

Bulk Transfer of Contracted-Out Pension Rights Without Consent

Following consultation, the DWP has confirmed that bulk transfers of contracted-out rights from defined benefit pension schemes may be made to schemes which have never been contracted-out, without member consent.

A DWP [response](#) to the consultation sets out the conditions contained in [regulations](#) which will have to be met where member consent is not obtained. The regulations come into force on 6 April 2018.

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Background

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 was known as “contracting out”. Prior to 6 April 1997, defined benefit (DB) pension schemes generally contracted out by providing guaranteed minimum pensions (GMPs) and between 6 April 1997 and 5 April 2016. From 6 April 1997 contracted out benefits were generally subject to a reference scheme (and known as post-97 COSR rights). Following the introduction of the new State Pension, contracting-out for DB occupational pension schemes was abolished on 6 April 2016.

Before contracting out was abolished, DB occupational pension schemes which were or had been contracted out schemes could bulk transfer scheme members without their consent to a different contracted-out or formerly contracted-out scheme. Where the proposed receiving scheme was not contracted out, a work around allowed the receiving scheme to contract out for a short period of time, and thus become a formally contracted out scheme.

Following the abolition of contracting out no new schemes, or schemes that have always been contracted in, can satisfy the requirement of being “formerly contracted out”. This can cause issues for employers involved in the restructuring of their group pension provision.

Currently, transfers can be made to DB schemes (subject to certain conditions being met):

- With the written consent of the member to any scheme; or

- 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 or a connected employer.

The New Regulations

The government is proceeding with its proposals to allow bulk transfers from formerly contracted out DB pension schemes to DB schemes which have never been contracted out without member consent. It is also extending provisions to enable the transfer of pensioner members to a new scheme more generally.

These new options are subject to the conditions that the rights of the members are not adversely affected by the transfer and the same protections are provided by the new receiving scheme.

Bulk transfers that are made to schemes that have never been contracted out (without obtaining the members' consent) will be subject to the following conditions:

GMP not in payment and not secured via a deferred annuity policy

The receiving scheme must:

- provide for pensions payable at the rates at which GMPs would have been payable by the transferring scheme if the transfer had not taken place;
- contain the same provision for starting and continuing the payment of those pensions; and
- comply with the statutory requirements for GMPs.

GMP not in payment and secured via a deferred annuity policy

The receiving scheme must provide for pensions to be paid at least an equal value to the annuity which would have been payable by the transferring policy, had the transfer not taken place, in respect of the accrued rights to GMP.

GMP in payment

The date of commencement of the pension being transferred must be:

- the date from which liability for payment of the pension is assumed by the receiving scheme - if payable to the member; or
- the same as it would have been under the provisions of the transferring scheme – if payable to the member's widow, widower or surviving civil partner.

A receiving scheme must provide for the payment of GMPs at a rate that is no lower than that paid by the transferring scheme, and must make statutory increases to the transferred GMP.

Conversion of GMP into other scheme benefits

Receiving schemes which have never been contracted out can convert GMP into other scheme benefits in accordance with the requirements of the Pension Schemes Act 1993.

Post-'97 COSR Rights

Bulk transfers without members' consent may be made to a salary-related scheme that has never been contracted out if rights are such that they would have met the reference scheme test as it had effect immediately before 6 April 2016.

Comment

The DWP is also looking at the issue of consolidating DB occupational pension schemes. These changes remove one difficult barrier to consolidation and will be popular with employers of former contracted out DB schemes looking to consolidate or restructure their pension provision.

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