



Department  
for Work &  
Pensions

# **The Occupational Pension Schemes (Preservation of Benefits and Charges and Governance) (Amendment) Regulations 2018**

Public consultation

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October 2017

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# Introduction

This consultation seeks views on the draft Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2018, which would amend the requirement to obtain an actuarial certificate for bulk transfers of DC to DC pensions without member consent, and replace it with an alternative test and new member protections. The regulations also remove the scheme relationship condition for these transfers, and extends charge cap protections for those transferred without consent.

## About this consultation

### Who this consultation is aimed at

- pension industry bodies and professionals;
- trustees or scheme managers;
- pension scheme members and beneficiaries;
- employers and representative organisations; and
- any other source

### Purpose of the consultation

This consultation seeks views on both the policy proposals and the draft regulations as described in this document.

### Scope of consultation

Pensions policy is a reserved matter under the devolution settlement and, therefore, no devolved administration interests arise in relation to Great Britain. Northern Ireland makes its own legislation in relation to pensions.

### Duration of the consultation

The consultation period begins on 26 October 2017 and runs until 30 November 2017. Please ensure your response to the draft regulations reaches us by that date as any replies received after that date may not be taken into account.

### How to respond to this consultation

Please send your consultation responses to:

Liz Roebuck  
Department for Work and Pensions  
Private Pensions  
1<sup>st</sup> Floor  
Caxton House

Tothill Street  
London  
SW1H 9NA

Email: [PENSIONS.BULKTRANSFERS@DWP.GSI.GOV.UK](mailto:PENSIONS.BULKTRANSFERS@DWP.GSI.GOV.UK)

## Government response

We will aim to publish the Government response to the consultation on the [GOV.UK](https://www.gov.uk) website. The [consultation principles](#) encourage Departments to publish a response within 12 weeks or provide an explanation why this isn't possible. Where consultation is linked to a statutory instrument responses should be published before or at the same time as the instrument is laid.

The report will summarise the responses.

# 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  
1st Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA

Email: [caxtonhouse.legislation@dpw.gsi.gov.uk](mailto:caxtonhouse.legislation@dpw.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](mailto: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](#).

# Executive Summary

Many stakeholders have told us that the current process for bulk transfers from DC pension schemes is complex, and prevents employers and trustees who wish to stop running their pension schemes from consolidating. In an occupational pension scheme market still dominated by a large number of small schemes, the gradual decline in scheme numbers is beginning to level off. With the introduction of master trusts and an authorisation framework, the DWP is now consulting on amending the current legislation which covers bulk transfers without member consent.

## The Call for Evidence

1. In December 2016 the DWP ran a call for evidence, seeking views on how the provisions on bulk transfers without member consent from defined contribution (DC) pensions, in particular from occupational and stakeholder pension schemes, could be improved.
2. The consultation ran from December 2016 to February 2017, and covered a range of questions<sup>1</sup>. We were particularly interested in whether the actuarial certificate (referred to in the Call for Evidence as the scheme quality condition) was appropriate in DC to DC transfers, and also whether the scheme relationship condition was working.
3. 45 responses were received, including from law firms, pension providers, actuarial firms and private individuals.
4. The overwhelming majority of responses indicated that the actuarial certificate is seen as a barrier to efficient DC to DC transfers, particularly where a Scheme Actuary needs to be specially appointed. Some estimated that the cost of obtaining the certificate, and reviewing and acting on the actuary's advice can be significant, and act as a barrier to transfers which are believed to be in members' best interests.
5. Many respondents felt that trustees should be more empowered to review the suitability of the new scheme, using their fiduciary duty as set out in trust law, supplemented by the DC code, but also that appropriate guidance and support should be available, as a prompt, covering elements to be taken into consideration.
6. Regarding the scheme relationship condition, respondents generally felt that it creates a barrier and restricts freedom of choice, potentially at the cost of value for members. The message from the majority of responses was that it serves no purpose in a 'pure' DC landscape, where members' benefits are not dependent

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<sup>1</sup> <https://www.gov.uk/government/consultations/bulk-transfers-of-defined-contribution-pensions-without-member-consent>

on a strong employer covenant, and can, for example, prevent the use of master trusts if the employer is not participating.

7. The condition can also pose a problem for schemes where the trustee board are still in existence, but the sponsoring employer no longer exists.

## **Our proposals**

8. This document includes a Government response to the Call for Evidence (see Annex A), policy proposals to simplify the approach to DC-DC bulk transfers without member consent, and [draft regulations](#) to achieve the policy intent. We are seeking stakeholder views both on whether they agree with the policy proposals, and whether the regulations deliver the policy intent. Our proposals are detailed in Chapter 1.

### **Removal of requirement for an actuarial certificate**

9. We propose that the need to obtain an actuarial certificate should be removed for 'pure' DC-DC transfers where there are no potentially valuable guarantees or options to be assessed.

### **Removal of scheme relationship condition**

10. Regarding the scheme relationship condition, DWP proposes removing this condition from legislation for 'pure' DC-DC transfers where there are no potentially valuable guarantees or options.

### **Maintaining member protections**

11. Where the transfer is to a scheme authorised under the master trust regime, trustees will have their fiduciary duties to act in the best interests of members, and we will consider the need to develop some further guidance for trustees on how to review the suitability of the receiving master trust.
12. Where the transfer is not into an authorised scheme, the trustees of the ceding scheme will also need to review the receiving scheme, under their responsibilities in trust law, with the assistance of appropriate guidance from The Pensions Regulator or the DWP. Additionally, we propose that trustees should consult with a professional who they have verified to be independent from the receiving scheme under consideration.
13. Where members are protected by the automatic enrolment default fund charge cap in the ceding scheme, we propose also that the receiving scheme will be required to continue to apply the charge cap in respect of those members in the arrangement into which they are transferred. Finally, for the avoidance of

confusion, we are also consulting on the policy that any funds into which members protected by the cap are switched without making an active choice should continue to be subject to the cap.

14. We believe these three proposals will help improve the process for transferring members without consent, whilst still protecting members. Member protection will be maintained because trustees will have a fiduciary duty to act in the members' interests. In the context of a bulk transfer the trustees will need to consider two elements of what is in the members' interests:
  - a. That the scheme is a well-run scheme, in which members' rights and benefits can reasonably be judged to be secure.
  - b. That member outcomes will be of a similar or better standard than those in the ceding scheme.
15. Members being transferred to a scheme authorised under the master trust regime will be moving into a scheme subject to minimum standards for the key people involved in running the scheme, the systems and processes used by the scheme, and the financial sustainability of the scheme, along with extra protections in the event that the scheme faces risks that may lead to its winding up. Trustees will still need to consider whether the scheme is appropriate for its members, given aspects such as the levels of charges, investment strategy and customer services.
16. Where the transfer is not to an authorised scheme, member protection around trustee competence, sustainability, systems and processes will be maintained as trustees will be required to take advice from an unconflicted expert on all aspects of the scheme.
17. In either case, members protected by the automatic enrolment charge cap in the ceding scheme will continue to be protected if they are moved without consent.
18. We welcome your comments on both the proposed policy and the [accompanying regulations](#) set out alongside this consultation document.

## Scope of our proposals

19. Any changes to regulations will not apply to DB schemes, where the actuarial certificate still plays a vital role, or for DC schemes which include guarantees, as these can and should continue to be effectively assessed by actuaries.
20. Having considered the evidence, we also do not propose changes in relation to orphaned schemes, or stakeholder schemes at this time. The Pensions Regulator is already working with HMRC and providers in respect of orphaned schemes, and it is appropriate to await the development of that work before deciding whether legislative change is necessary. We do not believe any changes to the

regulations around stakeholder pensions are necessary. This is explained further on in this document.

21. Our Call for Evidence last year made clear that we were not seeking evidence about the tax treatment of transfers without consent. We recognise, however, that the issues are related – therefore some respondents raised issues and made suggestions relating to taxation. These have been passed on to HMRC, although there are no plans to amend any regulations around taxation and transfers without consent at this time
22. This consultation will run for 5 weeks, with a view to regulations coming into force from 6 April 2018, subject to Parliamentary approval. The Regulations are subject to the negative procedure, meaning they do not need to be debated. It is anticipated that Northern Ireland will make corresponding regulations.

# Chapter 1: Policy proposals for amending the requirements for bulk transfers between DC pension schemes without member consent.

## Background

1. In this Chapter, we set out our policy proposals to simplify the approach to DC-DC bulk transfers without member consent, and refer to [draft regulations](#) to achieve the policy intent. We are interested in views on both the policy proposals, and whether the regulations deliver the policy intent.
2. Typically occupational pension schemes have been dominated by a large number of small schemes, with an impact on scheme governance, efficiency and Regulator oversight, as evidenced in The Pensions Regulator's DC Schemes Survey, published in September 2017<sup>2</sup>, and the DWP's Charges Survey of 2015<sup>3</sup>. With the introduction of master trusts, this landscape is changing fast. Whilst 83% of DC schemes still have fewer than 1000 members<sup>4</sup>, these only account for 3% of pension scheme savers<sup>5</sup>.
3. There is clear historic evidence of a sustained decline in scheme numbers. Typically schemes will transfer most or all members to another scheme before they begin the process of winding up and close their scheme down. This ensures that members do not pay the cost of wind-up.
4. However, this decline is levelling off, and industry have told us that the current arrangements for transfers without member consent are complex to apply due to the uncertainty of their application to DC pension schemes, and a key obstacle to DC scheme consolidation, where employers and trustees wish to stop providing a dedicated occupational scheme for their staff.
5. The current regulations<sup>6</sup> covering the process to be followed when carrying out bulk transfers between pension schemes without the consent of scheme members were drafted to reflect the pensions landscape at the time. At this point, defined benefit (DB) schemes made up the vast majority of pension

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<sup>2</sup> <http://www.thepensionsregulator.gov.uk/docs/dc-research-summary-report-2017.pdf>

<sup>3</sup> <https://www.gov.uk/government/publications/pension-charges-survey-2015-charges-in-defined-contribution-pension-schemes>

<sup>4</sup> Excluding micro schemes

<sup>5</sup> <http://www.thepensionsregulator.gov.uk/doc-library/dc-trust-presentation-of-scheme-return-data-2017.aspx>

<sup>6</sup> <http://www.legislation.gov.uk/ukxi/1991/167/regulation/12>

schemes in the market. These regulations were designed to ensure that transfers protected members' rights by being assessed and certified by an actuary, who would confirm that the receiving scheme was broadly no less favourable for members than the ceding scheme; and by requiring an existing relationship between the employers of the ceding and receiving schemes.

6. We recognise that the pensions landscape has changed significantly since these regulations were made, that defined contribution (DC) pensions are now much more prevalent, and that some of the tests are less meaningful for modern pension schemes.
7. There are also currently many small DC schemes in the market which find it more difficult to meet adequate standards of governance and administration. Reducing barriers to allow consolidation where scheme trustees or sponsors wish it, is a desirable outcome which the current regulations can impede.

## Scope

8. We are proposing to simplify the process for transfers without member consent to 'pure' DC benefits only. By this, we mean money purchase benefits without guarantees. This has been reflected in the regulations by reference to the simplified approach applying only to money purchase benefits, excluding money purchase benefits which would in fact be safeguarded or cash balance benefits were they not secured by an insurance policy or annuity contract.
9. We do not propose any change for transfers without member consent of non-money purchase benefits, or money purchase benefits with guarantees.

## Actuarial certificate (scheme quality condition)

10. The Government acknowledges that the current legislation is not readily applicable to DC transfers, and is being applied inconsistently. Actuaries are not necessarily the most appropriate professionals to assess receiving DC schemes, whose outputs are largely determined by investment strategies, and current guidance is not detailed enough to provide the reassurance needed.
11. We are proposing to remove the need to obtain an actuarial certificate for 'pure' DC-DC transfers where there are no potentially valuable guarantees or options to be assessed.
12. Where the transfer is to a scheme authorised under the master trust regime, trustees will exercise their fiduciary duties to act in the best interests of members and we will consider the need to develop some further guidance for trustees on how to review the suitability of the receiving master trust.
13. Where the transfer is not into an authorised scheme, the trustees of the ceding scheme will again need to review the receiving scheme, under their responsibilities in trust law, with the assistance of appropriate guidance from

The Pensions Regulator or the DWP. Additionally, trustees should consult with a professional whom they have verified to be independent from the receiving scheme under consideration.

14. For 'pure' DC benefits, without guarantees, assessment prior to a transfer is more appropriately carried out by a qualified, independent professional with DC investment knowledge. In defining this we use the same terminology in legislation as that used for an adviser who trustees are required to consult with when setting their statement of Investment Principles<sup>7</sup>. We anticipate that many schemes will want to use the same person, although we do not require this.
15. The consultant must be independent from the receiving scheme. In determining that a consultant is independent, trustees will need to establish whether the consultant 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.
16. Specifically, we are requiring that over the 5 years leading up to the advice being given, the consultant 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 addition, the consultant must not have received any payment or benefit from such a service provider.
17. In doing this, we are mindful of the Financial Conduct Authority's (FCA's) referral of investment consultants to the Competition and Markets Authority<sup>8</sup>, and we believe that this is therefore a necessary step to reassure trustees, and members alike that recommendations are being made with members' best interests at heart.
18. We acknowledge that it is possible for investment consultants to recommend master trust schemes to which they are connected when they are authorised. We believe that close supervision of receiving schemes by The Pensions Regulator could mitigate the risk of trustees not acting in members' best interests by accepting members, and of investment consultants in advising on the transfer. However, we welcome respondents' views on this point.
19. 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. We are not proposing that scheme advisers should certify the transfer, only offer advice.
20. In the case of a scheme authorised under the master trust regime, the trustees can rely on authorisation as an indication that the scheme meets certain minimum standards for:
  - a. the fit and proper status of key people involved in running the scheme,

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<sup>7</sup> Section 36 of 1995 Pensions Act

[http://www.legislation.gov.uk/ukpga/1995/26/pdfs/ukpga\\_19950026\\_300617\\_en.pdf](http://www.legislation.gov.uk/ukpga/1995/26/pdfs/ukpga_19950026_300617_en.pdf)

<sup>8</sup> <https://www.fca.org.uk/news/press-releases/fca-makes-market-investigation-reference-investment-consultancy-services>

- b. the systems and processes used by the scheme, and
  - c. the financial sustainability of the scheme
21. Authorised master trust schemes are also subject to extra protections in the event that the master trust faces risks that may lead to its wind up, including a requirement for members' pots to be protected from any costs involved in resolving such risks. Once the master trust authorisation regime has been established, The Pensions Regulator will maintain a list of authorised schemes on its website.
22. Trustees will still need to consider whether a particular authorised scheme is the appropriate scheme to transfer their members to. 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 DC investment knowledge.
23. For DC transfers without consent to schemes authorised under the master trust regime, we are considering issuing additional non-statutory guidance. This guidance is not intended to be a checklist of conditions that must all be met for a transfer to go ahead, but a list of factors that trustees ought to consider in coming to an overall view.

**Q1: We propose to remove the actuarial certificate for 'pure' DC-DC transfers, and instead rely on trustees' fiduciary duties to their members. In addition when the transfer is to a scheme which is not authorised under the master trust regime, the trustees must seek the advice of a suitable independent, unconflicted person. Do you agree with the policy proposal?**

**Q2: Do you believe that the regulations achieve the policy proposal?**

## **Scheme relationship condition**

24. The Scheme relationship condition serves no useful purpose for DC schemes, where members' benefits do not depend on the continuing support of a sponsoring employer. This is different from the situation with DB schemes, where the presence of an employer who has made a covenant with the scheme is essential.
25. Whilst the Government has no wish to either encourage or discourage the development of aggregators of deferred members' pension pots, the removal of this rule will allow this market to develop if providers are attracted to it.
26. It will also permit trustees of schemes who no longer have a sponsoring employer to transfer members to an alternative scheme before commencing

wind-up.

**Q3: We propose to remove the scheme relationship condition for all 'pure' DC-DC transfers. Do you agree with the policy proposal?**

**Q4: Do you believe that the regulations removing the scheme relationship condition achieve the policy proposal?**

27. A few respondents raised queries about the application of the scheme relationship requirement in some scenarios. Our expectation is that removing this requirement for transfers without consent from DC schemes without guarantees will resolve these queries.

## Charge cap protection

28. When members are transferred from a scheme in which they are protected to a scheme in which they are not, we propose that their protections under the charge cap will transfer into the new scheme.
29. Whilst in other aspects, we are content to let trustees make decisions using expert advice and the application of their fiduciary duty, we believe that the charge cap is an appropriate minimum requirement for any proposed DC receiving scheme, where the transfer takes place without member consent. Whilst trustees may be attracted by a particularly appealing investment strategy in the receiving scheme, it is important for them to recognise that the returns will not be guaranteed, and there is an upper limit to the level of charges which can be justified in the hope of superior investment returns.
30. In the most common case, where the employer continues to use the receiving scheme for automatic enrolment, the charge cap would apply anyway. However, in a scenario where non-contributing members are transferred to a separate scheme, or non-contributing members are the only members to be transferred out without consent, the charge cap would cease to apply. This is 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.
31. We therefore propose to impose a ceiling on the charges members might face when they are transferred from a scheme where they were protected by the cap. This will also maintain member confidence in pension saving, as the level of charges is a particularly visible and clearly comparable factor in the evaluation of pension scheme quality.

**Q5: We propose that members who are transferred without consent from a scheme, or within a scheme, where they were protected by the charge**

**cap, all funds in the arrangements into which they are transferred without making an active choice are protected by the charge cap. Do you agree with the policy proposal?**

**Q6: Do you believe that the regulations achieve the policy proposal?**

## **Business impacts**

32. The Government is committed to reducing the regulatory impact on businesses, and has undertaken to provide robust analysis of any impact of its proposed legislation. It would be very helpful, therefore, if pension scheme administrators and trustees could supply information in order to assist us in accurately assessing the impact of this proposed change, as detailed in the following questions.

**Q7**

**a. How many bulk transfers without member consent did you perform in 2015, 2016 and 2017 respectively? For administrators, how many bulk transfers did you administer in 2015, 2016 and 2017 respectively?**

**b. How much does having to join a member or an employer to a scheme to meet the relationship condition impact on the transfer process in terms of time/cost?**

**c. Whilst we acknowledge that the range of costs can be significant, do you agree that £15,000 is a suitable estimate for the current average cost of an actuary to obtain an actuarial certificate? If not, can you supply evidence that it should be different from this?**

**d. Do you agree that the cost of an independent investment consultant would be the same, if not lower than that of an actuary following a regulation change?**

**e. Do you agree that more than 50% of bulk transfers are transferred into a master trust? Could you provide an estimate of what % you think are transferred into a master trust?**

# Chapter 2: Government response and other issues

## Schemes with guarantees

1. In Chapter 1 we make a number of proposals for the simplification of DC transfers without member consent where there are no guarantees. However, we have to date seen no evidence that comparable issues are found with DC schemes with guarantees. Potentially valuable guarantees typically include guarantees about the rate at which a pension pot might increase (Guaranteed Investment Returns), or a guarantee about the rate at which the pension pot can be converted into income via an annuity (Guaranteed Annuity Rate). These might be money purchase or non-money purchase guarantees depending on whether the funding risk for the guarantee is borne by an insurer to the scheme, or the scheme itself.
2. We believe there is still a vital role for actuaries in assessing whether, and how, broadly no less favourable guarantees have been provided in the proposed receiving scheme. Consideration of covenant is also important whether the guarantee is provided directly or via a service provider such as an insurer to the scheme. Therefore we have no plans to amend regulations for non-money purchase guarantees (funded by the scheme) or money purchase guarantees (funded by an external body).

## Orphaned schemes

3. The term 'orphaned scheme' applies 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.
4. We have no plans to legislate to make it possible for an appropriate body, eg a pension provider, to act in the place of a trustee in respect of a bulk transfer of members from an orphaned scheme.
5. The Pensions Regulator is working with HMRC and pension providers to facilitate a consistent approach to winding up DC orphaned schemes across the industry and to help ensure that the members of such schemes receive their benefits when they fall due.
6. We will keep the issue of orphaned schemes under consideration and may consult on further steps if we identify a need to act in future.

## Stakeholder pensions

7. Stakeholder pensions were introduced by the Stakeholder Pension Scheme Regulations 2000 (the Stakeholder Regulations), and can be either personal or occupational (commonly referred to as contract- or trust-based).
8. As stakeholder pensions were attractive products with standardised features, provision was made for protecting members of a scheme which ceased to be registered as a stakeholder pension. Once a stakeholder scheme loses its registration it must begin winding up, and terms are set out for a bulk transfer without consent, including transferring the accrued rights of all members.
9. Where the member does not apply for the transfer payment to be made to a pension scheme or pension arrangement of their choice, the transfer can only be made to another stakeholder scheme. This ensured a minimum standard of protection for the member. Provision for these transfers is set out in regulations 6 and 7 of the Stakeholder Regulations and, specifically for occupational stakeholder schemes, regulation 12(6) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (the Preservation of Benefit Regulations).
10. Several responses to the call for evidence highlighted that the Preservation of Benefits Regulations only apply to occupational pension schemes and as such do not apply to contract-based stakeholder schemes. However, the Stakeholder Regulations still apply for the purposes of wind-up. Where a stakeholder pension scheme is winding up, the conditions for a bulk transfer without consent are prescribed by either regulation 12(6) of the Preservation of Benefit Regulations for occupational schemes, or regulations 6 and 7 of the Stakeholder Regulations for contract based schemes.
11. It appears from responses to the call for evidence that the regulations have been misinterpreted. The Regulations do not preclude a bulk transfer from a scheme which is not winding up, based on the underlying scheme type.
12. For an occupational stakeholder scheme which has not begun winding up a bulk transfer without consent is possible under the same terms as any other occupational scheme – currently, the provision of an actuarial certificate and the meeting of the scheme relationship condition.
13. There is only one occupational stakeholder pension remaining on TPR's register of stakeholder schemes. The scheme is not currently in wind up so the trustees have the choice of either carrying out a transfer to another occupational pension scheme, or commencing wind up and transfer to another stakeholder pension. No change to the regulations is needed for this.
14. In the case of a bulk transfer from a contract based stakeholder pension which has not begun wind up, the Stakeholder Regulations do not make any provision. Any such transfer is nevertheless supervised by the FCA. Whether such a transfer can occur from a contract based stakeholder pension not in wind up

would depend on the terms of the underlying contract between provider and member, and FCA principles and rules.

15. From the call for evidence we understand that providers would prefer transfers from contract-based stakeholder schemes to non-stakeholder pensions to be permitted. However, this latitude already exists. Where a provider of a contract based stakeholder pension wishes to do this, they could engage with the FCA to discuss how they propose to transfer member benefits before they commence winding up the scheme.
16. In summary, then, providers of contract-based stakeholder schemes where the scheme is not winding up should refer to the underlying contract with members and FCA principles and rules when considering a bulk transfer without consent. Where the scheme has commenced winding up the bulk transfer would have to be to another stakeholder scheme. The options for bulk transfers from the one remaining trust-based stakeholder scheme are to transfer to another occupational scheme or to commence wind up and transfer to another stakeholder pension.

## Other related issues

17. **Compulsory benchmarking** - One respondent suggested that there should be a legal duty for trustees to assess the proposed destination scheme against the wider market by conducting a tender or benchmarking process.
18. We do not intend to legislate to require this. Whilst in many instances it will follow naturally from trustees' fiduciary duty of undivided loyalty to the best interests of members that they should carry out such an exercise, it will not always be appropriate. For example, there will be some circumstances where trustees recognise that there are few if any alternative destination schemes. In other instances, they will have recently carried out such an exercise, and have good reason to believe that repeating the exercise will be disproportionate.
19. We do however recognise the scope for trustees' advisers to be conflicted, which is why we have proposed the independence test explained above.
20. **Liability on receiving and ceding schemes** - We also recognise the risk that trustees may not always be as diligent as they might be in robustly identifying the most appropriate destination schemes. That is why we do not intend to adopt another respondent's suggestion to offer DC scheme trustees a similar statutory discharge from the outcomes of a bulk transfer as those afforded to DB scheme trustees or DC scheme trustees on wind-up.
21. Given the uncertainties and risks associated with DC pension scheme investment, it is important that DC scheme trustees carry out appropriate due diligence and are not automatically protected in law from any decision they make.

22. Similarly though, we do not intend to legislate along the lines suggested by another respondent, and specify complete data cleanses, and apportion legal liability for the consequences of transfers between receiving scheme and ceding scheme.
23. We do not believe such measures will be effective in practice, as the receiving scheme may still wish to challenge the accuracy and completeness of the data given to them, or the adequacy of the ceding scheme's data cleanse. Where there is a dispute about a member's rights under the receiving scheme a pragmatic and case-by-case approach to identifying fault may well be more suitable for all parties than following an inflexible approach prescribed in law.
24. The fact that a significant number of bulk transfers do take place each year without attempted solutions to these issues being set out in law suggests that there is no immediate need to change that approach, although we will continue to monitor the process when, subject to Parliamentary approval, the other requirements for DC transfers are simplified .
25. Providers raised a number of other issues in their responses to the Call for Evidence. We address these below.
26. Legislation around block transfers and preservation of protected rights, such as a tax-free lump sums greater than 25%, protected pension ages, and Lifetime Allowances. As made clear in our original Call for Evidence, these are not in scope of our review of the current legislation around DC bulk transfers without member consent. We have passed comments to colleagues at HMRC for their further consideration. We do not believe HMRC intend to imminently revisit the relevant legislation. Of course, we expect trustees to continue to take account of protected rights when they consider whether transfers without member consent under the Preservation of Benefits Regulations are in members' best interests and whether the receiving scheme will offer value for members. Our expectation is that when such rights would be lost as a result of the transfer, it will very rarely be in members' best interests.
27. **Transfers from occupational schemes to personal pensions** – A few respondents raised this point. Although some responses indicated a desire for changes to be made to allow transfers without consent from occupational pension to personal pension, this was not a common theme, and we feel that it is extremely difficult to argue that members should be put in a situation where they are deemed to have entered a contract without their explicit consent, and have no right of opt out whatsoever. We also feel that the current occupational pensions market has sufficient capacity to accept any such transfers without needing to rely on personal pension schemes, rendering a change unnecessary in this area.
28. **Simplification of transfers after wind-up has begun** – one stakeholder suggested that the lighter touch approach for transfer on winding up should be extended beyond stakeholder schemes to all DC to DC transfers. We do not believe further legislative change is required here. With the simplification of

transfers without member consent prior to the commencement of winding up, we would expect that trustees will in future bulk transfer members to alternative schemes which present value for members and are in members' best interests prior to beginning wind-up. Generally this approach will be in members' best interests anyway, as it minimises the risk that members bear any cost associated with wind-up and affords them greater options than those provided after commencement of wind-up.

29. **Fund mapping** – one respondent suggested that the Department should consider making special provision to clarify that a member could be transferred without consent to the closest-matching fund in the receiving scheme and not be subject to the cap. We have considered this point further, and do not believe a legislative change is necessary or appropriate.
30. The reason why a member originally made an active fund choice will generally not be known to trustees. For example, members may have seen particular value in a particular fund option of the ceding scheme but not identify comparable benefits in the closest matching fund in the receiving scheme. Furthermore, members who joined prior to the widespread option of default arrangements in occupational schemes may have had no clear reason for choosing the fund several years ago, and would not do so if they were offered a default arrangement now.
31. If trustees wish to offer members funds they believe closely match the members' original choice, they may of course offer these to members, but we do not believe that it is appropriate to default members into them. Instead, they can simply move members to the scheme's default arrangement, which will generally be offered within the cap - and, as set out above, members will be protected by the cap if they are moved without consent from an arrangement and scheme where they were previously protected by the cap, regardless of whether the receiving scheme is used for automatic enrolment by the members' current or former employer.
32. **Need for 2-month member consultation prior to bulk transfer** - This issue relates to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (the 2006 Regulations), which state that no person with the power to make a listed change to a pension scheme may do so before those employers with more than 50 employees (as opposed to members) have consulted with affected members (being active or prospective members) for a period of no less than 60 days.
33. The definitive interpretation of legislation is a matter for the courts. However, the Department's current view is that the requirement to consult under the 2006 Regulations should not apply to bulk transfers without consent. We believe that these regulations were intended to apply to changes to the scheme rules, or the cessation of future accruals, which might prejudice a set of members under the scheme. Requiring a consultation before a bulk transfer would vitiate the power to move members without consent (as otherwise the consultation would be purely a formality).

34. Trustees should seek their own legal advice about whether to invoke the 2006 regulations in this type of transfer, and the interpretation above does not constitute legal advice.
35. **Transfer credits and references to earners** – one respondent raised this issue. The suggested change to section 73 of the 1993 Act clearly requires primary legislation and so cannot be achieved as part of this regulatory package. However, we will continue to engage with stakeholders on this point and consider the need for simplification alongside other primary legislation around transfers, including our stated plans to bring forward plans to limit the statutory right to transfer.
36. We have considered the other issues raised and have nothing to add in response at this time.

# Annex A

## Summary of responses to the Call for Evidence

1. On 16 December 2016 the Government published a call for evidence “Bulk transfers of defined contribution pensions without member consent”. The consultation, which ran until 16 February 2017, sought stakeholders’ views on how the current provisions on defined contribution (DC) bulk transfers without member consent could be improved. Specifically, the call for evidence sought input on:
  - transfers from occupational schemes, including views on the role of the actuarial certificate and the relationship between the transferring and receiving schemes
  - transfers from stakeholder pension schemes
2. The call for evidence was aimed at:
  - Pensions industry bodies and professionals;
  - Trustees or scheme managers
  - Pension scheme members and beneficiaries
  - Employers and representative organisations and
  - Any other source.
3. The Government received a total of 45 responses to the call for evidence from a variety of pension schemes and representative bodies. We are grateful to all respondents.
4. In overview, the responses to the call for evidence were strongly of the opinion that the current legislation needs to change in order to be more relevant to defined contribution (DC) occupational pension schemes. Most respondents felt that, in particular, the need to obtain an actuarial certificate, and the need for the employer of the ceding scheme to have a relationship with the receiving scheme added needless additional time and complexity to the process of carrying out a bulk transfer without member consent.
5. Respondents also felt that existing guidance was limited, and stressed that any changes to be made should keep members’ best interests in mind.

**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?**

6. Respondents told us that these types of transfer are now increasingly common, especially since the advent of master trusts. They are often as a result of mergers and acquisitions activity, or schemes wishing to move members to schemes offering better value for money, or improved member benefits.
7. A major factor preventing larger numbers of these types of transfer is the complexity and uncertainty of the process, given the lack of clarity over how the process should apply to defined contribution schemes and the need to have an actuarial certificate, which has been off-putting, despite the longer term member benefits which would tend to follow.

**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?**

8. Although the majority of respondents were not able to put exact figures on the process, as every case is different, most agreed that time and costs can vary widely depending on the complexity of the transfer, and the individual actuary appointed. Respondents also commented that interpreting the current requirements, and the need to consult legal advisors can add considerably to the time and cost of a transfer.
9. Similarly details of the numbers of transfers without member consent taking place is not widely available, but one respondent stated that their actuaries are typically involved in around 15-20 bulk transfers per year.

**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.**

10. Respondents gave a very strong message that there is a lack of clarity around the terms used, and a lack of guidance for actuaries making decisions around what they should be considering. This leads to an inconsistent approach and a potential for members to be disadvantaged.
11. Respondents suggested that if the current process were retained, there is a need for guidance, with some steer towards which aspects of the scheme the actuary should be looking at – for example, not merely narrow financial considerations such as the level of charges, but the benefits of the package as a whole.
12. Given the potential for claims to be made against them, many actuaries are taking a risk-averse approach to giving certificates, limiting themselves only to schemes and funds which are almost exactly the same in terms of their investment offering, charges and so on. One respondent felt that this could be

averted by the Government introducing some sort of 'kitemark' of robust quality standards for schemes which could move some of the risk away from the actuaries.

**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?**

13. Most respondents felt that there is a need for some form of check on the receiving scheme in order to provide some protection for members, but that actuarial certification is generally not appropriate for DC-DC transfers, where there are a whole range of non-actuarial factors that should be considered, and few if any clearly actuarial ones.
14. Respondents commented that although actuarial certification does give some degree of independent verification, trustees should be able to use their judgement and consult a range of alternative professionals to advise them, as appropriate.
15. We had many suggestions for how guidance issued by The Regulator could be introduced, or existing guidance improved to help both trustees and professionals, including actuaries, to understand in more detail which aspects to consider. Many commented that any summary of aspects should not become a tick-box, or be too prescriptive.
16. Many respondents were in favour of giving trustees power to assess schemes, as they already have a fiduciary duty of undivided loyalty to the best interests of members, which could easily include the assessment of transfers.

**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?**

17. Respondents commented that consideration should be given to excluding transfers from schemes with valuable guarantees from these reforms. The actuarial certification process is an important step in valuing guarantees.
18. Others felt that, where possible, guarantees should be replicated, or their value retained, in receiving schemes.

**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?**

19. Respondents told us that the scheme relationship condition creates a barrier and restricts full freedom of choice, potentially at the cost of value for members. They commented that the condition can be circumvented simply, but with added time and cost to the process, and it serves no useful purpose in a DC landscape.
20. This condition can prevent the use of master trusts if the employer is not participating, and can act as a barrier to consolidating small pots, as well as posing a problem for schemes where trustees are still present but the sponsoring employer no longer exists.
21. Respondents felt that this requirement should be abolished for 'pure' DC-DC transfers.

**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?**

22. Many respondents commented that members in this position are at increased risk of their pension pots being used to pay for administration and so it is critical that the scheme relationship conditions are set aside in these circumstances.
23. In the case of orphaned schemes, respondents wanted The Pensions Regulator to be able to appoint trustees, although it was acknowledged that this might have an impact on members' pots, especially in the case of pensions with relatively low assets under management.
24. Respondents felt that in some schemes, it might be more appropriate to assign policies to individual members.

**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?**

25. There were a number of concerns addressed around HMRC tax law, mainly addressing the fact that the need to protect protected tax free entitlements and protected pension ages can act as a barrier to carrying out bulk transfers. We have passed these on to HMRC as they do not fall within the remit of the DWP.
26. There were also issues raised specifically around other aspects of the current legislation which are addressed in Chapter 2 of this document, including:

- The issue of legislation being amended to allow transfers to personal pension schemes was raised by several respondents.
- The “stakeholder” exemption for transfer on winding-up referred to in the Preservation of Benefits Regulations 1991 should be extended to all DC to DC transfers. The current alternative on winding up – of annuity purchase – is not always attractive.
- Section 73 of the Pension Schemes Act 1993 should be modified to simplify (but not remove) the requirement that transfer credits be granted in the receiving scheme; defining “transfer credits” by reference to “earners” creates an unnecessary complication.

27. Other issues raised were:

- The Department should consider making special provision to clarify that a member could be transferred without consent to the closest-matching fund in the receiving scheme and not be subject to the cap.
- In assessing value for members, there should be a requirement for trustees to assess the proposed destination scheme against the wider market by conducting some form of proportionate tender or benchmarking process.
- Trustees in the receiving scheme do not have the same protections in DC as they do in DB. To help in reassuring receiving trustees that the benefits are being transferred are correct and complete, the ceding scheme should be required to carry out a data cleanse as part of the transfer process.
- The requirement for a 2-month member consultation, as detailed in the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006, seems unnecessary and discriminatory to smaller employers

**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?**

28. Respondents suggested that one circumstance in which the bulk transfer of a stakeholder pension without consent can occur was a provider with multiple stakeholder schemes combining them into one. This may be after acquiring business from another provider who has left the market.
29. However, the vast majority of respondents told us that in practice bulk transfers from one stakeholder pension scheme to another, as detailed in the Call for Evidence, are extremely rare. The main reason for their rarity was said to be that the legislation applies only to transferring occupational stakeholder pension schemes and there are very few of these.
30. Some respondents also pointed to the restrictive requirements that the receiving scheme must also be a stakeholder pension and that the transferring scheme has begun winding up as limiting the number of transfers.

31. Several respondents expressed the view that bulk transfers from contract-based schemes are not permitted without consent.

**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?**

32. All respondents who considered the requirement that the receiving scheme be a stakeholder pension agreed that it is outdated. Stakeholder schemes are viewed as legacy products with no new schemes being introduced and existing schemes not evolving with the market.
33. The majority of responses suggested that stakeholder pensions should not have special conditions for bulk transfers without consent, and that contract-based stakeholder schemes should be treated the same as any other contract-based pension. A number of respondents suggested that it would be preferable for transfers to be permitted to group personal pensions or to master trusts.
34. For contract-based schemes, most respondents felt that the oversight of the FCA and the Independent Governance Committees would provide members with sufficient protections if they were transferred to a scheme which is not a stakeholder pension.

**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?**

35. Most of those who responded agreed that the requirement to have commenced winding up the scheme was not needed. However, one respondent recognised that it is only in the case of a scheme winding up that a special provision is needed for stakeholder pensions.
36. In some circumstances this requirement may result in poor customer outcomes for members; such as where a specialist workplace scheme would offer dedicated employer service and support to one category of members. Winding up the entire scheme may disadvantage members who would not benefit from these services.
37. The respondents felt that the decision to invoke a bulk transfer should be based on what is in the best interest of members and be subject to FCA regulatory principles. This would protect against the risk of bulk transfers being carried out for commercial reasons to the detriment of members.

# Annex B

## Summary of questions

### **Actuarial certificate questions**

Q1: We propose to remove the actuarial certificate for 'pure' DC-DC transfers, and instead rely on trustees' fiduciary duties to their members. In addition when the transfer is to a scheme which is not authorised under the master trust regime, the trustees must seek the advice of a suitable independent, unconflicted person. Do you agree with the policy proposal??

Q2: Do you believe that the regulations achieve the policy proposal?

### **Scheme relationship test questions**

Q3: We propose to remove the scheme relationship condition for all 'pure' DC-DC transfers. Do you agree with the policy proposal?

Q4: Do you believe that the regulations removing the scheme relationship condition achieve the policy proposal?

### **Charge cap protection questions**

Q5: We propose that members who are transferred without consent from a scheme, or within a scheme, where they were protected by the charge cap, all funds in the arrangements into which they are transferred without making an active choice are protected by the charge cap. Do you agree with the policy proposal?

Q6: Do you believe that the regulations achieve the policy proposal?

### **Business Impact Questions**

Q7

a. How many bulk transfers without member consent did you perform in 2015, 2016 and 2017 respectively? For administrators, how many bulk transfers did you administer in 2015, 2016 and 2017 respectively?

b. How much does having to join a member or an employer to a scheme to meet the relationship condition impact on the transfer process in terms of time/cost?

c. Whilst we acknowledge that the range of costs can be significant, do you agree that £15,000 is a suitable estimate for the current average cost of an actuary to

obtain an actuarial certificate? If not, can you supply evidence that it should be different from this?

d. Do you agree that the cost of an independent investment consultant would be the same, if not lower than that of an actuary following a regulation change?

e. Do you agree that more than 50% of bulk transfers are transferred into a master trust? Could you provide an estimate of what % you think are transferred into a master trust?

### **General**

Q8: Do you have any further comments to add?

# Annex C

## Respondents to the Call for Evidence

ABI	Pensions Management Institute
AAT	PLSA
Aegon	Prudential
ACA	Sacker & Partners
Aon Hewitt	Scottish Widows
Arc Pensions Law	SEI
Atlas	Smart Pension
Aviva	Smith & Nephew
B&CE (The People's Pension)	SPP
Barnet Waddingham	Squire Patton Boggs
Burges Salmon	Standard Life
Ensign	Virgin Money
Eversheds	Willis Towers Watson
First Actuarial	Xafinity
Gowling	Zurich
IFoA	
Isinglass Consultants	
Independent Trustee Services	
Janine Sparks	
JLT	
KPMG	
Kuehne & Nagel	
Law Society of Scotland	
Legal & General	
Linklaters	
Mark Bondi	
Mercer	
Muse Advisory	
Now Pensions	