



Department
for Work &
Pensions

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

Government Response

February 2018

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Chapter 1: Introduction

- 1.1. On 21 December 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 (“the 1996 Regulations”) and the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015² (“the 2015 Regulations”).
- 1.2. The new Contracting-out (Transfer and Transfer Payment) Regulations 2018 (“the 2018 Regulations”) will enable transfers of contracted-out rights without the consent of members (whether active, deferred or pensioners) from a formerly contracted-out salary-related scheme to a newly established salary-related scheme that has never been contracted-out, under specified conditions (subject to the trustee receiving the necessary actuarial certificate).
- 1.3. The conditions are that the rights to be provided by the receiving scheme should be broadly, no less favourable than the rights which would have been provided under the transferring scheme. These regulations will work in tandem with the existing protections to members’ rights where benefits are transferred without consent, which are set out in regulation 12(3) of, and Schedule 3 to, the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991³ (the 1991 Regulations).
- 1.4. The consultation ended on 17 January 2018. There were 18 written responses from pension industry bodies, pension professionals and the individual. We are grateful to everyone who replied. A list of organisations and an individual that responded is at **Annex A**.
- 1.5. This response addresses the main issues raised by respondents.
- 1.6. The 2018 Regulations (S.I. 2018/234)⁴ have been made, laid and are available on the UK Legislation website.
- 1.7. This consultation document is available on the GOV.UK website⁵.

Impact Assessment

- 1.8. An Impact Assessment has been prepared for this instrument and will be made available alongside the legislation on the UK Legislation website.

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

² <http://www.legislation.gov.uk/uksi/2015/1677/contents>

³ <http://www.legislation.gov.uk/uksi/1991/167/contents>

⁴ <http://www.legislation.gov.uk/uksi/2018/234/contents/made>

⁵ <https://www.gov.uk/government/consultations/bulk-transfer-of-contracted-out-pension-rights-without-member-consent-draft-regulations>

Chapter 2: The Government's Response to the feedback received on the consultation questions 1 to 6 (the draft regulations)

Introduction

- 2.1. The consultation asked six questions concerning the consultation draft regulations. Chapter 2 summarises the comments received and sets out the Government's response. The regulation numbers in the headings refer 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 2018

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

Regulation 3 – Amendment of the Occupational Pension Schemes (Schemes that were Contracted-out) (No.2) Regulations 2015

Question 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?

Question 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?

Question 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?

Respondents' views

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

- i. A couple of respondents raised concerns that new paragraph A1, of Schedule 1 (consultation draft regulation 2(12)(b)) and a condition of transfers of GMPs under new regulation 3A could result in the new scheme having to comply with several sets of requirements regarding forfeiture and suspension and provide a significant obstacle to restructuring, reorganisation or consolidation. They also questioned why regulation 12(3) of the 1991 Regulations was insufficient to safeguard members' rights.
- ii. Eight respondents argued that new regulation 8A (consultation draft regulation 2(8)) prevents the transfer of pensions in payment which are currently not prevented by regulation 9 of the 1996 Regulations (for transfers to formerly contracted-out schemes). They also suggested deleting the word "accrued" or using alternative wording as a potential solution to this issue.
- iii. Five respondents commented on the requirements in draft regulation 8A to ensure the member's transferred benefits were adequately protected. They considered them to be onerous and unnecessary and (unlike the use of this term in Section 67 of the Pensions Act 1995⁶ when modifying accrued rights) it did not seem to be immediately clear how the "not adversely affect" requirement would be assessed and who would be responsible for making it. In their view the "not adversely affect" test may be difficult to apply in practice. They also suggested amending the definition of "connected employer" and "connected employer transfer payments" to ensure consistency between the 1996 Regulations and regulation 12 of the 1991 Regulations.
- iv. One respondent pointed to new paragraph 6 of Schedule 1 of the 1996 Regulations (consultation draft regulation 2(12)(c)) referring to the provisions for forfeiture etc., as being those of the receiving scheme and that this would not be possible for a scheme that has never been contracted-out.
- v. A couple of respondents suggested that a new modified definition was required for "guaranteed minimum pension" in paragraph 1 of Schedule 2 (consultation draft regulation 2(13)) in respect of onward transfers (from schemes that have never been contracted-out) and suggested alternative wording.
- vi. A couple of respondents questioned whether the revised definition of section 9(2B) rights sufficiently covered transfers of these rights in accordance with the 1996 Regulations. Some alternative wording was suggested.
- vii. One respondent raised two issues concerning member communications. Firstly, that scheme members can be confused about whom their pension

⁶ <https://www.legislation.gov.uk/ukpga/1995/26>

arrangement is with and where it is now held, because of previous transfer activity. Secondly, in relation to the reference test for defined benefit schemes, the respondent asked for a clear test that members, employers and scheme administrator are able to understand and be clearly communicated.

- viii. A couple of respondents made other minor suggestions, which we believe are out of the scope of this consultation. The main suggestion from respondents is that they thought that the definition of salary-related pension scheme needed to be deleted or amended to meet the policy objective as a receiving scheme should not have to be “salary-related” in order to receive bulk transfers without member consent, provided the necessary protections were afforded to transferred rights.
- ix. Lastly, respondents made a number of minor drafting suggestions.

Government Response

2.4. The Government Responses refer to the numbering in the Respondent’s views above.

- i. To address this issue we have omitted the new paragraph A1 of Schedule 1 (consultation draft regulation 2(12)(b)) and amended the existing paragraph 1 of Schedule 1 of the 1996 Regulations requiring all schemes to comply with sections 13 to 24E of the 1993 Act (this also corrects the previous reference to sections 13 to 24G rather than sections 13 to 24E (**see new regulation 2(7)(a) and (b)**)). This will remove the obstacle of the new scheme having to comply with several sets of rules covering commutation, suspension and forfeiture.
- ii. With regards to the second point, as a result of respondents’ comments, the Government has removed new regulation 8A (consultation draft regulation 2(8)) and included the provision in regulation 9 of the 1996 Regulations instead so that these transfers of post 97 contracted-out rights will apply to both formerly contracted-out schemes and schemes that have never been contracted out. These changes will also ensure that transfers of pensions in payment to schemes that have never been contracted-out will also be possible (**see new regulation 2(4)**).
- iii. The Government has decided that in order to resolve the issues respondents raised, the receiving scheme must provide benefits similar to those which a formerly contracted-out scheme would have provided under the appropriate legislation as it had effect at the time in **new regulation 2(4)** The definitions of “connected employer” and “connected employer transfer payments” have also been amended to ensure greater consistency between the 1996 Regulations and regulation 12 of the 1991 Regulations.
- iv. Given the issues covered in (i) above which would arise if the new scheme had to comply with commutation and suspension arrangements in several transferring schemes and the fact that it is not essential for the receiving

scheme to have its own bespoke arrangements for commutation etc., we have decided to maintain the requirement that the provisions which should apply should be those of the receiving scheme. However, a newly established scheme must still comply with requirements for accrued rights of guaranteed minimum pension (GMP) in payment under sections 13 and 17 of the Pension Schemes Act 1993⁷ (“the 1993 Act”). One minor change we have made is to make clear that all schemes must comply with the requirements of section 109 of the 1993 Act in respect of pensions in payment (**see new regulation 2(7)(c)**).

- v. As a result of comments made we have amended the modified definition of GMP in paragraph 1 of Schedule 2 to enable onward transfers from schemes that have never been contracted-out. A further change to this definition ensures that schemes which have never been contracted-out and receive transfers of GMPs can convert those GMPs into other scheme benefits in accordance with sections 24A-H of the 1993 Act.
- vi. Whilst we are grateful for the suggested revised text for the definition of section 9(2B) rights, we believe that the definition does meet the policy objective. However, we have amended the text to cross refer to amended regulation 9, as we have removed consultation draft regulation 8A.
- vii. We recognise that it has always been the case that members should understand the details of any benefits that are payable from a pension scheme to which members belong. Although disclosure⁸ requirements have changed over time, trustees will be expected to provide relevant information if needed. Individuals can also take advantage of the Pensions Tracing Service⁹ if they have lost information detailing the whereabouts of their pension.
- viii. The Government does not agree with the proposal that a scheme should not need to be salary-related in order to receive bulk transfers without member consent. The policy intention of these regulations was to remove the requirement that the receiving salary-related schemes had to be formerly contracted-out schemes and we think these regulations will achieve that objective. However, in light of the points raised by certain respondents, we propose to investigate this issue further with the industry, although any new proposals will not be included in the latest changes.
- ix. Minor changes have been made to the wording of regulations to ensure consistency.

⁷ <https://www.legislation.gov.uk/ukpga/1993/48>

⁸ <https://www.legislation.gov.uk/uksi/2013/2734/contents/made> - The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734) set out the information which trustees and managers of occupational and personal pension schemes must give to their members, the timescales for providing such information and the methods that may be used.

⁹ <https://www.gov.uk/find-pension-contact-details>

Question 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?

Question 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?

Question 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?

Respondents' views

- 2.5. Generally, respondents suggested that such transfers were quite common before abolition. A respondent cited that where a sponsoring employer wished to merge several schemes to facilitate easier management and administration, and to benefit from economies of scale, the preferred solution was frequently to set up a new scheme into which the other schemes were “tipped”.
- 2.6. Seven respondents mainly advisers / representative bodies were unable to provide any details regarding time/costs data either because they do not have the data available or for other commercial reasons as they do not routinely share such data with government or external regulators. Respondents did provide anecdotal evidence that organisations are currently being restricted or stopped from reorganising their defined benefit liabilities because it is not possible to make these types of transfers. One respondent mentioned that the resulting “costs are in business sales and scheme consolidations that are frustrated as a result of inflexible legislation”.
- 2.7. Some respondents suggested other minor changes, which are out of scope of this consultation. The main suggestion was that the definition of salary-related pension scheme needed either to be removed or amended in order to meet our policy intention, i.e. so that bulk transfers without member consent should not just be possible to salary-related pension schemes.

Government Response

- 2.8. The Department is grateful to respondents for their feedback on questions four and five.
- 2.9. The Government has considered very carefully the responses to question number six. As explained at response (viii) the Government does not agree with the suggestion that a scheme should not need to be salary-related in order to receive salary-related bulk transfers without member consent. However, in light of the points raised by certain respondents, the Government will be taking all comments away and will consider what further changes might be required to legislation as soon as we are in a position to do so.

Regulations removed post consultation

2.10. During the consideration of consultation comments received, we reviewed the provisions in the consultation draft regulations and concluded that some will not be needed. This section explains why we have removed these provisions.

Regulation 2(4) of the consultation draft: Transfers without earner's consent of guaranteed minimum pensions to salary-related schemes that never have been contracted-out

2.11. We removed consultation draft regulation 2(4). This is because we require compliance with the condition in the 1996 Regulations. We have updated the regulations to remove all references to consultation draft regulation 2(4). New regulation 3A has become redundant following other amendments.

Regulation 2(8) of the consultation draft: Transfers without earner's consent of Section 9(2B) rights to salary-related schemes that never have been contracted-out

2.12. We have removed consultation draft regulation 2(8). This is because the provision is deemed not necessary as we propose substituting the whole of regulation 9 (new regulation 2(4)), so that the provision would apply to both formerly contracted-out schemes and those that were never contracted-out, rather than make complicated textual amendments.

Regulation 2(11) of the consultation draft: Modification of Part III of the 1993 Act on transfers from policies of insurance or annuity contracts

2.13. We have removed consultation draft regulation 2(11). This is because the modification is not required because the provision is only appropriate to regulations 3 or 6 which apply transfers to formerly contracted-out schemes and overseas schemes.

Consultation draft regulation 2(12)

2.14. We have removed consultation draft regulation 2(12). This is because new schemes would not be able to consolidate their pension arrangements if they had to comply with rules regarding forfeiture and suspension requirements of a receiving scheme that are not mandatory, which only leaves arrangements for commencement and continuation (which in any event must still comply with sections 13 and 17 of the 1993 Act). We have simply removed A1 of Schedule 1 and added a new provision to paragraph 1 of Schedule 1, which requires all schemes to comply with section 13 to 24E of the 1993 Act.

Annex A: Consultation respondents

Aon Hewitt

Coats Group plc (Group Pensions)

Eversheds Sutherland (International) LLP

First Actuarial LLP

Freshfields Bruckhaus Deringer LLP

Hymans Robertson LLP

Institute and Faculty of Actuaries

JLT Benefit solutions Limited

John Thompson

Linklaters LLP

Mercer

Sacker & Partners LLP

Squire Patton Boggs (UK) LLP

The Association of Consulting Actuaries Limited

The Association of Pension Lawyers

The Pensions Advisory Service Ltd

The Society of Pension Professionals

Willis Towers Watson