

## A simplified process for DC scheme consolidation

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### Introduction

The DWP has [finalised its proposals](#) to simplify the process for consolidating DC pension schemes while maintaining member protection. [The Occupational Pension Schemes \(Preservation of Benefit and Charges and Governance\) \(Amendment\) Regulations 2018](#) (“the Regulations”) will generally come into force on and from 6 April 2018 to implement the new process.

### Key points

- A transitional period will run until the end of 30 September 2019, during which the existing rules for DC bulk transfers without member consent can still be used.
- Members who are protected by the default fund charge cap in the transferring scheme will continue to benefit from such protection following any transfer made without consent. However, certain exceptions will apply for members who have made an active fund choice within five years of a proposed transfer.
- The Regulations will not apply to DB schemes or to DC schemes with guarantees.

### Background

The current statutory rules for making bulk transfers without consent are both difficult to apply and “serve no useful purpose” in the DC context. The Government therefore proposed to simplify the process for transfers between “pure” occupational DC schemes (those which provide money purchase benefits without a guarantee), with a view to reducing complexity and removing a key obstacle to DC scheme consolidation.

A [call for evidence](#) back in December 2016 sought views on how the existing provisions for bulk transfers of DC pensions without member consent could be improved (see our [Alert](#) for details). A [consultation](#) then followed in late 2017, which looked at a number of ways to simplify the process, including the removal of the “scheme quality” and “scheme relationship” conditions described below.

### DC to DC bulk transfers without consent

Currently, schemes may undertake a bulk transfer without consent provided that the following conditions (which are intended to ensure member protection) are met:

- an actuary must certify that each member's rights in the receiving scheme will be "broadly, no less favourable" than the rights to be transferred ("the scheme quality condition")
- the transferring and receiving schemes both relate to persons who are or have been in employment with the same employers, or the transferring and receiving schemes relate to persons in employment with different employers and the transfer is either a consequence of a financial transaction between the employers or the employers are related for the purposes of the legislation ("the scheme relationship condition").

Employers for this purpose are related, for example, where they are in the same corporate group.

Schemes often take advantage of the bulk transfer provisions where a company wishes to consolidate its pension arrangements or to transfer its employees to a master trust. In such cases, seeking consent from the entire membership will often be very difficult, particularly in relation to deferred members.

## The new process

### The new conditions

From 6 April 2018, it will be possible to make a bulk transfer without consent from an occupational DC scheme:

- to an authorised master trust (which, by definition, will have to meet prescribed minimum standards in respect of governance and financial sustainability which are due in force from October 2018, see our [Alert](#) for details), or
- to another occupational pension scheme, provided that the transferring trustees have obtained and considered the written advice of an "appropriate adviser" who is "independent" of the receiving scheme.

### Connected schemes

In order to facilitate certain mergers, such as corporate restructures, and pension scheme consolidation, the exemption from the independent advice requirement will extend beyond master trusts to include a situation where both of the following tests are met:

- the transferring scheme employer is a group undertaking in relation to the principal 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.

### Selecting an appropriate adviser

Having taken on board [responses](#) to its consultation, the DWP has moved away from its initial, narrower proposals for the advice to be sought from a "suitably qualified person" with appropriate "investment" knowledge and experience. Instead, trustees will need to seek advice from someone they "reasonably believe to be qualified" to advise in relation to the transfer and who has "practical experience and knowledge [...] of pension scheme management".

Concerns were also raised by respondents that the test for "independence" was too stringent and would limit the opportunity of trustees to find someone independent enough to advise. The test will therefore now require trustees to consider whether, in the year ending on the date the advice is provided, the adviser (or, where the adviser is an undertaking, a related firm) has received payment for advice, administration or

investment services from:

- the receiving scheme itself
- a firm providing those services to the receiving scheme, or an undertaking connected to a firm which provides those services, or
- the receiving scheme's principal or controlling employer, or an undertaking connected with that employer.

The adviser independence safeguard has been introduced to ensure that the decision to transfer is not influenced by any conflict of interests. However, trustees will have some leeway to use advisers who may not fully satisfy the independence requirements, provided they have given "careful consideration and considerable weight" to the conditions, to ensure that "the right balance is struck between protecting schemes from inappropriate influence and allowing normal business practice to continue".

Where the transfer power rests solely with the employer, the Regulations will make it clear that it is the employer who must seek this advice, and confirm to the trustees that they have done so.

## Transitional period for the current statutory rules

Schemes will have nearly 18 months to continue using the current statutory rules for carrying out bulk transfers without consent (namely, the scheme quality and scheme relationship conditions), should they wish to do so. Aimed at helping schemes with bulk transfers already underway, the transitional period will run until the end of September 2019.

The current statutory rules will then be removed altogether from 1 October 2019 for pure DC schemes.

## Charge cap protection

Where transferring members are protected by the default fund charge cap (see our [Alert](#) for details), the receiving scheme will be required to continue to apply the cap in respect of those members, even if it is a scheme that is not being used for automatic enrolment. Similarly, any members being switched between arrangements within a single scheme will also benefit from this protection.

### Self-selectors

Flexibility will be introduced for members who have made an active fund choice (referred to in the DWP's response as "self-selectors"), to prevent them from being transferred into a default arrangement against their clearly expressed wishes or long-term best interests.

The starting point is that trustees "should continue to make all reasonable attempts to contact such members before the transfer to notify them that the transfer is taking place, and to confirm whether the member wishes to remain in an uncapped arrangement". Recognising that a response is unlikely to be forthcoming in all cases, it will be possible for trustees to transfer those who have made an active fund choice in the five preceding years into a non-default arrangement "which resembles that initial choice".

The DWP notes that the provision is "not intended to discourage trustees from placing relevant members in a capped arrangement should they feel this is in the member's best interest", but this would need to be "considered carefully by trustees".

Where members have made their investment choice more than five years before the transfer and they do not respond to trustee attempts to make contact, their benefits should be transferred into the default fund, to avoid delaying the transfer. The DWP expects trustees “to make every effort to contact these members so that they understand what is happening and the implications of the transfer”.

## Next steps

The Regulations will come into force on 6 April 2018.

In the meantime, the DWP is working with stakeholders and TPR to produce high level guidance for trustees “no later than the end of April 2018”.

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