



Department  
for Work &  
Pensions

# The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021: Consultation Response

Government response to the May 2021 consultation on the implementation of the regulations in relation to conditions that will be placed on pension scheme trustees, pension scheme managers and pension savers in order to facilitate a pension transfer.

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November 2021

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# Ministerial foreword

A key ambition of this Government is to drive better outcomes for pension savers and help ensure they achieve the best possible retirement. This can only be achieved by putting the members' interests at the heart of policy.

I previously set out my commitment to protect savers from pension scams. An important part of that is to make it as hard as possible for criminals to carry out their malevolent intentions. We know that individuals can be vulnerable to scams when transferring their savings from one scheme to another. The Government has continued to work closely with regulators, the Pension Scams Industry Group (PSIG) and enforcement agencies to protect individuals against scams, by raising awareness and helping them access appropriate guidance.

Building on this work, in May 2021 the Department for Work and Pensions launched the consultation *Pension Scams: Empowering Trustees and Protecting Members*, seeking views on the draft Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 which enable trustees and scheme managers to prevent or pause a transfer request if they see evidence of 'red flags' or 'amber flags'.

Following this consultation, we are bringing forward regulations to protect savers against pension scams, which reflect the views of the many organisations and individuals who took the time to respond. The contributions have been invaluable in helping us ensure we strike the right balance between providing necessary protections against scams and ensuring savers have freedom and choice about where their savings are invested.

Whilst I am immensely proud of the steps we have taken on scams; I do not consider our work complete. That is why the Government has committed to a review of these regulations within 18 months of them coming into force to ensure they remain effective in targeting the evolving methods used by scammers.

**Guy Opperman MP**

**Minister for Pensions and Financial Inclusion**

# Chapter 1: Introduction

## About this Government Response

1. Pension scams are a menace. They cost people their life savings and have a devastating financial and emotional impact on their victims. The Government is fully committed to working with regulators, industry, and enforcement agencies to protect people from pension scams through transfers from one pension scheme to another and make it as hard as possible for scammers.
2. The Government response to the Pension Scams consultation<sup>1</sup> set out three potential interventions aimed at tackling different aspects of pension scams:
  - ban pensions cold calling;
  - make it harder for fraudsters to open pension schemes; and
  - limit the statutory right to transfer to some occupational pension schemes.

The first two commitments were delivered in 2019; the regulations this consultation relates to will deliver on the final commitment. They will build a strong first line of defence in the fight against pension fraud, providing trustees and scheme managers with tools to intervene when concerns about a transfer arise.

3. The pensions industry has been asking for powers to be able to act when they have concerns about a transfer. They feel that their hands are tied as, no matter their concerns, the individual has a statutory right to transfer and can insist on the transfer proceeding.
4. Both the Pensions Regulator (TPR) and the Financial Conduct Authority (FCA) have already produced considerable material on high level rules<sup>234567</sup> for the industry and consumers on how to spot a pension scam. TPR has also made

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<sup>1</sup> <https://www.gov.uk/government/consultations/pension-scams/pensions-scams-consultation>

<sup>2</sup> <https://www.thepensionsregulator.gov.uk/pension-scams>

<sup>3</sup> <https://www.thepensionsregulator.gov.uk/en/pension-scams/carry-out-checks-on-pension-transfers>

<sup>4</sup> <https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/pension-scams-action-pack.ashx>

<sup>5</sup> <https://www.handbook.fca.org.uk/handbook/PRIN/2/1.html>

<sup>6</sup> <https://www.fca.org.uk/scamsmart/how-avoid-pension-scams>

<sup>7</sup> <https://www.fca.org.uk/news/news-stories/pension-scheme-operators-risk-smarter-scams>

clear to trustees that effective due diligence is key to protecting people against scams. In addition, the Pension Scams Industry Group (PSIG) has produced a Code of Good Practice<sup>8</sup> for combating scams, which sets out robust due diligence processes for trustees and pension providers to follow, to help them identify pension scams. Despite this, people are still losing their savings to scammers and the industry is still calling on the Government to help them safeguard their members'<sup>9</sup> pensions savings.

5. These regulations build on the due diligence the pension industry is already undertaking and gives them powers to act when they have concerns. They also build further on existing campaigns, such as ScamSmart<sup>10</sup>, to educate savers against the risk of scams. The introduction of mandatory scam specific guidance, provided by the Money and Pensions Service (MaPS), enhances awareness of the common methods used by scammers. The intention is to ensure that pension savers consider this information and pause before the transfer can proceed.
6. Though they build on current due diligence processes, the regulations will require schemes to process their members' data for a new purpose and to potentially ask for additional data from members. This includes, where relevant, to establish whether the employment link or residency link are demonstrated, or to establish the presence of the red and amber flags, where their current due diligence does not enable them to decide if the flags are not present. Trustees and scheme managers should ensure that they comply with the relevant UK GDPR principles, and that members are made aware of what additional data is being collected and the purpose for which it will be processed. Guidance on UK GDPR requirements and Data Protection Impact Assessments is available from the Information Commissioner's Office (ICO).<sup>11</sup>

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<sup>8</sup> <http://www.combatingpensionscams.org.uk>

<sup>9</sup> For the purposes of this response, as with the regulations, "member" refers to those saving in both occupational and personal pension schemes.

<sup>10</sup> <https://www.fca.org.uk/scamsmart>

<sup>11</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-impact-assessments/>

## Scope of the regulations

7. Section 125 of the Pension Schemes Act 2021<sup>12</sup> has provided powers to set conditions for transfers, to be met before the statutory right to transfer can be exercised. This means there will now be legal restrictions to the statutory right to transfer which work alongside the extensive industry due diligence processes. The measures build upon existing due diligence laid out by TPR, which trustees and scheme managers carry out as part of their wider responsibilities to act in the best interests of the member, even where automated pension transfer systems are in operation. To offer further support for schemes on how to practically apply due diligence PSIG have published a voluntary code of conduct which will be updated to reflect these regulations.
8. The intention is to ensure that transfers, where trustees and scheme managers have no suspicions, can proceed without any additional processes. Currently, it is estimated by PSIG that this amounts to approximately 95% of transfers. As such, the regulations provide effective tools for addressing the remaining 5%, whilst ensuring that all of industry are required to operate their due diligence in respect of transfers to consistent and robust standards.
9. The FCA also require personal pension providers to perform activities in respect of Anti-Money Laundering (AML)<sup>13</sup> rules. Providers should ensure that employees are aware of financial crime risks and that customer-facing staff receive financial crime training as appropriate.
10. The regulations ensure that trustees and scheme managers will now have the tools to act where suspicions about the circumstances that have prompted the transfer request are identified. It will no longer simply be a case that the member can insist that a statutory transfer takes place in such circumstances.
11. The new measures will enable trustees to prevent a transfer request if they decide that 'red flags' are present, the circumstances most commonly associated with scams. The statutory right to a transfer will be removed in these cases. In other circumstances, 'amber flags', which may be an indicator of a potential scam, the member will have to provide evidence they have taken scam

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<sup>12</sup> <https://www.legislation.gov.uk/ukpga/2021/1/contents>

<sup>13</sup> <https://www.fca.org.uk/firms/financial-crime/money-laundering-terrorist-financing>

specific guidance from MaPS before their statutory right to a transfer can be exercised.

## Overview of Responses

12. The consultation was open for responses between 14 May and 10 June 2021. The Department for Work and Pensions (DWP) asked seven questions about the proposed conditions to apply to a statutory right to transfer. 69 responses were received from pension providers and administrators, legal firms, independent financial advisers, professional bodies, industry groups, regulators, consumer groups, and individual members of the public.
13. The majority of respondents strongly supported the Government's intention to protect against pension transfer scams and the principles of the regulations. However, there were differences in the responses to the specific questions posed. In addition, respondents raised general points about how the regulations would work in practice and whether there would be transitional arrangements.
14. This document sets out the Government's response to the consultation, including DWP's views, in each chapter of the consultation.
15. DWP's response to the consultation and subsequent amendments to the regulations have been based on where a significant number of respondents have made the same, or similar, points. Where workable solutions to issues have been proposed, we have considered adopting them.
16. The Government would like to thank all respondents for taking the time to respond to this consultation, and for sharing their views. A list of respondents can be found at **Annex A**.

# Chapter 2: Responses on the First Condition

17. The purpose of the proposed First Condition in the regulations is to ensure that members retain the guarantee of being able to exercise their statutory right to transfer when the transfer is into certain types of schemes. The proposed condition would have been met where the trustees or managers of the transferring scheme confirmed that the receiving scheme is of one of the following types of scheme:

- a public service pension scheme;
- a Master Trust scheme;
- a collective money purchase scheme; and
- a pension scheme operated by an insurer that is registered by the Financial Conduct Authority (FCA) and authorised by the Prudential Regulatory Authority (PRA).

18. The consultation asked one specific question in relation to the proposed First Condition of the regulations:

Q1: Please provide details of any additional types of receiving scheme to which transfers should proceed without additional checks, including how they can be identified for the purposes of the regulations.

19. The Government recognises that the pension entitlement belongs to a member and that they should have freedom to make decisions about how and where they choose to invest their pension savings. We want the guaranteed right to transfer to remain in place for certain types of scheme, allowing transfers to proceed without further checks. In those cases, transfers will be able to proceed with just one straightforward check, of the scheme type, whilst still ensuring the member is protected from the worst outcome, of being scammed out of their savings.

## Consultation Feedback

20. 87% of respondents provided feedback to this question, along with general, broader comments on the condition.

21. Most of the feedback received related to the fourth type of scheme included in the proposed condition, namely schemes operated by an insurer that is registered by the FCA and authorised by the PRA. Respondents' main concern was that this last group is too narrow and could potentially cause commercial harm to firms not falling within it, such as large-scale Self-Invested Personal Pension (SIPP) providers. They also argued that although the First Condition is

not designed as a 'safe' list it could be perceived as such and therefore negatively impact their business if they were not included.

22. DWP received a number of suggestions for how the list of types of scheme could be expanded. These included:

- schemes in the FTSE 100 / 250;
- schemes with high volumes of assets under management;
- non-insurer SIPP providers which have demonstrated a high degree of compliance, and which do not (or will undertake not to) allow the use of unregulated investments; and
- personal pension providers registered and authorised by the FCA, where the personal pension scheme is also registered as a pension scheme with Her Majesty's Revenue & Customs (HMRC).

23. There were also several suggestions for the inclusion of lists: for example; FCA/ HMT/ HMRC to provide a safe list of Qualifying Recognised Overseas Pension Schemes (QROPS) or a register of 'safe' schemes agreed with TPR (and/or FCA), with details of those schemes being appropriately detailed to avoid cloning attempts.

24. One respondent recommended that the list could be extended to QROPS if TPR could be satisfied that the QROPS is subject to a comparable level of regulatory scrutiny and governance to an authorised Master Trust scheme and the residency link set out in the third condition is also satisfied. There was also one suggestion that transfers to a Gibraltar QROPS should also be considered as part of the schemes included in the condition.

25. Another respondent suggested that the list could be expanded, without detriment to the policy intent, to include transfers to another arrangement operated by the same trustees; for example: from one section of a non-associated multi-employer sectionalised scheme to another. It was suggested this type of transfer is commonplace in industry wide schemes, such as the Railways Pension Scheme (RPS) or the Electricity Supply Pension Scheme (ESPS).

26. There was an overall concern about the transfer process and potential delays to those schemes not captured in this condition. We have carefully considered the transfer process during the development of the regulations, and we believe that where a scam risk is identified the potential long-term harm to an individual outweighs the detriment of possibly having their pension transfer delayed.

## DWP View

27. DWP believe the feedback raises valid points and intend to remove reference to FCA registered, and PRA authorised, insurers. The First Condition will therefore simply reference Government funded schemes for those in public

service, as well as Master Trust schemes and collective money purchase schemes authorised by TPR.

28. DWP believe this change addresses the issues raised by 30% of the respondents whilst continuing to provide the guarantee of being able to exercise the statutory right to transfer by transfers to certain types of scheme. This guarantee is of particular importance for any members who have entered into a scam scheme and wish to leave, as it provides a guaranteed and quicker route out of that scheme, as the provision is so simple there is no scope for it to be deliberately misapplied in an attempt to hinder such a transfer out of the scam scheme.
29. The powers in the Pension Schemes Act 2021 allow the Secretary of State to set conditions to be met before the statutory right to transfer may be exercised. They do not provide for sub-delegation of the setting of those conditions. Reference to a list determined by a third party (e.g. FCA / TPR / HMT / HMRC) would amount to such sub-delegation.
30. DWP also concluded that even if the legislation allowed sub-delegation, any form of 'external list' would be extremely difficult to maintain and cause issues with liability. The speed by which scams evolve would make such lists virtually redundant as soon as they were drawn up and whoever maintained the list could have liability for its validity if it was shown a scheme on the list was ultimately a scam scheme.
31. Having carefully considered the alternative suggestions put forward for types of scheme to be included in the First Condition, DWP do not think any of these are workable or address the issues identified in the responses:
  - including schemes in the FTSE 100 / 250 or those with a certain level of assets under management, risks the same commercial challenge from schemes not included in these categories; and the movement of schemes in and out of this classification; inclusion of non-insurer SIPP providers would not allow trustees to interrogate whether a scheme permitted unregulated investments and determining what would constitute a 'high degree of compliance' is too complex and/or hard to define; and
  - HMRC registration is just for tax purposes and does not involve any verification that the scheme is not a scam; scammers in the past have used HMRC registration to appear legitimate, although HMRC has now introduced rules to make it harder to open fraudulent schemes.
32. By not including them, the playing field is levelled for all FCA registered and authorised schemes, as transfers to those schemes will all proceed under the new Second Condition (explained below). The majority of those transfers will cause no concern to the transferring scheme, and where this is the case, those transfers will proceed with no due diligence additional to that currently carried out. But it will be for transferring schemes to make that judgment, based on their

current due diligence (explained in more detail below), as opposed to DWP trying to make it by prescribing them as to a receiving scheme type that falls within the First Condition.

# Chapter 3: Responses on the Second Condition

33. The proposed Second Condition delivered on the commitment to require that evidencing an employment link between the transferring member and the receiving scheme should be one of the criteria underpinning a statutory right to transfer to an occupational pension scheme. It was also intended to involve personal responsibility on the part of the member by putting the onus on them to provide the specified evidence of the employment link.
34. DWP asked one specific question in the consultation in relation to this proposed condition.

Q2: To what extent is the evidence requirement set out in the regulations to demonstrate an 'employment link' sufficient and how could it be strengthened?

## Consultation Feedback

35. 83% of respondents provided feedback to this question. The feedback received in general welcomed a member only being able to exercise their right to a statutory transfer to an occupational pension scheme if an employment link could be evidenced. Respondents focused on the technical aspects of providing and identifying the validity of the evidence supplied, rather than the principle of having to demonstrate the link.
36. There were three key points presented by around half of the respondents for this condition. Firstly, 24% of those who gave feedback on this condition had concerns about the relative ease of providing, and difficulty in detecting, false evidence, such as wage slips or employer letters. 16% queried whether they would have to take the evidence at face value or whether they would have the ability to question it, including the ability to consider the Fourth Condition (the red and amber flags) in such circumstances.
37. It was also suggested that an additional red flag be added that checks if any individual or firm has guided the member to be anything less than completely truthful or to conceal or withhold any information.
38. 8% also pointed out that there are a number of legitimate reasons why an individual might be unable to provide the prescribed evidence. For instance, people may have a relationship with a previous occupational pension scheme they want to consolidate into, or they may be involved in a salary sacrifice scheme.

39. Suggestions presented to address the concerns and issues raised included removing the condition completely or linking it to the Fourth Condition to allow the flags to be considered alongside the employment link. Respondents felt that the flags should be considered even if the employment link applied but doubts remained as to the validity of the evidence being presented. It was also suggested that exemptions to the evidence requirements reflect circumstances where there may be a legitimate reason for a member not being able to provide evidence.
40. Several respondents felt that the existence of the Fourth Condition meant there was little need for the Second (or Third) Condition.

## DWP View

41. DWP welcome the input received in relation to this proposed condition and appreciate all the points raised.
42. We agree that the regulations should be amended, to address respondents' concerns about the ease with which the prescribed evidence can be faked, as set out in the conclusion section of this response. We do not see the introduction of a specific red flag in relation to coercion as workable. We have, however, strengthened the policy intent of personal responsibility by including an express requirement for requested information/evidence to be provided by the member directly to the scheme rather than by a third party on their behalf. It is not DWP's assertion that all third parties, or indeed the majority of third parties, act in dubious ways. However, by requiring the evidence to be provided directly by the member the risk of interference of a scammer, to create fake evidence and provide it to the transferring scheme, is minimised, since a member will now clearly have to take responsibility for the evidence that is provided.
43. This requirement does not preclude a bona fide third party supporting the member to gather the appropriate evidence. It simply requires the member to take responsibility for providing the information/evidence. There are some necessary exceptions to this, where a representative has been appointed on behalf of the member:
- a deputy appointed by the Court of Protection under Part 1 of the Mental Capacity Act 2005;
  - a receiver appointed under Part VII of the Mental Health Act 1983, who is treated as a deputy by virtue of the Mental Capacity Act 2005;
  - an attorney with a general power, or a power to make the request for a transfer, appointed by the member under the Powers of Attorney Act 1971, the Enduring Powers of Attorney Act 1985, the Mental Capacity Act 2005 or otherwise; or

- In Scotland, a judicial factor administering the member's estate, or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000.

44. It is recognised that there will be circumstances in which the member will be unable to provide the prescribed evidence for legitimate reasons, for example, they may be enrolled in a non-contributory pension scheme or be in low paid work. In others, the lack of evidence of contributions into an occupational pension scheme or little evidence of salary paid will be clear scam risk indicators. It is not possible or desirable to provide a definitive list in the regulations of all these circumstances. Based on the feedback received, DWP has reviewed the condition in its entirety, in particular, how a member's inability to provide the prescribed evidence affects the transfer request and the impact of suspicions that evidence may not be genuine. We have decided that, in answer to these issues and the concern around inability to consider the presence of flags, that the employment link (and the residency link – see Chapter 4) should be considered as a scam risk indicator alongside the flags.
45. Where that link is not shown or there is a concern that evidence may not be genuine, this will raise an amber flag requiring that the member takes the MaPS scams guidance. This means that legitimate transfers, where the employment link cannot be demonstrated for genuine reasons, and cases where evidence is not in fact fake, will not be prevented from proceeding as under the proposed Second Condition. However, where the concerns may be due to a scam, the member will receive the MaPS guidance and be made aware of the risks of proceeding, so they can make an informed decision as to whether to still proceed. The updated requirements are set out in the conclusion section of this response.

# Chapter 4: Responses on the Third Condition

46. The proposed Third Condition delivered on the commitment to address the concerns raised about transfers to QROPS by establishing a residency link for transfers to overseas pension schemes.
47. Analysis by HMRC indicates that there were 3,000 transfers to QROPS in the year 2020-2021, a drop from 4,400 in the year 2019-2020.<sup>14</sup> Transfers to QROPS remain an area of concern for the pensions industry, as they have often been a vehicle for pension scams.
48. DWP asked one specific question in the consultation in relation to this proposed condition:

Q3: How could the evidence requirement for the 'residency link' work in practice?

## Consultation Feedback

49. 72% of respondents provided feedback to this question. Like the Second Condition, much of the feedback welcomed a member only being able to exercise their right to a statutory transfer to a QROPS if a residency link could be evidenced. The responses broadly focused on the specific types of evidence that would need to be provided, and technical aspects of how the condition would work rather than the principle of having to demonstrate the residency link.
50. Key points raised by respondents concerned the types of evidence that would be acceptable to prove a residency link; for example, a residency permit signed by a local councillor; visa documents; overseas passport; rent/mortgage documentation. Concerns were raised that if there was no level of discretion the requirement could mean additional time and costs for schemes and trustees as they may not have the required expertise to understand residency rules and

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<sup>14</sup> <https://www.gov.uk/government/publications/pension-schemes-newsletter-131-july-2021/pension-schemes-newsletter-131-july-2021#qualifying-recognised-overseas-pension-schemes-qrops-transfer-statistics>

regulatory requirements of each overseas country and would also struggle to determine the authenticity of the evidence. There was an overall concern that this condition could potentially create a need to carry out further checks involving other parties and in turn, slow down the transfer process.

51. Many also wanted to see a list of the types of evidence that would be suitable, whilst others raised concerns that such a prescriptive list would create a loophole for scammers to circumnavigate the regulations.
52. One respondent suggested that the requirements for evidencing overseas residency should be similar to those for evidencing a move overseas, or for high-risk money laundering requirements. As it may not always be easy for members to prove that they have been resident in the overseas jurisdiction for at least six months, schemes should be allowed to request more than one item of evidence.
53. There was also feedback similar to that received for the Second Condition that trustees and scheme managers should have the opportunity to consider the presence of red and amber flags.
54. Many respondents raised concerns about whether they would need to accept the evidence provided at face value and about the difficulties in establishing if it is genuine. The proposed condition provided that if the member supplied trustees with evidence that demonstrated the residency link, then the transfer would proceed without further investigation of flags. Many schemes expressed that they wanted a further level of security and that the regulations should be extended to consider the evidence received alongside the flags.
55. There were also concerns that if there was a need for translation of documents, there may be significant costs to businesses.
56. Many of the respondents felt that the term 'financial jurisdiction' was unclear and required definition in the regulations and some were concerned that the regulations were not aligned with HMRC's tax requirements in respect of QROPS and so there were no established procedures they could follow.
57. Several respondents felt, as with the Second Condition, that the existence of the Fourth Condition, the red and amber flags, meant there was little need for the Third Condition. As the Fourth Condition enabled them to take a more holistic view of the risks of the transfer, this left the Third Condition overly prescriptive in its proposed form.
58. Some schemes felt they should have the discretion to pass on any additional costs, within reasonable limits, to members transferring out of the scheme to an overseas destination where there are costs to verify the validity of the evidence presented.

59. One respondent thought the condition was overly complex and suggested we could instead verify against address data held for the member and whether the address held for them is over six months old. Another suggested that the qualifying criteria for residency should be expanded to require that the person has not been absent from the jurisdiction in question for more than 30 days in any given 12 months rolling period.

## DWP View

60. DWP accept much of the feedback in the consultation response around concerns about demonstrating and assessing physical residency in the country in which the QROPS is established. The original basis for the residency link was in HMRC's tax legislation relating to the Overseas Transfer Charge (OTC) on pension transfers to a QROPS. Alongside the change of approach to the residency link detailed below (for it to be considered alongside the red and amber flags), the residency link will now align more closely with the exclusion from the OTC in section 244B of the Finance Act 2004. Where the residency link applies, rather than demonstrating physical residency, as under the proposed residency link, members will have to demonstrate (and transferring schemes assess) their tax residency in the country in which the QROPS is established. Both members and transferring schemes have to do this already in assessing liability for the OTC.

61. The policy intent is still to mandate a formal residency document to demonstrate tax residency, and at least two other pieces of appropriate evidence. This will align with HMRC residency requirements, to the extent that residency means residency for tax purposes, but be more specific as regards required evidence, setting one specific and one flexible requirement for evidence. Some discretion will remain with schemes as to what evidence may be suitable for them to consider but this can accord with the assessments they already make for the OTC exclusion. We acknowledge that some trustees and scheme managers may not be fully aware of all the possible forms of evidence that could be presented to them. That is why TPR guidance will set out examples of what types of evidence schemes may receive and may wish to consider alongside the formal residency document.

62. The regulations centre around the provision of the document itself, that the member must provide in a timely manner. For many countries, a residency permit can come in the form of a formal visa document or a resident ID card, which many residents must obtain within a certain time of entering the country to access services and employment. Therefore, we feel it is reasonable for an individual to provide formal documentation of their residency, and as schemes are only required to ask for the document to be provided, rather than investigate the regulatory conditions attached to the document, we disagree that this will incur an excessive amount of time or cost to schemes.

63. DWP disagree that the Third Condition would be overly complex and believe that any simplification of the evidence requirements would be exploited by scammers. We do not believe the evidence requirement will be excessive in terms of time or costs to schemes and cannot legislate for this in the regulations. This would be an individual matter for each scheme.
64. We considered the concerns over taking evidence at face value, responsibility (and cost) of translation and, if there is a need for the Third Condition and agree these are genuine concerns. We have decided that, in answer to these issues and the concern around inability to consider the presence of flags, that it will be the responsibility of members to provide translations of documents, where required by trustees or scheme managers. The residency link (as with the employment link – see Chapter 3) will also be considered as a scam risk indicator alongside the flags, including an amber flag where evidence may not be genuine. DWP's response is set out in the conclusion chapter of this response.

# Chapter 5: Responses on the Fourth Condition

65. In evidence to the Work and Pensions Select Committee<sup>15</sup> inquiry into pension scams and during debates during passage of the Pension Schemes Act 2021, it was suggested that scheme members have an expectation they will be protected but trustees have very little power to do anything. The proposed Fourth Condition of the regulations was in direct response to this by providing greater powers to trustees and scheme managers to prevent transfers where they identify scam risks as a result of their due diligence processes.
66. The proposal was to introduce a set of scam risk indicators, based on concerns already raised by industry and highlighted in the PSIG Code of Good Practice. In circumstances which point to a significant scam risk red flags would be introduced, or in other circumstances which may point to a scam risk but may also be legitimate, amber flags would be introduced.
67. Where red flags are identified the transfer would be prevented. Where amber flags are identified the transfer would only proceed when the member provides evidence, they have taken scam specific guidance from MaPS.
68. DWP asked two specific questions in the consultation in relation to this proposed condition.

Q4: How should the 'red flags' as set out in the regulations work in practice?

Q5: How should the 'amber flags' as set out in the regulations work in practice?

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<sup>15</sup> <https://publications.parliament.uk/pa/cm5802/cmselect/cmworpen/504/50402.htm>

# Consultation Feedback

## General

69. 87% of all respondents provided feedback that was generally positive; it was noted that the proposed flags, in the main, captured the scam risk indicators that cause the industry concern when being asked to make a transfer. Most respondents were content that trustees would be able to interpret the flags and how to apply them.
70. Other respondents suggested that trustees and scheme managers may not have the expertise relating to fees and investment structures etc. to be able to determine what should signal the amber flags.
71. There was also a common thread in the responses suggesting the methods used by scammers are always changing and that the scope of the flags will need to be adaptable.
72. 42% of respondents were worried about the potential for red or amber flags arising after the initial transfer. There were also concerns about the Second or Third Condition being met but an inability to apply the Fourth Condition. The principle worry was about being forced to make a transfer to a scheme because the Second or Third Condition was met but due diligence pointed to a flag being present.

## Additions and deletions to the flags

73. A small number of respondents suggested adding to the red flags. They felt if a QROPS could not be confirmed as registered by HMRC this should be treated as a red flag.
74. It was pointed out by some respondents that the way in which the 'unsolicited contact' red flag appeared in the draft regulations could have an impact on legitimate business practices. It is common for generic marketing approaches to be used by pension schemes to contact existing and new members.
75. Although a small proportion of respondents suggested removing some of the amber flags, a larger proportion sought clarity on the definitions of terms used.

## Assessment of the flags

76. Approximately 25% of respondents mentioned additional costs due to the need to assess for flags, that additional time would be needed to interpret the flags and that this would add to transfer times. None, however, offered any quantification of what this would mean in practice. Three respondents

suggested, to counter this, that Government should create a list of pension schemes that are deemed as safe.

77. There was some feedback that communication of the flags will be key and that members should be educated about the flags before they consider any pension transfers. The argument being that awareness of the flags will ensure they are less likely to be a factor in future transfers and therefore speed up transfer times.

## DWP View

78. DWP acknowledge that trustees and scheme managers will need to take steps to implement the new regulations as an inevitable part of introducing the scheme of protections. However, the risk indicators, as most respondents agree, do work to identify signs of a pension scam and, in fact, already form a large part of current due diligence processes.
79. The risk indicators have been developed based on feedback from industry, including PSIG. They build on current due diligence processes to give trustees and scheme managers the legal tools to intervene when they have concerns about a scam. However, if they consider they hold sufficient evidence already to show there are not likely to be flags, there is no obligation to seek more evidence about potential flags. This key part of the policy has been emphasised in the new regulations and is set out in the conclusion section of this response.
80. It is not DWP's policy to prescribe how the evidence and information to determine the presence of flags is obtained. Neither is it DWP's policy to prescribe how the evidence or information is used to determine the presence of flags. DWP's policy is to enable trustees and scheme managers to act on the outcomes of their existing due diligence processes, as well as giving them powers to make further specific requests for evidence or information and the ability to act on any concerns. DWP believe the policy addresses the feedback received that the new regulations, particularly red and amber flags, may possibly delay transfers that trustees and scheme managers currently deem as straightforward. If the trustees and scheme managers believe they have sufficient evidence or information that there are unlikely to be any flags present in respect of a transfer, they are under no obligation to seek further evidence or information from the member and they can process the transfer without additional activity. This may include the use of their own transfer 'internal list', where such a list is based on due diligence that tells them transfers to those schemes present a low scam risk and the flags are unlikely to be present in respect of them.
81. DWP do not anticipate identification of the flags adding additional time in the majority of cases. PSIG estimate there being no likely scam risk in 95% of transfer requests. The policy intention is that trustees do not need to conduct additional due diligence in these cases. The flags provide trustees with the legal powers to intervene in the remaining 5% of cases where they may have

concerns. With the exception of requiring new action for transfers to occupational pension schemes and QROPS, by seeking prescribed evidence from members, and notification requirements about the existence of the conditions and decisions as to whether or not they are satisfied, these regulations add no additional requirements for those trustees and scheme managers who are already carrying out necessary due diligence on transfer scam risk. The flags enable them to act in the cases where they think it may be needed, first by giving them power to seek further evidence or information, as relevant to their decision about the presence of the flags. Once they have chosen to seek such further evidence or information, they need only have reason to believe any of the flags is present before preventing (red flags) or pausing (amber flags) the transfer.

82. The feedback that the flag referring to 'unsolicited contact' may have the unintended consequence of capturing legitimate business practices is appreciated by DWP and it was never the intention to inhibit such practices. But unsolicited contact, or 'cold calling', is a key indicator of high scam risk and so it is essential that it remains as a red flag. The new regulations have been further clarified to ensure legitimate advertising is not captured, meaning only those activities prohibited under the Government's ban on cold calling in 2019 cause a transfer to be prevented. TPR guidance will provide support to trustees and scheme managers. However, they should by now, from their own practice, be aware of what is legitimate, and non-legitimate, contact, further to that ban.
83. DWP have considered whether, if a QROPS could not be confirmed by HMRC, this should be treated as a red flag. DWP and HMRC believe it would either block too many transfers from going ahead or would not be deliverable.
84. More general suggestions about clarifying the application of the amber flags have been taken on board. The intention is to give further clarity within the regulations and the TPR guidance. Although the aim will be to give a level of clarity, the overall policy is still to allow trustees and scheme managers to use their own expertise to assess the flags based on their knowledge of financial markets. We're making the amber flags as clear as possible, to create consistency, whilst permitting margins of judgment, based on industry expertise, and aided by clear guidance. Once the amber flags apply, the requirement to seek MaPS guidance is mandatory, otherwise there is a red flag. But transfers are not prevented where that guidance is taken, so if trustees or scheme managers have reason to believe an amber flag is present, based on their judgment about the current financial market, a transfer can still go ahead where the member takes the scams specific guidance and, with that in mind, is still content for the transfer to go ahead.
85. Finally, in relation to a Government owned list of schemes, this is not possible for the same reasons it is not possible to rely on a list of safe, or unsafe, schemes under the First Condition. The Secretary of State for Work and Pensions must set the conditions for transfers and cannot sub-delegate this to a third party. Additionally, any such list would effectively be out of date as soon as

it was published and, as there cannot be an absolute guarantee that no scam activity is present, may create a false sense of security when transferring to a scheme on the list. Therefore, DWP do not believe this suggestion would work, even if it were permitted.

# Chapter 6: Responses to the other questions

86. DWP indicated in the consultation the intention to require a member to take scams specific MaPS guidance, even if someone has taken financial advice. The aim of the guidance session is to alert the member to the methods scammers use and give them time to pause and think about their transfer before it proceeds. The session will be separate to any other sessions offered by MaPS. It is complementary to any financial advice taken or more general scam awareness guidance, as it will be targeted to the member in the process of making a specific transfer request, where an amber flag has been identified by the transferring scheme. Financial advice is a more holistic review of the member's circumstances and whether the transfer will help the member achieve their personal financial goals and not specifically about identifying a scam.

87. DWP asked a specific question about the guidance sessions:

Q6: Do you have any views on how the requirement to take guidance can work in practice when the pension saver has already taken financial advice?
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## Consultation Feedback

88. 81% of respondents gave feedback on the question about the guidance requirement.

## Compatibility of guidance with financial advice

89. In response to the question about how the guidance requirement can work if someone has taken financial advice, 7% gave practical suggestions, 31% were in favour of the principle and 43% could see downsides in the approach.

90. Those in favour of the approach felt that financial advice and scam specific guidance were designed to serve two different purposes. Financial advice is a personalised view on whether the transfer is in the individual's best interests based on what they want to get from their retirement savings. The scam specific guidance highlights the common methods scammers use and characteristics of scam schemes, at least one of which has been identified so as to require the referral to guidance, and gives the member time to pause and consider if they still want to proceed. It was suggested that it would seem inappropriate for an adviser who has recommended the transfer to be also providing guidance on the possible scam risks of that transfer.

91. Those who had concerns with this approach suggested that the member may feel inconvenienced if they are being required to attend a guidance session after

they have already taken financial advice. It was suggested that the MaPS session could be amended for those who have received financial advice, it could be shortened or that the requirement could be removed entirely.

## The role of MaPS

92. Most respondents agreed that the session would educate members against the dangers of scams. A small number of respondents queried whether the session had to be carried out by MaPS or whether the trustee could deliver it or arrange for third-party delivery.
93. It was also suggested that the MaPS session could create a level of mistrust between the transferring scheme and the member.

## Feedback loop

94. Some respondents were keen to see MaPS provide trustees with either feedback on how the session went with the member or a way to verify the session took place. Trustees worried that the member could fake evidence that they have attended a session. Respondents were particularly keen on MaPS feeding back if they identified further amber or red flags.

## Standard Questions

95. The consultation also provided a list of suggested questions aimed at providing direction for trustees and scheme managers to identify red and amber flags. The proposed regulations did not prescribe the questions in order to provide trustees and scheme managers with flexibility in their approach, dependent on their current processes or what they consider relevant in the circumstances. The standard questions were to be in guidance and to be just that, a guide only; but one which may save some time and effort, increase consistency of approach, whilst also avoiding disproportionately lengthy requests.
96. DWP asked a specific question relating to the standard questions in the consultation:

<p>Q7: Annex 3 sets out the proposed list of standard questions that trustees and schemes managers should use to help determine the presence of red or amber flags. Do these questions provide a comprehensive list, which if any questions are not needed and what other questions should be included?</p>
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97. 80% of respondents fed back on the proposed list of standard questions. Most were content with the questions and were glad to have examples of what to ask members, to help their own assessment if there are any flags. A few responses suggested language changes and DWP has reviewed these and taken them on board.

98. 20% of respondents pointed to the PSIG code and that they use their own list of questions, to help with their due diligence. They asked how the PSIG questions and other guides will work in conjunction with the standard questions and which set of questions they should use.
99. Respondents also suggested that the questions would need to be fluid and able to change easily, to keep pace with changing methods adopted by scammers.

## DWP View

100. Having carefully considered the responses in relation to the guidance question, DWP believe that the requirement should be retained, even if an individual has received financial advice.
101. Financial advice provides an invaluable service for pension savers through formal recommendations on how to use savings to achieve the retirement envisaged, especially the risks of giving up a guaranteed income for market dependent returns but does not provide scam specific guidance. The scam specific guidance serves a very different purpose, namely, to ensure that the pension saver, prior to transferring, is aware of the methods scammers employ to attract them and the characteristics of scam schemes. It is not DWP's intention to undermine financial advice by introducing the scam specific guidance requirement.
102. DWP is also concerned that an exemption for the guidance requirement for those who have taken financial advice could be exploited by scammers. There is no requirement for an individual to follow the advice of a financial adviser or to tell the transferring scheme what the advice was. This could be used by scammers, as where they will have built up a relationship with the member, they may convince them that a financial adviser discouraging them from transferring to a scam scheme, is working with the transferring scheme to keep their savings.
103. It is expected that the situation, where financial advice has already been taken and there is a guidance requirement, will be rare. This situation is likely only to arise when a financial adviser has recommended not to transfer, due to concerns they have, but the member insists they want to proceed. Continuing with the requirement adds protection against the issue identified above.
104. DWP does not believe the guidance requirement will create mistrust with the advice market. MaPS will provide an impartial generic guidance session focused on scams, which caters to everyone by asking them open questions, whereas financial advice provides personalised recommendations to members on their finances. We believe the guidance to be complementary and a necessary added protection for members.
105. Feedback regarding trustee or third-party delivery of the guidance session will not be possible to deliver. MaPS must be seen as independent from the

pensions industry and, as such, their delivery of the guidance sessions further reduces the likelihood of scammers pitting members against their advisers as highlighted above to persuade them to make a transfer. In addition, DWP will need to prescribe the body that can provide the bespoke scams guidance in order for trustees or scheme managers to be able to make a specific requirement of the member about the guidance to be taken and for them to be able to confirm that the guidance has been taken.

106. To ensure members are open to the guidance from MaPS, and to further reduce the possibility of scammers coaching members, MaPS needs to remain fully impartial. The relationship between the member and MaPS must remain separate and not involve the trustees or scheme managers. DWP therefore do not want to allow direct feedback from MaPS to the trustees or scheme managers on anything they pick up through the guidance sessions. This would also not be practically deliverable for MaPS as the process could lead to them having effectively to participate in transferring schemes' due diligence processes.
107. Because it is independent, the MaPS guidance will cover all facets of the transfer, which may alert a member to the existence of further amber or red flags. If the member subsequently wishes to inform the trustees or scheme managers about further amber or red flags they can, or they can choose not to proceed with the transfer. Therefore, there is the potential for a feedback loop via the member and the guidance will emphasise the importance of openness with the transferring scheme, as a means to protect the member, to strengthen this potential.
108. DWP understands the concern of a member being persuaded by scammers to confirm they have taken guidance when that is not the case. To prevent this MaPS will issue a unique identifier, which the member will only receive after the guidance session has taken place. The unique identifier will be used to prove to the trustees or scheme managers that the member has attended the session. DWP accept there may be an opportunity for fake identifiers to be presented, unfortunately it is not possible to fully prevent this, but it is mitigated by the member having to provide the details themselves.
109. To offer maximum ongoing protection, DWP agree that the suggested questions to identify the presence of red and amber flags will need to be reviewed regularly and look forward to industry's input as and when they see new methods evolving. DWP welcome the excellent work of PSIG and see the use of their Code of Good Practice by industry as a positive step towards preventing pension scams. The flags, and therefore the suggested questions, are based on feedback from industry and PSIG regarding the concerns they are already identifying. It is not the intention to prescribe, in the regulations, the questions trustees or scheme managers should use to identify if either red or amber flags are present, so as to retain flexibility and responsiveness. There will, however, be example questions in TPR guidance to give schemes, where

they need them, a guide to the questions to ask to identify the flags.

# Chapter 7: Conclusion

## The First Condition

110. DWP, when developing the regulations, acknowledged the concerns of industry that the statutory right to transfer can be exploited by scammers. The industry view is that it can be used to persuade members to transfer from legitimate, well run schemes, to ones where scammers could profit.

111. However, the statutory right to transfer remains important to allow freedom and choice. By limiting the statutory right to transfer, DWP achieves the balance of offering maximum protection against pension scams with the freedom to choose.

112. In responding to the feedback on the proposed First Condition, DWP considered a number of options to address the concerns raised:

**Option 1** - remove the First Condition. Only the Fourth Condition would apply (unless the transfer is to an occupational pension scheme or a QROPS, where the employment and/or residency link would apply). This would mean full due diligence being required in all transfers.

**Option 2** - try to add other tightly prescribed types of scheme to the list. DWP asked industry to help identify schemes that could be added, however none of the suggestions put forward were workable or fully addressed the concerns raised in the consultation.

**Option 3** - retain the First Condition but remove the reference to a pension scheme operated by an insurer that is registered by the FCA<sup>16</sup>, and authorised by the PRA.

113. DWP have decided to adopt Option 3. This means the First Condition will continue to provide a guarantee of being able to exercise the statutory right to

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<sup>(16)</sup> See section 1A of the Financial Services and Markets Act 2000 (c. 8).

transfer, of special importance when they are in a scam scheme that they want to leave and which might otherwise attempt to block a transfer by misuse of the conditions.

114. This will also serve to level the playing field for all FCA regulated schemes offering similar products, thereby addressing concerns about commercial disadvantage due to not being in the list. This option has been tested with industry, who were broadly in agreement with it being the most workable solution.

115. It is intended that how the First Condition is working and the impact on different sections of the pensions industry will be a key element of the Government's strategy to evaluate the regulations.

## The Second, Third and Fourth Conditions

116. It was clear from the feedback received that the way DWP envisaged the proposed Second, Third and Fourth Conditions operating might not be clear to trustees and scheme managers. They were under the misapprehension that they had to go through and apply each condition in sequence, thereby slowing down the transfer process. Although DWP does not accept that the draft regulations provided for this, we acknowledge that there was potential for misinterpretation in the proposed structure of the conditions.

117. To address these concerns DWP considered 3 possible options:

**Option 1** – stay with current structure of the Second, Third and Fourth Conditions but make express that trustees must, as part of their decision as to whether the employment or residency link is demonstrated, decide if evidence provided is genuine (with, as proposed, the statutory right to transfer lost if the link is not demonstrated).

**Option 2** – keep the conditions as proposed, with each being stand alone, but allow trustees to refer to condition 4 where they have doubts or concerns about the validity of the evidence provided.

**Option 3** – remove each standalone condition and merge them into one new condition, allowing for a holistic consideration of the employment and residency links with the red and amber flags.

118. In order to simplify the structure and ease interpretation, DWP has decided to adopt Option 3. Adopting this approach removes uncertainty about what conditions to apply. This clarifies the structure of the regulations, meaning trustees only apply either the First Condition or the Second Condition.

119. The new Second Condition allows trustees and scheme managers to take a holistic approach when reviewing transfers and allow the flags to be applied

where the employment or residency link has been demonstrated, or demonstrated but with concerns about the genuineness of the evidence provided to do so.

120. The new Second Condition continues to require the trustees or scheme managers to seek evidence of either an employment link or residency link in the circumstances in the proposed Second and Third Condition (transfers to an occupational scheme, in the UK or overseas, or other transfers overseas). However, it now enables trustees and scheme managers to consider this evidence in the wider context of the red and amber flags, as opposed to considering the evidence in isolation, and having to process transfers even where they considered red or amber flags to be present. This change also responds to the feedback that trustees and scheme managers were concerned they would have to simply take evidence provided to satisfy the proposed Second and Third Condition at face value.

121. Further to the feedback regarding legitimate reasons for failure to demonstrate the employment link or the residency link, the new Second Condition no longer prevents transfers in those cases but instead raises an amber flag, meaning trustees and scheme managers must require the member to take MaPS guidance before their transfer can proceed.

122. It was apparent from the feedback received that a number of respondents felt there was a requirement to seek additional evidence or information to that obtained under their current due diligence processes to identify the presence of red or amber flags. This was never DWP's intention and the regulations have been revised to reflect this more clearly. Feedback also indicated respondents weren't clear what evidence could be relied upon in applying the flags. We have therefore made clear that trustees or managers of the transferring scheme may rely on:

- any information provided informally, by the member or another party to the transfer;
- a general or specific omission of evidence or information from the member's formal response; or
- any evidence or information already held, including that obtained in the course of carrying out their duties in relation to the transferring scheme or another scheme.

123. It is now clear that all evidence in trustees' and scheme managers' possession is relevant and can be considered, including from other or wider due diligence activity e.g. knowledge a receiving scheme has raised a red flag in another transfer.

124. New regulation 10(2) also expressly provides that trustees and scheme managers can proceed with a transfer if they decide, based on evidence or information they already hold, that it is more likely than not (on the balance of probabilities) that the substantive red flags in regulation 8(5) and substantive

amber flags in regulation 9(5) are not present in respect of the transfer. This makes clear that it is not necessary to seek additional evidence or information in all cases to which the new Second Condition applies and that current due diligence activity can be enough to decide that it is satisfied.

125. To address calls for clarity and provide as much objectivity as possible, DWP has honed and tightened the use of terms in the flags and the related definitions. TPR guidance will support the practical application of the regulations.
126. DWP believe the updated regulations respond to the concerns raised and are deliverable, whilst staying true to the original policy intent to safeguard pension savers from the risk of being scammed.

# Chapter 8: The Revised Regulations

127. Based on the responses from industry to the consultation, the regulations have been updated as outlined in Chapter 7. The new structure of the regulations is designed to maximise ease of interpretation and allow trustees and scheme managers to take a holistic approach when reviewing transfers. They also draw out the ability of trustees and scheme managers to rely on information already held, as a result of current due diligence processes, to process transfers under the Second Condition that do not involve the employment link or the residency link. Where such transfers fall within the vast majority that cause no concern, they can proceed with no further activity required.

## Structure of the Regulations

128. The redrafted regulations are now comprised of two conditions. Trustees and scheme managers will apply either the First Condition or the Second Condition.

129. The First Condition, containing the guarantee of exercise of the statutory right to transfer, applies to transfers to schemes which are:

- A public service pension scheme;
- An authorised Master Trust scheme; or
- An authorised collective money purchase scheme.

130. The Second Condition applies to transfers to all other schemes. It sets out the scam risk indicators in the form of red and amber flags, to allow trustees and scheme managers to act on the results of their due diligence processes. Where a red flag is identified it will prevent the transfer from proceeding, whilst where an amber flag is present, the transfer can only proceed when the member provides evidence that they have taken scam specific guidance from MaPS.

131. The requirement for evidence of an employment link when transferring to an occupational pension scheme, or residency link when transferring to QROPS, now forms part of the Second Condition. Failure by the member to demonstrate either the relevant employment or residency link will not prevent a transfer from taking place as proposed but will require the member to take scam specific guidance from MaPS. However, the successful demonstration of either link will also no longer guarantee a transfer, as presence of other flags may still lead to the transfer being prevented or paused for scams guidance to be taken, should the transferring scheme's due diligence reveal that presence.

## Types of Transfer

132. The regulations build on current due diligence processes carried out by trustees and scheme managers. In relation to these regulations, there are three broad types of transfer: those under the First Condition and two types of transfer under the Second Condition. Each will require trustees and scheme managers to take different actions to determine which process applies, then how and whether a condition is satisfied.

133. Transfers which are covered by the First Condition require trustees and scheme managers simply to confirm the scheme type is one of those listed in regulation 7 and that the scheme is established or authorised as required by that scheme type. Members transferring to schemes to which this condition applies will be guaranteed their ability to exercise their statutory right to transfer, where the receiving scheme is of one of these types. Trustees and scheme managers are forbidden from making further requests for evidence or information apart from that necessary to identify the correct receiving scheme, so such transfers should be processed without delay.

134. The Second Condition applies to all other transfers. These break down into two types of transfers:

- Type 1 - those transfers (not to an occupational scheme or QROPS, which mandate that evidence be provided to demonstrate respectively the employment link or residency link) where trustees or scheme managers have already carried out sufficient due diligence to decide that the substantive red flags and amber flags are unlikely to be present (estimated by PSIG to be about 95% of current transfers).
- Type 2 - those where trustees or scheme managers are either required to carry out additional due diligence activity under the regulations (where the employment or residency link applies) or choose to do so due to concerns that the flags may be present (estimated by PSIG to be about 5% of all current transfers).

135. Dependent on the type, different action is required:

### Type 1

The trustees or scheme managers consider that they have sufficient evidence, based on their existing knowledge and information from current due diligence processes, to say on the balance of probabilities that the substantive red flags in regulation 8(5) and substantive amber flags in regulation 9(5) are not present, therefore the Second Condition is satisfied and these transfers duly proceed, without additional due diligence activity under the regulations – see regulations 6(2) and 10(2).

## Type 2

- a) The trustees or scheme managers must seek further evidence or information in respect of the employment or residency link – regulations 6(3) and 10(1); or
- b) The trustees or scheme managers exercise their discretion to seek further evidence or information about the presence of the flags because they cannot say on the basis of current due diligence that on the balance of probabilities the substantive red and amber flags are not present – regulations 6(3) and 10(3).

In either Type 2 case, a) or b), they must decide that:

- they have no reason to believe any of the substantive flags are present, or it's not beyond reasonable doubt that a procedural red flag in regulation 8(4) or a procedural amber flag in regulation 9(2) to (4) is present: in which case the Second Condition is satisfied and the transfer duly proceeds; or
- they have reason to believe that one of the substantive flags is present, or it's beyond reasonable doubt that a procedural red or amber is present: in which case—
  - a red flag means that the Second Condition is not satisfied and the transfer is prevented;
  - an amber flag means that:
    - if the member does not provide evidence that the MaPS guidance has been taken, that becomes a red flag, so the Second Condition is not satisfied and the transfer is prevented;
    - if the member takes the MaPS guidance but withdraws their request, the transfer is stopped;
    - if the member provides evidence that the MaPS guidance has been taken, the Second Condition is satisfied and the transfer duly proceeds.

136. Trustees or scheme managers will therefore only be expected to perform additional activity beyond their current due diligence for the minority of transfers, those of 'Type 2' under the Second Condition. However, where they have concerns, the regulations provide the tools to take action.

# Annex A: Respondents to the Consultation

The following were respondents to the May/ June 2021 consultation on Pension Scams. One private individual also responded.

ABI

Aegon

AJ BELL

Allen & Overy LLP

AMPS

AON

Association of Consulting Actuaries

Association of Pension Lawyers

AVIVA

B&CE's

Barnett Waddingham LLP

British Airways Pensions

BT Pension Scheme

Capita

CMS Cameron McKenna Nabarro Olswang

Curtis Bank

Dalriada Trustees Limited

DirectDocs

DP Pensions Ltd

Embark Group

Equiniti Group plc

Eversheds-Sutherland

FIDELITY

Gibraltar Association of Pension Fund Administrators (GAPFA)

Gowling WLG (UK) LLP

GPC Pensions Ltd

Hargreaves Lansdown

Herbert Smith Freehills LLP

Hymans Robertson LLP's

ILAG

Interactive Investor

Intrusted pension services Ltd

Invensys Pension Trustee

Lane Clark & Peacock LLP

Legal & General

Linklaters

Local Government Association

Local Pensions Partnership Administration

Manx Insurance Association

MERCER

NEST

Oakbarn Financial Planning

Origo

Pension Bee

Pensions Management Institute

PIMFA

Pinsent Masons

PLSA

Portafina

PSIG

Quilter

Railways Pension Trustee Company Limited

ReAssure Limited (Phoenix Group)

Retirement Line Ltd

Reuters Pension Fund (RPF)

Sackers

Spence & Partners

Squire Patton Boggs

St James Place

Surrey Pension Fund Resources

The Financial Services Consumer Panel (FSCP)

The Society of Pensions Professionals

TISA

Transparency Task Force

Travers Smith LLP

Universities Superannuation Scheme Ltd

Willis Towers Watson

XPS Pensions Group