



Department
for Work &
Pensions

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

Public consultation

April 2017

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Introduction

Following the introduction of the new State Pension, salary-related contracted-out schemes can no longer transfer pensioner members to newly created schemes (with their consent) because these transfers can currently only take place to schemes that have been formerly contracted-out.

The Department is aware that a number of schemes would like to perform these transfers but are prevented from doing so by the legislation. In particular if these transfers do not take place, because of the financial position of some of the schemes, pensioner members of the schemes may have to be transferred to the Pensions Protection Fund (PPF). The benefits members receive may then be less than if a transfer could be made to a newly established scheme.

Following the publication of the Government's Green Paper "Security and Sustainability in Defined Benefit Pension Schemes"¹, the Government has made it clear that it wants to support the sustainability of pension schemes whilst protecting members' benefits. It is aware that this anomaly means that whilst deferred members can benefit from better pension arrangements through a transfer, pensioner members cannot. To address this issue, the Government intends to introduce changes to legislation to enable transfers, in limited circumstances, of pensioner members, with their consent, to schemes that have never been contracted-out.

In the recent response to the consultation on the Occupational Pension Schemes and Social Security (Schemes that were Contracted-out and Graduated Retirement Benefit) (Miscellaneous Amendments) 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. Although not addressed in this consultation, this remains under active consideration. We will also consider, in due course, extending the

¹ <https://www.gov.uk/government/consultations/defined-benefit-pension-schemes-security-and-sustainability>

² <https://www.gov.uk/government/consultations/occupational-pensions-draft-regulations-legislative-review-and-guaranteed-minimum-pensions-equalisation-methodology>

transfer of pensioner members to new schemes more generally, but for now our priority is schemes which are at financial risk.

About this consultation

Who this consultation is aimed at

This consultation is mainly aimed at pension administrators and employers who sponsor formerly contracted-out defined benefit occupational pension schemes and those intending to establish new defined benefit schemes. However, the Government also welcomes the comments from the pension industry, professionals, pension schemes, trustees, pension scheme members and member representative 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 2017.

Scope of consultation

This consultation applies to England, Wales and Scotland. The Department for Communities will be making corresponding provisions for Northern Ireland.

Duration of the consultation

The consultation period begins on 10 April 2017 and runs until 23 April 2017.

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

Or if you would prefer not to respond either by email or post, you can use the online survey (see below).

[Respond online](#)

Please ensure your responses reaches us by: 23 April 2017

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 your applicable, how the views of members were assembled.

Any queries about the subject matter of this consultation should be addressed to:

CONTRACTING.OUTTEAM@DWP.GSI.GOV.UK

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@dwp.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 2017

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

Background

- 1.1. Between 6 April 1978 and 5 April 1997 employers sponsoring salary-related 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. 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 1993 which provides for these rights.
- 1.2. With the introduction of the new State Pension in April 2016 and the abolition of contracting-out for salary-related schemes, it is no longer possible to transfer pensioner members with contracted-out benefits, to a new scheme with their consent. Transfers can only be made to formerly contracted-out schemes.
- 1.3. With recent responses to consultations, it has been made clear to the Department that this is one area that occupational pension schemes would like to see changed along with extending the current rules concerning bulk transfers without member consent to allow transfers to schemes that have never been contracted-out. Although the latter is not being addressed in this consultation (we do intend to revisit this issue later this year).

- 1.4. The Department is aware that, for some schemes, the reason they would like these transfers to take place is to prevent a situation where pensioner members, because of the financial situation of the scheme, will otherwise enter the PPF. An alternative to this would be for the transferring scheme to transfer deferred members and pensioner members to a new scheme which essentially will provide better benefits than the PPF, albeit other elements of the pension such as annual increases may be less than they might have received under the original scheme. We are aware that some schemes currently find themselves in this predicament and urgently require a change in legislation to permit these transfers to take place.
- 1.5. Legislation that enabled transfers of pensioner members to a scheme that has never been contracted-out could benefit the member by providing them with a better pension than if the scheme was to enter the PPF; and benefit the employer by reducing the ongoing liabilities of the scheme thus ensuring its sustainability. It will also ensure more parity between deferred members and pensioner members as legislation currently does permit transfers of deferred members' benefits with their consent to schemes that have never been contracted-out.
- 1.6. Because the Department is aware of an urgent demand by the industry for this change and specifically in circumstances where schemes are in financial difficulty, it will limit the circumstances where these type of transfers take place to where the scheme is undergoing a PPF assessment or where a regulated apportionment arrangement (RAA) has been entered into.
- 1.7. A regulated apportionment arrangement is a statutory mechanism which allows a company to free itself from its financial obligations to a pension scheme in order to avoid insolvency, provided that certain conditions are met and the RAA is approved by both the Pensions Regulator and the PPF. More details can be found [here](#)³.

³ <http://www.thepensionsregulator.gov.uk/docs/regulated-apportionment-arrangements-statement-august-2010.pdf>

1.8. As mentioned in the introduction, the Department will give further consideration to other types of transfer to schemes that have never been contracted-out, extending transfers of pensioner members to new schemes more generally, and bulk transfers without member consent and we will turn to this later this year.

Commentary

1.9. Regulation 2 makes amendment to the Contracting-out (Transfer and Transfer Payment) Regulations 1996⁴ to enable pensioner members with rights to GMPs and section 9(2B) rights to be transferred, with their consent, to a scheme that has never been contracted-out. The transfers are limited to circumstances where the scheme is undergoing a PPF assessment or where a RAA has been entered into.

1.10. Like the existing arrangements for transfer of deferred members' contracted-out rights to schemes that have never been contracted-out, it is proposed that the member must acknowledge in writing that the benefits to be provided by the receiving scheme may be in a different form and of a different amount to those which would have been payable by the transferring scheme; and may not provide a survivor pension.

Consultation Questions

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?**
2. **Do you agree that pensioner members' benefits are adequately protected?**
3. **Do the proposed regulations work for employers who form a section of a multi-employer scheme? If not, what needs to change?**

⁴ <http://www.legislation.gov.uk/uksi/1996/1462/contents>

Annex A: Draft Contracting-out (Transfer and Transfer Payment) (Amendment) Regulations 2017

2017 No.

PENSIONS

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

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - 2017

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 12C(1)(a), 20(1)(a)(iii), 181 and 182 of the Pension Schemes Act 1993(a) makes the following Regulations.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate, in accordance with section 185(1) 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 2017 and come into force on [].

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

2.—

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

(2) In regulation 1(2) (interpretation) insert at the appropriate places—

““assessment period” has the meaning given in section 132 of the Pensions Act 2004 (assessment periods);” and

““regulated apportionment arrangement” has the meaning given in the Occupational Pension Schemes (Employer Debt) Regulations 2005;”.

(3) In regulation 2 (general)—

(a) in sub-paragraph (3), for “or 4” substitute “, 4 or 6A”;

(b) after sub-paragraph (3) insert—

“(3A) A transfer payment from an occupational pension scheme in respect of the payment of guaranteed minimum pensions to or in respect of a person who has become entitled to them may be made in accordance with regulation 6A and no such transfer payment may be made otherwise.”; and

(c) in sub-paragraph (4), for “6” substitute “6A” and after “in respect of” insert “the payment of guaranteed minimum pensions or of”.

(a) 1993 c.48. Section 12C was inserted by section 136(5) of the Pensions Act 1995 (c.26) and is repealed by the Pensions Act 2014 (c.19) but the repeal has effect subject to savings specified in S.I. 2015/1502 article 2.

(4) After regulation 6 (transfer payments in respect of guaranteed minimum pensions to overseas schemes) insert—

“6A Transfers in the case of a regulated apportionment arrangement or where an assessment period has commenced

(1) This regulation applies in relation to an occupational pension scheme where—

- (a) there is an assessment period in relation to the scheme; or
- (b) a regulated apportionment arrangement has been entered into in relation to the scheme.

(2) A transfer of liability for, or a transfer payment in respect of, the payment of guaranteed minimum pensions to or in respect of a person who has become entitled to them may be made from an occupational pension scheme to which this regulation applies (“the transferring scheme”) to an occupational pension scheme which is not an overseas scheme or overseas arrangement (“the receiving scheme”) if the person to whom the pension is payable —

- (a) consents to the transfer in writing;
- (b) acknowledges in writing to the transferring scheme the receipt of a statement showing the benefits to be awarded in respect of the transfer; and
- (c) accepts in writing that-
 - (i) the benefits to be provided by the receiving scheme may be in a different form and of a different amount to those which would have been payable by the transferring scheme; and
 - (ii) there is no statutory requirement on the receiving scheme to provide for survivor’s benefits out of the transfer payment.”.

(5) In regulation 7—

(a) in paragraph (2)(b), after “regulation 9” insert “or a transfer in accordance with regulation 11A”;

(b) after paragraph (2) insert—

“(2A) A transfer payment from an occupational pension scheme that was a salary-related contracted-out scheme in respect of the payment to or in respect of a person who has become entitled to them of pensions under that scheme deriving from section 9(2B) rights may be made in accordance with regulation 11A and no such transfer payment may be made otherwise.”; and

(c) in paragraph (3) for “11” substitute “11A” and after “paragraph (1)” insert “or a payment in respect of pensions deriving from section 9(2B) rights such as is referred to in paragraph (2A)”.

(6) After regulation 11 insert—

“11A Transfers in the case of a regulated apportionment arrangement or where an assessment period has commenced

(1) This regulation applies in relation to an occupational pension scheme that was a salary-related contracted-out scheme where—

- (a) there is an assessment period in relation to the scheme; or
- (b) a regulated apportionment arrangement has been entered into in relation to the scheme.

(2) A transfer of liability for, or a transfer payment in respect of, the payment to or in respect of a person who has become entitled to them of pensions deriving from section 9(2B) rights may be made from an occupational pension scheme to which this regulation applies (“the transferring scheme”) to an occupational pension scheme which is not an overseas scheme or overseas arrangement (“the receiving scheme”) if the person to whom the pension is payable—

- (a) consents to the transfer in writing;

(b) acknowledges in writing to the transferring scheme the receipt of a statement showing the benefits to be awarded in respect of the transfer; and

(c) accepts in writing that-

(i) the benefits to be provided by the receiving scheme may be in a different form and of a different amount to those which would have been payable by the transferring scheme; and

(ii) there is no statutory requirement on the receiving scheme to provide for survivor's benefits out of the transfer payment.”.

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

Address
Date

Name
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

DRAFT