ireland; and Scotland.

The audits of registered UK charities must be undertaken under ISAs (UK).

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