

From 6 April 2018, there are changes to the conditions that must be met for the bulk transfer of members' money purchase benefits from an occupational pension scheme to another occupational scheme without consent. These changes are contained in *The Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018* [SI 2018/240].

The intention behind the changes is to simplify the conditions that must be met for such bulk transfers to be made without having to seek the explicit permission of individual members in advance, as well as protecting the interests of members who have been transferred without their consent.

The DWP have produced some [detailed guidance](#) on this area, aimed at the trustees or managers of any scheme who are intending to undertake a bulk transfer without consent. For this Aries Insight, we will look at the key aspects of the new Regulations.

What benefits can be transferred under the new provisions?

The new provisions only apply where the benefits being bulk transferred consist of "relevant money purchase rights". These are money purchase benefits for which the transferring scheme does not provide any guarantee or promise in relation to the amount of the benefits to be provided, or the amount available for the provision of the benefits.

In effect, then, the new provisions only apply where the benefits involved are pure money purchase.

The conditions that must be met for a bulk transfer without consent

There are three distinct and separate circumstances in which the new provisions can apply.

Firstly, they can apply where the receiving scheme is "authorised under the Pension Schemes Act 2017". Broadly, this means that the receiving scheme is a Master Trust that has been authorised by the Pensions Regulator under the new supervisory regime that is due to apply from 1 October 2018.

Secondly, the new provisions can apply where the following requirements are all met:

- the transferring scheme employer and the receiving scheme employer are undertakings (i.e. each is either a corporate body, a partnership or an unincorporated association carrying on a trade or business);
- the transferring scheme employer is a group undertaking in relation to the receiving scheme employer (i.e. is a parent or subsidiary undertaking of the receiving scheme employer); and
- the member whose rights are to be transferred is a current or former employee of an undertaking which is a group undertaking in relation to the transferring scheme employer or the receiving scheme employer.

This is intended to allow bulk transfers without consent where the controlling employers of the transferring and receiving scheme are both within the same group of undertakings. Note, however, that this route cannot be used where the member involved is a former employee

of an employer that is no longer connected to the group of undertakings, for example where that former employer has been wound up or sold.

Finally, the new provisions apply where the trustees or managers of the transferring scheme have, within one year ending on the date on which the bulk transfer is made, obtained and considered written advice in connection with the transfer from an adviser that they consider to be qualified to give advice on this area. In addition, the trustees or managers of the transferring scheme must have determined that the adviser used is independent from the receiving scheme.

When considering whether an adviser is independent from the receiving scheme, the trustees or managers should establish whether, in the year before the transfer is made, the adviser has received any payment from the receiving scheme, a firm (or group undertaking) that provides services to the receiving scheme or the receiving scheme employer (or a group undertaking in respect of that employer). The sort of services that need to be considered here include advisory, administration or investment services provided to the receiving scheme.

The fact that a particular adviser has received any payments as described above does not preclude the trustees or managers from concluding that the adviser is independent from the receiving scheme, however the DWP guidance suggests that this is a matter that should be given considerable weight. Where the trustees or managers do conclude that an adviser who has received any relevant payments in the previous 12 months is, nonetheless, independent they should record their decision here in writing and include details of the factors that they took into account when making their assessment and the weight that they attributed to each such factor.

Where advice is not required

As we have seen, where the first condition above (*authorised Master Trust*) or the second condition above (*group undertaking*) apply, there is no strict requirement for the trustees or managers of the transferring scheme to obtain advice in connection with the bulk transfer.

The trustees are, however, still subject to their fiduciary duty to act in the best interests of the members and, as such, may still wish to consider whether it would be appropriate to obtain advice in connection with the proposed bulk transfer. Indeed, the DWP guidance says that the expectation is that the trustees would obtain advice even where this is not a statutory requirement.

Assessing a proposed receiving scheme

Whilst not covered under the new Regulations, before making a bulk transfer without consent, the trustees of the transferring scheme need to be mindful of their duties under the Pension Regulator's [Code of Practice](#) on the Governance and administration of occupational trust-based schemes providing money purchase benefits and the requirement to assess the [value for money](#) that the proposed receiving scheme offers for members.

The DWP guidance provides some helpful advice as to how trustees might go about assessing any proposed receiving scheme in terms of how they can satisfy themselves that, overall, a transfer to the proposed receiving scheme would be in the members' interests.

Application of the charge cap

Under the *Occupational Pension Schemes (Charges and Governance) Regulations 2015* [SI 2015/879] there are limits on the charges that can be imposed on a member's fund where the scheme in question is being used as a qualifying scheme to comply with the

employer's automatic enrolment duties and the member's contributions are invested in the default fund.

To help protect members, those Regulations have been amended to cover situations where members are bulk transferred without their consent. The effect of the amendments is that, where a member is bulk transferred without their consent and, prior to the bulk transfer, the charge cap applied for that member under the transferring scheme, that charge cap will continue to apply for the member under the receiving scheme.

The charge cap restriction does not apply for members where:

- before the bulk transfer was made, the member's funds were not invested in a default fund, and
- after the bulk transfer is made, the member's funds are not invested in a default fund, and
- the member made their fund choice under the transferring scheme within the five years before the bulk transfer is made ("the five year rule").

Note that, for current employees who are not protected by the charge cap under the transferring scheme, if these individuals are bulk transferred without consent to a scheme that is used by their employer to comply with the employer's automatic enrolment duties, the receiving arrangement will become a default arrangement in respect of the individuals concerned. As such, the charge cap will apply unless the five year rule above applies.

Summary

The changes introduced from April 2018 will be helpful for group undertakings that have multiple money purchase schemes that they wish to consolidate and, once the Master Trust authorisation regime is in force, will enable employers to bulk transfer money purchase members into a Master Trust.

These transactions are, however, highly complex and the trustees of any schemes for which a bulk transfer out is being contemplated should ensure that they understand and follow the DWP guidance.

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