

Title: The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2013 IA No: [0033] Lead department or agency: DWP Other departments or agencies:	Impact Assessment (IA)			
	Date: 01/12/2012			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
Nil	Nil	Nil	Yes
			Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

The pensions industry has reported that there is confusion over what the scheme actuary is certifying when a formerly contracted-out pension scheme wishes to change its rules, and the legislative requirements for bulk transfer of pension scheme membership (without member consent) can cause unnecessary administrative burdens.

Additionally, an unintended change was made to legislation on bulk transfers in 2005 that inadvertently prevents bulk transfers (without member consent) to non-UK EEA states, and government intervention is the only method that can be used to correct the relevant regulations.

What are the policy objectives and the intended effects?

The objectives and intended effects are to:

- clarify the policy intention of the regulations where formerly contracted-out schemes wish to change their rules;
- reduce administrative burdens for pension schemes which wish to make bulk transfers of scheme membership (without member consent);
- reinstate pension schemes' ability to make bulk transfers (without member consent) to pension schemes based in EEA countries other than the UK should they wish to do so.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

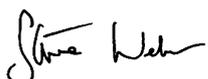
Two options were considered - to do nothing, or to make changes to regulations. For all three objectives, to do nothing was not considered the best way forward, as this would continue to cause difficulty to the pensions industry.

A non-regulatory alternative has not been considered as the changes are de-regulatory.

The legislation which it is proposed to amend is part of the protective regulatory framework to which pension schemes must adhere when they wish to either transfer scheme members' accrued rights in bulk, or, for a formerly defined benefit contracted-out pension scheme, change scheme rules.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 10/2017					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 10/12/12

Summary: Analysis & Evidence

Policy Option 1

Description: DO NOTHING

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Nil

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There are no quantifiable costs, monetised or otherwise.

Other key non-monetised costs by 'main affected groups'

Scheme actuaries will be unclear as to what action to take when a formerly contracted-out scheme wishes to change its rules.

Pension schemes will continue to spend additional time and money during a bulk transfer of scheme membership process.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks

N/A

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Nil	Benefits: Nil	Net: Nil	No	NA

Summary: Analysis & Evidence

Policy Option 2

Description: MAKE CHANGES TO REGULATIONS

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Nil

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	10	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0	0

Description and scale of key monetised costs by 'main affected groups'

There are no quantifiable costs, monetised or otherwise from these minor changes.

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	10	Optional	Optional
High	Optional		Optional	Optional
Best Estimate	0		0	0

Description and scale of key monetised benefits by 'main affected groups'

None.

Other key non-monetised benefits by 'main affected groups'

Pensions industry contacts have told us that if the proposed changes are made, there will be clarity about what is expected from the scheme actuary when a formerly contracted-out pension scheme wishes to change its rules and there will be a reduction in the amount of time taken to process a bulk membership transfer.

There would be some overall savings but these are likely to be small.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
N/A		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: Nil	Benefits: Nil	Net: Nil	Yes	Zero net cost

Evidence Base (for summary sheets)

1. Pension industry representatives reported that they were experiencing difficulty with regulations in two areas:

- The role of the scheme actuary where a formerly contracted-out scheme wished to change scheme rules.
- The bulk transfer of scheme membership without individual member consent.

They requested that the regulations are amended to clarify the role of the scheme actuary, and to ease administrative burdens during the bulk transfer process. Additionally, they pointed out that a change to the legislative definition of an occupational pension scheme had restricted schemes' ability to make bulk transfer without member consent to schemes based either in the UK or outside the EEA.

Role of the scheme actuary on scheme rule change

2. Contracted out pension schemes have to meet a statutory test in relation to benefits from the scheme. This is the Reference Scheme Test (RST), and is carried out every three years by an actuary. After a pension scheme has ceased to contract-out of the additional state pension, there are certain legislative safeguards placed on those schemes to ensure that accrued rights are not affected. One requirement is that any scheme rule changes that take place after the scheme has ceased to contract-out must not affect the members' rights accrued while the scheme was contracted-out; any changes to accrued rights must still meet the RST. The scheme actuary is required to certify that this is the case before the scheme rule is changed.

3. The regulation, as it is currently worded, does not meet the policy intention, and its meaning is unclear. Industry representatives told us that it was not possible to provide this certification as set out in the current legislation. Firstly, the RST is worded as a prospective test, looking at the coming three years, so it could not be applied to a past period. Secondly, pension schemes generally would not keep the required data going back to 1997 (when the RST was introduced) which would be necessary to consider to make the certification. We have been told by pension schemes that following "lengthy legal exchanges (with the associated costs) the legal advisers have advised on a way to proceed with the rule amendments". In order to attempt to meet the requirements set out in the legislation, pension schemes have to seek and pay for additional legal advice and incur delays to making changes to scheme rules.

Bulk transfer of scheme membership

4. Where the accrued rights in a defined benefit pension scheme do not include contracted-out rights, current legislation permits the scheme to bulk transfer a member's rights to another defined benefit scheme without the member's consent where the employers involved in the transfer are connected as defined in the regulations. Broadly, the two schemes must apply to employment with the same employer, or where the schemes apply to employment with different employers, the proposed transfer must be a bulk transfer of members, and the employers must be either involved in a takeover or merger, or be part of the same group of companies.

5. Where the rights being transferred include contracted-out rights, the transfer, in addition to meeting the connected employer test, must also be to a receiving scheme which is an active contracted-out scheme.

6. The Department was informed that in order to overcome the difficulties imposed by the regulations of only being able to transfer to a current, active, contracted-out scheme, some pension scheme administrators have re-opened a former contracted-out scheme, obtained a contracting out certificate from Her Majesty's Revenue and Customs, and accepted a minimum number of members for a limited period. This ensures that the legislative requirement for the receiving scheme to be an active contracted-out scheme is met. This workaround process increases administrative costs and substantially increases the timescale for companies undergoing merger and organising pension provision.

7. For not contracted out schemes, where mergers of schemes which have different employers (now more frequent than in the past) are being considered, there is doubt, in many cases, as to whether

the connected employer/scheme links test can be met. This is because legislation requires the transferring scheme and the receiving scheme to “apply to employment with the same employer”. It is unclear as to whether schemes which previously applied to employment with that employer are able to meet the legislative criteria, and therefore whether the transfer can take place. This results in schemes taking costly additional legal advice, which delays (or, depending on the advice, can stop) any transfer taking place. It is proposed to remove the ambiguity which surrounds this “connected employer test”.

8. Prior to 2005, the bulk transfer without member consent described in paragraph 4 was not constrained by any territorial limitations provided that the legislative safeguards were met. Then the Pensions Act 2004 amended the definition of an occupational pension scheme to one whose main administration was based in either the UK or outside the EEA. This was to make it clear that pension arrangements based in other EEA countries are regulated by those countries, not by UK law. However, since the bulk transfer without member consent regulations cross-refer to this definition, the change inadvertently removed the ability of schemes to make these transfers to schemes based in EEA states other than the UK.

Rationale for intervention

9. The Government want to clarify policy intentions and remove obstacles in relation to bulk transfer of accrued rights. The Department informally consulted the industry representatives that raised the issues. During consideration of making the requested changes to the regulations, the Department concluded that it did not have enough information to assess the potential impacts of these changes. During November and December 2011, the Department undertook a confidential evidence-gathering exercise with a small number of representatives from the industry. The Department suggested solutions to the problems they faced, and asked them for evidence in terms of costs and savings and general benefits to business if the changes to regulations they had asked for were made.

10. Although the Department has a selection of anecdotal evidence as a result of that exercise, industry representatives were unable to provide robust costs or savings for the regulations that it is proposed should be amended following their requests. The Department has been assured by the industry that there will be some small savings for business from these deregulatory measures, but it is unable to quantify any amounts with certainty. The Department tested these assurances in the public consultation exercise (see paragraphs 22 and 23).

11. From that informal exercise, it is known that the cost of a transfer will vary depending on the size of the scheme and the complexity of the existing arrangement. And for the workaround that schemes use to keep within the legislation whilst making a bulk transfer, it is known that actuarial costs will tend to be fixed, while the administrative costs will generally increase in proportion to the number of members involved. The additional costs, which result from complying with the current legislative restriction, will depend on the steps that need to be taken in respect of any scheme to enable the transfer to proceed. A respondent said of the bulk transfer issue “while the cost of this “workaround” has not been huge, it has involved disproportionate time and legal cost for employers and Trustees.”

12. Regarding the transfers to schemes based in other EEA countries, the Government wish to restore the original policy intent that has been inadvertently removed.

Policy Objective

13. In relation to rule changes for former contracted out schemes, the objective is to restore the policy intention so that accrued rights are protected when a scheme changes its rules, whilst reducing administrative burdens.

14. For bulk transfers of scheme membership, the objective is to remove delay and additional cost for pension schemes when undertaking a bulk transfer of scheme membership without member consent.

15. For bulk transfers without consent to schemes based in other EEA countries, the Government wish to restore the longstanding policy intention that transfers may be made to schemes based in these countries as well as those based in the rest of the world.

Description of options considered

Role of scheme actuary on scheme rule change

16. Do nothing: This option would mean no change for the pensions industry - there would still be ambiguity as to exactly what action the scheme actuary should take following a proposed rule change. In addition, as the Department is now aware the regulation does not meet the policy intention, to do nothing is not an option that can be taken.

17. Favoured option: This option would clarify the legislation, and remove the current ambiguity for scheme actuaries. The change will reflect the prospective nature of the RST within the relevant regulation and require the actuary to certify that any retrospective scheme changes are actuarially equivalent to the rights they replace (such a requirement is already an option, instead of obtaining member consent, for all scheme amendments) on a retrospective rule change.

Bulk transfer of scheme membership

18. Do nothing: This option would mean that non contracted-out schemes would continue to experience uncertainty over the interpretation of the connected employer test, and transfers may not take place because of this (possibly to the detriment of scheme members). Contracted-out schemes would still incur additional costs as they would have to continue to use the expensive workaround that they have devised to ensure compliance with the legislation, and this will lead to delays in the transfer process. Schemes would continue to be unable to make bulk transfers without member consent if the destination scheme was based in another EEA country.

19. Favoured option: This would remove the additional cost of the workaround and speed up the transfer process, as the change to regulations would clarify, for not contracted-out schemes, that where a scheme did previously apply to employment with that employer, but which no longer does so because it is closed to new accruals, a bulk transfer could be made. For contracted-out schemes, a former contracted-out scheme would be able to receive a bulk transfer from an active contracted-out scheme. And reinstating bulk transfers without member consent to schemes based in EEA countries other than the EEA will allow those transfers to take place.

Micro-businesses

20. These beneficial proposals apply to all sizes of business and micro-businesses are not exempted. However, in practice, micro-businesses are not normally involved in the administration of pension schemes, and defined benefit schemes are generally used by employers with a large workforce.

Costs and benefits to business

21. Although the stakeholders with which the Department engaged during November and December 2011 could not provide robust figures, they did believe that the changes would provide benefits to them, both in administrative costs and time.

22. A public consultation was undertaken (20 July -13 September 2012), which invited comments on whether the proposed amending regulations will work in practice; 16 organisations responded. To further test the assumptions in the Impact Assessment that accompanied the consultation document in relation to the proposed changes for formerly contracted-out schemes which wish to change their rules and bulk transfer of scheme membership, respondents were specifically asked to give an indication of the range of costs currently incurred by industry as a result of using their existing processes, and to identify the monetised and non-monetised benefits arising from the proposed changes.

23. Respondents did not provide any data regarding the range of costs currently incurred, nor were any monetised benefits identified. Only three respondents to the consultation referred to non-monetised benefits: they commented that there would be an overall saving arising from the proposed changes relating to bulk transfer of scheme membership without consent, but were not able to make an informed estimate of the amount that might be saved; that the proposed changes relating to bulk transfer of scheme membership would result in reduced costs being incurred by pension schemes in actuarial / legal /audit /investment fees, but again, no figures were offered to support that statement; and that there

would be greater flexibility for consolidation of pension arrangements and an improved relationship between employers and trustees. In addition, consultation respondents did not challenge any of the assumptions contained in the Impact Assessment.

One-in, One-out

24. These measures are in scope for One-in, One-out policy because they would have a positive effect on business. However the savings are likely to be small and are unquantifiable, and are therefore assessed as having a net zero impact.

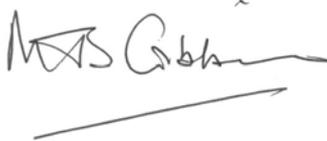
Summary and implementation plan

25. These minor technical changes are being introduced as a result of representations from the pensions industry. The changes will ease administrative burdens for business with small (but unquantifiable) savings, and clarify the policy intention of the regulations.

26. It is proposed that a package of amending regulations will be brought forward, coming into force in April 2013.

The Regulations which would be affected by the proposed changes are:

- Regulation 42(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996/1172)
- Regulation 12 of the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (SI 1991/167)
- Regulations 4 and 9 of the Contracting-out (Transfers and Transfer Payments) Regulations 1996 (SI 1996/1462)

 Regulatory Policy Committee	OPINION	
Impact Assessment (IA)	The draft Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2013	
Lead Department/Agency	Department for Work & Pensions	
Stage	Final	
Origin	Domestic	
IA number	DWP 0033	
Date submitted to RPC	05/11/2012	
RPC Opinion date and reference	23/11/2012	RPC12-DWP-1425(2)
One-in, One-out (OIOO) Assessment	GREEN	
<p>Overall comments on the robustness of the OIOO assessment.</p> <p>The IA scores the measure as an 'IN' with zero Equivalent Annual Net Cost to Business (EANCB) as the policy is new regulation that will be net beneficial to business. This is consistent with the current One-in, One-out (OIOO) Methodology and represents a reasonable assessment of the likely impacts.</p>		
<p>Overall quality of the analysis and evidence presented in the IA</p> <p>The IA does not specifically provide a discussion on OIOO. However, the qualitative arguments used in support of costs and benefits suggest the OIOO categorisation is consistent with the current OIOO Methodology and represents a reasonable assessment of the likely impacts. The IA would have benefited from an extended discussion on the One-in, One-out (OIOO) categorisation of the proposal.</p>		
Signed 	Michael Gibbons, Chairman	