



Department
for Work &
Pensions

The advice requirement and overseas pension transfers

Government response to the call for evidence

March 2018

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Introduction

This is the Government response to the call for evidence on the advice requirement and overseas pension transfers, which ran from 30 September to 23 December 2016.

Background

The requirement to take financial advice ('the advice requirement') was introduced by section 48 of the Pension Schemes Act 2015 alongside the pension freedoms reforms ('the freedoms') in April 2015. It was designed to ensure members with over £30,000 in safeguarded pension benefits¹ are informed of the implications of giving up those benefits.

These members are required to take advice from a financial adviser authorised by the Financial Conduct Authority (FCA) before transferring or converting safeguarded pension benefits to a form where they can be accessed flexibly (or, in the case of safeguarded-flexible benefits, before accessing them directly by taking an uncrystallised funds pension lump sum). The requirement applies whether the transfer is to a UK pension scheme or to a non-UK pension scheme.

With safeguarded pension benefits, the scheme and its sponsoring employer generally bear the funding risk of the guarantee. Transferring or converting these types of benefits to a form where they can be accessed flexibly shifts the risk to the member. The advice requirement was introduced following feedback from industry and consumer groups, to ensure that members would be fully informed of the valuable guarantees they were surrendering before taking any decision, and to counteract the risk of members acting against their own best interests or being encouraged by anyone to transfer out of their scheme.

The Government received several representations from industry and individual members that the requirement may have created difficulties for overseas residents wishing to transfer their pension savings from the UK to an overseas pension scheme. As UK-based financial advisers are often unlikely to know overseas tax regimes or pension rules, those seeking to transfer safeguarded pension benefits to a non-UK scheme may often need to seek advice from both an FCA-authorised financial adviser and an overseas financial adviser.

The Government launched a call for evidence in September 2016 to explore how the advice requirement was working for non-UK residents with safeguarded pension benefits. The call for evidence also sought views on how a possible easement for

¹ Safeguarded benefits are defined in legislation as pension benefits that are not money purchase or cash balance benefits. In practice, they are benefits which include some form of guarantee or promise about the rate of secure pension income that the member will or may receive. Examples include salary-related defined benefit schemes and defined contribution schemes offering a Guaranteed Annuity Rate (GAR).

these members might work if it was found that the advice requirement was placing disproportionate obstacles in relation to overseas transfers and set out three broad options and invited views and evidence on each. These options were:

1. Retain the existing requirement to take advice for overseas residents;
2. Remove the requirement to take advice for overseas residents;
3. Introduce an easement that would permit overseas members to seek advice meeting an equal minimum standard in their country of residence, rather than requiring them to seek advice from an FCA-authorized financial adviser.

Developments since the call for evidence closed

New tax charge for overseas pension transfers

1. As UK pensions benefit from tax relief, UK tax law sets out the circumstances in which a pension transfer can be made without incurring a tax charge. For example, any transfer overseas must be made to a qualifying recognised overseas pension scheme (QROPS) for the member to avoid a 55% tax charge.
2. In March 2017, the Government introduced a 25% tax charge for transfers to a QROPS². The charge applies unless:
 - both the individual and the QROPS are in the same country;
 - both are within the European Economic Area (EEA); or
 - the QROPS is provided by the individual's employer.
3. This is likely to reduce the number of transfers to QROPS in a third country that is not the UK or the member's country of residence. These types of transfer have also been associated with scams where the member is encouraged to transfer their funds to a country they have no connection with.

Updated rules for pension transfer advice

4. The FCA's Handbook sets out rules for advice given to consumers on the conversion or transfer of safeguarded benefits. Following a consultation in 2017³, the FCA have updated their rules for such pension transfer advice to reflect the increased demand for advice and changes to the market following the introduction of the freedoms. These new rules were announced in the FCA Policy Statement PS18/6 and rules will take effect from 1 April 2018, with some other parts taking effect from 1 October 2018.

² Qualifying recognised overseas pension schemes: charge on transfers, <https://www.gov.uk/government/publications/qualifying-recognised-overseas-pension-schemes-charge-on-transfers/qualifying-recognised-overseas-pension-schemes-charge-on-transfers>

³ 'Advising on Pension Transfers', <https://www.fca.org.uk/publication/consultation/cp17-16.pdf>

5. The new rules require pension transfer advice to result in a personal recommendation. The personal recommendation should be backed up by an analysis of the member's options taking into account the member's personal circumstances and objectives. This appropriate pension transfer analysis (APTA) looks at the income needs of the member and how well this might be achieved with their current scheme and the proposed receiving scheme. It will also include the value of any death benefits and the member's appetite for risk. The APTA will also be expected to cover specific issues relating to overseas pension transfers⁴, and whether a client's objectives can best be achieved via the current scheme or from an overseas arrangement.
6. For overseas transfers, there are further considerations when assessing the destination of the funds and the member's individual circumstances. These include the local investment market, tax rules, regulatory and compensation regime, currency exchange fluctuations and international tax agreements. To ensure that members receive suitable advice in these circumstances, the FCA identified that it may be necessary for the UK-based pension transfer specialist to work with a financial adviser in the destination country who would be better informed on such local matters.
7. In any event, when carrying out the analysis of the transfer, the UK-based adviser should be taking into consideration the destination funds into which the transfer value would be transferred. This would consider the nature of the investments as well as the potential returns and charges on the investments. Without this, the UK-based adviser would not be able to make an appropriate comparison of the client's options. This broad type of model, where a pension transfer specialist works with a second financial adviser who focuses on investment advice to the member, is not unique to overseas transfers; it is also used for some UK transfers. In its consultation, CP18/7, the FCA has proposed further guidance on how two firms of advisers should work together.
8. The FCA have also proposed extending the qualification requirements for an IFA specialising in pension transfers (Pension Transfer Specialist) to include the Level 4 Retail Distribution Review (RDR) qualifications for advising on investments.

⁴ From herein referred to as 'overseas transfers'

Summary of responses

9. We received 52 responses to the call for evidence from a broad range of respondents. Respondents included large and small adviser firms, based in the UK and overseas, as well as some UK firms with an international presence. We also received responses from pension providers, lawyers, trustees, administrators, professional bodies and consumer protection bodies. We are grateful for all responses received.

The current requirement

10. Over half the respondents supported retaining the current advice requirement, although some acknowledged the additional challenges faced by overseas members. Approximately a quarter of respondents expressed a preference for an easement that would allow a non-UK resident to use an overseas financial adviser instead of one in the UK. Of those remaining, most did not give support for any one of the options. Only two respondents suggested that overseas members should not be required to take advice.
11. The respondents who supported maintaining the current advice requirement included adviser firms, pension lawyers, professional bodies and consumer protection bodies and were mainly based in the UK. The majority of those who stated a preference for an easement were advisers based outside of the UK or were multinational firms.
12. The vast majority of respondents welcomed the protection provided by the advice requirement including access to the Financial Ombudsman (FOS) and the Financial Services Compensation Scheme (FSCS) where the advice is provided in the UK. This was seen as the most important consideration when evaluating an easement. Some of the respondents expressed concern that relaxing the advice requirement would introduce an increased risk of scams or mis-selling. It was suggested that this was counter to the Government's current work in preventing pension scams.

“The main advantage is that the member receives advice from a financial adviser based in a good regulated environment. He benefits from the access to the Financial Ombudsman if the client believes the advice was wrong and the Financial Services Compensation Scheme if the firm that gave the advice cannot meet its liabilities.” **Montfort International**

“Any conditions that could feasibly be put in place before an exception from the advice requirement applied are unlikely to be successful in preventing scam arrangements from taking advantage of the difference between UK and overseas transfer requirements.” **Eversheds**
13. No respondents submitted evidence that the requirement to take financial advice is actively preventing overseas residents from transferring their safeguarded

pensions. Some respondents noted the additional considerations for overseas residents, primarily the potential need to engage and pay for two financial advisers, one in the UK and one locally, and the limited number of UK financial advisers willing to advise on these transfers. Some respondents stated that a lack of suitably qualified financial advisers can result in these transfers taking longer than they had before the advice requirement was introduced. A few respondents suggested that sometimes the member was unable to obtain advice within the three-month period during which the transfer value was valid.

“The process of engaging with an FCA regulated company can be time [consuming] and engaging overseas causes delays. The [Isle of Man (IOM) Financial Services] Authority has been informed on some occasions that the client missed the 3 month guaranteed transfer window. It is an expensive exercise for an IOM client, as they are having to pay a fee to the UK adviser as well as a fee to the IOM adviser.” **Isle of Man Financial Services Authority**

14. The additional cost was generally seen as a consequence of the complexities of providing advice on transferring between financial jurisdictions and the benefits that can accrue from making informed decisions based on good advice. However, a few respondents suggested it is unfair that overseas residents wishing to transfer to a non-UK scheme should face greater expenses than if they were transferring to another UK scheme.

“UK advisers do not necessarily have knowledge of overseas legislation and regulation. This can lead to the UK adviser taking advice from an overseas firm, at extra cost to the client, in order that he can complete his advice report.” **Gibraltar Association of Pension Fund Administrators**

Establishing residency

15. The call for evidence asked respondents to consider how an easement could be established for those living, or intending to live, abroad. We received a range of suggestions for confirming members' country of residence. Most focused on what evidence, such as residence visas, a member could be required to provide. Some respondents considered what process could be used to verify a member's residency. The habitual residence test, which is used to determine entitlement to many UK benefits, was seen as too subjective. Some respondents suggested the use of HMRC's statutory residence test, which is used to establish tax residency, but others felt it would be difficult for the ceding scheme to administer.

“Applying a detailed residency test such as the “habitual residence” test described in the call for evidence could, in our view, place a significant burden on trustees, providers and potentially also on members.” **Eversheds**

“A more straightforward means to consider non residence, should simply living in a jurisdiction be insufficient, would seem to be to apply the UK Statutory Residence Test” **AAM Advisory**

“We believe that the Statutory Residence Test would be too time consuming, complex and ultimately expensive for the consumer in establishing residence for each case.” **Personal Finance Society**

Third country jurisdictions

16. In considering how an easement could work, the call for evidence asked for details of what role third country jurisdictions play in overseas transfers from the UK. A third country jurisdiction is a country which is not the UK or the member’s country of residence. Respondents reported that it can be legitimate for a member to use a financial adviser, or transfer to a QROPS, in a third country. This may occur where there are no QROPS in the member’s country of residence, where the member feels there is insufficient regulation of financial advisers in their country of residence or where the member cannot find a local financial adviser.
17. Respondents identified that advice on transfers involving a third country is more complex due to the need to consider additional tax implications and regulatory regimes.

“There is the need to cover all 3 fiscal/advice regimes in terms of expertise. The adviser would need a knowledge of UK pensions; a knowledge of QROPS and the fiscal regime in the country where the QROPS is based; a knowledge of the reciprocal tax agreement between the country where the QROPS is based and the country of residence; and a knowledge of local tax issues.” **The Pensions Advisory Service**

Equivalent protection

18. The training undertaken in non-UK jurisdictions in relation to pensions was generally considered by respondents to be insufficient for advising on transfers of UK pensions with safeguarded benefits.

“Very few overseas jurisdictions have any sort of professional qualifications and regulatory oversight for advice on Pensions, particularly transfers from Defined Benefit Schemes.” **TMF Group**

“There should be no lowering of standards – understanding UK pensions with safeguarded benefits has to be demonstrated and this should not be via “equivalent” qualifications taken in other jurisdictions which may contain no relevant UK pension content.” **Personal Finance Society**

19. Some respondents suggested that those overseas advisers who were authorised and operating in a well-regulated jurisdiction could supplement their local training with UK pension transfer qualifications. However there is no existing process for evaluating the regulatory systems of other countries or the authorisation of overseas advisers; some respondents proposed this should be the responsibility of the UK Government – others suggested that this would be unduly burdensome.

“The Government could monitor and maintain a register of countries in which the local advice requirements are deemed adequate. This could be combined with the proposed requirement for training on relevant aspects of UK legislation or requiring overseas advisers to obtain UK qualifications (e.g. from the CII) on top of their local qualifications.” **Aon Hewitt**

“This is likely to be a complex, and costly, operation as each country would need to be looked at individually and measuring against knowledge which may have little or no relevance in the country in question would be difficult.”

Prudential

20. One response pointed out that even with the clear guidance on pension transfer advice in the UK, active supervision is still necessary to ensure quality.

“The difficulties faced by the FCA in ensuring that appropriate independent advice is given correctly even within the UK regulatory framework is already apparent, with their alert of 2 August 2016 highlighting concerns in relation to business acquired from unregulated advisers and introducers (which will include overseas advisers)”⁵ **Barnett Waddingham**

21. The call for evidence asked whether there were compensation avenues available overseas that members could use if they were to suffer financial detriment. For example, where the advice is provided within the UK regulatory framework the member would have access to the Financial Ombudsman Service and Financial Services Compensation Scheme. Some respondents gave examples, such as local ombudsman services. However, most respondents indicated that this varies between countries. Some respondents also suggested that such services would have to be assessed and monitored by Government. It was also suggested that it may be difficult for a regulator to assess advice on a type of benefit they are unfamiliar with.

“The level of redress available varies considerably between different regimes... Other regulators may have difficulty understanding whether something constitutes poor advice without expertise in UK registered pensions.” **The Pensions Advisory Service**

22. Respondents were clear that trustees and scheme managers should not be burdened with more checks than they already carry out and, were an easement to be applied, the liability of trustees and scheme managers should be subject to reasonable limits.

“The PLSA survey showed that due diligence work on transfer requests absorbs – on average – around 9 hours of staff time. Some schemes reported receiving as many as 50 transfer requests over a six-month period. This illustrates why schemes would be very reluctant to take on yet more due diligence checks.” **Pensions and Lifetime Savings Association**

⁵ The FCA have issued subsequent notices about aspects of advice in relation to pension transfers on 24th January 2017, 3rd October 2017 and 3rd November 2017.

Government response

Summary

23. Having considered the responses to the call for evidence Government considers that the advice requirement as applied to overseas transfers is largely working and does not require an easement.

Numbers affected

24. There were 9,700 transfers to a QROPS⁶ in the tax year 2016 to 2017; respondents suggested that between 25% and 50% of transfers may be from a scheme with safeguarded benefits. This means there may have been between 2,400 and 4,900 transfers from these schemes. However, only transfers of more than £30,000 would be subject to the advice requirement and we did not receive any indication from providers what proportion of transfers would fall into this category. It is therefore difficult to assess the number of overseas transfers affected by the advice requirement.

25. Following the introduction of 25% tax charge in March 2017, there was a reduction in the number of transfers to QROPS.

Retaining the existing requirement to take advice for overseas residents

26. The evidence received did not indicate that the requirement to take financial advice is routinely preventing overseas residents from transferring their safeguarded pensions out of the UK. The Financial Ombudsman Service reported only four complaints in relation to the advice requirement in the 18 months from when it was introduced to when they responded to our call for evidence.

“We’ve seen fewer than 20 complaints over the last three years about transfers overseas or difficulty in accessing UK pension benefits from overseas. Of these, four relate to the advice requirement imposed since the introduction of the pension freedoms... Approximately 20% of these complaints overall have been upheld.” **Financial Ombudsman Service**

27. There is evidence to suggest that the demand for pension transfer specialists carrying out transfer advice on giving up safeguarded pensions exceeds supply. As a result, members sometimes struggle to find a financial adviser or face delays while waiting for an adviser to complete the advice process on their proposed

⁶ ‘Transfers to Qualifying Recognised Overseas Pension Schemes’, <https://www.gov.uk/government/statistics/transfers-to-qualifying-recognised-overseas-pension-schemes>

transfer. This applies to pension transfers within the UK and those overseas but the lack of suitable transfer specialists is exacerbated by the more complex nature of overseas transfers.

“[The disadvantage is that] an expatriate may find it difficult to source advice from a UK FCA regulated adviser and may not proceed with considering a transfer because of these practical difficulties, rather than for the right reasons.” **QROPS Bureau**

28. The FCA’s changes to pension transfer advice rules should offer further clarity for advisers about operating in this market. Providers of pension transfer qualifications introduced new qualifications in anticipation of the FCA’s rule changes and have reported high demand for them. The Chartered Insurance Institute reported that more than 500 personal finance professionals signed up to its new pension transfers qualification within the first week.⁷ We expect this to lead to an increase in the number of pension transfer specialists in due course.

Considering an easement

29. The Government is committed to the principle that members with safeguarded benefits should be informed of their value and the merits of keeping them before making a decision to give them up.

30. We invited evidence on how an easement that allowed members to satisfy the requirement by taking advice from a financial adviser in their country of residence might work. It became clear from the responses that the information needed to verify that the easement applies is not readily available for trustees. It would require new mechanisms for establishing member residency, comparing overseas regulatory frameworks with our own and evaluating the quality of overseas advisers. These would add additional complexities to a process which is already inherently more complicated as it spans at least two financial jurisdictions.

31. In addition, and importantly, we are not satisfied that an easement that allows the advice requirement to be met by an adviser not authorised and supervised by the FCA would offer sufficient protection to members. Transfers can carry the risk of scams and this is potentially magnified for overseas transfers where the destination of the funds being transferred can be more opaque.

“Transferring outside of the UK regulated environment is a higher risk transaction than a transfer to a registered pension scheme, so the existence of the advice requirement as a consumer protection measure is particularly important.” **Investment and Life Assurance Group**

“The main advantage of maintaining the current approach is that it ensures a high level of protection for the large number of members who could potentially be encouraged to transfer overseas inappropriately – perhaps as part of a

⁷ ‘Demand for pension transfer AF7 qualification soars’, <http://thejournal.cii.co.uk/news/demand-for-pension-transfer-af7-qualification-soars>, published 14 September 2017

pension scam - with serious consequences for their financial welfare.” **Aon Hewitt**

32. Respondents who detailed how they advise members on the transfer of safeguarded benefits to a QROPS told us that they use both a UK adviser and an overseas adviser.
33. It is widely acknowledged that transferring safeguarded pension benefits overseas is a complex financial decision; the decision to surrender safeguarded benefits and the decision of where to invest, including the regulatory and tax implications of transferring to another jurisdiction. Responses to the call for evidence suggested that it is rarely the case that a single transfer specialist would be sufficiently qualified and experienced to advise on an overseas transfer without liaising with an adviser in the other country involved.
- “The FCA regulated adviser assesses the merits and risks of money being transferred from a safe, registered scheme in the UK, protecting consumers from falling victim to scams. The role of the overseas adviser is to then provide expert advice on how the released funds can be invested in that jurisdiction according to the consumer’s needs. Both elements of this advice are essential as each serve a different purpose.” **Financial Services Consumer Panel**

Conclusion

34. The vast majority of respondents welcomed the protection afforded to members by the advice requirement. Only two respondents suggested that the advice requirement should not apply to overseas members. Respondents were also concerned that relaxing the advice requirement could lead to an increased risk of scams or misselling.
35. Feedback also suggested it would be extremely difficult to ensure that the quality of overseas advisers was suitable or that members would have access to financial redress overseas in the same way that they do in the UK from the Financial Ombudsman Service and Financial Services Compensation Scheme.
36. Although we recognise that the shortage of financial advisers specialising in pension transfers can delay the process for some members, it is to be expected, and widely accepted, that advice on transfers across borders is inherently more complex regardless of the type of pension benefit being advised. While we expect more transfer specialists to continue to enter the market, we will continue to monitor the numbers of suitably qualified advisers and the capacity of the market to cope with demand for overseas transfers. Evidence is also emerging that some UK firms are already making connections with overseas advisers in order to provide more coherent and rounded advice on overseas transfers.
37. Following consideration of these points and the responses to the call for evidence, we are largely satisfied that the advice requirement is working as intended for overseas transfers by offering an effective level of protection for members. We therefore intend to retain the advice requirement for overseas transfers at the

present time since the gains provided in consumer protection outweigh the issues faced by some members with delays in the overseas transfer advice process.

List of respondents

4 Square Advice
AAM Advisory
AES Financial Service
Aisa Direct
Aon Hewitt
Association of Consulting Actuaries
Association of Pension Lawyers
Australian Securities and Investments Commission
Barnett Waddingham
BDH Sterling
Boal & Co
BT Pension Scheme
Chartered Global
Cradle Overseas Pensions
DeVere
DirectDocs.com.au
Equiniti Pension Solutions
Eversheds
Expat IFA
Financial Migration
Financial Ombudsman Service
Financial Services Consumer Panel
Gibraltar Association of Pension Fund Administrators
Guernsey Association of Pension Providers
Henley Financial
Investment & Life Assurance Group
Isle of Man Financial Services Authority
Isle of Man Financial Planners and Insurance Brokers Association
Mark Hattersley
Mercer
Momentum

Montfort International
Old Mutual Wealth
Pensions and Lifetime Savings Association
Personal Finance Society
Praemium
Prism Xpat
Prudential
QROPS Bureau
QROPS Specialist
RPMI
Sackers & Partners
Society of Pension Professionals
Standard Life
STM Group
Superannuation Arrangements of the University of London
The Pensions Advisory Service
TMF International Pensions
UK Pensions Melbourne
Willis Towers Watson
Xafinity
Xerox