



Department  
for Work &  
Pensions

# The advice requirement and overseas pension transfers

Call for evidence on members with safeguarded  
pension benefits transferring outside the UK

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September 2016

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# Introduction

This call for evidence seeks to gather information on how the requirement to take advice is working for overseas members, and whether the current process should be maintained or adapted, to work better for individuals who are moving or already resident overseas.

## About this consultation

### Who this consultation is aimed at

This call for evidence is aimed at organisations and providers directly, or indirectly involved in advising or transferring safeguarded pension benefits to overseas schemes. This will include those who administer and manage both occupational and personal pension schemes; pension experts and lawyers; UK and overseas financial advisers and their representative bodies; and overseas pension schemes who have experience of receiving transfers from UK schemes.

The Government would also welcome comments from consumer groups and pension scheme members.

### Purpose of the call for evidence

This call for evidence will be used to inform future policy development relating to the requirement to take financial advice for members with safeguarded pension benefits.

### Scope of the call for evidence

This consultation applies to England, Wales and Scotland

### Duration of the consultation

The call for evidence period begins on Friday 30 September 2016 and runs until Friday 23 December 2016 at 5 pm.

### How to respond to this consultation

Please send your consultation responses to:

James Calverley

Decumulation and Transfers Team (Overseas), Department for Work and Pensions, 1<sup>st</sup> Floor, Caxton House, Tothill Street, London, SW1H 9NA

Email: [James.Calverley@dwp.gsi.gov.uk](mailto:James.Calverley@dwp.gsi.gov.uk)

# How we carry out calls for evidence

## Consultation principles

This consultation is being conducted in line with the revised [Cabinet Office consultation principles](#) published in January 2016. These principles give clear guidance to government departments on conducting consultations.

## Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator  
2nd Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA

Email: [caxtonhouse.legislation@dwp.gsi.gov.uk](mailto:caxtonhouse.legislation@dwp.gsi.gov.uk)

## Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:

Email: [freedom-of-information-request@dwp.gsi.gov.uk](mailto:freedom-of-information-request@dwp.gsi.gov.uk)

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

# Context

## **The advice requirement and overseas residents with safeguarded pension benefits**

It is important that individuals have the freedom to access their pension savings in the way that suits their needs best. It is also important to ensure suitable protections are in place, so members are informed where their pension savings contain potentially valuable guarantees. At the same time, Government wishes to avoid placing a disproportionate burden on members and organisations.

To avoid individuals unknowingly giving away valuable pension rights, a legal safeguard has been in place alongside the new freedoms since April 2015. This requires that members whose safeguarded pension benefits are assessed as being greater than £30,000 take financial advice before they access the pension freedoms by transferring or converting to a form where they can be accessed flexibly.

This requirement to take financial advice (“the advice safeguard”) applies to safeguarded benefits, including traditional salary-related defined benefit (DB) pension savings, and pension savings which contain a guarantee about the amount or rate of pension income. It also applies whether the transfer is to a UK pension scheme, or to a non-UK pension scheme, and whether it is for the purpose of accessing the pension savings flexibly, or for other reasons.

The Government has been made aware that the introduction of the advice safeguard has produced additional complexities for individuals who wish to transfer their safeguarded pension savings to a non-UK pension scheme, for instance because they are resident outside the UK or moving overseas on retirement.

This call for evidence seeks to gather information on how the requirement to take advice is working for overseas members, and whether the current process should be maintained or adapted, to work better for individuals who are moving or already resident overseas.

It also explores whether an alternative process to the existing advice requirement can and should be developed for overseas transfers. As this represents a significant step Government would need to carefully consider whether the potential benefits and risks of changing the requirement for one group of safeguarded members is in their interests, including whether any alternative can in fact offer the same consumer protections.

## Numbers of overseas members with safeguarded benefits and transfer volumes

1. Given that the advice safeguard has only been in place since April 2015, there is an understandable lack of current and historical data available about the numbers of members who could seek to transfer safeguarded benefits overseas. DWP has undertaken some preliminary analysis that suggests there could be around 700,000 individuals (in a range between 0.5 million to 1 million), living abroad with private sector contracted-out salary related defined benefit (DB) pensions not yet in payment.
2. DWP's estimates do not include those with funded public sector DB pensions, and non-salary related safeguarded benefits such as guaranteed annuity rates (GARs). The numbers living abroad with safeguarded pensions not in payment maybe far higher. However, it is worth noting that only those with a cash equivalent transfer value greater than £30,000, that wish to transfer their pension, will be affected by the advice requirement. The total figure for those potentially impacted by the requirement to take advice therefore may be lower.
3. The Government welcomes any further information and data that could help us estimate the volume of overseas transfers in defined benefit savings, or pension arrangements which include safeguarded flexible benefits such as a GAR. Ideally, it would be helpful to have information only for pension transfers greater than £30,000.

***Q1: Do you have any information on the scale of transfers of safeguarded pension savings over the last five years to overseas pension schemes, and any assessment of future demand for pension transfers?***

## Transfer process prior to April 2015

4. The processes by which members transfer their pension benefits to an overseas pension scheme are set by the interaction between DWP legislation and tax law. The Pension Schemes Act 1993 gave members a statutory right to transfer their pension savings into an alternative pension scheme and request a free statement of entitlement from the scheme trustee to ascertain the cash equivalent transfer value (CETV) of their non-money purchase pension rights.
5. After receiving their statement of entitlement, the member then has three months from the date of the statement to confirm to the scheme trustees that they wish to proceed with a transfer. Those who wish to transfer their safeguarded benefits to a qualifying recognised overseas pension scheme (QROPS), are also currently required to comply with the timescales set out above. For their transfer overseas to be free of UK tax, the receiving scheme must be a QROPS.

6. When a member exercises their right to transfer to another scheme, the trustees or scheme administrators of the ceding scheme must ensure the transfer meets certain statutory requirements. Where the transfer is to an overseas scheme. The member is responsible for establishing if the pension scheme in another country is a QROPS or they will be subject to a tax charge of 55%. The scheme administrator also has an incentive to check the scheme is a QROPS to avoid incurring their own tax charges on the transfer.
7. Before April 2015 members were not required under UK law to take independent financial advice, either from a financial adviser authorised by the FCA or a non-UK adviser. However, we understand that many sought some form of financial advice to facilitate the processes of transferring their pension benefits overseas and, this was frequently from a specialist adviser based in an overseas financial jurisdiction.

## **The existing advice safeguard**

8. The requirement that advice must be taken from an FCA-authorised adviser provides certain assurance as to the quality and content of the advice. In general, advice on transfer of benefits from DB schemes must be provided by, or checked by, a pension transfer specialist. This includes an analysis of the transfer (known as a transfer value analysis) that:
  - sets out the value of a member's existing safeguarded benefits, including other valuable benefits such as death benefits
  - calculates the rate of return that would need to be achieved in the receiving scheme to equal those benefits
  - provides a clear recommendation on whether the financial adviser believes that giving up their safeguarded benefits would be in the member's best interests, based on the transfer value analysis and the member's own circumstances.
9. Because the FCA's rules require firms advising on pension transfers to have the appropriate permissions, it in effect imposes certain quality standards on the advice given to members. The quality of advice provided is further assured because the pension transfer specialist advising on the pension transfer would be liable for the consequence of any poor advice. Depending on the circumstances, the member could be entitled to financial compensation.

## **Impact of the existing safeguard on Overseas Residents**

10. There have been a number of common concerns raised about the appropriateness of requiring members who are resident overseas to seek advice



from an FCA-authorized adviser. Those living overseas who wish to transfer their pension may have different or additional circumstances and motivations for transferring pension benefits to an overseas scheme than a member with DB benefits seeking to transfer to a UK DC scheme to take their pension flexibly.

11. Prior to the introduction of the advice requirement, a member would often seek out a non-UK based financial adviser, because they were able to advise on local tax rules and/or the suitability of overseas pension schemes. Alternatively local advice would be sought because it was a requirement of the receiving scheme or overseas financial jurisdiction.
12. By contrast, UK financial advisers may not wish, or be able, to offer this form of specialised transfer service covering the tax and pension rules of the member's country of residence. The result is that members resident overseas with safeguarded pension benefits may be financially disadvantaged by having to seek two separate sets of advice, one to meet the conditions of the new advice safeguard requirement and another from a local overseas adviser to advise on issues relating to the transfer overseas, such as tax implications or timing of the transfer to minimise the impact of currency fluctuations.
13. The member may also be exposed to unnecessary risk because advice is taken in two different jurisdictions, with the result that it is not clear how the member should seek recompense in event of a poor outcome as a result of the advice.
14. Being resident outside the UK may also mean that the member is further disadvantaged as they may be unable to secure an FCA-authorized financial adviser willing, or sufficiently qualified, to provide financial advice for an overseas transfer. Feedback received from members living overseas has revealed reluctance from advisers to take on pension transfers to overseas schemes. The reasons given include a lack of suitable expertise, and a concern that taking on such business will be unprofitable because it increases the cost of their personal indemnity insurance.

## **Retaining the existing safeguard on overseas transfers**

15. Given the important protections that the advice safeguard offers, the simplest way to guarantee these protections would be to leave the existing safeguard unchanged in its application to overseas residents.
16. **As has been outlined in this chapter, there are clearly concerns regarding the operation of the safeguard in its current form.** Nevertheless any alternative to the existing advice safeguard would constitute a significant step. Any proposed alternative process should therefore only apply to members with safeguarded pension benefits resident overseas (or potentially, who are intending to move overseas) who wish to transfer their pension benefits to a QROP scheme.

17. We welcome views and evidence on the benefits and risks of maintaining the existing advice safeguard and insights on how the practical difficulties overseas members are experiencing can be addressed without Government intervention.

**Q2. What are the advantages, or disadvantages, of continuing to apply the advice requirement in its current form to members now resident overseas?**

## Removing the advice safeguard for overseas transfers

18. The Government could instead restore the pre-April 2015 transfer process, and allow individuals to transfer their safeguarded benefits to an overseas pension scheme without regulated advice by an FCA-authorized adviser.

19. Where the jurisdiction of the scheme to which the member was transferring (or the scheme itself) required the member to seek regulated financial advice, the member would still need to obtain this as before. However where neither receiving scheme nor the jurisdiction in which it was located require advice, the member would be able to complete the transfer without any advice.

## Impact of removing the existing safeguard

20. Removing the requirement to take regulated financial advice increases the risk of a member deciding to make an unsuitable transfer to an overseas scheme. Indeed this might be perceived as a perverse outcome, as it would mean that a member potentially incurring additional tax charges in addition to surrendering valuable benefits would receive less advice on the implications of making this decision than a member than transferring their benefits to a DC scheme in the UK.

21. Any exception to the existing advice safeguard should also apply only to those members to whom it is intended to apply - namely, members who are now resident overseas, and potentially those who are planning to move overseas.

22. Any exception for overseas residents, through removing the advice requirement, should therefore exclude UK residents who wish to use it for reasons not intended, such as to avoid paying for an FCA-authorized adviser.

23. This requires a suitable definition or test of residency which trustees of the ceding scheme can use to confirm that the member is an overseas resident. For example, for many UK benefits, a habitual residence test must be met<sup>1</sup>. Although it has no statutory definition, case law prescribes that amongst the relevant factors to be taken into account are bringing possessions so far as is practicable, doing everything necessary to establish residence before coming, having a right

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<sup>1</sup> See, for example, Decision Makers' Guide Vol 2 Ch 7 Part 3: Habitual residence and right to reside IS, JSA and SPC

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/538387/dmgch0703.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/538387/dmgch0703.pdf)

of abode, seeking to bring family, and having durable ties with the country of residence or intended residence.

24. The habitual residence definition appears to offer an appropriate level of commitment that the member has genuinely taken up residence in the country where their proposed receiving scheme is located. However it may well be very difficult for trustees or scheme administrators of the ceding scheme to verify that the member has genuinely moved overseas and is not simply adopting a temporary address to circumvent the advice safeguard for UK residents.

***Q3. What are the advantages, or disadvantages, of lifting the advice requirement for members living overseas, or potentially moving overseas?***

***Q4. We welcome views on the use of permanent resident criteria to establish whether the advice requirement should be lifted. How might trustees, scheme administrators or others verify that the residence criteria had been met?***

## **Permitting the overseas member to seek equivalent advice in their country of residence**

25. Government could consider a legislative change which allowed a member with safeguarded benefits resident overseas which they were seeking to transfer to a pension located in the jurisdiction in which they were resident to comply with an alternative advice requirement. Under this test, they would need to prove that they have taken advice from a “local” financial adviser, registered and authorised in their country of residence.
26. For example, a member now resident in Australia could comply with DWP’s independent advice regulations by taking financial advice from an authorised Australian financial adviser.
27. Such a proposal would require that the advice must still be taken from a financial adviser, but now it would be one who was potentially better placed to advise the member on the transfer into the receiving scheme. The assumption is that a local financial adviser would have more expertise as to the applicable regulatory rules, tax implications and investment options available. The member would then also be able to transfer their pension using only one financial adviser, in the location where they reside, which is logistically easier and more cost-effective.
28. In such instances members could then be required to demonstrate they had taken advice from an independent adviser who was qualified to advise on all aspects of the transfer, including the implications of giving up safeguarded benefits and transferring to a local QROP scheme
29. The advice safeguard introduced in April 2015 provides protections on the quality and content of advice received. Stakeholders have differed in their view as to

whether advice equivalent to that available in the UK can be accessed overseas, and we believe that advice equivalent to that found in the UK is unlikely to be available in all jurisdictions.

30. Criteria that any alternative equivalent advice requirement should demonstrate are—

- High quality advice - the advice received should be broadly equivalent to the advice that the member would have received had they gone to an FCA authorised adviser.
- Sufficient consumer protections - there needs to be appropriate protection for overseas residents
- Practical to deliver - the member should be able to demonstrate that they have taken advice, and the ceding scheme should be able to confirm that advice has been given by a financial adviser with the correct permissions.

31. These criteria are considered in further detail below. Any responses should seek to address how their proposed alternative process addresses these criteria.

## Quality of advice

32. The FCA cannot set, monitor or enforce standards for advice received overseas, which adds a series of barriers to developing an alternative process. Moreover:

- there are no existing additional requirements (besides the current advice requirements) setting out the *type* of advice members must receive before transferring to a QROPS;
- the FCA has no power to ensure that overseas advisers not regulated by the FCA are competent to provide advice and that their advice is suitable;
- the quality of oversight of overseas advisers will vary by the jurisdiction. Some jurisdictions may have similar regulatory oversight to that offered in the UK; others may not.

33. Discussions with stakeholders have revealed that it may be possible for overseas advisers to take and obtain relevant qualifications, either set by relevant professional bodies in the UK or equivalent qualifications that are set within their own financial jurisdiction. A possible option is therefore to create or identify a recognised set of minimum standards by which advisers could demonstrate they have obtained the relevant qualifications to become a pension transfer specialist. Overseas advice might then only meet the advice safeguard if it is delivered by overseas advisers who can demonstrate they have met a minimum set of standards.

34. The Government is keen to explore how this suggestion, or any other methods of assuring the quality of advice given to overseas members, could be developed. We therefore welcome views on the practicalities of establishing and applying standards for overseas advice, including any measures that could be introduced to ensure continuing oversight of advice and advisers.

***Q5. How can Government best ensure local advisers meet appropriate quality standards?***

## **Consumer protection**

35. Historically, those targeted by fraudsters for their pension were primarily under 55 years of age, lured into accessing savings early with false promises of pension loans. However, the pension flexibilities have created new opportunities for investment scams.

36. The Government wishes to ensure that individuals are protected. It has therefore introduced a range of measures to help individuals wishing to transfer or convert their safeguarded benefits to obtain flexible benefits, to understand both their options and the risks involved, including those of potential scams. These measures apply irrespective of whether the savers are in the UK, or where they plan to transfer their pension. In addition to the advice requirement, measures in place include:

- Pension Wise: with its recognisable branding, this free and impartial service offers individuals guidance on their choices;
- stronger tax registration process to make it easier for HMRC to refuse or deregister suspicious schemes;
- an industry code of practice for transferring pension savings from one scheme to another<sup>2</sup>.

37. The Government, the Pensions Regulator and the FCA have also sought to improve awareness of the risks of pension scams through several publicity campaigns that alert people to warning signs of investment scams such as cold calling. However, these campaigns are UK-based and individuals overseas may be less exposed to them and therefore less aware of the important messages that they deliver.

38. Additional risks are also attached to the transfer of pension funds from a UK-based to an overseas scheme, such as mismanagement of the process resulting in the member being subject to a tax charge. The requirement to take regulated financial advice reduces the risk of a member deciding to make an unsuitable

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<sup>2</sup> Combating pension scams: a code of good practice -<http://www.combatingpensionscams.org.uk/>

transfer to an overseas scheme. If the member suffers detriment, the client can also bring a complaint to the Financial Ombudsman Service (FOS), who will consider their circumstances and how advice was given relative to the FCA requirements, and the FOS can then instruct the adviser's firm to compensate the client for losses up to £150,000 if the complaint is upheld.

39. In contrast, where advice is provided by an adviser not regulated by the FCA, the member's country of residence may have an equivalent regulatory regime that provides similar member protections to those offered by the FCA. However, any alternative process to the existing requirement to take financial advice from an FCA authorised adviser, would not be able to ensure compensation for the member for poor quality advice on transferring of safeguarded benefits.
40. The Government therefore seeks views on what scope there is to design an alternative process that offers protection to members resident overseas and if there are any measures that could be put in place to minimise risk.

***Q6. We would welcome evidence on the type and level of financial redress that is available for overseas residents transferring their safeguarded pension benefits to overseas jurisdictions other than that provided by the UK.***

## **Practicalities of delivery**

41. As covered above in paragraphs 25-30, any alternative process to meet the advice safeguard for overseas residents would need a suitable definition or test of residency which trustees of the ceding scheme can use to confirm that the member is an overseas resident. Such a definition should also allow the scheme trustees or administrators to distinguish between members who were genuinely resident overseas and those were resident in the UK and subject to the existing safeguard.
42. Any alternative advice process would also need to have a way for scheme trustees and administrators to check that the member has taken advice from a local financial adviser. With the existing advice safeguard, where the requirement to obtain financial advice applies, trustees or managers of the ceding scheme must receive a written statement from a financial adviser that confirms:
  - that the scheme member in question has received appropriate independent financial advice on the merits of transferring their safeguarded benefits;
  - that the financial adviser has the correct permission to carry on the regulated activity; and
  - the adviser's reference number and the name of the member they have advised.

43. This statement must be received before any request to release the member's safeguarded pension benefits can be actioned. Although schemes are not required to review or check the financial adviser's recommendation to the member, they are required to check that the adviser is authorised, by reference to the FCA's Financial Services Register.
44. We would welcome views and evidence on how trustees and scheme administrators might verify that a member resident overseas had genuinely received advice from an authorised provider in their own country.

***Q7. How can members with safeguarded benefits who are now resident overseas demonstrate to the ceding scheme that they have obtained independent advice from a local adviser?***

## **Permitting equivalent advice from a third country**

45. Many overseas residents are seeking to transfer safeguarded pension benefits to pension schemes located in their own country. In this instance, an adviser based in the member's country of residence potentially could ensure a single regulatory authority would oversee both the adviser and the investment of the pension transfer into a new scheme. However, other overseas pension transfers are made by individuals who are not resident in the same country as the one in which the receiving pension scheme is registered.
46. The Government has been made aware that it is common for members to seek the services of financial advisers located in other financial jurisdictions, where advisers and schemes provide intermediary services that receive the initial transfer of a member's safeguarded pension before transferring them to a pension scheme of the member's choice. Members may choose to use these services for various reasons, including the absence of a suitable regulatory regime, or financial adviser in their current country of residence.
47. In these circumstances, the adviser, and possibly the initial destination of the members' pension transfer from the UK, differs from the financial jurisdiction in which the member resides. Therefore, allowing the advice requirement only to be met by advice from a financial adviser based in the same financial jurisdiction as the member presents difficulties for members who seek or rely on these advice services to transfer their UK safeguarded pension. It may mean, for example, that the member may not be able to locate a local adviser in the county of residence, who is willing or competent to advise on a cross-border pension transfer to a third country.
48. However, permitting transfers via advisers or to overseas schemes located in countries where the member is not resident could introduce significant additional risks to consumer protection from scams, or difficulties obtaining financial redress.

49. The Government welcomes views on the relative merits and potential issues of extending the coverage of an equivalent advice requirement process for transfers involving advice or pension schemes located in a third country.

***Q8. The Government welcomes any information on current transfer practices involving schemes or advisers in third countries, including how these processes meet the existing advice safeguard.***

***Q9. What are the risks and benefits of allowing overseas members with safeguarded benefits to take advice from a financial adviser who is authorised in a country different from their country of residence - for example in the country where the receiving pension scheme is registered, or in another country?***