

Bulk Transfers of Money Purchase Benefits Without Member Consent

Amending regulations have been introduced to simplify the bulk transfer of money purchase (also known as defined contribution) pension savings without consent. The bulk transfer of these benefits has traditionally been subject to requirements that were originally devised with defined benefits in mind, and has never really leant itself to the money purchase environment.

The new regulations came into force from 6 April 2018, and the DWP has also published [guidance](#) on the new requirements.

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What are the changes?

The DWP has replaced the need for actuarial certification and the stipulation for a degree of association between the transferring and receiving pension schemes (known as ‘the scheme relationship condition’) with three alternative routes (or conditions). Bulk transfers without member consent are permitted if one of three alternative conditions is satisfied. The actuarial certification route is still available until October 2019, under a transitional period.

- The first is where the receiving scheme is an authorised master trust. There is no appropriate advice requirement in this case.
- The second is where the transfer is between pension schemes operated by connected group companies (e.g. where there has been a corporate restructure). Likewise, there is no appropriate advice requirement in this case.
- The third is where trustees of the transferring scheme have obtained and considered advice from an independent appropriate adviser.

Additionally, safeguards have been implemented to ensure members protected by the charge cap in the transferring scheme do not lose out when transferred without consent.

These changes do not affect trustees’ duty under trust law to act in members’ best interests. The decision to carry out a bulk transfer without consent remains one for the trustees to make, in accordance with their fiduciary duty and consideration of members’ best interests and good value for members.

The scope of the changes

The changes only apply to bulk transfers without member consent of 'pure' DC benefits (i.e. money purchase benefits without guarantees). Non-money purchase benefits or money purchase benefits with guarantees are not included.

The changes do not apply to orphaned pension schemes (where a scheme continues to hold assets but where it is no longer possible to identify either a trustee or a party with the power to appoint a trustee under the trust deed and rules), or to stakeholder pension schemes.

Removing the need for an actuarial certificate

The DWP has acknowledged that the previous legislation was not readily applicable to transfers of money purchase pension savings, and was being applied inconsistently. Actuaries are not necessarily best placed to assess the suitability of receiving money purchase schemes, where the benefits provided are largely determined by investment strategies and charges, and previous guidance was not detailed enough to provide the reassurance needed.

The need to obtain an actuarial certificate for transfers between 'pure' money purchase pension schemes is therefore being removed, where there are no potentially valuable guarantees or options to be assessed.

This requirement will not fall away immediately. Instead the DWP has decided to remove this option for transfers which fall in scope of the new regulations, but only from October 2019, so that trustees have a full 18 months to complete any bulk transfers which are underway.

The requirements now depend upon whether or not the receiving scheme is an authorised master trust. We discuss the two situations below.

Bulk Transfers to Authorised Master Trusts

From October 2018, for bulk transfers without consent to an authorised master trust, transferring scheme trustees will be able to rely on the Pensions Regulator's authorisation as an indication that the receiving scheme meets certain minimum standards in terms of:

- the fit and proper status of key people involved in running the scheme;
- the systems and processes used by the scheme; and
- the scheme's financial sustainability.

It should be noted that the initial master trust authorisation process is running from October 2018 until April 2019 therefore the full list of authorised master trusts may not be available until April 2019.

Trustees will still need to consider whether a particular authorised master trust is the appropriate scheme to transfer their members to, given their duty to act in members' best interests. In making this decision they will wish to consider matters such as the scheme's charges, investment strategy and customer services record and are likely to need advice on these aspects from a qualified independent professional with money purchase investment knowledge. However, trustees are not required by regulation to take appropriate independent advice where the transfer is to an authorised master trust.

Bulk Transfers to Other Types of Money Purchase Pension Scheme

Where the transfer is not into an authorised master trust, the transferring scheme trustees will again need to review the receiving scheme, under their responsibilities in trust law. Additionally, they should consult with an appropriate adviser whom they have verified to be independent from the proposed receiving scheme.

The decision to carry out a bulk transfer without consent is ultimately one for the trustees to make, in accordance with their fiduciary duty and consideration of members' best interests and good value for members. It is for trustees to decide who to consult, but they must reasonably believe the adviser is qualified to give advice on the proposed bulk transfer by reason of that person's ability in, and practical experience and knowledge of, pension scheme management. This could be an adviser the trustees are already using, if they meet the relevant criteria, or more than one adviser within the same advisory firm.

Consulting with an appropriate adviser

In defining the independent adviser, the DWP initially used the same terminology in the regulations as that used for an adviser that trustees must consult with when setting their Statement of Investment Principles. Following the consultation, this was changed from 'suitably qualified professional' to 'appropriate adviser'. Previous references to financial and investment matters have been replaced with the more general 'pension scheme management'. Many schemes are still likely to choose the investment consultant as the appropriate adviser, although trustees don't have to do so. The DWP's guidance gives more details on the knowledge and experience the adviser should have; how to choose an adviser and what the advice should cover.

The adviser must be independent from the receiving scheme. In determining this independence, trustees will need to establish whether the adviser has any links to the receiving scheme, such as receiving any payments from it or being connected to it in a way that might bias the consultant's advice.

This means that the adviser must not have been a director, manager, partner or employee of a firm providing advisory, administration, investment or other services in respect of the receiving scheme, or connected to such a provider in the one year (as expected, reduced from the proposed five year period) leading up to the advice being given. In addition, the adviser must not have received any payment or benefit from such a service provider in that period. Trustees should obtain written confirmation from the adviser that these requirements are met.

Examples of the type of work which would not tend to call the adviser's independence into question might be a situation where the firm that employs the adviser, or an associated company, might have given advice to the receiving scheme's sponsoring employer in relation to matters unrelated to pensions, such as tax or assurance.

The legislation does not detail the level of advice that trustees should seek, or require any recommendation on whether to transfer or not. However, the DWP would expect that, as a minimum, trustees should ensure that if they rely on any recommendation, these are in the best interests of the members.

Bulk Transfers Between Connected Schemes

Where the following conditions apply bulk transfers without consent can take place without the requirement for independent appropriate advice:

- 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.

The exemption from taking appropriate advice does not apply where there are 'orphan' members (former employees of employers who are no longer connected).

Either way, trustees need to consider whether the transfer is in members' best interests.

Charge Cap Protection

When members are transferred from a pension scheme in which they are protected to a scheme in which they are not, their protections under the charge cap (i.e. 0.75% of funds within the default arrangement) will transfer into the new scheme.

Whilst in other aspects, the DWP is content to let trustees make decisions using expert advice and the application of their fiduciary duty, the DWP feels that the charge cap is an appropriate minimum requirement for any proposed receiving money purchase scheme, where the transfer takes place without member consent.

Where an employer continues to use the receiving scheme for automatic enrolment, as would often be the case, the charge cap would apply anyway. However, in a scenario where non-contributing members are the only members to be transferred out without consent, the charge cap might cease to apply in the absence of this new requirement (because the receiving scheme would not meet the definition of a qualifying scheme, as the employer would not be using it for automatic enrolment in relation to any current employees).

Transfer of self-selecting members

For members that actively selected fund choices in the transferring scheme (self-selectors), which are not subject to the charge cap, receiving scheme trustees should move them into a fund that closely resembles their fund choice in the transferring scheme. As part of this, the receiving scheme trustees should look to contact the member to notify them of the transfer and seek their confirmation to remain in an uncapped fund.

Where they are unable to contact, or obtain a response from, the member, trustees can choose to transfer these self-selectors from a non-default fund to a new non-default fund without triggering the charge cap restrictions, if the member has, in the five years ending with the date of the transfer, expressed a choice as to where their contributions were allocated.

A consequence of this legislation appears to be that where a member joined a pension scheme more than five years ago and is investing in a non-default fund, their benefits cannot be transferred without their consent to another non-default fund where the charge cap restrictions do not apply. If the trustees wanted to include the member in the bulk transfer without consent, they would need to transfer them to a default fund (with a charge cap).

In Closing

Until now, bulk transfers of money purchase rights were subject to legislative requirements designed with defined benefit pension schemes in mind. These changes mean that the legislation for bulk transfers of money purchase rights without consent is now more relevant to the benefits being transferred.

Post October 2018, trustees of schemes making bulk transfers to schemes other than authorised master trusts must ensure they consult with an appropriate adviser before making the transfer, except where the transfer meets the group undertaking condition.

Either way, the trustees need to ensure that the transfer is in members' best interests, given trustees' responsibilities under trust law.

When planning to undertake a bulk transfer exercise, trustees need to ensure they factor in the time needed to:

- consider whether or not the appropriate advice requirement needs to be met
- appoint an adviser that is confirmed as independent of the receiving scheme
- consider the advice received, including the charge cap requirements

- consider the good practice aspects set out in the DWP's guidance (including communications with members, data quality, transfer agreements and transition management).

These changes provide trustees with a clearer framework for bulk transfers of money purchase benefits, which will be welcomed by sponsors and trustees of DC schemes or schemes with DC sections who are considering restructuring their arrangements, Contact your usual consultant to discuss how we can help you navigate the requirements.

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