

<b>Impact Assessment</b>	
<b>Title of measure</b>	Enabling the bulk transfer <sup>1</sup> of contracted-out pensions rights (active <sup>2</sup> , deferred <sup>3</sup> and pensioner) without member consent to new schemes that have never been contracted-out.
<b>Lead Department/Agency</b>	DWP
<b>Expected date of implementation</b>	6 April 2018
<b>Origin</b>	Domestic
<b>Date</b>	19 February 2018
<b>Lead Departmental Contact</b>	Julius.Urbutis1@dwp.gsi.gov.uk
<b>Departmental Triage Assessment</b>	Negligible

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<sup>1</sup> The bulk transfer is known in legislation as “connected employer transfer” or a “connected employer transfer payment”.

<sup>2</sup> Current employees who are contributing (or having contributions made on their behalf) to an organisation's occupational pension scheme.

<sup>3</sup> A member of an occupational pension scheme who has accrued rights or assets in the scheme but is no longer actively contributing (or having contributions paid on his behalf) into the scheme.

## **Rationale for intervention and intended effects**

### **Policy background**

Between 6 April 1978 and 5 April 2016, employers could opt their employees out of additional State Pension provided their occupational pension scheme met certain statutory requirements. This was known as “contracting-out”. Before contracting-out was abolished on 6 April 2016, it was possible for salary-related contracted-out occupational schemes to bulk transfer scheme members (actives, deferred and pensioners), without their consent, to either a contracted-out scheme or formerly contracted-out scheme. These transfers took place between employers and schemes undertaking mergers, acquisitions and takeovers or transfers within the same group of companies. They are known technically as “connected employer transfers” or take effect as a result of “connected employer transfer payments”.

Where a transfer was to take place to a new scheme (that has never been contracted-out), the new scheme could formally become contracted-out for a short period, consequently becoming a formerly contracted scheme and satisfying the legislative requirements. Provided the transfer met certain conditions regarding protecting members’ contracted-out rights, the members’ consent was not required.

The abolition of contracting-out means it is no longer possible within the legislation to create a new scheme with (formerly) contracted-out provisions in the scheme rules. Although the transfers without member consent to a formerly contracted out scheme remain possible no newly created schemes can be contracted out; which in essence means the transfers to new schemes are no longer possible.

The proposed change will enable the bulk transfer of contracted-out pensions rights (active, deferred and pensioner) without member consent to new schemes (that have never been contracted-out) under specified conditions.

### **Rationale for intervention**

Businesses affected may feel constrained in taking strategic action involving mergers, acquisitions and takeovers because they will be unable to merge pension schemes as part of that action. Where this happens it is a foregone opportunity to optimise or expand business operations, which in turn means business growth (and associated positive impacts to economy and society) may be stifled. The Department is aware that a number of businesses would like their schemes to perform these transfers but are currently prevented from doing so by the legislation. The rationale for intervention is to remove this legislative barrier, unintentionally created as a result of the abolition of contracting out. Removing this barrier for UK businesses will enable them to grow and operate in an optimal way whilst ensuring at the same time that the pensions of those members being transferred to new schemes (without their consent) are protected.

### **Intended effects**

To enable certain businesses taking strategic action involving mergers, acquisitions and takeovers to optimise or expand their business operations, which also results in associated positive impacts to the economy and society.

## **Viable policy options (including alternatives to regulation)**

### **Alternative to regulations**

Alternatives to regulation have not been considered, as legislation is required to amend the existing law.

### **Option 1: Do nothing**

Doing nothing would mean that some businesses may feel constrained in taking strategic actions involving mergers, acquisitions and takeovers resulting in foregone opportunities to optimise and grow their businesses as a result of the existing legislative barrier.

The government has previously committed to changing the legislation.

### **Option 2: (preferred option)**

Amending existing legislation to allow the bulk transfers of contracted-out pension rights (active, deferred and pensioner) without member consent to new schemes (that have never been contracted out) under specified conditions. These specified conditions<sup>4</sup> will ensure that there is no increase in the risk of members not getting their pensions in full as a result of the transfer.

This is a preferred option because it will restore the status quo in respect of the bulk transfers following the abolition of contracting-out.

## **Description and scale of key monetised costs and benefits by ‘main affected groups’**

### Key message

The proposed legislative change is **deregulatory**; and the actions that it will enable businesses to undertake are **optional** to them. Therefore it creates no additional burden to businesses, and on that basis is assessed as **zero cost**.

### Counterfactual

The counterfactual scenario is one where the bulk transfer of contracted-out pensions rights (active, deferred and pensioner) without member consent to new schemes that have never been contracted-out is not allowed by legislation; and given that following the abolition of contracting-out it is not possible for any newly created scheme to have contracted-out provisions it is not possible to bulk transfer contracted-out pensions rights into new schemes. Under this scenario there are businesses that may feel they are prevented from taking strategic action involving mergers, acquisitions or takeovers which would optimise and / or grow the business. The outcome: businesses will be unable to merge their pension schemes as part of a merger/acquisition/takeover, resulting in their pension schemes having to remain separate<sup>5</sup>; this prevents them from getting full benefits e.g. of economies of scale thus making the whole business merger no longer economically viable in some cases.

### Costs to businesses

*Overall.* Assessed to be zero on the basis that the measure is deregulatory and permissive. Those employers that do not wish to take action involving mergers, acquisitions or takeovers, and those that do but their pension schemes are not affected, will not be concerned by the proposed legislative change in any way.

*Familiarisation and implementation.* Assessed to be zero. Mergers, acquisitions or takeovers in general are complex processes, and inevitably involve familiarisation and implementation costs (e.g.

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<sup>4</sup> The exact design of the specified conditions is yet to be agreed.

<sup>5</sup> On average, Defined Benefit pension liability per sponsoring employer is over £100 million – hence pension commitments is a significant part of the business in general.

familiarising with legal requirements, amending business procedures, accounting, IT, merging pensions, etc.). But the argument here is that the proposed change is permissive and businesses will only undertake mergers, acquisitions or takeovers (incl. pensions transfers as part of them) where they find it beneficial and cost efficient (familiarisation and implementation costs are at least outweighed by savings from economies of scale and / or increased revenues and profits).

### Benefits to businesses.

Expected to be positive and not negligible, but not quantified.

In principle, there may be direct and indirect benefits to businesses:

-Direct – for businesses that take strategic action involving mergers, acquisitions or takeovers, and are now able to bulk transfer, they will benefit from efficiencies from merging their schemes into one.

-Indirect – some businesses who did not take strategic action involving mergers, acquisitions or takeovers in the counterfactual will now decide to take the action and may benefit from additional growth and / or business optimisation.

In terms of direct impacts, there is an economic rationale<sup>6</sup> that consolidation of schemes results in savings associated with administrative efficiencies, access to a wider range of investment options, and affordability of better expert advice which may result in better (investment and other) decisions. However, the scale of those savings is very much scheme/business specific. We do not have detailed specifications or data of which schemes/businesses would benefit from the proposed change, and attempting to collect this information would be disproportionate, therefore we do not quantify this.

Indirect impacts. In general, mergers, acquisitions and takeovers help improving and expanding businesses, by e.g. creating economies of scale (e.g. sharing the same distribution chain or admin functions), expanding product range, acquiring and sharing know-how, etc. However, we do not quantify the benefits due to significant uncertainties and complexities involved, which would make the quantitative assessment highly disproportionate.

However, we give a high-level illustration of possible scale of impact. According to Scheme Actuary Survey, October 2016, by Willis Towers Watson in the last three years (before October 2016) there were 9 schemes that made at least one bulk transfer involving contracted out liabilities to a new scheme (i.e. one set up specially). Some of the schemes used bulk transfer more than once, resulting in 13 bulk transfers of this type in total. So on average 3 schemes were making 4 bulk transfers involving contracted out liabilities to a new scheme every year while it was possible within the legislation (i.e. before the abolition of contracting-out). Also, the same survey found that when asked whether they would make at least one bulk transfer of this type in the next three years if these regulations were changed 7 schemes said 'probably', and another 30 'possibly'. This is small in the context of about 6,000 private sector Defined Benefit schemes in total, but not insignificant given that for some sponsoring employers the transfer is seen as crucial for the purposes of enabling them to take certain strategic action in order to optimise, maintain competitiveness, and grow their business.

### Costs to members

*Familiarisation costs.* Assessed to be zero. Members will not need to take any action. And we expect that it will be the scheme's responsibility to provide all relevant information to the members, if any information needs to be provided.

*Loss of benefits.* Assessed to be zero on the basis that there will be conditions specified in the

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<sup>6</sup> E.g. as discussed in this article ([link](#))

legislation that will ensure there is no increase in the risk of members not getting their pensions in full as a result of the transfer.

Benefits to members

A strong sponsoring employer is key to ensuring the scheme can pay members benefits in full. Where the change in the legislation enables businesses to take strategic action that strengthens / grows their business operations the likelihood of members getting their benefits in full may increase.

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Date: 19.02.18

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Date: 19.02.18

**Better Regulation Unit signoff:** Fiona Kilpatrick

Date: 19.02.18