



Department
for Work &
Pensions

The draft Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018

Public consultation

December 2017

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Introduction

Before contracting-out¹ was abolished, it was possible for salary-related (or defined benefit) contracted-out occupational pension schemes or formerly contracted-out schemes to bulk transfer scheme members without their consent, to either a contracted-out scheme or formerly contracted-out scheme. Where a transfer was to take place to a new scheme that had never been contracted-out, the new scheme could become contracted out for a short while, thus becoming a “formerly contracted-out scheme” and satisfying the legislative requirements.

With the introduction of the new State Pension on 6 April 2016 and the abolition of contracting out for salary-related schemes, this arrangement cannot take place and it is no longer possible to transfer contracted-out rights without consent to a new scheme.

The Department for Work and Pensions is aware that a number of schemes would like to perform these transfers but are prevented from doing so by the legislation. In particular this affects employers and schemes undertaking mergers and acquisitions or transfers within the same group of companies.

In the recent response to the consultation on the Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2017² we said that we would be looking at the issue of bulk transfers without member consent to schemes that have never been contracted-out and that we would also consider extending the transfer of pensioner members to a new scheme more generally.

This consultation seeks views on the draft Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018 (“the 2018 Regulations”). The 2018 Regulations enable bulk transfers of contracted-out rights to take place in certain circumstances without member consent, to schemes that have never been contracted out. A condition of the transfer will be that the rights of the member are not adversely affected and the same protections must be provided by the new scheme.

The 2018 Regulations will come into force on 6 April 2018.

Who this consultation is aimed at

This consultation is mainly aimed at pension administrators and employers who sponsor formerly contracted-out schemes and those intending to establish new schemes. However, the Government would also welcome comments from the

¹ Between 6 April 1978 and 5 April 2016 employers could opt their employees out of additional State Pension provided their pension schemes met certain statutory requirements. This is known as “contracting out”. Following the introduction of the new State Pension, contracting-out for salary-related (or defined benefit), occupational pension schemes was abolished on 6 April 2016

² <https://www.gov.uk/government/consultations/contracted-out-pensions-enabling-transfers-to-schemes-that-have-never-been-contracted-out>

pension industry, professionals, pension schemes, trustees, pension scheme members, member representatives' organisations and any other interested organisations.

Purpose of the consultation

The consultation seeks views on the draft Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018.

Scope of consultation

This consultation applies to England, Wales and Scotland. It is anticipated that the Department for Communities will make corresponding provisions for Northern Ireland.

Duration of the consultation

The consultation period begins on 21 December 2017 and runs until 17 January 2018.

How to respond to this consultation

Please send your consultation responses to:

Email: CONTRACTING.OUTTEAM@DWP.GSI.GOV.UK

By postal address to:

Department for Work and Pensions

Contracting-out policy Team

First Floor

Caxton House

Tothill Street

London SW1H 9NA

Please ensure your response reaches us by 17 January 2018.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Government response

We will aim to publish the government response to the consultation on the GOV.UK website. The [consultation principles](#) encourage Departments to publish a response within 12 weeks or provide an explanation why this isn't possible. Where consultation is linked to a statutory instrument responses should be published before or at the same time as the instrument is laid.

The report will summarise the responses and say what the Government intends to do as a consequence.

How we consult

Consultation principles

This consultation is being conducted in line with the revised [Cabinet Office consultation principles](#) published in January 2016. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:
Email: freedom-of-information-request@dpw.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

Chapter 1: Commentary on the draft Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018

Background

1. Between 6 April 1978 and 5 April 1997 employers sponsoring salary-related (or defined benefit) occupational pension schemes could contract their employees out of the additional State Pension as long as the scheme paid a 'guaranteed minimum pension' (GMP) calculated according to the legislation. The GMP was intended to provide a minimum amount of weekly pension, broadly equivalent to the additional State Pension that would have been built up had the member not been contracted out. The GMP is payable for life at age 60 for a woman and 65 for a man, and a survivor benefit is payable to a surviving spouse or civil partner. This system was in operation until 5 April 1997; although no new rights accrue, rights accrued until April 1997 are, and will continue to be, protected.
2. From 6 April 1997 a new set of rules for salary-related contracted-out schemes was introduced - the Reference Scheme Test (RST). Rights accrued under the RST are referred to as "section 9(2B) rights" after the relevant section of the Pension Schemes Act 1993³ which provides for these rights.
3. With the introduction of the new State Pension on 6 April 2016 and the abolition of contracting out for salary-related schemes, it is no longer possible to transfer (active, deferred and pensioner) members' contracted-out benefits without their consent to a scheme that has never been contracted out.
4. Currently, transfers can be made to salary-related schemes (subject to prescribed conditions being met):
 - with the written consent of the member, to any scheme (including a scheme which is not, and has never been, a contracted-out scheme); and
 - without the consent of the member, to a scheme which was a contracted-out scheme where the transferring scheme and the receiving scheme apply to employment with the same employer or a connected employer.
5. An example of the latter is a transfer which is part of a merger or de-merger of group pension schemes or part of a business sale. Under the current legislation the ability to transfer contracted-out rights has largely been preserved. However, the ability to transfer without the consent of the member has been limited to

³ <http://www.legislation.gov.uk/ukpga/1993/48/contents/enacted>

transfers between schemes which were previously contracted out. This is because since 6 April 2016 it has not been possible to establish a new contracted-out scheme or section to receive transfers of contracted-out rights without member consent. This may cause issues for employers involved in the restructuring of group pension provisions.

6. The choices available to sponsoring employers are as follows:
 - obtain the consent of relevant members;
 - leave the contracted-out element of members' rights in their existing scheme;
or
 - ensure any transfer of contracted-out rights is made to a scheme which was previously contracted-out on a defined benefit basis.
7. In the recent response to the consultation on the Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2017⁴, the Department said that we would be looking at the issue of bulk transfers without member consent to schemes that have never been contracted out. The Department also said that we would consider extending provisions to enable the transfer of pensioner members to a new scheme more generally. The draft 2018 Regulations, which are the subject of this consultation, provide for these changes.
8. These amendments will enable any salary-related occupational pensions right (active, deferred and pensioner) to be transferred to newly established schemes (that have never been contracted out) without member consent under specified conditions.
9. These conditions will be that the rights of the member are not adversely affected by the transfer and that the same protections must be provided by the new scheme, for example revaluation and indexation that would have been afforded to members if the transfer were to a formerly contracted-out scheme. These regulations work in tandem with the existing protections to members' rights where benefits are transferred without member consent set out in regulation 12 of the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (S.I. 1991/167)⁵.

Commentary on the Regulations

Regulation 1 Citation and commencement

10. Regulation 1 provides the citation and commencement of the regulations. The new Regulations come into force on 6th April 2018.
11. The regulations apply to England, Wales and Scotland. We anticipate that the Department for Communities in Northern Ireland will provide the provisions.

⁴ <http://www.legislation.gov.uk/ukxi/2017/600/contents/made>

⁵ <http://www.legislation.gov.uk/ukxi/1991/167/contents>

Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations 1996

Regulation 2(1) and (2)

12. Draft regulation 2(1) and (2) amends the definition of “connected employer” and “connected employer transfer payment” in the Contracting-out (Transfer and Transfer Payment) Regulations 1996⁶ (“the 1996 Regulations”) to enable transfers of this type to be made from and to schemes that have never been contracted out. This ensures that further subsequent transfers can be made from schemes that have never been contracted out. Draft regulation 2(2) also defines “salary-related” in the context of a pension scheme.

Regulation 2(3)

13. Draft regulation 2(3) amends regulation 2(3) of the 1996 Regulations to enable a transfer of liability for the payment of GMPs to a new scheme by referencing new regulation 3A in the provision.

Regulation 2(4)

14. Draft regulation 2(4) inserts a new regulation 3A into the 1996 Regulations to set out the circumstances in which a “connected employer transfer” of GMPs to a salary-related scheme that has never been contracted out may be made without the member’s consent.

Regulations 2(5)

15. Draft regulation 2(5) amends regulation 4 of the 1996 Regulations to clarify that this regulation relates specifically to connected employer transfers of GMPs to schemes that were formerly salary-related contracted-out schemes.

Regulation 2(6)

16. This paragraph amends the heading to regulation 5 of the 1996 Regulations to clarify that this regulation relates specifically to transfer payments in respect of accrued GMP rights to pension schemes with the member’s consent.

Regulation 2(7)

17. This paragraph amends regulation 7(2A) of the 1996 Regulations to enable transfers of section 9(2B) rights to be made from salary-related schemes that have never been contracted out. This could be following the transfer of section 9(2B) rights from a formerly contracted-out scheme to those schemes. It also inserts a reference to regulation 8A into regulation 7(2)(b) to permit connected employer transfer payments of section 9(2B) rights to new schemes that have never been contracted out.

Regulation 2(8)

18. This paragraph inserts a new regulation 8A into the 1996 Regulations to set out the circumstances in which the connected employer transfer payment in respect

⁶ <http://www.legislation.gov.uk/ukxi/1996/1462/contents/made>

of earners' accrued section 9(2B) rights may be made to a salary-related scheme that has never been contracted out.

Regulation 2(9)

19. This paragraph amends the heading to regulation 10 of the 1996 Regulations to clarify that this regulation relates specifically to transfer payments in respect of section 9(2B) rights to pension schemes with members' consent.

Regulation 2(10)

20. Draft regulation 2(10) amends regulation 12 of the 1996 Regulations to ensure that the appropriate modifications of Part III of the Pension Schemes Act 1993 are made where the new connected employers' transfers of GMPs without member consent take place from occupational pension schemes to schemes that have never been contracted out.

Regulation 2(11)

21. This regulation amends regulation 13 of the 1996 Regulation to ensure that the appropriate modifications of Part III of the Pension Schemes Act 1993 are made where the new connected employer transfers of GMPs without member consent take place from insurance policies or annuity contracts to schemes that have never been contracted out.

Regulation 2(12)

22. This regulation amends the heading of Schedule 1 of the 1996 Regulations to enable transfers of accrued rights to GMPs to schemes that have never been contracted out and schemes that have. A new paragraph A1 sets out the requirements for transfers of accrued rights to GMPs to schemes that have never been contracted out. Cross reference – see new regulation 3A. This regulation also amends paragraph 6 of Schedule 1 to clarify the further circumstances for when the GMP is in payment.

Regulation 2(13)

23. This regulation amends Schedule 2 of the 1996 Regulations to modify the definition of GMPs in section 8(2) of the Pension Schemes Act 1993 so that it includes GMPs provided by a salary-related scheme following a connected employer transfer in accordance with the new regulation 3A of the 1996 Regulations.

Amendment of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015

Regulations 3(1) and (2)

24. Draft regulation 3(1) amends the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015⁷ to take account of changes being made to the 1996 Regulations by these regulations. In particular it provides for a new definition of section 9(2B) rights which includes section 9(2B) rights which have been transferred to a salary-related scheme that was never contracted out in accordance with new regulation 8A of the 1996 Regulations.

⁷ <http://www.legislation.gov.uk/ukxi/2015/1677/contents/made>

Consultation questions

1. Do you agree that the draft changes enable transfers of contracted-out pension rights without member consent to be made to schemes that have never been contracted out as mentioned in paragraph 9?
2. Do you think that the proposed changes to the regulations will provide adequate protection for deferred and pensioner members' benefits following transfers without member consent to schemes that have never been contracted out?
3. Do the proposed changes to the regulations allow further bulk transfers of contracted-out rights to take place without member consent from schemes which have never been contracted out to other schemes?
4. In your view, before contracting out for salary-related schemes was abolished, how common were bulk transfers of contracted-out rights without member consent to schemes that have never been contracted out, can you give examples of circumstances in which they occur?
5. Can you give an indication of the time/costs of complying with the proposed previous requirements, number of contracted-out right transfers per year that you think might be helpful?
6. Are there any other areas of transfers of contracted-out rights you believe require further attention and do you have examples of how they are not working?

Annex A: Draft Contracting-out (Transfer and Transfer Payment) Regulations 2018

2018 No.

PENSIONS

**The Contracting-out (Transfer and Transfer Payment)
(Amendment) Regulations 2018**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - 6th April 2018

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 20(1)(a)(iii) and (3), 37A, 181 and 182(2) and (3) of the Pension Schemes Act 1993(a), makes the following Regulations.

The Secretary of State has consulted such persons as he considers appropriate, in accordance with section 185(1)(b) of the Pension Schemes Act 1993.

Citation and commencement

1. These Regulations may be cited as the Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2018, and come into force on 6th April 2018.

Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations 1996

2.—(1) The Contracting-out (Transfer and Transfer Payment) Regulations 1996(c) are amended as follows.

(2) In regulation 1(2)—

(a) in the definition of “connected employer transfer” and “connected employer transfer payment”(d), for the words “from a scheme that was a salary-related contracted-out scheme to a scheme that was a salary-related contracted-out scheme” in both places in which they occur, substitute “from one salary-related scheme to another”;

(b) in the appropriate place, insert—

“a pension scheme is “salary-related” if—

(a) the scheme is not a scheme under which all the benefits that may be provided are money purchase benefits, and

(a) 1993 c. 48. Section 20(1) was amended, and section 37A inserted, by Schedule 13 to the Pensions Act 2014. Section 181 is cited for the meaning it gives to “prescribed” and “regulations”.

(b) Section 185(1) was amended by sections 122, 151 and 177 of, and Schedules 3 and 5 and Part 1 of Schedule 7 to, the Pensions Act 1995 (c.26).

(c) S.I. 1996/1462.

(d) The definitions of “connected employer transfer” and “connected employer transfer payment” were substituted by S.I. 2013/459 and amended by S.I. 2016/200.

- (b) the scheme does not fall within a class prescribed in regulations made by the Secretary of State under the 1993 Act;”.
- (3) In regulation 2(3), for “3, 4 or 6A” substitute “3, 3A, 4 or 6A”.
- (4) After regulation 3 insert—

“Transfers without earners’ consent of guaranteed minimum pensions to salary-related schemes that have never been contracted out

3A. A connected employer transfer may be made to a salary-related scheme that has never been a contracted-out scheme if—

- (a) the conditions specified in paragraphs A1 and 2 to 4 of Schedule 1 are satisfied, unless the transfer is from an appropriate policy in which case the condition set out in paragraph 5 of Schedule 1 must be satisfied; and
 - (b) in the case of a transfer of liability for the payment of guaranteed minimum pensions to or in respect of a person who has become entitled to them, the transfer is from a scheme and the conditions set out in paragraph 6 of Schedule 1 are satisfied.”.
- (5) In regulation 4(a)—
 - (a) in the heading, at the end insert “to schemes that were salary-related contracted-out schemes”;
 - (b) after the words “connected employer transfer” insert “to a scheme that was a salary-related contracted-out scheme”.
 - (6) In regulation 5, in the heading, after “transfer payments” insert “with earners’ consent”.
 - (7) In regulation 7—
 - (a) in paragraph (1), for “a scheme that was a salary-related contracted-out scheme”, in both places where it occurs substitute “a salary-related scheme”;
 - (b) in paragraph (2)(b), for “regulation 9” substitute “regulation 8A or 9”;
 - (c) in paragraph (2A)(b), for “an occupational pension scheme that was a salary-related contracted-out scheme” substitute “a salary-related occupational pension scheme”.
 - (8) After regulation 8 insert—

“Transfer payments without earners’ consent in respect of section 9(2B) rights to salary-related schemes that have never been contracted-out schemes

8A.—(1) A connected employer transfer payment in respect of an earner’s accrued section 9(2B) rights may be made to a salary-related scheme that has never been a contracted-out scheme by virtue of section 9(2B) of the 1993 Act if—

- (a) the transfer will not adversely affect the rights of the earner or person concerned, and
 - (b) the condition set out in regulation 12(3) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (requirement for actuarial certificate) has been met.
- (2) For the purposes of paragraph (1)(a), a transfer would adversely affect a person’s rights if it would alter those rights so that the benefits, or future benefits, to which they relate would or might be less generous.”.
- (9) In the heading to regulation 10(c), after “transfer payments” insert “with earners’ consent”.

(a) Regulation 4 was amended by S.I. 2013/459.
 (b) Regulation 7(2A) was inserted by S.I. 2017/600.
 (c) Regulation 10 was substituted by S.I. 2011/1245.

(10) In regulation 12(a), for “scheme that was a salary-related contracted-out scheme” substitute “salary-related scheme” and for “3, 4 or 6” substitute “3, 3A, 4 or 6”.

(11) In regulation 13(b), for “scheme that was a salary-related contracted-out scheme” substitute “salary-related scheme”.

(12) In Schedule 1—

(a) in the heading to Part 1(c), for “Scheme that was a Salary-related Contracted-out Scheme” substitute “Salary-related Scheme”;

(b) before paragraph 1 insert—

“A1. Subject to paragraphs 2 to 4, the receiving scheme must in respect of the rights transferred—

(a) provide for pensions payable at the rates at which guaranteed minimum pensions would have been payable by the transferring scheme if the transfer had not taken place;

(b) contain the same provision for commencement and continuation of payment of those pensions and (if any) for commutation, suspension and forfeiture as for guaranteed minimum pensions provided by the transferring scheme in accordance with sections 13 and 17 of the 1993 Act; and

(c) comply with sections 13 to 24G of the 1993 Act in respect of accrued rights.”;

(c) for paragraph 6 substitute—

“6.

(a) The date of commencement of the pension the liability for which is transferred—

(i) if the pension is payable to the person who has become entitled to it, must be the date from which liability for payment is assumed by the receiving scheme; and

(ii) if the pension is payable to the widow, widower or surviving civil partner of that person, must be the same as it would have been under the provisions of the transferring scheme.

(b) The receiving scheme must contain the same provision (if any) for suspension and forfeiture of that pension as for guaranteed minimum pensions provided by the receiving scheme in accordance with section 13 or (as the case may be) 17 of the 1993 Act.

(c) A receiving scheme which is a salary-related scheme that has never been contracted out must provide for the payment of guaranteed minimum pensions to or in respect of a person who has become entitled to them at a rate that is no lower than the rate at which they were paid by the transferring scheme, and must make any increases to the rate which are required by virtue of section 109 of the 1993 Act.”.

(13) In Schedule 2, in paragraph 1, in the substituted definition of “guaranteed minimum pension”—

(a) in the first line, after “provided” insert “— (a)”;

(b) renumber existing paragraphs (a) and (b) as (i) and (ii) respectively;

(c) at the end of renumbered sub-paragraph (ii) insert—

“or

(b) by a salary-related scheme which has never been a contracted-out scheme following a transfer without the earner’s consent, such that the receiving scheme

(a) Regulation 12 was amended by S.I. 2016/200.

(b) Regulation 13 was amended by S.I. 2016/200.

(c) The heading to Part 1 was amended by S.I. 2016/200.

met the requirements of regulation 3A of the Contracting-out (Transfer and Transfer Payment) Regulations 1996.”

Amendment of the Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015

3.—(1) The Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015(a) are amended as follows.

(2) In regulation 2(1), in the definition of “section 9(2B) rights”(b)—

(a) for paragraph (a) substitute—

“(a) rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions)—

(i) under a scheme that was a salary-related contracted-out scheme, or

(ii) under a salary-related scheme that has never been a contracted-out scheme, following a transfer in accordance with regulation 8A of the Contracting-out (Transfer and Transfer Payment) Regulations 1996,

so far as attributable to an earner’s service in contracted-out employment on or after the principal appointed day(c); and”;

(b) in paragraph (b)(i), for “another scheme that was a salary-related contracted-out scheme” substitute “another salary-related scheme”.

Signed by authority of the Secretary of State for Work and Pensions

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Contracting-out (Transfer and Transfer Payment) Regulations 1996 (S.I. 1996/1462) (“the 1996 Regulations”) and the Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015 (S.I. 2015/1677) (“the 2015 Regulations”) to allow contracted-out pension rights to be transferred without members’ consent to schemes which have never been contracted out of the Additional State Pension.

Regulation 2 amends the 1996 Regulations to enable transfers and transfer payments between connected employers to be made to and from schemes that have never been contracted out, and to specify the circumstances in which such transfers can be made without a member’s consent.

Regulation 3 amends the definition of “section 9(2B) rights” in the 2015 Regulations to include rights accrued under a salary-related scheme that has never been contracted out, following a transfer in accordance with new regulation 8A of the 1996 Regulations.

(a) S.I. 2015/1677.

(b) The definition of “section 9(2B) rights” was amended by S.I. 2016/200.

(c) See section 181(1) of the 1993 Act, as amended by paragraph 43 of Schedule 13 to the Pensions Act 2014 (c.19) (“the 2014 Act”).