

Client guide

The Nucleus Bypass Trust for use with the Nucleus Pension account

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Welcome to the guide for the Nucleus Bypass Trust for use with the Nucleus Pension account. This section explains how the document is structured and defines some of the terms we will be using.

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Important note:

The bypass trust should only be used with the Nucleus Pension account, under which the scheme administrator has a discretion to pay lump sum death benefits to any person in the discretionary class, and the discretionary class includes the trustees of a trust declared by the Nucleus Pension account holder.

All references to a spouse, widow or widower in this guide should be taken to also refer to a registered civil partner.

In this document all references to member refer to you, as the Nucleus Pension account holder.

The information contained in this client guide is based on Nucleus' understanding of current taxation, legislation and HM Revenue and Customs' practice, all of which may change with or without notice.

The Nucleus Bypass Trust Deed is provided on the strict understanding that it is presented as a draft to be considered by the settlor and their legal advisers. Ultimately, its legal and tax effects will depend on the circumstances of each particular case. Accordingly, neither Nucleus Financial nor any associated or affiliated company nor any of their representatives, officials, employees or professional advisers can accept any responsibility for any loss occasioned as a result of its use in any circumstances whatsoever.

1. Introduction – personal pension plans, death benefits and inheritance tax (IHT)

Where you are a member of a registered pension scheme, such as the Nucleus Pension account, substantial benefits can become payable on your death. Pensions are at the moment generally, free of IHT, except in some circumstances. Please note that The rules around pensions being excluded from IHT are changing from April 2027. Please speak to your financial adviser to understand how these changes could impact you and your pension savings along with how IHT is charged on your estate and when allowances and exemptions may be able to be applied to reduce any tax payable.

If you, as a member of the Nucleus Pension account, establish a Nucleus Bypass Trust during your lifetime and lump sum death benefits are paid to the trust rather than to a beneficiary, it may be possible to mitigate your future potential IHT tax liability.

The trust is called a bypass trust because the pension scheme death benefits are not paid to the surviving spouse and are not part of the taxable estate. Instead, they are paid to a trust under which your chosen beneficiaries (including your spouse) can benefit. The trust can therefore incorporate flexibility over who benefits under it and, in particular, means that the trustees can pay (or lend) some benefits to your surviving spouse.

While the bypass trust offers the opportunity for effective IHT planning, it also gives rise to a number of tax implications. These should be discussed with your advisers.

Death benefits can be paid under a personal pension either where a member dies before drawing retirement benefits (i.e. with uncrystallised benefits) or while they are in receipt of retirement benefits. The amount of death benefits payable will depend upon the rules of the scheme and if these are paid as lump sums or designated to income.

Unused pension funds can be passed to whoever a pension scheme member nominates, whether they are related or not. If the pension scheme member dies before age 75, then there is normally no income tax to pay on receipt of these benefits, but depending on how these are paid they may need to be tested against your lump sum and death benefit allowance. For death benefits paid and death occurs after age 75, they will be taxed for individuals at their marginal rate to income tax and for trusts at special trust rates. Furthermore, if when the beneficiary subsequently dies and there remains unused pension funds, then these too can be passed onto others (successors).

However, the rules surrounding who these benefits can be passed on to, and the format they may be passed on, are complex. You should speak to your financial adviser about the pension death benefit process, the importance of completing expression of wishes and nominating beneficiaries, the options available to you and the taxation implications involved.

2. The benefits of using the Nucleus Bypass Trust to receive death benefits

The aim of the Nucleus Bypass Trust is to provide a flexible structure to receive death benefits from a Nucleus Pension account which can provide for the payment of those benefits to a wide range of beneficiaries including your widow/er and dependants. Where you have elected for a lump sum to be paid, have declared a bypass trust and completed a nomination form the scheme administrator may exercise their discretion to pay death benefits to the trustees of the bypass trust.

All payments made to the bypass trust from the pension account should be free from IHT if made within two years of death. However, when funds are paid to the trust, there may be an income tax charge of 45% if you are 75 or over at the time of your death, although credit for this tax will be available to a beneficiary receiving a benefit from the trust in due course.

As this trust is set up on a discretionary basis, this means your trustees will have absolute discretion as to who can benefit from the trust property, when and by how much. Your surviving spouse (as widow or widower) will be one of the discretionary beneficiaries under the trust and the trustees (of whom the surviving spouse could be one) can make appointments of trust capital. Please note there could be tax implications involved when the trustees make distributions out to beneficiaries and you should speak to your financial and tax adviser to understand what these are and how they apply.

The trustees have power to grant interest-free loans to a beneficiary which could be more tax efficient and you should speak to your adviser about this.

3. Some questions on the Nucleus Bypass Trust

(i) What is the Nucleus Bypass Trust?

The Nucleus Bypass Trust is a discretionary trust, which you, as the member of the Nucleus Pension account, establish during your lifetime. Then, provided you have that you would like the benefit paid to your trustees, the scheme administrator of the pension account can exercise their discretion to pay the lump sum death benefit to the trustees of the bypass trust.

The trustees of the bypass trust can then, at their discretion, pay benefits to any of the beneficiaries, including your surviving spouse (if appropriate) during the remainder of their lifetime. Distributions from the Nucleus Bypass Trust could have tax implications for the trustees. Additionally if capital is distributed from the trust to a beneficiary the value will be part of that beneficiaries estate and so could increase the potential IHT liability. If loans are made from the trustees to beneficiaries, then these will be treated differently and you should speak to your financial and tax adviser about any tax implications for different types of distributions from the trust.

(ii) How is the Nucleus Bypass Trust established?

The Nucleus Bypass Trust is established during your lifetime and contemplates that the property initially made subject to the trust will be a nominal sum, e.g. £10, and no additions made until after your death when the pension account death benefits are paid to it. Even though the sum is nominal, it is essential that it is transferred to the trust to ensure that the trust is properly established. It is recommended that anyone who also wishes to carry out other IHT planning with lifetime gifts should use a separate trust.

(iii) What is the nature of the Nucleus Bypass Trust?

The trust is a discretionary trust, which gives the trustees wide powers to appoint benefits to discretionary beneficiaries. The trust requires you, as the settlor, to insert the names of the default beneficiaries when establishing the trust. These are the people who will benefit in the very unlikely event that the trustees do not appoint the trust fund to other beneficiaries within the trust period.

Your widow(er), as well as your children, grandchildren and other specified individuals, are named among the discretionary beneficiaries.

To avoid adverse tax consequences during the settlor's lifetime, neither you as the settlor nor your spouse may benefit from the trust in any way. However, the settlor's widow/widower can.

The trustees also have power to lend funds, interest free, to a beneficiary. The power to lend may give the opportunity to reduce IHT by creating debts for IHT purposes on the estate of, say, your surviving spouse.

(iv) How is the member's nomination to trustees of the Nucleus Bypass Trust made?

You will be the settlor of the bypass trust. Having established it, you would normally complete a letter of wishes to indicate to the trustees of the Nucleus Bypass Trust the person you would wish them to consider as the primary beneficiary under the trust.

(v) Why is the bypass trust a discretionary trust?

A discretionary trust gives the maximum possible flexibility to trustees to appoint benefits, to a wide range of potential beneficiaries. The trustees have absolute discretion about who can benefit, when and by how much from this wide range of beneficiaries meaning they have no entitlement and not inside any beneficiaries estate for IHT purposes while the assets are held within the Bypass trust.

(vi) What are the income tax implications of a discretionary bypass trust?

Prior to age 75, the lump sum death benefits will generally be paid with no deduction of tax (subject to available lump sum and death benefit allowance) where it is paid within 2 years of the scheme becoming aware of the member's death.

From age 75, the lump sum death benefits will be paid to the trust net of a 45% special lump sum death benefit tax charge. To the extent that subsequent payments of capital to the beneficiary are attributable to the pension lump sum death benefits, they will be taxed as income of the beneficiary but the 45% tax charge deducted by the pension scheme trustees will be available as a credit to frank the income tax liability. This credit is reclaimable by the beneficiary to the extent that their marginal tax rate is lower than 45%.

(vii) Registering the trust with HMRC

All UK express trusts unless excluded need to be registered on HMRC's Trust Registration Service (TRS) This may include the Bypass trust and you and your trustees should seek advice on all HMRC registration and reporting requirements.

4. The Nucleus Bypass Trust provisions in detail

For tax purposes, the Nucleus Bypass Trust is a discretionary trust. The trust gives the trustees power to appoint benefits under the trust among a wide class of beneficiaries. No beneficiary is entitled to any benefit until the trustees so decide – the ultimate default beneficiaries named in the trust will benefit only if no other appointment has been made by the end of the trust period.

The following is a summary of the key provisions of the Nucleus Bypass Trust deed.

Part 1 – The trust declaration

The deed is executed by the settlor and the named additional trustees. It is assumed that the settlor will establish the trust with a nominal amount, say, £10.

It is recommended that the settlor should appoint at least two additional trustees to ensure that there are two trustees able to act upon the death of the settlor.

Part 2 – Definitions

In this part of the trust the terms used throughout the trust are defined to avoid repetition. The most important definitions are those of the discretionary beneficiaries and the default beneficiaries.

The discretionary beneficiaries are those in whose favour the trustees may make appointments of benefits. They include the widow or widower of the settlor, the children and the remoter issue of the settlor, your spouses, the brothers and sisters of the settlor, and your issue, anybody who would benefit from the estate of the settlor on the settlor's death, any person nominated in writing to the trustees by the settlor, as well as any charity. The settlor can add any other individual not covered by the standard wording. The settlor's spouse is not a beneficiary while the settlor is alive but the settlor's widow/widower is.

The class of discretionary beneficiaries is very wide and can be added to by the settlor – all that is necessary is a written notification to the trustees. However, the settlor and the settlor's spouse cannot be added as a class at any time.

The default beneficiaries are the individuals who will benefit if the power of appointment is not exercised by the trustees by the end of the trust period. They are named by the settlor in the trust deed. At least one person must always be named and, if more than one is named, the shares in which they are to benefit must be stated. This is necessary to ensure that the trust is valid. It is essential that, where more than one default beneficiary is named, the cumulative shares add up to exactly 100%, as otherwise adverse tax consequences may arise to the trust.

Part 3 – Principal trust terms

In this part the trustees' power of appointment is defined as well as the default entitlement if the power of appointment is not exercised by the end of the trust period.

As previously indicated, the power to appoint capital and income under the trust is vested in the trustees. The power is exercisable at the trustees' discretion and includes the power to appoint further trusts in favour of beneficiaries.

The trustees have power to accumulate any trust income for the trust period.

In default of appointment by the end of the trust period, the default beneficiaries will benefit.

There is also a special provision dealing with any potential conflict of interest. In many cases, the trustees of the trust would be members of your family who would also be beneficiaries under the trust. If an appointment of benefits were to be made in favour of a beneficiary who is also a trustee then a suspicion of conflict of interest could arise. For this reason, there is a provision in this trust which states that if a beneficiary is also one of the trustees, the trustees can only make an appointment in favour of that beneficiary if there is at least one other trustee who does not benefit directly or indirectly from the appointment being made.

The trustees have wide powers included in the trust to advance capital from the trust fund to beneficiaries and to make loans to beneficiaries. These loans can bear interest or be interest free. A loan may be more appropriate than an advance of capital in many circumstances.

Part 4 – Administrative provisions

The trustees have wide administrative powers to deal with the trust fund and to reinvest the proceeds of any investment in any way they wish. They also have the power to borrow funds, to make payments to parents or guardians of minor beneficiaries and to delegate certain powers.

Part 5 – Appointment, dismissal, retirement and remuneration of trustees

The trust contains comprehensive provisions applying to the trustees.

The power to appoint new or additional trustees is vested in the settlor during their lifetime and after their death in the trustees. The settlor also has power to dismiss any trustee, provided at least one trustee, other than the settlor, remains after such a dismissal.

After the death of the settlor, if any trustee loses mental capacity, they can be dismissed by the majority of the other trustees.

In all other cases trustees under an English trust must act unanimously. There are also powers dealing with the retirement of trustees and corporate trustees.

Trustees who act in their professional capacity are entitled to charge fees.

Part 6 – Further trust provisions

These mainly deal with the trustees' liability.

The liability of individual trustees is limited so that they will not be held liable for any loss to the trust fund, provided they act in good faith.

Trustees who are paid for their services are also liable for negligence.

Part 7 – Proper law

The trust is governed by the law of England and Wales.

Part 8 – Signatures

Here you (as settlor) and the trustees sign the trust deed and all signatures are witnessed.