



Department
for Work &
Pensions

Bulk transfers of defined contribution pensions without member consent

Call for evidence

December 2016

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Chapter 1: Setting the Scene

Introduction

1. Automatic enrolment has resulted in a big increase in the number of pension savers, so it is all the more important that burdens on pension schemes should be reduced whenever possible, that legislation remains fit for purpose, and that scheme members are adequately protected.
2. **In this call for evidence we are seeking your views on how the current provisions on the bulk transfer of defined contribution (DC) pensions, in particular from occupational and stakeholder pension schemes, without member consent could be improved.** These types of transfer can take place where for example, a company wants to consolidate its pension assets from two or more schemes, or where a single employer scheme wishes to exit pension provision and transfer members into a master trust. We are not considering any changes to the requirements needed for bulk transfers of defined benefit pensions without member consent in this call for evidence.
3. We want to make sure these provisions, which were originally designed for a defined benefit, rather than a DC landscape, can work effectively for DC schemes. In particular we are looking to see how we can:
 - a. reduce unnecessary burdens whilst ensuring members are adequately protected;
 - b. allow providers of stakeholder pension schemes to transfer members to more modern and often lower cost schemes.
4. This also gives us the opportunity to revisit a potential barrier to allowing scale to develop in the DC landscape. Often (though by no means always), smaller DC occupational schemes will have weaker governance and usually have higher charges¹. By enabling these small schemes to exit the market or consolidate, improving bulk transfer arrangements should help scale to develop without the need for specific legislation.
5. We have engaged with a small number of industry representatives to test the extent to which there is an appetite for change. However, we think it is right for

¹ See for example, the Pension Charges Survey 2015 <https://www.gov.uk/government/publications/pension-charges-survey-2015-charges-in-defined-contribution-pension-schemes>, pages 43-46.

everyone to have the opportunity to contribute, and for us to capture the widest possible range of views.

What this Call for Evidence covers

6. **Chapter 2** focusses on occupational DC to DC bulk transfers. **Chapter 3** looks at bulk transfers from stakeholder pensions to other stakeholder pensions and the scope to expand the range of receiving schemes into which members of stakeholder schemes can be transferred.
7. A similarly-named, but quite different process, applies to the transfer of member benefits which include a protected pension age or rights to tax free sums in excess of 25%. These are known as *block transfers* and, as they are covered by HMRC legislation, do not fall within the remit of this call for evidence.
8. The Pension Schemes Bill, introduced in Parliament in October, provides for a separate set of bulk transfer without consent requirements to apply to master trust schemes, where a master trust scheme has experienced a triggering event and is transferring members to another authorised master trust before commencing wind-up.
9. The Bill is structured so that transfers following trigger events will not take place under the current regulations for 'scheme-initiated' bulk transfers covered in this call for evidence. This is because of the different circumstances in which post-trigger event transfers occur. Instead legislation governing this kind of transfer will be made under provisions in the Bill subject to Royal Assent and separate consultation. As such it is not covered in this call for evidence.
10. The period covered by this call for evidence is 9 weeks. The information and views gathered will inform a consultation and more industry engagement on firmed up policy proposals during 2017. Should secondary legislation be required, our current aspiration is for it to be in place by April 2018.

Chapter 2: DC-DC bulk transfers

Introduction

1. Under Regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (“the Preservation Regulations”), a scheme may undertake a bulk transfer of members’ accrued rights without their consent, provided certain conditions, which are intended to ensure member protection, are met.
2. Schemes may wish to take advantage of this provision where, for example, a company wants to consolidate its pension assets from two or more schemes, or where a single employer scheme wishes to exit pension provision and transfer members into a master trust. In such cases, seeking consent from the entire membership will often be very difficult, particularly in relation to deferred members who no longer work for the employer.

How the current provisions work

3. Transfers from occupational pension schemes to other occupational pension schemes (but not to personal pension schemes) are allowed under the Preservation Regulations without the need for member consent when certain conditions apply. The scheme rules must expressly permit transfer to be made without consent.
4. The conditions to be met are that
 - **an actuarial certificate regarding the members’ rights in the receiving scheme is produced** which meets certain criteria (regulation 12(3)). These criteria are set out in **Annex A** of this call for evidence;
 - **the transferring and receiving schemes have a certain relationship.** The nature of that relationship is set out specifically in regulation 12(2) and (2A) of the Preservation Regulations. In general terms, this is where the transferring scheme and the receiving scheme relate to persons who are or have been in employment with the same employer (regulation 12(2)(a)); or in the case of schemes relating to persons employed by different employers, where the transfer is a consequence of a financial transaction between those employers or where the employers are companies or partnerships bearing a particular relationship to each other (regulation 12(2)(b)).

5. Information about the proposed transfer and details of the value of the rights to be transferred (including rights in respect of death in service benefits and survivors' benefits) must be given to each member affected not less than one month before the proposed transfer is due to take place.

The actuarial certificate (the scheme quality condition)

6. In their certificate the actuary must certify that in their opinion the transfer credits to be acquired for each member under the receiving scheme are broadly no less favourable than the rights to be transferred. There is no definition of what is meant by "broadly no less favourable" in legislation. This test has its origins in defined benefit transfers without member consent, and the need to ensure that members secured a broadly similar or enhanced entitlement to a future salary-related income as a result of the transfer.
7. Nor is there any detailed guidance on how these provisions should be interpreted. The Institute and Faculty of Actuaries' APS P1, "Duties and responsibilities of members undertaking work in relation to pension schemes" is the mandatory standard. But they have also issued a note on the actuarial certification of bulk DC transfers without consent. This note acknowledges the difficulties actuaries have in interpreting the legislation and recommends that they seek legal advice if in doubt. It also suggests specific issues to consider when looking at what constitutes "accrued rights to be transferred" and "broadly, no less favourable" – see **Annex B**.
8. Whilst the previous Industry Practice Standard, Guidance Note 16 (GN16), has now been withdrawn, we understand from industry representatives that many actuaries still use it. But although actuaries may still refer to it as a guide, there is no formal requirement for them to do so, nor can actuaries rely on it if challenged. This note gives a steer on how "broadly no less favourable" should be applied; it includes the following:
 - the actuary need not consider the pension terms and conditions for future service benefits under the receiving scheme compared with those that existed under the transferring one;
 - the value of the transfer credits to be granted in the receiving scheme must not be less than the value of the member's past service rights in the receiving scheme;

- the benefits in the receiving scheme do not need to mirror those of the transferring scheme for the actuary to give a certificate;
 - the actuary must be satisfied that no member, beneficiary or contingent beneficiary is to be given materially inferior benefits in the receiving scheme;
 - the actuary should only give the certificate if he/she is satisfied that the benefits of the transferring members in the event of a winding up of the receiving scheme immediately following the transfer would be not be materially less than those payable in the event of the winding up of the transferring scheme immediately before the transfer.
9. Early indications from some industry representatives via responses to other consultations, correspondence and other engagement have been that the actuarial certificate should be re-visited. Many thought that the current arrangements are more suited to defined benefit and needed to be updated for the current DC landscape. In particular there was concern that the current provisions on broad equivalence were difficult to interpret, and actuarial practices varied widely. Some stakeholders also found these provisions restrictive in that they prevented the movement of assets to more modern products which they felt to be in members' best interests.
10. We accept that the current "broadly no less favourable" test may not be suitable for DC schemes. Other measures may be more appropriate in addition to, or instead of, the relative value of past service rights and transfer credits. These might include consideration of the relative merits of transferring and receiving schemes in terms of governance, charges, investments and retirement options. We recognise however, that this can be complex and could involve a trade-off of multiple considerations such as charges, investments and retirement options. However, we should also bear in mind that scheme designs vary widely and the use of a "broad equivalence" comparator is intended to cope with this.
11. Our initial view is that replacing the actuarial certificate with a reliance on trustees' fiduciary duties alone would not offer adequate clarity for trustees or member protection. For example, trustees may come under pressure from a sponsoring employer to transfer members out so that the scheme can efficiently begin wind-up. The evaluation of the relative advantages and disadvantages of the receiving scheme may also prove challenging for smaller schemes, and not offer sufficient assurance that transferring members would meet trustees' fiduciary duty. Finally, members who wished to challenge a transfer without consent might be forced to rely on the interpretation of trust law by the courts on

points in relation to which there is limited case law that is directly relevant.

12. Instead we would prefer to focus on solutions which simplify or standardise the current actuarial arrangements, provide a legislative solution, or offer a feasible alternative mechanism. If any respondents think that there is a rationale for maintaining the status quo we would be interested to know this too.
13. For example, we would welcome views on whether schemes should continue to rely on the professional judgment of actuaries, or whether another type of appropriately qualified independent person would be better qualified to assess the relative benefits of transferring and receiving schemes, (or even whether technical guidance for trustees would be sufficient on its own). We would also welcome views on what factors any assessment should, or should not, take into account.
14. We are also interested in hearing your views on the types of pension benefits that should be subject to a simplified process. We do not propose simplifying the process for salary-related (i.e. defined benefit) benefits. Nor do we propose doing so for DC schemes which offer valuable guarantees during the accumulation phase, either in relation to accumulation (such as a promise about the rate at which an investment will grow) or in relation to decumulation (such as a guaranteed annuity rate).
15. However, we acknowledge that there may be some borderline cases, for instance where there is a guaranteed minimum investment return or annuity rate which is relatively low in value, or where a member's benefits may be calculated on either a DB or DC basis depending on which produces the higher value at the time when they come to take them. Other schemes might offer additional benefits such as life assurance, which may, or may not, be valuable.

Questions – Actuarial certificate (Scheme quality) condition

Q1: In your view, how common are occupational DC–DC bulk transfers without consent and can you give examples of circumstances in which they occur?

Q2: Can you give an indication of the time/costs of complying with the current requirements, the number of DC-DC bulk transfers per year, the time/cost of producing the actuarial certificate, and any other information you think might be helpful?

Q3: Do you think there is sufficient clarity regarding what is meant by “broadly no less favourable”, and how consistently do you think it is being applied? Some examples of how actuaries actually apply this provision would be helpful.

Q4: Do you think that the actuarial certificate or an alternative check of scheme quality still has a role in occupational DC-DC transfers? If so, who ought to carry out such an assessment? What factors should be considered as part of that assessment and which should be excluded? Do you have any thoughts on how the relative strengths and importance of those factors should be weighed up? If not, how would members continue to be protected?

Q5: Sometimes occupational DC pensions have valuable guarantees, either borne by the scheme or by another body. How do you think the process should differ for these types of scheme?

Relationship between transferring and receiving schemes (the scheme relationship condition)

16. As outlined above, the other condition set out in the Preservation Regulations is that transferring and receiving schemes must have a certain relationship.

17. The purpose of these provisions again has its origins in the traditional, predominantly single-employer pension landscape, in which it would be expected that transfers without member consent would take place only where there was some kind of underlying relationship between the employers using the schemes.

18. There are two ways in which the current scheme relationship condition may be met;

- where the transferring scheme and the receiving scheme relate to persons who are or have been in employment with the same employer (regulation 12(2)(a)). This would allow the transfer of members' rights without consent where the employer has set up a new scheme;
- the transferring and receiving scheme relate to persons employed by different employers, where the transfer is a consequence of a financial transaction between those employers or where the employers are companies or partnerships bearing a particular relationship to each other (regulation 12(2)(b) and (2A)). This might apply where two employers merge (for example following a buyout), and members are to be transferred from the scheme of one of the employers to the scheme of the other.

19. Initial engagement with stakeholders has suggested that the scheme relationship condition is clearer and causes fewer concerns than the scheme quality condition. However two issues have nevertheless been highlighted. We would welcome views on each of these issues and any others which stakeholders have

experienced or are aware of.

20. First, it has been noted that the scheme relationship condition could act as a barrier to the efficient consolidation of small pots in occupational pension schemes, for example, by preventing single employer schemes transferring out former employees of the sponsoring employers to a separate scheme.

21. This barrier could arise because, until the trustees of a single employer scheme transferred their *first* deferred member without consent to the second scheme, the transferring scheme and the receiving scheme would not relate to persons who are or have been in employment with the same employer.

22. Typically there would also not have been a financial transaction between the employers relating to the respective schemes, and the employers would not be related to each other via a corporate group, partnership or scheme rules. Therefore the scheme relationship condition could not be met, meaning that the transfer cannot go ahead.

23. We would welcome views as to whether this is an issue for the industry or whether there are ways in which it has been overcome. We would also like to hear any views on whether such a barrier may in fact be desirable.

Orphaned schemes

24. A second, more immediately critical, issue identified by a few stakeholders was a situation where the only employer to whom the transferring scheme had ever been related had been dissolved, and there is no longer a trustee of the scheme.

25. Unless the employer had enrolled or transferred some employees in another scheme prior to dissolution, the scheme relationship condition could not be met. Similarly, there could be no transfer as a consequence of a financial transaction with an already dissolved employer, or relationship with a dissolved employer that might otherwise meet the condition.

26. In these circumstances a bulk transfer (without members' consent) from such an orphaned scheme to an alternative scheme could never take place.

27. In certain circumstances, it might be possible for pension providers which had historically administered the scheme to assign policies from an orphaned DC occupational scheme to the names of individual members as an alternative to bulk transfer. However, this approach might not work for all the different ways in which occupational pension schemes are set up.

28. Where this option is not available, the members of orphaned schemes may be at increased risk of poor outcomes. Therefore, we are considering whether it may be helpful, in at least some circumstances, to allow for an exemption from the scheme relationship condition so that members can benefit from being transferred to a well-governed scheme, and the scheme can be wound up in an orderly way.
29. If we were to do this, we would wish to impose clear safeguards as to the use of the exemption. For example it might only apply in relation to schemes below a certain size or to schemes established before a certain date.
30. In addition, there is the added complication of orphaned schemes not having a trustee in place to obtain an actuarial certificate or apply any alternative scheme quality condition (see Q4 above). Therefore, someone else, for example the provider, would need to be able to request this quality check and use it to effect a transfer. We would welcome any views on how this might be achieved without encouraging trustees to walk away from schemes.
31. We would like to use this call for evidence to explore these issues further and are interested in hearing your views. We are also interested to hear if there is anything else in the bulk transfer provisions that you think is not working as intended for DC-DC transfers.

Questions – the scheme relationship condition

Q6: Do you have any experience of how the scheme relationship condition works in practice? Do you think it serves a useful purpose or does it act as an obstacle in some circumstances? What is the frequency and impact of these obstacles?

Q7: What is the impact of the current provisions around bulk transfers for ‘orphaned DC schemes’, where there are no surviving employers or trustees in relation to the scheme? Do you think that we need special provision for such schemes, for example to allow pension providers to carry out a transfer where certain conditions are met? How do you think this should work in practice?

Q8: Are there any other areas of the occupational DC-DC bulk transfer provisions that you think need simplifying and do you have examples of how they are not working?

Chapter 3: Bulk transfers from stakeholder schemes

Introduction

1. For bulk transfers without consent from stakeholder schemes there is no need for an actuarial certificate and no scheme relationship condition. The conditions for these transfers are set out regulation 12(6) of the Preservation Regulations, which require that:
 - the receiving scheme is also a stakeholder scheme;
 - the transferring scheme has commenced winding-up; and
 - the transfer payment must be of an amount at least equal to the cash equivalent of members' rights under the transferring scheme as calculated and verified under statutory requirements relating to the calculation of cash equivalents.
2. Stakeholder pension schemes were introduced in 2000; and at the time were attractive because they had simple, capped charging structures, flexibility and low minimum contributions. In view of this, it made sense to maintain member protection by ensuring transfers without member consent only took place between stakeholder schemes. And historically, most employers were obliged to offer a stakeholder scheme, so this provision allowed schemes to be consolidated or split off where employer or provider firms made acquisitions or disposals.
3. Stakeholder pension scheme legislation is within the remit of the Department for Work and Pensions, so monitoring compliance with that legislation is largely a matter for the Pensions Regulator.
4. Most stakeholder schemes are operated by firms and the firms that provide them are subject to FCA principles and rules.² In particular, firms are under an obligation to treat their customers fairly.³ Before proceeding with a bulk transfer without consent, firms are expected to consider the position of the customers to be transferred and ensure that they are being treated fairly

² Establishing, operating or winding up a stakeholder scheme is a specified activity and rights under a stakeholder scheme are specified investments under FSMA 2000 (Regulated Activities) Order 2001 (the RAO)

³ <https://www.fca.org.uk/firms/fair-treatment-customers>

Early industry engagement

5. There was a clear view from stakeholders who have engaged with us so far that to restrict these transfers only to other stakeholder schemes is now outdated, and transfers should be allowed to take place to other types of scheme. Some providers wanted to be able wind up their stakeholder schemes and move the members to more modern schemes, which they argued would be in members' interests. Although in theory this could happen *with* member consent, in practice this is rarely easy to obtain, because of, for example, difficulties in obtaining forwarding addresses, or the effect of members not bothering, or forgetting to respond.
6. It was also highlighted that most stakeholder pensions were set up before the roll-out of automatic enrolment and the introduction of a lower charge cap on default funds of qualifying schemes⁴. There have also been recent regulatory improvements in both occupational and workplace personal pension scheme governance generally, which do not apply to individual stakeholder pensions.
7. Although the charge cap applies to all funds in stakeholder schemes, whereas in schemes used for automatic enrolment, it applies to default funds only, we understand from providers that most or all funds can be offered at a similar or lower charge in schemes use for automatic enrolment.
8. On a related point, specific occupational pension protections apply where employees are transferred from one employer to another under the Transfer of Undertakings (Protection of Employment) Regulations 2006⁵ (TUPE). These are covered by sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005⁶.
9. These provide that when a transferring employer currently offers its employees an occupational pension scheme, the receiving employer must provide another occupational pension scheme in relation to which it is the employer or make contributions to a stakeholder pension scheme of which the employee is a member. Stakeholders have raised this in the past and have suggested that employers should be able to satisfy the TUPE requirements by also providing access to a personal pension, including a Group Personal Pension. However, this would require a change to primary legislation (section 258 in particular), and as such is outside the scope of this call for evidence. However, we are happy to hear stakeholders' views on this issue.

⁴ Charge cap for qualifying schemes used for Automatic Enrolment is 0.75% (default funds) . Charges for stakeholder schemes are capped at 1% (1.5% for the first ten years), applies to all funds.

⁵ S.I. 2006/246.

⁶ S.I. 2005/649.

10. Overall, we recognise that the pensions landscape has evolved considerably since stakeholder pensions were first introduced, and that it makes sense to consult on how the provisions for bulk transfers from stakeholder schemes can be updated. For example, we might permit members of contract-based stakeholder schemes can be transferred without consent to an Individual or Group Personal Pension scheme. In these cases, FCA regulatory principles would apply, and would broadly protect members from a worse outcome than if they had not been moved, so additional protections may not be required.
11. It is also appropriate to consider the requirement that stakeholder schemes must have begun wind up before members can be transferred without consent. Whilst we have seen no evidence of members bearing the costs of stakeholder scheme wind-up, and there is a ceiling on the costs members can bear through the stakeholder pension charge cap, it could be argued that they should not bear any of these costs.
12. These are merely initial thoughts. So we would like to use this call for evidence to explore whether there is scope to amend or remove the current restrictions on stakeholder pension transfers without consent, and if so, how these provisions should work.

Questions

- Q9:** In your view, how common are stakeholder to stakeholder DC-DC bulk transfers without consent and can you give some examples of circumstances in which they occur?
- Q10:** Do you think that the current restrictions on bulk transfers without consent from stakeholder pension schemes should be lifted so that they are treated in the same way as those from personal pension schemes, ie under FCA principles and rules?. If so, to what types of scheme should these transfers be allowed?
- Q11:** Do you think that providers of transferring schemes should be able to invoke the bulk transfer without consent provisions where a stakeholder scheme has not yet commenced winding up?

Chapter 4: Summary of Questions and Processes

Chapter 2: DC-DC bulk transfers

Q1: In your view, how common are occupational DC –DC bulk transfers without consent and can you give examples of circumstances in which they occur?

Q2: Can you give an indication of the time/costs of complying with the current requirements, number of DC-DC bulk transfers per year, time/cost of producing the actuarial certificate, and any other information you think might be helpful?

Q3: Do you think there is sufficient clarity regarding what is meant by “broadly no less favourable” and how consistently do you think it is being applied? Some examples of how actuaries actually apply this provision would be helpful.

Q4: Do you think that the actuarial certificate or an alternative check of scheme quality still has a role in occupational DC-DC transfers? If so, who ought to carry out such an assessment? What factors should be considered as part of that assessment and which should be excluded? Do you have any thoughts on how the relative strengths and importance of those factors should be weighed up? If not, how would members continue to be protected?

Q5: Sometimes occupational DC pensions have valuable guarantees, either borne by the scheme or another body. How do you think the process should differ for these types of scheme?

Q6: Do you have any experience of how the scheme relationship condition works in practice? Do you think it serves a useful purpose or does it act as an obstacle in some circumstances? What is the frequency and impact of these obstacles?

Q7: What is the impact of the current provisions around bulk transfers for ‘orphaned DC schemes’, where there are no surviving employers in relation to the scheme? Do you think that we need special provision for such schemes, for example, to allow pension providers to carry out a transfer where certain conditions are met? How do you think this should work in practice?

Q8: Are there any other areas of the occupational DC-DC bulk transfer provisions that you think need simplifying and do you have examples of how they are not working?

Chapter 3: Bulk transfers from stakeholder schemes

Q9: In your view, how common are stakeholder to stakeholder DC-DC bulk transfers without consent and can you give some examples of circumstances in which they occur?

Q10: Do you think that the current restrictions on bulk transfers without consent from stakeholder pension schemes should be lifted so that they are treated in the same way as those from personal pension schemes, ie under FCA principles and rules? If so, to what types of scheme should these transfers be allowed?

Q11: Do you think that providers of transferring schemes should be able to invoke the bulk transfer without consent provisions where a stakeholder scheme has not yet commenced winding up?

Call for Evidence Arrangements

This call for evidence will be of particular interest to people designing, advising on, and running DC or stakeholder schemes. As well as trustees, pension providers, employer benefit consultants and advisors, this includes people involved in pension governance, administration and investment. We would also particularly welcome comments from the actuarial industry.

Purpose of this Call for Evidence

This call for evidence seeks evidence and views on how the current provisions on DC to DC bulk transfer without consent could be improved. Our main objectives are to reduce unnecessary burdens whilst ensuring members are adequately protected, and modernise the provisions so they reflect the current pensions landscape.

Duration of this Call for Evidence

This consultation period begins on 20th December 2016 and runs until 21st February 2017.

How to respond to this Call for Evidence

Please send your responses to:

Maggie Simpkin
1st Floor Zone C
Caxton House
Tothill Street
London SW1H 9NA

E mail: Pensions.Bulktransfers@dwp.gsi.gov.uk

Please ensure your response reaches us by 21st February 2017.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

How we consult

Consultation principles

This consultation is being conducted in line with the revised Cabinet Office consultation principles published in January 2016. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street London SW1H 9NA

Email: caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the

consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:
Email: freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the Freedom of Information Act.

Annex A:

The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

Regulation 12 Transfer of member's accrued rights without consent

(1) For the purposes of section 73(4) of the Act, a scheme may provide for the member's accrued rights to be transferred to another occupational pension scheme (as described in section 73(2)(a)(i) of the Act) without the member's consent where

- (a) the scheme is being wound up and the transfer is to another scheme that applies to employment with the same employer; or
- (b) the conditions set out in paragraphs (2) and (3) of this regulation are satisfied.

(1A) For the purposes of section 73(4) of the Act, a scheme may provide for a transfer payment to be made to another occupational or personal pension scheme (as described in section 73(2)(a)(i) of the Act) without the member's consent where the conditions set out in paragraph (6) of this regulation are satisfied.

(2) The condition set out in this paragraph is that the rights of a member are being transferred from the transferring scheme to the receiving scheme and either—

- (a) the transferring scheme and the receiving scheme relate to persons who are or have been in employment with the same employer; or
- (b) the transferring scheme and the receiving scheme relate to persons who are or have been in employment with different employers, the member concerned is one of a group in respect of whom transfers are being made from the transferring scheme to the receiving scheme, and either—
 - (i) the transfer is a consequence of a financial transaction between the employers; or
 - (ii) the employers are companies or partnerships bearing a relationship to each other in one of the ways described in paragraph (2A).

(2A) The relationships between the employers referred to in paragraph (2)(b)(ii) are—

- (a) the employers are members of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006 (meaning of “subsidiary” etc);
- (b) the employers are—
 - (i) an employer who is the principal employer for the purposes of the scheme in accordance with the scheme rules, or who is the employer who has power to act on behalf of all employers in the scheme in relation to the scheme rules; and
 - (ii) an employer subject to the rules of the scheme; or

(c) the employers are partnerships having at least half of their partners in common.

(3) The condition set out in this paragraph is that—

(a) the relevant actuary gives a certification, by completing the certificate in Schedule 3, in relation to the members' rights in the receiving scheme;

(b) the relevant actuary sends that certificate to the trustees or managers of the transferring scheme;

(c) the transfer takes place within 3 months of the date of the relevant actuary's signature in the certificate; and

(d) there are no significant changes to the benefits, data and documents used in making the certificate (see the benefits, data and documents specified in the certificate) by the date on which the transfer takes place.

(4) For the purposes of making the certification in paragraph 1 of the certificate in Schedule 3, where long service benefit in the transferring scheme is related to a member's earnings at, or in a specified period before, the time when he attains normal pension age then, in the case of a member in pensionable service at the date of transfer, the value of the rights to be transferred shall be based on pensionable service (including any transfer credits) in the transferring scheme up to that date and projected final pensionable earnings.

(4A) For the purposes of making the certification in paragraph 2 of the certificate in Schedule 3, the relevant actuary shall, in considering whether there is good cause, have regard to all the circumstances of the case and in particular—

(a) to any established custom of the receiving scheme with regard to the provision of discretionary benefits or increases in benefits; and

(b) to any announcements made with regard to the provision of such benefits under the receiving scheme.

(4B) Where it is proposed that a member's accrued rights are to be transferred in accordance with this regulation, information about the proposed transfer and details of the value of the rights to be transferred (including rights in respect of death in service benefits and survivors' benefits) shall be furnished to the member not less than one month before the proposed transfer is due to take place.

(5) In this regulation “the relevant actuary” means—

(a) where the transferring scheme is a scheme for which an actuary is required under section 47 of the Pensions Act 1995 to be appointed, the individual for the time being appointed in accordance with subsection (1) of that section as actuary for that scheme;

(b) in any other case, a Fellow of the Institute and Faculty of Actuaries or a person with other actuarial qualifications who is approved by the Secretary of State, at the request of the trustees or managers of the scheme, as being a proper person to act for the purposes of this regulation in connection with the scheme.

(6) The conditions set out in this paragraph are that—

(a) the transferring scheme is or has been a stakeholder pension scheme, within the meaning of section 1 of the Welfare Reform and Pensions Act 1999 or Article 3 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, and the receiving scheme is such a scheme;

(b) the transferring scheme has commenced winding-up; and

(c) the transfer payment is of an amount at least equal to the cash equivalent of the member's rights under the scheme, as calculated and verified in a manner consistent with regulations made under section 97 of the 1993 Act (calculation of cash equivalents).

Format of the actuarial certificate (Schedule 3)

THIS CERTIFICATE IS SUBJECT TO THE NOTES BELOW

The name of the transferring scheme is:

The reference number of Her Majesty's Revenue and Customs for that scheme is:

The name of the receiving scheme is:

The reference number of Her Majesty's Revenue and Customs for that scheme is:

1 I certify that in my opinion, the transfer credits to be acquired for each member under the receiving scheme in the categories of member covered by this certificate are, broadly, no less favourable than the rights to be transferred.

2 Where it is the established custom for discretionary benefits or increases in benefits to be awarded under the transferring scheme, I certify that in my opinion, there is good cause to believe that the award of discretionary benefits or increases in benefits under the receiving scheme will (making allowance for any amount by which transfer credits under the receiving scheme are more favourable than the rights to be transferred) be, broadly, no less favourable.

In making this certification:

- I used these benefits;
- I used this data;
- I used these key actuarial assumptions to value the rights, transfer credits, any discretionary benefits and any discretionary increases in benefits;
- I used these documents.

The categories of member covered by this certificate are:

Signature:
Date of signature:
Name:
Qualification:
Address:
Name of employer (if applicable):

Notes (Extract):

This certificate must not be taken by the trustees or managers of the scheme as authority to make a transfer without members' consents. It must also not be taken as a recommendation to make a transfer without members' consents. The trustees or managers of the scheme need to satisfy themselves that making the transfer is consistent with their duties to the transferring members and the remaining members. The trustees of the scheme need to satisfy themselves that making the transfer is consistent with their responsibilities and powers under trust law.

The actuary is not expressing in this certificate an opinion on whether or not the amount of the transfer value is reasonable.

The actuary has taken account of the benefits accrued by the date of this certificate. The actuary has not taken account of any differences between the terms and conditions of any benefits that may accrue in the future under the transferring scheme and the receiving scheme.

Annex B:

Extract from IFoA's note on actuarial certification of bulk money purchase transfers

Specific issues that a Member should consider (and about which they may wish to seek advice)

7 What constitutes "accrued rights to be transferred" under the scheme?

The Member may wish to consider:

- a. Is the cash equivalent transfer value of each member's fund the only factor to take into account when determining the value of their accrued rights?
- b. If not, what other issues are relevant considerations for the actuary, and which should instead form part of the wider trustee considerations?
- c. For example, should the actuary compare (noting this is not an exhaustive list):
 - i. Scheme design before and after the transfer e.g. differences in options, fee structure or services provided to members;
 - ii. The nature of the funds and the associated risk/return profile e.g. UK equity v global equity, active v passive?

8. How should the "broadly, no less favourable" consideration be interpreted in relation to the scheme?

- a. To what extent, if at all, can positive differences in any of the above characteristics be used to offset any negative differences:
 - i. within the same category of characteristics e.g. the extent to which explicit charges can be used to offset transaction charges; or
 - ii. across different categories e.g. the extent to which an expectation of higher returns in the receiving scheme can be taken into account or used to offset a difference in fee structures?

- b. Are there any circumstances where a reduction in the size of the fund (or in the cash equivalent) being transferred can be acceptable? For example:
 - i. If the reduction in the fund is no greater than would have been applied to calculate the member's cash equivalent at the date of transfer, due to the application of transaction charges, a market value adjustment or an exit charge?
 - ii. If the substitute fund in the receiving scheme is expected to provide better returns, can this be used to compensate for any reduction?

9. How might the legislative requirement on discretionary benefits and increases affect the proposed transfer?

What (if any) discretionary practices or similar exist under the transferring scheme and have a value which ought to be duplicated or reflected in the receiving scheme to allow the certificate to be given? For example, this could include:

- a. Some expenses being met by the employer (although the rules do not require it);
- b. The possible availability of an option to secure a pension within the scheme on favourable terms;
- c. Discretionary enhancement of benefits on ill health.