

THE PROTECTED RIGHTS (TRANSFER PAYMENT) (AMENDMENT) REGULATIONS 2005

GOVERNMENT'S RESPONSE TO CONSULTATION

Introduction

1. In February 2005, the Department undertook a consultation on changes to the Protected Rights (Transfer Payment) Regulations 1996. The consultation ended on 15 April 2005.
2. Eleven responses to the consultation were received. A list of the respondents is at **Annex A**. The Department is very grateful to all who contributed to the consultation.
3. The Protected Rights (Transfer Payment) (Amendment) Regulations 2005 were laid on 25 October 2005 (SI 2005/2906). The regulations come into force on 28 November 2005.
4. The regulations are available on OPSI's website at <http://www.opsi.gov.uk/stat.htm>
5. This document is available on the Department's website at <http://www.dwp.gov.uk/consultations/2005/>
6. A paper copy of this document can be obtained from:

Department for Work and Pensions
3rd Floor
Adelphi
1-11 John Adam Street
London WC2N 6HT

Tel 020 7962 8126

Disclaimer

7. This document describes the policy underpinning the changes being made to the Protected Rights (Transfer Payment) Regulations 1996. The commentary on the regulations should not be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

Response to Consultation

1. Most respondents welcomed the proposed changes but most also wanted them to go further.

Extent of Transfer

2. Particular concern was expressed that the proposals allowed members to object to the bulk transfer. There was also concern that they only applied to deferred members and not actives. Respondents pointed to the provisions on bulk transfers in regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) regulations (SI 1991/167) (the “Preservation of Benefit regulations”) as a possible model.

3. The Department has carefully considered the comments that were made and has made some changes to the proposals. The regulations now provide for two methods in which a bulk transfer of protected rights can be made:

(i) “no objection” - the member raises no objection to the transfer

(ii) the “Preservation of Benefit” model.

(i) “No objection”

4. This is largely the option that was consulted on. The key change is that it no longer refers just to deferred members; it can be used for both active and deferred members. A member will still be able to object to the proposal bulk transfer of his protected rights. But if the member does not formally object the bulk transfer can be made. This method will probably be most suitable where the scheme has already ascertained that members would be content with a bulk transfer of their protected rights. Actuarial certification is not a requirement.

(ii) The “Preservation of Benefit” model

5. A number of respondents suggested that regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) regulations (SI 1991/167) should be extended so that it also applies to bulk transfers involving protected rights. The Department accepts that this would be a useful proposal. Rather than amend the Preservation of Benefit regulations, an additional method for the bulk transfer of protected rights has been included in these regulations. This method mirrors the requirements of regulation 12 of the Preservation of Benefit regulations as they would apply to protected rights. The bulk transfer of protected rights can now be made where an actuary can certify that the member’s rights in the receiving scheme will be broadly no less favourable than in the transferring scheme. This method will apply to active and deferred members and the member cannot object to the transfer. This method may be more suitable for more complex bulk transfers of rights. It would also be appropriate where members have both protected and non-protected rights: the requirements of regulation 12 of the Preservation of Benefit regulations and these regulations are broadly the same and so the same procedures can be used to undertake the bulk transfer for both sets of rights.

6. The Actuarial Profession has confirmed that GN16 as it stands can be used in relation to bulk transfers of protected rights.

7. The regulations provide for safeguards in respect of both methods. In both cases, the bulk transfer may only be made to another contracted-out money purchase occupational pension scheme. (This includes the money purchase section of a mixed benefit contracted-out scheme.) The transferring and receiving schemes must also have a relationship as described in regulation 12(2) of the Preservation of Benefit regulations.

Other issues

8. Concern was expressed about a number of other issues

9. **Types of schemes** Respondents commented that mixed benefit contracted-out schemes were not mentioned in the regulations and the position of formerly contracted out schemes was not considered to be clear.

10. The regulations have now been amended to provide for transfers to and from the money purchase sections of mixed benefit contracted-out schemes. The regulations also make clear that transfers can be made from formerly contracted-out schemes.

11. Other respondents wanted the provisions widened to allow bulk transfers to contracted-out salary related schemes or to appropriate personal pensions. The Department's view is that this would be a precipitate change, not the least because members would rightly be concerned that the nature of their pension rights could be changed without their consent.

12. **Pensioner members** Some respondents wanted to know how the provisions would apply to pensioner members. The Department's policy is that where effect has been given to protected rights by means of a pension or annuity, the member no longer has any protected rights in the scheme and as such these regulations would not apply. If however a member has taken a pension or annuity from non protected rights but still has protected rights in the scheme, these regulations would apply to him.

13. **Information to the member** Concern was expressed as to whether the amount of information to be supplied to the member would be sufficient for him to make an informed decision. Where the proposed bulk transfer is to take place via the "no objection" method, the regulations require information to be provided to the member about the value and nature of the rights to be transferred. In addition the notification has to include the name and address of a person whom the member can approach for further information. If the "Preservation of Benefit" method is used, the member will also be provided with information. But additionally the actuarial certification that the transfer is broadly no less favourable should address issues such as the costs and charge of the transfer and the investment strategy of the new scheme.

REGULATIONS

Introduction

14. The Protected Rights (Transfer Payment) (Amendment) Regulations 2005 (SI 2005/2906) (the "Amendment regulations") amend the Protected Rights (Transfer

Payment) Regulations 1996 (SI 1996/1461) (the “Main regulations”). In particular the Amendment regulations replace regulations 2 and 3 of the Main regulations.

Regulation 3 (*New regulation 2*)

15. Regulation 3 replaces regulation 2 of the Main regulations. The new regulation makes clear that transfers of protected rights can be made from the money purchase part of a mixed benefit contracted-out scheme (COMB) and from formerly contracted-out schemes.

Regulation 4 (*New regulation 3*)

16. This regulation replicates the pre-existing provisions in the Main regulations as they apply to transfers to an appropriate personal pension scheme.

Regulation 5 (*New regulations 3B and 3C*)

17. This regulation inserts new regulations 3B and 3C into the Main regulations.

New regulation 3B

18. This regulation provides for transfers to a money purchase contracted-out scheme or the money purchase part of a COMB. It broadly replicates the pre-existing provisions in the Main regulations where the member consents to the transfer.

19. One point made in the consultation was whether the requirement that the employer must be a contributor to the scheme (new regulation 3B(2)(d)) was still appropriate, given the tax changes to be introduced in April 2006. However these regulations take effect before the tax changes come into force. In addition the requirement that the employer must be a contributor is contained in several parts of the Main regulations. In the Department’s view it is more appropriate to review this issue later and across the piece.

New regulation 3C

20. This new regulation provides for TWO methods for the bulk transfer of protected rights without the consent of the member being necessary. The new regulation applies to both active and deferred members. The first method is provided for in paragraphs (3) and (4) and associated paragraphs (5), (6), (7) and (10). Key points of the requirement include:

- there must be a specified relationship between the transferring and receiving schemes or their relevant employers;
- a notification must be sent to the member containing information about the transfer and that the member has the right to object to the transfer. (The regulations address points made in the consultation about the procedures surrounding notifications, including notifications by email.) A notification need not be sent to an excluded person;
- three months should be allowed from the date of the notice before the bulk transfer is made;
- the protected rights of any member who objects to the transfer must not be included in the bulk transfer.

21. The second method is contained in paragraph (8) and associated paragraph (10). This method is intended to replicate the requirements of regulation 12 of the Preservation of Benefit regulations as they would apply to protected rights. Key points of this requirement include:

- there must be a specified relationship between the transferring and receiving schemes or their relevant employers;
- an actuary must certify that the member's rights under the new scheme will be broadly no less favourable than the rights to be transferred;
- a notification must be sent to the member at least one month before the proposed transfer containing information about the transfer. The member cannot object to the transfer. A notification need not be sent to an excluded person.

Conclusion

22. The Amendment regulations will allow employers to rationalise their occupational pension schemes, whilst safeguarding the position of members. The regulations should lead to the more efficient administration of pension schemes and to a reduction in costs.

Consultation responses

The Actuarial Profession
Association of Pension Lawyers
B&CE
Barclays Capital Pension Scheme
Financial Services Authority
Hammonds
Hymans Robertson
Society of Pension Consultants
Standard Life
TDG plc
Watson Wyatt