Department
for Work &
Pensions

Simplifying the process for defined contribution pension scheme consolidation while maintaining member protection

The government response to the consultation on the Occupational Pension Schemes (Preservation of Benefits and Charges and Governance) (Amendment) Regulations 2018

February 2018

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Introduction

This is the Government's response to the consultation launched in October 2017, which sought views on the draft Occupational Pension Schemes (Preservation of Benefits and Charges and Governance) (Amendment) Regulations 2018. The draft regulations removed the requirement to obtain an actuarial certificate for bulk transfers of occupational 'pure' Defined Contribution (DC) to DC pensions without member consent, and replaced it with an alternative test and new member protections. The regulations also proposed removing the scheme relationship condition for these transfers, and extending charge cap protections for those transferred without consent.

The consultation ran from 26 October 2017 until 30 November 2017, and was aimed at pension industry bodies and professionals, pension scheme trustees and managers, pension scheme members and beneficiaries, employers and any other interested parties.

Overview of results

We received 35 responses to the consultation, from pension scheme providers, law firms, bodies representing trustees, consultancy firms, and other bodies involved in the pensions industry. In addition we held roundtable events for major stakeholders, and additional meetings on technical aspects of the proposals. The proposals were welcomed by stakeholders, with some reservations on the detail, as explained later in this document. We would like to thank all those who responded to this consultation.

Executive Summary

The latest data published by The Pensions Regulator[1] shows that there are currently 2180 Defined Contribution (DC) occupational pension schemes with 12 or more members[2]. More than 80% are schemes with fewer than 1000 members. These schemes can often represent poor value. The Pensions Regulator's recent DC Schemes Research found that 55-75% report having weak governance[3]. Other studies have indicated that smaller schemes pay significantly more in charges[4], are

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[1] The Pensions Regulator. DC trust: presentation of scheme return data 2017-18, published January 2018

[2] Most schemes with 11 or fewer members are Small Self-Administered Schemes or Executive Pension Schemes, where the members are the trustees or the directors of a corporate trustee. This means that these schemes do not have the same difficulty getting member consent for a transfer.

[3] The Pensions Regulator. DC trust-based pension schemes research, published September 2017

[4] Pension charges survey 2016: charges in defined contribution pension schemes, published October 2017.

much less able to negotiate effectively with service providers to deliver good member outcomes[5], and are less able to invest in certain asset classes[6].

The current process for scheme consolidation is very burdensome. Schemes can seek consent from every individual member – but this is time-consuming and difficult, with low response rates, even after concerted efforts. A 'without consent' approach is available, but the tests to be met are either difficult to apply or serve no useful purpose when used for Defined Contribution schemes.

We understand that around one-third of employers, and the trustees who administer these schemes, report wishing to close their existing scheme and move members to another scheme – usually a master trust[7] - but they face barriers to doing so under the current requirements. Stakeholders have frequently raised this issue, and the Financial Conduct Authority[8], The Pensions Regulator[9] and the Law Commission[10] have all publicly called for the process of consolidation to be simplified.

Following the prior call for evidence which ran between December 2015 and February 2016, we developed proposals for amendments to the current regulations which would simplify the process for carrying out transfers without consent, and which would apply only to occupational DC schemes without additional guarantees.

We consulted on the proposal that for transfers to authorised master trusts[11], trustees could rely on fiduciary duty alone to make the decision to transfer. For transfers to any other type of scheme, however, we proposed that trustees should seek the advice of a person who is independent of the receiving scheme, and so can offer advice on a non-conflicted basis. We also consulted on the additional requirement that any member protected by the charge cap should continue to be protected in the receiving scheme.

Revised proposals

Consultation respondents were very supportive of the proposals, but suggested a number of changes. The following paragraphs summarise those we plan to implement.

The independence requirement

Many respondents believed that the proposed conditions against which advisers could be judged independent were too stringent given the relatively consolidated

[5] Financial Conduct Authority. Asset Management Market Study: final report, published June 2017
[6] The Law Commission. Pension Funds and Social Investment, published June 2017
[7] Aon Defined Contribution Scheme Survey 2017: navigating the future – overcoming headwinds.
[8] Financial Conduct Authority. Asset management market study – final report. June 2017.
[9] The Pensions Regulator. 21st century trusteeship and governance. Discussion paper response. December 2016.
[10] Law commission. Pension funds and social investment. June 2017
[11] Master Trust schemes authorised by the Pensions Regulator under the provisions of Part I of the Pension Schemes Act 2017, once those have been commenced

nature of the industry, which also sees some advisers frequently moving between companies. We have amended the requirements so that the adviser must not have provided advisory, administration or investment services (rather than *any* work) to the receiving scheme, service provider or sponsoring employer (or a connected firm) in the past year (rather than the past 5 years).

Bulk transfers between 'connected' schemes – such as corporate restructurings

A few respondents highlighted that bulk transfers also take place between schemes whose sponsoring employers are connected – for example, where two firms merge and wish to consolidate their pension schemes. As the risk here from conflicts of interest seems minimal, we have removed the requirement to seek independent advice in such types of transfer. More detail on this is given later on in this document.

Remove the option of using the existing process

Several respondents suggested that the current complex process including the actuarial certificates and the scheme relationship test should no longer be available for transfers between DC schemes without guarantees – otherwise trustees might see it as a more rigorous and therefore more attractive way of protecting members. We have decided to remove this option for transfers which fall in scope of the new regulations, but only from October 2019, so that schemes have a full 18 months to complete any transfers which are underway.

Guidance for trustees

Many respondents emphasised the importance of clear guidance, particularly around choosing an appropriate adviser, and the aspects of the receiving scheme that should be taken into account when making the decision to transfer. We plan to work with stakeholders and the Regulator to produce high-level guidance for pension scheme trustees no later than the end of April 2018.

Charge cap constraints

Some respondents expressed concern about how the legislation treats self-selectors – members who previously made an active choice to contribute to a particular arrangement which is currently uncapped. Under current legislation, where such members did not actively confirm, prior to a transfer between schemes or within a scheme, that they wish to be moved into an arrangement which is not a default, then where the scheme was being used for automatic enrolment by their employer, they would need to be moved into an arrangement which could be offered within the cap.

To help address concerns whilst maintaining member protection, we have amended the draft regulations to provide additional latitude in respect of recent self-selectors by introducing a time-based trigger. This would allow a transfer without active member consent from a non-default arrangement to a new non-default arrangement without triggering the cap restrictions, where the member has, in the five years

ending with the date of the transfer, expressed a choice as to where his or her contributions were allocated.

Full details of responses received, and our replies to them, follow.

Responses to questions

Removal of the actuarial certificate, and the requirement for additional advice

Q1: We propose to remove the actuarial certificate for 'pure' DC-DC transfers, and instead rely on trustees' fiduciary duties to their members. In addition when the transfer is to a scheme which is not authorised under the master trust regime[12], the trustees must seek the advice of a suitable independent, unconflicted person. Do you agree with the policy proposal?

Q2: Do you believe that the regulations achieve the policy proposal?

Summary of responses and government reply

1. All respondents agreed with the proposals, with some reservations. Points made, and our responses to them, are detailed below.

The person who gives the independent advice

2. We were made aware that in the large majority of instances, the adviser will still be a legally defined person, but actually be acting as a firm, although it is possible on occasion that they might be an individual 'natural person', and we would not want to limit this. The consultation draft of our regulations, with references to director, manager, partner and so on, were framed as if they will always be an individual.
3. A respondent to the consultation drew an inference about the independent adviser's need for professional qualifications which we did not intend, specifically about the use of the word 'qualified' when describing a suitable professional from whom advice should be obtained.
4. Another respondent queried whether we had been correct to focus to the extent we had on investment knowledge in the draft regulations, given our stated policy intention that the person would advise on all aspects of the receiving scheme.

[12] Master Trust schemes authorised by the Pensions Regulator under the provisions of Part I of the Pension Schemes Act 2017, once those have been commenced

Government Response

5. We have amended the requirements - regulation 12(9)(b) – so that the independence criteria will function irrespective of whether the adviser is a natural person or a legal person.
6. Although we accept the comments made about our use of the word ‘qualified’ when describing the professional person, our preference is, in other respects, to broadly reflect section 36 of the 1995 Pensions Act as closely as possible. This will give trustees the confidence that their investment consultant (whether an individual or a firm) can meet the requirement to advise on the transfer as long as that person or organisation’s knowledge is broad enough to encompass other aspects of pension scheme management.
7. We have therefore amended regulation 12(9)(a) slightly to replace “suitably qualified professional” with “appropriate adviser”, and to replace the references to financial and investment matters with the more general “pension scheme management”.

Amending the independence test

8. We had widespread feedback that the independence test we proposed is too stringent, and significantly limits the opportunity of trustees to find someone independent enough to advise, given the nature of the pensions advice market, and the fact that advisers frequently move between firms.
9. The rationale behind the original policy was to avoid a scenario where an adviser could be recommending a scheme to which they are connected, either by the fact that they have provided particular services to the scheme, such as advice, investment or administration, or that they are employed by a firm which provides such services to the scheme they are recommending.
10. If either of these scenarios exist, it would be difficult to confidently deem any advice on such a scheme fully independent without further consideration, which is why we set out the criteria we did in the original draft.
11. One respondent highlighted that a potential conflict might also exist in the situation where the advisor was providing, or had recently provided, services to the scheme sponsor.

Government Response

12. We have therefore redrafted the independence requirements – regulation 12(9)(b)(i), (ii) and (iii) - so that :
    - the period of time trustees should be looking at in order to establish independence is reduced from five years to 1 year, and the key services they should be considering are limited to advice, administration or investment services.

- whether using an individual or a firm to provide advice, trustees will need to check whether the adviser they wish to use has received payment for any of the above services
  - from the scheme itself, or
  - from a firm which provides those services to the receiving scheme, or an undertaking connected to a firm which provides such services, or
  - from the receiving scheme's principal employer or controlling employer, or from an undertaking which is connected with that employer.

13. In this instance, we are referring to a current ownership link rather than a historic one. If the adviser has worked in the past 12 months for a firm which demerged 3 years ago from a firm which provides services to the scheme, that is unlikely to affect the adviser's judgment. We therefore believe that an appropriate connectedness definition would be that the 2 firms are group undertakings within the meaning given by section 1161(5) of the Companies Act 2006.
14. This was already captured in slightly different form in the draft regulation 12(9) inserted by the version of the regulations on which we consulted, and which is now 12(11) in the revised version.

Trustee discretion on independent advice

15. Several respondents have highlighted that as drafted, regulation 12(9)(a) does not appear to automatically rule out any adviser, or firm who does not satisfy one or more of 12(9)(b)(i), (ii) and (iii), and therefore might be assumed to be not 'independent'.

Government Response

16. We have not made any amendments to this section of the Regulations. We believe the interpretation proposed by several respondents reflects the policy intention – for example, it would not appear to be proportionate if trustees had to rule out a firm from advising on a transfer simply because on a conservative interpretation of the services provided on audited accounts to the pension scheme, a very small proportion of the work on this may have constituted 'advice'.
17. Similarly, an individual adviser may have 11 months earlier received a very small payment by a firm which sponsored a master trust to which the trustees were proposing to transfer the member, despite the large majority of the adviser's work now being carried out for the sponsor of another master trust, to which the trustees were not proposing to transfer the member.
18. In this kind of circumstance, we do not believe that procuring an alternative adviser, potentially at the members' expense, would be proportionate or in their best interests. Therefore taking this into account, we believe it is desirable to continue to require that "the trustees have determined that the suitably competent

professional is independent of the receiving scheme after taking account of the following matters…" Trustees will therefore have the ability to use advisers who may not fully satisfy the independence tests in regulations, although they should give these matters careful consideration and considerable weight.

Bulk transfers between 'connected' schemes – such as corporate restructures

19. Several respondents highlighted a consequence of the regulations whereby, if two firms merged and combined their pension schemes, trustees would be prevented from using a service provider to the receiving scheme to advise on the transfer. Whilst we anticipate that this will be relatively uncommon compared with transfers to master trusts, we believe it will be frequent enough to justify exempting such transfers from the regulations if this can be done straightforwardly without creating a significant avoidance risk.

Government Response

20. We believe it is appropriate to extend the exemption from the independent advice requirement beyond authorised master trusts to include a situation where both the following principle-based tests are met:
    - there is a very close ownership relationship between the employers of the members to be transferred; and
    - the employer/s are in controlling positions within their respective schemes.
21. We have therefore amended the drafting of the regulations (regulation 12(8)) to include an additional qualifying situation where independent advice will not have to be obtained. This is the situation where:
    - the principal employer or controlling employer of the transferring scheme is a group undertaking in relation to the principal employer or controlling employer of the receiving scheme; and
    - the members whose rights are to be transferred are current or former employees of an undertaking which is a group undertaking in relation to an employer referred to above.
22. We do not believe that such an exemption could be used to circumvent the independent advice requirement in other circumstances, where one of the policy principles outlined in paragraph 21 is not met.

Authority to carry out the transfer

23. Several respondents alerted us to the fact that in certain schemes the trustees do not have discretion over the transfer, and the responsibility for this sits with the

employer. Under the current regime, certification needs to be given and it is less relevant whether that is given to the trustees or to the employer. The transfer simply cannot go ahead without it.

24. The existing Regulation 12 of the Preservation of Benefits Regulations does not refer to any person – whether trustee or employer – as the decision maker. The introduction of a requirement for independent advice (as opposed to certification) in certain circumstances triggers a question over who the advice should be given to. The natural answer to this is the decision maker.

Government Response

25. We have amended the regulations – see regulation 12(10) - to the effect that where the employer has sole power to effect the transfer, they should be tasked with seeking and considering the advice of an appropriate adviser, and confirm to the trustees that they have done this.

26. Where such transfers take place, we would generally expect employers, with a ‘fiduciary like’ role in this instance to robustly assess the merits and suitability of the receiving scheme, and for the trustees, who have a fiduciary responsibility in other areas except those limited by the scheme rules, to consider their fiduciary duty to act in the members’ best interests more broadly.

Removing the option to revert back to the actuarial certificate route

27. Stakeholders alerted us to the fact that the regulations as drafted permitted a choice of which process trustees could follow to carry out a bulk transfer. This would carry a risk that trustees might choose to continue to obtain actuarial certificates for bulk transfers of in-scope schemes, rather than following the amended process. They might do this in the belief that the actuarial process is in some way more robust. As highlighted by responses to 2016’s call for evidence, however, it generally offers no better protection to members of DC schemes without guarantees, and is simply more costly and confusing.

Government Response

28. We have therefore removed the option of continuing to follow the actuarial certificate process described in current regulation 12(1) of the Preservation of Benefits Regulations in relation to transfers of benefits which are in scope of regulation 12(1B) – see regulation 2(2) of the amending regulations. As we do not see this as causing a risk of member detriment – rather, this is a longer range measure to ensure that trustees follow the route which is intended – we are content to allow a time-limited transitional period for schemes to complete any ongoing bulk transfers.

29. Given the time that may be taken for some bulk transfers under the existing process, we have set the time limit at 1 October 2019, just short of 18 months from 6 April 2018. Our intention would be that the transfer itself would need to be complete by 30 September 2019. Schemes which had sought an actuarial certificate, but not completed the transfer by this date, would need to begin the process under regulation 12(1B). Once authorised Master Trusts are available as receiving schemes for a bulk transfer the transferring scheme will not be required to seek separate independent advice.

Which benefits are in scope of the simplified process

30. We have received a number of comments or queries about the benefits covered by the simplified bulk transfer process. The majority of respondents appear to favour the policy intention but some were confused by the original drafting in regulation 12(1B)(b) of the consultation draft.

Government Response

31. Rather than seek to define benefits in scope of the new simplified process by reference to the classification set out in the Pension Schemes Act 2015, we have amended the drafting to seek to define benefits on more of a first principles basis. As a result the simplified process applies to “relevant money purchase rights”. These are defined in new regulation 12(11) as, broadly, money purchase benefits without guarantees or promises.

32. We are not seeking to amend the policy over the benefits which are in scope. Any benefits offering Guaranteed Investment Returns or the option of a Guaranteed Annuity Rate are intended to be excluded from this definition, regardless of how they are funded. Our intention is that they will remain subject to the existing actuarial certificate and scheme relationship test.

Other issues

33. Most respondents are happy with the proposal to exempt transfers to authorised master trusts from the need to seek additional independent advice (regulation 12(7)), with one or two exceptions. At least two respondents felt there was no need at all for additional advice, leaving trustees to use their fiduciary duty to act in the best interests of their members in all bulk transfers.

34. Many respondents emphasised the importance of clear guidance, particularly around giving trustees some steers on how to choose an appropriate professional, and what aspects of the receiving scheme should be examined and taken into account when making the decision to transfer. Several responses gave helpful suggestions on what should be included in guidance.

Government Response

35. We do not propose amending the need to seek additional advice in cases of bulk transfers to schemes outside the new authorisation framework, or between ‘unconnected’ schemes.

36. We plan to work with both stakeholders and the Regulator to produce high-level guidance for pension scheme trustees to support these regulations. Our current intention is to publish this guidance by the coming into force date of the legislation, and no later than the end of April 2018.

Removal of the scheme relationship condition

Q3: We propose to remove the scheme relationship condition for all ‘pure’ DC-DC transfers. Do you agree with the policy proposal?

Q4: Do you believe that the regulations achieve the policy proposal?

Summary of responses and government reply

37. All respondents welcomed the proposal to remove the requirement for there to be an existing relationship between ceding and receiving schemes in order for a bulk transfer to take place, in the case of transfers of ‘pure’ DC benefits.
38. Therefore we are not making any amendments to this proposal.

Extension and maintenance of charge cap protection

Q5: We propose that members who are transferred without consent from a scheme, or within a scheme, where they were protected by the charge cap, all funds in the arrangements into which they are transferred without making an active choice are protected by the charge cap. Do you agree with the policy proposal?

Q6: Do you believe that the regulations achieve the policy proposal?

Summary of responses and government reply

39. These questions related to two proposed amendments to regulation 4 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 which added a further two paragraphs (3) & (4) to this regulation.
    - Additional paragraph (3) was intended to address a loophole whereby some members might lose the protection of the charge cap if they are transferred without their consent to an arrangement within a new scheme which is not being used for AE.
    - Additional paragraph (4) was intended to ensure that if these members are subsequently transferred without consent to another arrangement within the scheme, they would continue to retain their charge cap protection.
    - This provision, alongside existing regulations, also had the effect that cap protection would be triggered by moving some members from an actively-selected arrangement within a relevant scheme to a new arrangement to which the member has not actively agreed.
40. These proposals prompted some scrutiny by respondents. Overall, most respondents were supportive of cap protection remaining with capped members where they are transferred without consent to a new arrangement in a relevant scheme.
41. There was also general agreement with the proposal not to restrict the charges in the new scheme so that they could not exceed those in the ceding one. This approach recognises that charges are not the only determinant of value for members. It is therefore possible for members to be transferred from one charge-capped arrangement to an arrangement with slightly higher charges, provided that the charges still fall within the cap, as long as the trustees can determine that other compensating factors mean that the transfer is still in members’ best interests.

42. However, a number of respondents expressed concern about the potential treatment of some self-selectors (members who actively chose their arrangement) if they do not actively confirm that they wish to be transferred into an arrangement similar to the one they originally selected.
43. Many of these respondents disagreed with these members being placed in the default fund as a matter of course, particularly where the member's selection was recent. More generally, there was a view that these members' choices should be preserved as far as practicable.
44. On the other hand, some respondents did acknowledge that under such an approach there is a risk that some of these members may be mapped across to superficially similar or potentially poor value funds without due consideration or sufficient engagement, and that these may well not be the choices that members would make if they were given the option of a default versus a range of self-selected funds today.
45. A number suggested that trustees should have discretion to decide what is in the original self-selecting member's best interest in these particular cases. Under such an approach, they could choose to move the member to a default arrangement subject to the cap or alternatively transfer that member to a non-default arrangement as long as they were satisfied that this remained in the member's best interests. As part of this they would have regard to the range of available investment options in the receiving scheme, and how these might need to adapt over time to deliver income and/or capital in retirement. It was suggested that guidance could set out some of the criteria to consider, to help trustees in making these decisions.
46. Alongside these concerns we also received a few technical drafting comments from respondents from the legal profession, aimed at clarifying or simplifying the drafting of the provisions.

Government Response

Transfers of members originally protected by the charge cap

47. As respondents agreed that capped members should retain their protection if transferred to a scheme that is not being used for automatic enrolment, we have made minimal changes to that part of proposed regulation 4(3).
48. We have, however, amended regulation 4(3) to ensure specifically that these members retain cap protection if subsequently switched between arrangements without consent, in the new scheme. This was originally provided for separately, in proposed regulation 4(4), but we concluded that it was simpler and clearer to place provisions focused on these members in the same paragraph. These provisions now appear separately from those focused on self-selectors.

Transfers of self-selectors

49. To help address trustees' concerns that current legislation might force them to move some recent self-selectors into a default arrangement against the members' clearly expressed wishes or long term best interests, we have amended proposed regulation 4(4) to provide additional latitude.

50. We appreciate that some of these members will have made active choices for clear reasons, which continue to hold, and that trustees might therefore wish to move them into an arrangement which resembles that initial choice.

51. That said, trustees should continue to make all reasonable attempts to contact these members prior to the transfer to notify them that the transfer is taking place, and to confirm whether the member wishes to remain in an uncapped arrangement.

52. We recognise however that there will be occasions where the trustees fail to obtain a response. Accordingly, revised regulation 4(4) will allow trustees to choose to transfer these self-selectors from a non-default arrangement to a new non-default arrangement without triggering the cap restrictions, if the member has, in the five years ending with the date of the transfer, expressed a choice as to where his or her contributions were allocated.

53. Given that the large majority of members joining pension schemes in the past 5 years have been automatically enrolled, it is reasonable to suppose that members who made an active choice of fund in the past 5 years, did do so voluntarily and on an informed basis. Members making an active choice more than 5 years ago are significantly more likely to have joined when members were encouraged to make a choice, and the default was seen as a last resort, or when there was no default at all.

54. In future years, the effect of our legislation will be that members who made an active fund choice at the point of automatic enrolment cannot be switched or transferred to a different uncapped arrangement without consent, where it was more than 5 years ago. It will still be helpful for the members who were engaged enough with saving more than 5 years ago to make an active choice of fund then to be asked to renew that decision.

55. This provision is not intended to discourage trustees from placing relevant members in a capped arrangement should they feel this is in the member's best interest. In many instances, this may be the best option for members - and this option should be considered carefully by trustees in deciding what is best for these members.

56. For members who made a choice of arrangement more than five years ago - and who do not respond to any trustee attempts to make contact, we have mandated trustees to move these members to the default fund, rather than delay the transfer further. Again we would expect trustees to make every effort to contact these members so that they understand what is happening and the implications of the transfer.

57. In conclusion, this approach strikes a sensible balance between facilitating scheme consolidation and protecting members whilst minimising the risk of recent self-selecting members being moved into funds which do not reflect their preferences.

Fund switches within existing arrangements

58. We recognise that trustees sometimes make underlying fund switches within an existing “arrangement” for self-selectors. This may be because the investments in which members’ funds were held are no longer offered, or the trustee board no longer considers them appropriate. We understand that these do not as a matter of course involve significant member communications.

59. The Pensions Regulator’s DC investment governance guidance[13] offers helpful guidance to trustees on some of the considerations in such cases, including best practice for member communications.

60. As this guidance points out, the result of some exercises may be that a recent self-selector is now investing in an arrangement different from that they originally chose to invest in. Even though they made a choice to invest in the original funds, this switch could trigger the current legislation’s definition of a default arrangement.

61. In recognition of trustees’ concerns, the revised regulation 4(4) also provides latitude to trustees to allow such switches of arrangement without consent, based on the five year trigger.

[13] http://www.thepensionsregulator.gov.uk/trustees/investment-management-in-your-dc-scheme.aspx#s22288

Business Impacts

Q7 Business Impacts

a. How many bulk transfers without member consent did you perform in 2015, 2016 and 2017 respectively? For administrators, how many bulk transfers did you administer in 2015, 2016 and 2017 respectively?

b. How much does having to join a member or an employer to a scheme to meet the relationship condition impact on the transfer process in terms of time/cost?

c. Whilst we acknowledge that the range of costs can be significant, do you agree that £15,000 is a suitable estimate for the current average cost of an actuary to obtain an actuarial certificate? If not, can you supply evidence that it should be different from this?

d. Do you agree that the cost of an independent investment consultant would be the same, if not lower than that of an actuary following a regulation change?

e. Do you agree that more than 50% of bulk transfers are transferred into a master trust? Could you provide an estimate of what percentage you think are transferred into a master trust?

Summary of responses and government reply

62. We received several helpful responses to these questions.

Government Response

63. The government is grateful for all responses to the above, which have been used in assessing the impact of this policy proposal in the accompanying impact assessment.

Any further comments

Q8: Do you have any further comments to add?

Summary of responses and government reply

64. We received several additional comments including some previously addressed in our October 2017 consultation document. These included difficulties with transferring between, and the inability to transfer to Group Personal Pensions (GPPs), and the issue of HMRC legislation around block transfers and protected rights continuing to act as a barrier to transfers.
65. We have passed these concerns on to the relevant policy owners.

Statutory discharge

66. Two respondents to the consultation again suggested that DWP should consider implementing a statutory discharge for DC ceding scheme trustees, similar to that which is available for certain other transfers under the 1993 Pension Schemes Act.
67. An additional respondent argued that this interpretation was faulty, and that this statutory discharge, where it does exist, in fact only releases trustees from liability for paying a benefit, not for claims of negligence or fault.
68. Such a discharge tends to only be required where statute requires the trustees to do something that is not provided for in the scheme rules, such as the statutory entitlement to a cash equivalent. Section 73 of the 1993 Act does not cut across pension rules – it is permissive. And most scheme rules contain provision for transferring a member’s accrued rights to another scheme.
69. We previously explained in our October 2017 consultation that we did not intend to offer a statutory discharge for ceding scheme trustees in bulk transfers without consent. That remains our policy position.

Deferred annuity contracts (section 32 buyouts)

70. One respondent requested that the Government should look to ensure that ‘section 32 buy outs’ are subject to the same consumer protections as other bulk transfers, and ideally, consider whether they are appropriate at all in a DC environment where there will be authorised master trusts into which members can be transferred.

71. Anecdotal evidence suggests that deferred annuity contracts, which have succeeded section 32 buy outs are less and less well used. One of the practical attractions of their use were the trustee burdens associated with bulk transfers without member consent, including the actuarial certificate and scheme relationship test. Given that the process is being simplified in this package of regulations, whilst continuing to ensure members are protected, we anticipate the use of deferred annuity contracts to continue to fall further still.
72. However we would also encourage trustees who are continuing to use deferred annuity contracts, for example to routinely 'export' deferred members, to consider whether this remains in members' best interests, or whether their fiduciary duty is better met through a newly simplified bulk transfer approach, which confers additional flexibility on how the member exercises their pension rights in future.

Certification of data quality

73. Several respondents asked us to give consideration to requiring ceding trustees to certify the quality of their data prior to transfers taking place.
74. We acknowledge that it is good practice for ceding schemes to check the quality of the data they are transferring to a new scheme. Whilst we do not intend to introduce a mandatory data cleansing exercise in regulations, we will consider adding an advisory note in the forthcoming guidance to suggest this as good practice for trustees as part of the transfer process.

Definition of 'earner'

75. Another suggestion made by a respondent was that with the removal of the scheme relationship condition, there should be no need for the benefits transferred to the receiving scheme to be transfer credits, given that transfer credits are defined as "rights allowed to an earner" and that potentially not all members will fall within the current definition of an earner in the Pension Schemes Act 1993. Government had previously been asked to consider amending the Act to reflect this.
76. Although it is not possible to amend the Act at this time, we have inserted an amendment to the Preservation of Benefits regulations to refer to the power in section 73(2)(b) and (4)(b) of the Act, which allows our regulations to prescribe without-consent 'alternatives to provision of short service benefit'. This means our regulations for transfers of relevant money purchase benefits do not rely upon the definition of earners.
77. We have also made a further amendment to remedy an ambiguity in existing regulation 12(1A).

Annex A
Respondents to the Consultation

ACA

Aon Hewitt

Aviva

B&CE (The People's Pension)

Baker McKenzie

Barnet Waddingham

Burges Salmon

Capita

Deloitte

Ensign

Eversheds

First Actuarial

Hymans Robertson LLP

IFoA

KPMG

Linklaters

LRT Supplementary Pension Scheme

Mercer

Norton Rose Fulbright

Now Pensions

PLSA

PPI

Sacker & Partners

SEI

Smart Pension

SPP

Squire Patton Boggs

Standard Life

TPAS

Willis Towers Watson