Title: The Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2014: Amending the Transfer of Employment (Pensions Protection) Regulations 2005 **IA No:** DWP0044 **Lead department or agency:** DWP **Other departments or agencies:** None	Impact Assessment (IA) **Date:** 21/02/2014 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Secondary Legislation **Contact for enquiries**: Mike Axton: 020 7449 7368
Summary: Intervention and Options	**RPC:** RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£0m	£0m	£0m	YES	Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

The Transfer of Employment (Pension Protection) Regulations 2005 (the TEPP Regulations) require new employers following a transfer of employment to match a transferring employee's pension contributions up to 6% of their salary, provided this is allowed by the rules of their pension scheme. The Pensions Act 2008 sets minimum contributions to money purchase schemes for Automatic Enrolment, including a minimum employer contribution. From July 2012 to September 2017 the minimum employer contributions are 1% of qualifying earnings. If employees are subsequently transferred, a new employer could then be required to pay contributions at a higher level than would be required for Automatic Enrolment purposes.

What are the policy objectives and the intended effects?

The changes will give new employers the option to match the contributions being paid by the former employer immediately before the transfer. The objective is to ensure that the TEPP Regulations do not require new employers following a transfer to pay higher contributions than an employer would have to pay under Automatic Enrolment. The intention is to prevent an increase in costs for business beyond that envisaged under the Automatic Enrolment requirements, but under the new provision employees would not be placed in a worse position than they were in before the transfer, as the new employer would need to at least match the contributions which the former employer was paying. The measure is deregulatory.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option

Do nothing is not an option because the interaction of the TEPP Regulations and Automatic Enrolment could increase costs for business beyond those required under Automatic Enrolment. This could also lead to transferred employees being placed in a more favourable position than they would have been had they remained with their former employer. The proposed option would allow transferee employers to satisfy the TEPP Regulations by matching the contributions paid by the transferor employer immediately before the transfer, instead of having to match the level chosen by the employee up to the 6% maximum level. There is no non-regulatory alternative. The impact being addressed results from regulations, and it consequently cannot be addressed without regulation.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:**					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Date: 20/02/14

Summary: Analysis & Evidence — Policy Option

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** 0

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	0		0	**0**

Description and scale of key monetised costs by 'main affected groups'

The changes to the TEPP Regulations will ensure that new employers do not face an increase in pension costs following a transfer. There are therefore no costs to business associated with these changes.

Other key non-monetised costs by 'main affected groups'

Under the revised provision some employees who might previously have requested an increase in contributions from the new employer will not now be able to do so, but we expect the number affected to be small (evidence suggests a strong degree of inertia in pensions saving). But such employees would not be in a worse position than they were in before the transfer, however, as the new employer would need to at least match the contributions which the former employer was paying.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	0		0	**0**

Description and scale of key monetised benefits by 'main affected groups'

We are unable to quantify the benefits to employers of the changes to the TEPP Regulations but we expect them to be small. The increased flexibility for employers afforded by the extension of the definition of 'relevant contributions' to allow the new employer to match the contributions being paid by the former employer before the transfer (as opposed to having to match employee's contributions up to 6% of salary) will reduce the potential cost of pension protection to business.

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks — **Discount rate (%)**

N/A

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: Nil	**Benefits:** Nil	**Net:** Zero	Yes	Zero net cost

Evidence Base (for summary sheets)

Problem under consideration

1. The Transfer of Undertakings (Protection of Employment) Regulations 2006, commonly known as the TUPE Regulations, implement the EU Acquired Rights Directive and safeguard employees' rights when the business in which they work changes hands between employers. The Transfer of Employment (Pension Protection) Regulations 2005 (the TEPP Regulations) grant protections in relation to occupational pension schemes following a transfer of employment to which the TUPE Regulations apply.

2. The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 require employers to enrol certain employees into a qualifying workplace pension scheme if they are not already in one, and to make minimum contributions. From July 2012 to September 2017 the minimum contributions are 2% of qualifying earnings (1% from the employer and 1% from the employee), increasing to 5% for the period between October 2017 and September 2018, and 8% from October 2018. The interaction with the TEPP Regulations could, however, lead to much higher contributions levels being required from a new employer following a transfer of employment.

Rationale for intervention

3. With Automatic Enrolment it is possible that an employer could automatically enrol its employees in an occupational money purchase or stakeholder scheme with, initially, minimum contributions of 1% (employer) and 1% (employee). If during the initial phasing period such employees are transferred under the terms of the TUPE Regulations, the transferee employer could be required to pay contributions at the rate of 6%. This would increase costs for business beyond that envisaged under the Automatic Enrolment requirements, and could lead to the transferred employees being placed in a more favourable position than they would have been had they remained with their former employer. (Affected employees would not be in a worse position than they were in before the transfer, however, as the new employer would need to at least match the contributions which the former employer was paying.)

Policy Objective

4. The objective is to ensure that the TEPP Regulations do not require much higher contributions than an employer might have to pay under the Automatic Enrolment phasing profile. The change will introduce more choice for transferee employers in the level of pension scheme contributions paid such that should they so choose, they may continue to pay the same level of contributions that was being paid into a money purchase scheme by the transferor employer immediately prior to the transfer.

Description of options considered (including do nothing)

5. The option being progressed is to amend the TEPP Regulations to allow new employers to satisfy the requirements of those regulations if they match the contributions being paid to a money purchase scheme by the former employer immediately before the transfer, instead of having to match the level chosen by the employee up to the 6% maximum level. The proposal is for the new provisions to come into force on 6 April 2014.

6. Without action, transferee employers enrolling employees in an occupational pension scheme could face an unintended increase in pension contributions if transferring employees choose higher pension contributions (up to a cap of 6%). This would increase costs for business beyond that envisaged under the Automatic Enrolment requirements, so do nothing is not an option.

7. Non-regulatory alternatives are not possible since the amendments are to existing legislation which needs to be retained as part of the regulatory framework to which employers engaging in business restructuring and transfers of undertakings must adhere.

8. Consultation on the amendments took place between 25 February 2013 and 5 April 2013, and the Government response to the consultation is being published separately.

Monetised and non-monetised costs and benefits

9. There is a lack of quantitative information on TUPE transfers, due to the difficulty in collecting representative data from those businesses involved. Evidence from the Workforce Employment Relations Survey suggests that only around 4% of workplaces a year (around 31,000) undergo a TUPE transfer, and these occur across a wide range of industries. Further information on the Workplace and Employment Relations Survey is available at: *https://www.gov.uk/government/collections/workplace-employment-relations-study-wers*

10. BIS has used information from the Workplace Employment Relations Survey to estimate that between 2009 and 2011 around 62,000 workplaces with 5 or more employees underwent a change in ownership that was reasonably likely to have been a TUPE transfer. This is equivalent to 31,000 a year – around 4% of workplaces. Based on the above estimate for the number of TUPE transfers, the estimated number of employees working for a workplace that experienced a TUPE transfer is likely to be 910,000 per year.

11. We have no information on the pension arrangements in workplaces that have been affected by a TUPE transfer to enable us to make robust estimates of the impact of this change on business. We do not know, for example, how many former employers in such transfers were providing pensions, how many employees they will have, and whether or not they have staged under Automatic Enrolment. We also have no information on the extent to which employees would exercise their full rights to insist on contributions up to the maximum permitted by scheme rules.

12. To reliably calculate the impact of this change we would need to have information on pension arrangements pre and post transfer, information on the number of employees, an estimate of what proportion of TUPE transfers would request an increase in pension contribution rates and information on salary levels to calculate what this would mean for the transferee employers. Given the nature of this proposal it would be disproportionate to arrange for the collection of detailed representative quantitative information on TUPE. Many respondents to the consultation supported the proposal as a measure which would assist sponsoring employers, although some representing the interests of employees considered that it would reduce the pension protection offered by the TEPP Regulations to some extent.

13. The increased flexibility for employers afforded by the extension of the definition of 'relevant contributions' to allow the new employer to match the contributions being paid by the former employer before the transfer (as opposed to having to match employees' contributions up to 6% of salary) will reduce the potential cost of pension protection to business. It is not possible to estimate with any confidence the potential savings from this deregulatory measure but we expect them to be small and have scored this as a zero net cost to business. In practice we think it is unlikely that a significant number of employees transferred under a TUPE transfer will choose to pay contributions at the 6% level (in 2012 the average contribution rate for employees was 3.1% in defined contribution pension schemes: *Source: Occupational Pension Schemes Survey 2012, ONS)*
http://www.ons.gov.uk/ons/dcp171778_328287.pdf

14. Some employers could benefit from a potential saving from this measure. Where the transferee employer chooses to match the previous employer, the level of contributions it makes in relation to the transferring employee could be lower that under the existing regulations. This could happen where the previous employer contributed at less than 6% and the employee would have chosen to contribute more than that up to 6%. Some employees who might previously have requested an increase in contributions from the new employer will not now be able to do so, but such employees would not be in a worse position than they were in before the transfer, however, as the new employer would need to at least

match the contributions which the former employer was paying. The number of employers and employees affected is likely to be small, however, for the reasons set out above.

Direct costs and benefits to business calculations (following OITO methodology)

15. The changes to the TEPP Regulations will not lead to any costs on business. The main benefit will be to give employers greater flexibility by the extension of the definition of 'relevant contributions' to allow the new employer to match the contributions being paid by the former employer before the transfer (as opposed to having to match employees' contributions up to 6% of salary). This will reduce the potential cost of pension protection to business.

16. For the reasons outlined above, we are not able to reliably quantify the impact of this deregulatory measure, but we would expect it to be small and have therefore scored it as a zero net cost to business.

Small business assessment

17. These changes to the TEPP Regulations apply to all sizes of business and micro-businesses are not exempt.

Summary and preferred option with description of implementation plan

18. The preferred option is to amend the TEPP Regulations to allow new employers to satisfy the requirements of those regulations if they match the contributions being paid to a money purchase scheme by the former employer immediately before the transfer, instead of having to match the level chosen by the employee up to the 6% maximum level. The proposal is for the new provisions to come into force on 6 April 2014.