

# Sixty second summary

## Simplifying DC-to-DC bulk transfers

The DWP has published, for consultation purposes, legislation that would remove some legal hurdles that hinder transfers without member consent from one occupational money purchase scheme to another.<sup>1</sup> There would be no requirement to obtain an actuary's certificate, nor would there have to be any employment connection between the transferring and receiving schemes. Trust law would, however, continue to oblige the trustees of the transferring scheme to ensure—with the help of their advisers—that the transfer is in their members' interests.

### Background

A transfer between occupational pension schemes can currently take place without the members' consent if (amongst other things):

- the transferring and receiving schemes relate to employment with
  - the same employer,
  - different employers within a corporate group, or
  - unrelated employers involved in a financial transaction, such as a merger or acquisition; *and*
- an actuary certifies that, in his or her opinion, the members will acquire rights under the receiving scheme that are '*broadly, no less favourable*' than the rights transferred.

When those rules were conceived, pension schemes were predominantly defined benefit (DB) in nature, and the requirements made sense in that context. They are less appropriate to transfers between the money purchase, or defined contribution (DC), schemes that are now (increasingly) the main form of occupational pensions provision in the private sector. The trustees of a DC scheme are not required to appoint an actuary for any other purpose; and although there is some debate about precisely which factors are relevant for the '*broadly, no less favourable*' test, and how it ought to be performed, most people are in agreement that the skills required are not uniquely actuarial.

Acting upon such concerns about inappropriate impediments for DC-to-DC transfers, the Department for Work and Pensions (DWP) issued a call for evidence on the subject in December 2016. Having considered the responses to the call for evidence, it now proposes to amend the relevant legislation.

### Removal of certification & employment-relationship requirements

The DWP intends to remove the need for an actuarial certificate, as well as the condition about the relationship between the transferring and receiving schemes' employers, when 'pure' DC benefits are the only rights involved. The certification and scheme-relationship provisos will, however, continue to apply if the rights come with any guarantees relating, for example, to the pre-retirement investment return or annuity rate on offer; and that will be the case regardless of whether the guarantee is contained within the terms of the scheme itself or if it arises indirectly because the benefits have been secured by insurance.

<sup>1</sup> *Bulk transfers of defined contribution pensions without member consent: draft regulations* <[www.gov.uk/government/consultations/bulk-transfers-of-defined-contribution-pensions-without-member-consent-draft-regulations](http://www.gov.uk/government/consultations/bulk-transfers-of-defined-contribution-pensions-without-member-consent-draft-regulations)>.

Those simplifications (removal of the certification and employment-relationship requirements) will apply if either the receiving scheme is a master trust authorized by the Pensions Regulator<sup>2</sup>, or the transferring trustees have considered the written advice of a qualified professional who has appropriate DC investment expertise, and no conflicting ties to the receiving scheme.

### Trustee obligations

In its consultation paper, the DWP stresses the importance of trustees' duty to act in the best interests of the beneficiaries—principally, the scheme members—and that the decision to proceed with a bulk transfer is for the trustees to make.<sup>3</sup> It says that in order to do so they will need to form an opinion about the proposed receiving scheme, and it identifies various features that will need to be evaluated, such as its standards of governance, the security of its benefits, and likely member outcomes (which will need to be at least as good as the transferring scheme's). When performing those assessments, the advice of the independent expert will be important.

The DWP notes that the master-trust authorization regime that is due to come into force in 2018 – 2019 will provide a degree of reassurance when a transfer to such a scheme is proposed. Presumably for that very reason, it appears that there will be no *formal* advice requirement in such cases. However, the DWP stresses that an appraisal of the master trust—for example, its charging structure, investment strategy, and customer-service record— will still be necessary, and that that trustees are likely to want professional advice on such matters.

The DWP is considering whether it or the Pensions Regulator should produce non-statutory guidance to help trustees assess the suitability of receiving schemes.

### Charge cap

The draft legislation would also provide that the restrictions on charges that have been introduced since 2015 will continue to apply in the receiving scheme, unless the transfer is made with the member's express consent. Such provision is considered necessary because the 0.75 per cent a year cap on charges for default investment arrangements applies only if a scheme is used by the member's employer for auto-enrolment compliance, and it is possible that a scheme that receives a bulk transfer will not be so used (for example, if only early leavers are transferred into it).

### Timings

It is intended that the draft legislation would come into force on 6 April 2018. Responses to the proposals should be submitted by 30 November 2017.

The removal of actuarial certification for DC-to-DC transfers is long overdue, being a relic of the DB world that is ill-suited to the current pensions landscape and direction of travel. The trend toward master trusts has exposed the needless complications in moving DC pots, particularly the ambiguities associated with the '*broadly, no less favourable*' actuarial analysis.

The master trust authorization regime and anticipated market consolidation have forced the agenda and timetable somewhat. It is essential that if—when?—consolidation occurs, it can be carried out fluidly and with members' interests at the core. These changes, if implemented, will pave the way. Principles-based guidance about the key components of an assessment of master trust suitability would be of value and would foster consistency whilst allowing trustees the freedom to focus on their own members' needs. Although the move to a master-trust is largely an employer-driven exercise, collaboration between the employer and its former scheme's trustees will become ever more critical.

<sup>2</sup> Once provisions in the *Pension Schemes Act 2017* are brought into force, master trust schemes will be unable to operate without authorization.

<sup>3</sup> The actuarial certificate that is currently required already makes this clear: '*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.*'