



The Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2017

Government response

April 2017

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Chapter 1: Introduction

- 1.1. On 10 April 2017 the Department for Work and Pensions published a consultation which sought views on amendments to the Contracting-out (Transfer and Transfer Payment) Regulations 1996¹ which would enable the transfer of contracted-out pensioners, with member consent, to schemes that have never been contracted-out. The transfers will only be permissible in limited circumstances where schemes are in financial difficulty.
- 1.2. The consultation ended on 23 April 2017. There were 11 written responses from pension industry bodies and pension professionals. We are grateful to everyone who replied. A list of individuals and organisations that responded is at **Annex A**.
- 1.3. A couple of respondents felt that the consultation period was too short and there was insufficient time to consider the proposed regulatory changes. As explained in the consultation, the Government has been requested to make these changes as a matter of urgency, to ensure pensioners' rights in vulnerable schemes are properly protected. Given the limited scope of the regulations and prior engagement with industry we consider that two weeks was a proportionate consultation period.
- 1.4. This response provides a broad summary of the issues raised and addresses each of them in turn.
- 1.5. The 2017 Regulations will be available on 26 April 2017 on the UK Legislation website:
www.legislation.gov.uk/uksi/2017/600/contents/made
- 1.6. This consultation document is available on the GOV.UK website:

¹ <http://www.legislation.gov.uk/uksi/1996/1462/contents>

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

Impact Assessment

- 1.7. The analysis of the impact of the introduction of the changes to the Contracting-out (Transfer and Transfer Payment) Regulations 1996 will be published alongside the secondary legislation on the UK Legislation website.

Chapter 2: the Government's response to the feedback received on the consultation questions (1 to 3) on the draft regulations

Introduction

- 2.1. The Consultation posed three questions concerning the draft Regulations. Chapter Two summarises the comments received and sets out the Government's response. The Regulation number in the heading refers to the numbering in the final Regulations.
- 2.2. When reading these responses you may find it helpful to refer to the original consultation, which provides the context.

Chapter 1: The draft Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2017

Regulation 2 - Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations 1996

Question 1: Do you agree that the draft changes enable transfers of contracted-out pensions (in payment) with member consent to be made to schemes that have never been contracted out in the limited circumstances mentioned in paragraph 1.6 (of the consultation)?

Respondents' views

- 2.3. Respondents welcomed the proposed amendments to the regulations. There were, however, a few issues raised:

- i. Firstly, that under the proposed changes to the regulations it was not possible to refer to a “transfer of liability” (of GMPs or post 97 contracted-out rights). This was because, it was argued, the transfer is being applied to provide benefits in a scheme which is not subject to the same statutory restrictions and requirements as a formerly contracted-out scheme; and which are potentially of a different type or amount in the receiving scheme.
- ii. That the changes to the regulations may introduce some unintentional additional restrictions – for transfers of contracted-out rights that are in payment to former contracted-out schemes currently possible under regulations 3, 4 or 9.
- iii. One respondent commented that there was some inconsistency with the wording of draft regulations 6A and 11A.
- iv. There was concern from one respondent that whilst the regulations require the pensioner to acknowledge that the benefits they receive in the new scheme may be in a different form and different amount from the transferring scheme, HMRC requirements under the Finance Act 2004² mean that the pension in payment cannot be reduced by the receiving scheme. The respondent suggested that because the wording of the statement allows for the new pension to be paid in a different form, this could give rise to the possibility of an unauthorised payment being made.
- v. One respondent suggested that members should only be required to give this acknowledgement where benefits would be in a different form, but where benefits would be replicated in the new scheme then this was unnecessary.
- vi. Lastly, a couple of respondents were concerned that once an assessment period had started, legislation prevented the scheme from paying transfer values to a new scheme.

² <http://www.legislation.gov.uk/ukpga/2004/12/contents>

Government Response

- i. With regard to the first point, the Government takes the view that a transfer of liability is possible although the receiving scheme has not formerly been contracted- out and the regulations should therefore enable either a transfer of liability which the receiving scheme **may** be able to provide, or a transfer payment in respect of the pension in payment. In the latter case, there is no distinct “transfer of liability” and this allows for the payment of the pension to be in a different form from that which would have been payable by the transferring scheme.
- ii. With regard to the second point, the Government does not agree that the amendments introduce any new restrictions for transfers that can currently be made to formerly contracted-out schemes. The transfers to formerly contracted-out schemes that can currently be made under regulations 3, 4 and 9 (transfers of liability) are unaffected and not limited by these regulations. These regulations provide for additional cases where transfer payments in relation to contracted-out rights in payment can be made, which relate specifically to schemes where there is an assessment period in relation to the scheme or a regulated apportionment arrangement has been entered into.
- iii. Minor changes have been made to the wording of regulations 6A and 11A to ensure consistency.
- iv. We would still expect schemes to comply with the requirements under the Finance Act 2004 and that the pension in payment should not be reduced. This does not however prevent pensions from being paid by the new scheme in a different form or different amount from the transferring scheme.
- v. The Government recognises that whilst a new scheme may be able to provide identical benefits to the receiving scheme, it will not be under the same statutory restrictions and requirements as a formerly contracted-out

scheme. Hence the Government believes that the provision requiring pensioners to give an acknowledgement should remain as drafted. This also provides consistency on this with transfers of deferred pensions.

- vi. Under section 135 of the Pensions Act 2004³ it is generally the case that no transfers or transfer payments are to be permitted whilst a scheme is in assessment. However, Section 135(9) of the Act provides that any action taken in contravention of the restrictions in section 135 is void, **except to the extent that the PPF validates the action**. The Department's understanding is that the PPF would therefore be able to validate a transfer in exceptional circumstances such as those provided for in the proposed changes to legislation.

Question 2: Do you agree that pensioner members' benefits are adequately protected?

Respondents' views

- 2.4. Question two provided five responses. One respondent, without going into detail, was content that the revisions to legislation provided adequate protection for pensioner members. The second and third respondents suggested that the acknowledgement which pensioners must give recognising that the benefits they receive in the new scheme may be in a different form does not go far enough and that the statement should also recognise any differences in pension increases between the old and new scheme and any other changes which might be relevant within the new scheme.
- 2.5. The fourth respondent felt that the protection was sufficient because of the limited circumstances in which these transfers will apply, meaning the transfers will only proceed where there is active scrutiny by the PPF or the Pensions Regulator. They also added that any transfers would be likely to proceed under discretionary transfer powers in the scheme rules, in relation to which the

³ <http://www.legislation.gov.uk/en/ukpga/2004/35/contents>

trustees would need to be satisfied that making such a transfer would be consistent with their fiduciary duties to scheme beneficiaries.

- 2.6. The fifth respondent, whilst they felt the new regulations provided adequate protection, felt that the scope of the new provisions should be widened so that they apply to any occupational pension scheme.

Government Response

- 2.7. The Government's view is that, for the reasons given by the fourth respondent, the regulations do provide adequate protection of pensioner members' benefits. In relation to the acknowledgement that must be provided by pensioners, the Government takes the view that this should mirror the wording of such acknowledgements which have to be given by deferred members for transfers of their contracted-out rights to schemes that have never been contracted-out. The Government considers this will be sufficient to protect pensioner members' rights and additional requirements could create uncertainty for deferred members.

- 2.8. With regard to the request to widen the scope to other schemes, these regulations make provision for schemes that are in financial difficulty where the Government has been requested by the industry to take urgent action. Widening the scope of the regulations to other schemes and circumstances is more complex and requires further consideration and it is likely that a longer consultation would be appropriate. The Government has therefore prioritised the issues that require addressing urgently. As stated in the consultation, we do intend to consider extending the transfer of pensioner members to new schemes more generally in the near future together with bulk transfers that are made without member consent.

Question 3: Do the proposed regulations work for employers who form a section of a multi-employer scheme? If not, what needs to change?

Respondents' views

2.9. Concerning multi-employer schemes, whilst the vast majority of respondents felt that the regulations would work for employers who form a section of a multi-employer scheme, a couple of respondents raised concerns that the regulations did not adequately address the situation of these employers with one suggesting an amendment to ensure that the regulations would address their circumstances

Government Response

2.10. It appears to us that whilst there are arguments for addressing this issue specifically, given most respondents felt the legislation would work for employers within multi-employer schemes, it is not necessary to do so. However, the Government will review this requirement as part of further changes which it will be considering in relation to contracting-out transfers later in the year.

Annex A: Consultation respondents

Association of Consulting Actuaries

Association of Pensions Lawyers

Burges Salmon

Eversheds Sutherland (International) LLP

Mercer

Pensions Management Institute

Prospect Union

Sackers

Society of Pensions Professionals

Trades Union Congress

Travers Smith