Department
for Work &
Pensions

Pension Scams: Empowering Trustees and Protecting Members

Consultation on The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

May 2021

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Ministerial foreword

Foreword by the Minister for Pensions and Financial Inclusion

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 criminals to carry out their malevolent intentions. That is why I intend to take forward the implementation of the measures introduced in Section 125 of the Pension Schemes Act 2021, which received broad cross-party support. This consultation outlines our proposals which we intend to bring forward at the earliest opportunity.

These new measures will enable trustees to prevent a transfer request if they see evidence of 'red flags'. They will also, for other potentially fraudulent transfers, prevent people's hard-earned savings being moved to suspect schemes without them receiving expert guidance. These conditions can relate to both the destination of the transfer or where the pension saver is unclear about how their money will be invested or how much they will be charged for their savings to be managed. These measures empower trustees and managers to act and build on the ban on pensions cold calling and tougher rules to stop scammers opening fraudulent pension schemes Government has already introduced.

I have listened to industry about the important part trustees play in preventing scams and believe the conditions on transfers set out in the draft regulations attached to this consultation put them in the driving seat when it comes to pension transfers.

My officials and I have had extensive discussions with industry and the regulators in setting the level and detail of our ambition. We know there is a tremendous amount of good work already going on and want to build on that. I expect trustees to continue to undertake due diligence, however; I want that process to be supported by the clear conditions set out in these regulations.

I know we all want to support people have the best retirement they can and one of the ways we can achieve that is by preventing them from being scammed. I believe this consultation sets out how we can work together to achieve that goal.

Guy Opperman MP Parliamentary Under-Secretary of State at the Department for Work and Pensions

Introduction

About this consultation

Who this consultation is aimed at?

Anyone who has an interest in pension transfers, in particular pension scheme trustees and managers, and pension scheme members.

Purpose of the consultation

To seek views and opinions on the proposed 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.

Scope of consultation

As pensions policy is a reserved matter for Scotland and Wales, this consultation therefore applies to England, Wales and Scotland. It is anticipated that the Department for Communities will make corresponding legislation for Northern Ireland.

Duration of the consultation

This consultation will be open from 14 May 2021 until 10 June 2021. Please ensure responses are received within this period as late responses will not be incorporated into the department's response to this consultation.

How to respond to this consultation

You can respond to this consultation by e-mail to:

caxtonhouse.dwptransferegulations@dwp.gov.uk

or by writing to:

Kirsty Knight

Department for Work and Pensions

Policy Group

Private Pensions and ALB Partnerships

Zone A, Third Floor South,

Quarry House,

Leeds LS2 7UA

Government response

We will aim to publish the Government response to the consultation on the GOV.UK website. The consultation principles encourage Departments to publish a response within 12 weeks or provide an explanation why this isn't possible. Where consultation is linked to a statutory instrument, responses should be published before or at the same time as the instrument is laid. We intend to publish this response at the same time as the instrument it relates to is laid.

The report will summarise the responses.

How we consult - Consultation principles

This consultation is being conducted in line with the revised Cabinet Office consultation principles published in March 2018. 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
4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.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 (FoI): Email: freedom-of-information-request@dwp.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.

Chapter 1: Background and summary of proposals

Protecting savers from pension scams

1. These regulations deliver on the provisions set out in s.125 of the Pension Schemes Act 2021 in relation to pension transfers. As debated during the passage of the Act, these provisions are designed to enable trustees to prevent transfers from occurring if there is a risk that the scheme member might be scammed. In introducing these measures, the Government recognises the devastating impact scams can have on individuals and their pensions savings.
2. Pension scammers' activities are by their very nature hard to track and continually evolving in order to escape prosecution and exploit people when they are at their most vulnerable. Official figures on pension fraud show that in the five year period from January 2015 to December 2019 there were approximately 3,000 crime reports received by Action Fraud[1]. It is widely acknowledged that this figure is likely to underrepresent the scale of the problem. Many scams are not reported - there is often a lag between a pension scam taking place and individuals finding out and some people do not want to acknowledge publicly that they have been a victim. Witnesses to the Work and Pension Select Committee inquiry[2] on pension scams identified these disparities and the disconnect between the self-reported figures and what the industry believe is the scale of the problem.

Previous consultation on pension scams and subsequent actions

3. The Government launched a consultation in December 2016[3]. The response published in August 2017[4] set out the Government's intention to introduce three interventions to tackle the serious threat of pension scams:
    - a ban on cold calling in relation to pensions, to help stop fraudsters contacting individuals;

[1] Data rounded to the nearest 100. Pension Fraud here covers the following three Home Office Crime Codes (HOCC):
NFIB16A - Pension Fraud by Pensioners;
NFIB16B - Pension Fraud Committed on Pensioners;
NFIB16C - Pension Liberation Fraud.

[2] https://committees.parliament.uk/work/457/protecting-pension-savers-five-years-on-from-the-pension-freedoms-pension-scams/

[3] https://www.gov.uk/government/consultations/pension-scams/pensions-scams-consultation

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638844/Pension_Scams_consultation_response.pdf

- limiting the statutory right to transfer to some occupational pension schemes; and
- making it harder for fraudsters to open pension schemes.

4. In January 2019 the Government introduced the cold calling ban[5] and the commitment to make it harder to open pension[6] schemes was delivered.

5. In responding to feedback from the 2016/17 consultation on Pensions Scams[7], the Government decided to implement the proposed limitations to the statutory right to transfer. Namely, limiting the right to transfer unless the following conditions were met;

   - transfers into personal pension schemes operated by firms authorised by the Financial Conduct Authority (FCA);
   - transfers into authorised MasterTrust schemes; or
   - transfers where a genuine employment link to the receiving occupational pension scheme could be evidenced.

6. The Government also committed to actively engage with industry, consumer groups and other stakeholders on how best to implement the employment link and add conditions to Qualifying Recognised Overseas Pension Schemes (QROPS) into the statutory transfer criteria.

7. As limiting the statutory right to transfer required authorised MasterTrusts to be in existence and with the authorisation process being completed in 2019, the relevant primary provisions were contained in section 125 of the Pension Schemes Act 2021.

8. During the passage of the Act, this approach has been strengthened and in addition to the original conditions set out in the 2017 consultation response[8], DWP will be introducing extra conditions on transfers.

Summary of proposals

9. It is our intention to introduce the following requirements on trustees and scheme managers;

   I. To confirm the transfer is to one of a number of types of receiving scheme which present a low scams risk, by virtue of the requirements of those schemes; if that is the case the transfer proceeds without any further

[5] https://www.gov.uk/government/news/pensions-cold-calling-banned
[6] https://www.gov.uk/guidance/pension-administrators-register-a-scheme
[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638844/Pension_Scams_consultation_response.pdf
[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638844/Pension_Scams_consultation_response.pdf

checks or requirements for members[9] to provide further evidence or information to the trustee or scheme manager.

II. If the transfer is not to one of those listed types of scheme, members can exercise their statutory right to transfer on condition that certain prescribed evidence is provided. Trustees need to confirm the member has demonstrated an employment link between themselves and the occupational pension scheme they wish to transfer to. If they wish to transfer to a QROPS and they can't demonstrate an employment link, they will be required to demonstrate residency in the same financial jurisdiction as that of the scheme to which they wish to transfer. Where these employment and residency conditions are met, the transfer proceeds.

III. If neither I nor II apply, then the trustees or scheme managers must decide if any of the prescribed circumstances that would prevent a transfer are present. We refer to these as 'red flags'. Should any of these be present, the transfer may not proceed. If the red flags are not present, the trustees or scheme managers must decide whether any of the circumstances where the member must be referred to specified scams guidance apply. If these are present, the transfer may only proceed once the member provides evidence of having taken the guidance. We refer to these as 'amber flags'. Where they decide the flags are not present, the transfer proceeds.

IV. The trustees or scheme managers are not required to seek information from the member to identify whether the red or amber flags are present but have the power to do so if needed. They may be able to decide that the red and amber flags are not present without the need for additional checks or activity to that which they already undertake as part of their current processes.

[9] References to members of pension schemes in this consultation document include reference to consumers in relation to personal pension schemes.

Chapter 2: Costs, scope, timing and regulations

Costs, benefits and capacity

10. We believe that the introduction of these regulations is key to protecting pension savers from falling victim to transfer scams. Our regulations will empower trustees and scheme managers to determine whether a transfer can proceed or not by setting out conditions that must be met.

11. Although these regulations will come with some additional costs, it is important to see them in the context of protection for both the pension saver and the trustee and/or scheme manager. These regulations build on the already existing requirement for trustees and scheme managers to carry out due diligence in relation to a transfer request. In essence, the regulations we intend to introduce will, put simply, be going some way to formalising this process.

12. The impact of the regulations on business has already been captured within the published impact assessment (IA) for the Pension Schemes Act 2021[10]. However, it should be noted that the additional impact of operational costs on businesses, where activity is required to comply with the regulations, has not been raised with us during our frequent and intensive discussions with industry groups. In fact, the converse is true as it has been suggested that the regulations can act as a guideline for trustees regarding effective due diligence, and may potentially avoid nugatory work or activities.

13. However, we recognise that there may be potential impacts on businesses due to delays in the transfer process. We would therefore welcome any evidence of these or other likely business impacts. Based on the responses to the consultation and subsequent final policy decisions, we will consider what updates to the IA may be required.

Scope

14. These regulations are made using powers inserted into sections 95 and 101F of the Pension Schemes Act 1993 by section 125 of the Pension Schemes Act 2021[11]. These require the Secretary of State to impose conditions, at least one of which must be met before members can exercise their statutory right to transfer their cash equivalent transfer value (CETV) to another registered pension arrangement. The statutory right to transfer is governed by Part IVZA

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10 https://www.legislation.gov.uk/ukpga/2021/1/pdfs/ukpgaod_20210001_en_001.pdf#page=151

11 https://www.legislation.gov.uk/ukpga/2021/1/contents/enacted

and Part IVA of the Pension Schemes Act 1993. It is a member's right to transfer the cash equivalent of their pension rights or pension credit rights to a registered pension scheme of their choice. The regulations that set conditions on that statutory transfer will apply wherever a member has relevant pension benefits, so applies to transfers from and to the following -

a. Funded and Unfunded Public Service Pension Schemes

b. Defined Benefit Occupational Pension Schemes

c. Defined Contribution Benefits Schemes

d. Collective Money Purchase Schemes.

15. The conditions will (and have to) apply to all transfers, without exceptions. This includes where the member has chosen to take regulated financial advice[12], or where there is a requirement for the member to take regulated financial advice before their transfer can proceed.

16. These regulations will also apply to transfers from and to personal pension schemes.

17. Different kinds of pension schemes are overseen by the different pensions regulators and we expect that they will provide guidance to trustees and scheme managers on the new regime. The regulators will use their current powers to address matters arising from non-compliance with the new regulations. The Pensions Ombudsman will provide individual judgements on a case by case basis where cases are brought to them in relation to the application of these regulations.

18. As pensions policy is a reserved matter for Scotland and Wales, these regulations will apply to all trustees and scheme managers operating in England, Scotland and Wales. It is anticipated that the Department for Communities will make corresponding legislation for Northern Ireland.

Timing

19. It is our intention to introduce the regulations in Autumn 2021.

[12] https://www.legislation.gov.uk/uksi/2001/544/article/53E

Chapter 3: What the regulations will require

20. Prior to the introduction of the Pension Schemes Act 2021[13], a member of a pension scheme had a statutory right to transfer[14] their pension savings from one scheme to another without the circumstances of the transfer being subject to any conditions.

21. Throughout Government's ongoing engagement with industry and others following the response to the 2016 Pension Scams Consultation[15], we have heard from trustees and scheme managers that they are identifying potential scams but are often powerless to prevent them.

22. It is widely recognised that the majority of transfers are straightforward and proceed without the need for any additional scrutiny and we do not want this to change. Although it is difficult to get a completely accurate picture of the scale of pension scams and the proportion of transfers made to scam schemes, the Pension Scams Industry Group (PSIG), estimate that 5% of all transfer requests gave trustees and scheme managers cause for concern, based on their small survey in 2018[16].

23. The introduction of Pension Freedoms in 2015[17] has given pension savers control over what they do with their savings. In developing these regulations, Government has sought to strike a balance to offer greater protection in relation to pension transfers, whilst continuing to give pension savers flexibility on how they use their hard earned savings.

Strategic objectives

24. Most pension transfers are legitimate and can proceed with, minimal intervention or due diligence by the scheme because they are transfers to properly and fairly operated receiving schemes. Ideally, we do not want to prevent or impose unnecessary barriers on transfers where there is minimal or low risk of a pension scam.

25. However, there is a need for those running a pension scheme to have a greater ability to intervene and prevent a transfer where there is a risk of a

[13] https://www.legislation.gov.uk/ukpga/2021/1/contents/enacted
[14] https://www.legislation.gov.uk/ukpga/1993/48/part/IV/chapter/IV/enacted
[15] https//assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638844/Pension_Scams_consultation_response.pdf
[16] https://www.actuarialpost.co.uk/article/new-research-from-the-psig-uncovers-depth-of-pension-scams-15565.htm
[17] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/332674/21_July_pensions_final_WMS__C_.pdf

scam or fraud. This could be due to the circumstances surrounding the transfer or those involved in it which we are referring to as ‘red flags’.

26. In addition, where there is a situation linked to the transfer which raises a concern referred to here as ‘amber flags’, we still want to trustees to have the ability to act. In these cases, the transfer will only proceed after the member provides evidence they have taken specific guidance.

27. The specific guidance will be delivered by the Money and Pensions Service (MaPS). It will not be the same as the guidance already available through Pension Wise, but will be specific to the dangers of scams, the methods deployed by scammers and what to look out for.

Regulatory approach

28. Our regulatory approach strives to achieve a balance between providing greater protection for pension savers, giving trustees and scheme managers greater power to act in their members’ best interests and continuing to give savers the right to exercise choice over how to use their pension savings. That approach will ensure the majority of pension scheme transfers can continue without unnecessary hindrance.

29. We expect that these regulations will be supported by guidance issued by the Pensions Regulator (tPR), for occupational schemes. The Financial Conduct Authority (FCA) will provide equivalent support for the personal pension schemes that it regulates.

First condition

30. The policy intent is that the majority of the transfers trustees already deem safe will continue with little or no intervention. This is because transfers to many types of receiving scheme present a low risk of scams, by virtue of the requirements placed on those schemes.

31. The first step of our regulatory approach (‘the First Condition’) will therefore be to require trustees and scheme managers to identify if the transfer is to one of the types of schemes listed below. To meet the condition which would enable the transfer to proceed the trustees or scheme managers must confirm that the receiving scheme has been authorised or established in accordance with the relevant requirements for that scheme. Those types of scheme are:

    - Public Service Pension Scheme established by The Public Service Pensions Act 2013; or
    - Authorised MasterTrusts; or
    - Authorised Collective Money Purchase Schemes (CMPS), when the appropriate regulations come into force; or
    - Personal Pension providers, authorised and regulated by the FCA, that are an insurer authorised by the Prudential Regulatory Authority, or within the same corporate group as such an insurer.

32. We recognise this may not be a comprehensive list of those types of scheme to which transfers could be deemed to have a low risk of being a scam. However, these types of scheme need to be clearly definable, legally, and readily identifiable for the First Condition to be easily operable by trustees and scheme managers.

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.

Second and third conditions

33. Where the transfer is not to one of the types of receiving scheme within the First Condition, then the statutory right to transfer can only take place to a UK occupational pension scheme or to a QROPS where the member has provided the evidence prescribed in regulations, and trustees and scheme managers have confirmed on the basis of that evidence that the transfer meets certain conditions. This is unless the member provides evidence of a transfer to the same receiving scheme in the last 12 months.

34. The specific condition for statutory transfers to a UK occupational pension scheme is that the member must demonstrate an ‘employment link’ with the receiving scheme (“the Second Condition”). This is because the only legitimate reason for such a transfer is where there is a link between the member, the employer and the scheme. This condition will be demonstrated by the provision of evidence that contributions have been paid into the scheme, by themselves and their employer, as well as evidence of employment earnings from the receiving scheme’s sponsoring employer.

35. A member will have a statutory right to a transfer to a QROPS if the member can demonstrate either an ‘employment link’ (under the Second Condition) for transfers to occupational schemes (where, for the same reason as with UK-based schemes, we would expect this to exist), or a ‘residency link’ (‘the Third Condition’). This is because, for transfers overseas, the absence of either an employment or a residency link puts the member at an increased risk of a scam. The residency link must be demonstrated by evidence from the member that they have been resident in the same financial jurisdiction as the QROPS for at least six months.

36. It will be the responsibility of the member seeking to transfer to provide evidence of their employment or residency link.

37. The employment link will be demonstrated by prescribed evidence in regulations; namely, an employer letter, pay slips, bank statements, and a schedule of payments to the scheme.

38. We are not prescribing in regulations the evidence to demonstrate the residency link, as different jurisdictions have different forms of residency documentation and the evidence members will be able to provide will vary. However, we would expect members to provide suitable evidence, such as a residency document, visa or citizenship card, or other formal proof of address. The Pensions Regulator will explore how best to support schemes to understand and apply the residency link requirement through guidance.

39. Where a member is asked, by the trustee or scheme manager, to provide specified evidence to demonstrate an employment or residency link and fails to do so, then there is no statutory right to transfer.

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?

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

Fourth condition

40. For all other transfers (those to which the First, Second and Third Conditions do not apply), the regulations will require trustees and scheme managers to determine if the circumstances giving rise to the 'red flags' or 'amber flags' apply. Where the flags are not present "the Fourth Condition" will be satisfied and the transfer will be able to proceed. It will also be able to proceed where one or more of the 'amber flags' are present but the member has taken MaPS scams guidance. The member will therefore be aware of the risk of a scam in the circumstances of their case and will be empowered to make a decision as to whether they still want to proceed despite an identified risk factor (the 'amber flag') which has required them to take that guidance.

41. In the majority of cases, we expect that trustees or scheme managers will be able to determine quickly whether the 'red' or 'amber' flags are present, so that transfers can proceed without delay. Where the trustees or scheme managers already have sufficient information from activity that they undertake as part of their current processes to make a decision about the presence of flags, they will be able to determine that the Fourth Condition is satisfied without the need for additional checks.

42. However, in the minority of cases, where the flags may be present, trustees and scheme managers will now have the power to request information, at their discretion, to assess the circumstances of the transfer and to intervene to protect the member from a scam where red or amber flags may be present.

43. In addition to a transfer not proceeding if the member fails to provide requested information or fails to take the MaPS scams specific guidance, where the most significant indicators of the risk of a transfer scam are present, namely the ‘red flags’, trustees will be able to prevent statutory transfers from proceeding. These circumstances are that the trustees or scheme managers have a reasonable belief that:

- financial advice has been provided by firms or individuals without the appropriate regulatory permissions, or such firms or individuals have been involved in recommending that the member make the transfer; and/or
- the member has been contacted unsolicited in person, by telephone, text, letter or email, or via social media; and/or
- the member was offered incentives to transfer, including free pension reviews, early access to some or all of their pension savings before normal pension age, a savings advance or cashback from their pension savings; and/or
- the member was pressured to complete the transfer quickly, within a short or time limited period.

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

44. In other circumstances, known as ‘amber flags’, the transfer can only proceed when the member is able to provide evidence to the trustees or scheme managers that they have taken expert scams guidance from MaPS, or they have made a transfer to the same receiving scheme in the last 12 months and provides evidence of having taken MaPS scams guidance in that period.

45. The circumstances which will require the member to provide evidence of having taken guidance are:

- there are high risk or unregulated investments included in the receiving scheme; and/or
- where the fees being charged by the receiving scheme are unclear or high; and/or
- the proposed investment structures are complicated or unorthodox; and/or
- the receiving scheme includes overseas investments or any of the advisers are based overseas; and/or
- there has been a high volume of transfers to a single receiving scheme or involving a single adviser or firm.

Q5. How should the ‘amber flags’ as set out in the regulations work in practice?

46. The scams guidance will be provided by MaPS.

47. MaPS will then also provide the specified evidence to the member to demonstrate to the trustees or scheme managers that they have taken the guidance. The evidence will be a unique identifier supplied to each person with whom MaPS has an appointment and will be supplied to the individual following the completion of the appointment.

48. Only after the trustees or scheme managers are satisfied that the member has received this expert scams guidance from MaPS can the transfer proceed. There will be no exceptions to the MaPS guidance requirement where the amber flags apply, including where the member has been required to take regulated financial advice from a financial adviser. The scams guidance is specifically targeted at the risk of scams and is complementary to such financial advice, which may be much broader in scope and is not required to focus on the risk of a transfer scam.

Q6. Do you have any views on how the requirement to take scams specific guidance from MaPS can work in practice when the pension saver has already taken financial advice?

49. It is a condition of the transfer for the member to provide the information requested by the trustee or scheme manager to assess the red and amber flags. Therefore, if the member does not provide the information, this will be a red flag and the transfer cannot proceed.

50. DWP, in conjunction with partners, has developed a set of standard questions for trustees and scheme managers to use to meet the requirement to gather information from the member. These standard questions for trustees and scheme managers are detailed in Annex 3 of this consultation and are intended to provide trustees with clarity on the level of information they should seek to determine if a prescribed condition is met. We are working with regulators and industry to determine how best to publish this information to support trustees and scheme managers.

51. We do not wish to see evidence gathering imposed where it is not needed. Standard questions asked of members should take a tiered approach, in that members are only asked questions relevant to their destination. For example, where a member is seeking a transfer to an occupational scheme or to a QROPS, to determine if the Second Condition or Third Condition apply respectively, it is not suitable to ask questions relating to the Fourth Condition (red and amber flags). Trustees and managers can ask members for information above the standard questions, and this information, alongside other details gathered as part of wider evidence gathering relating to a

transfer can inform whether red or amber flags apply. This information should be proportionate as we do not wish to see members unfairly burdened with excessive information requests or penalised for failure to meet these requests.

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?

Annex 1: Specific consultation questions

First condition

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.

Second and third conditions

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?

Q3. How could the evidence requirement for ‘residency link’ work in practice?

Fourth 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?

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?

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?

Annex 2: Draft regulations

STATUTORY INSTRUMENTS

2021 No.

PENSIONS

The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 95(6ZA) to (6ZC), 101F(5A) to (5C), 181(1), 182(1) and (2) and 183(1) of the Pension Schemes Act 1993([a]).

In accordance with section 185(1) of the Pension Schemes Act 1993([b]), the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021.

(2) These Regulations come into force on #, immediately after section 125 (exercise of right to cash equivalent) of the Pension Schemes Act 2021([c]) comes into force for all remaining purposes.

(3) These Regulations extend to England and Wales and Scotland.

(4) In these Regulations—

"the 1993 Act" means the Pension Schemes Act 1993;

"member" has the meaning given by regulation 2(3)(b);

"pension scheme" means an occupational pension scheme or a personal pension scheme;

"receiving scheme" means the pension scheme to which a member is seeking to make a transfer;

"transfer" has the meaning given by regulation 2(4);

"transferring scheme" means the pension scheme from which a member is seeking to make a transfer.

(a) 1993 c. 48. Sections 95(6ZA) to (6ZC) were inserted by section 125(2) of the Pension Schemes Act 2021 (c. 1). Section 101F was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30) and subsections (5A) to (5C) were inserted by section 125(6) of the Pension Schemes Act 2021. Section 181(1) is cited for the meaning given to "prescribe" and "regulations". Section 182(1) was amended by paragraph 1 of Part III of Schedule 7 to the Pensions Act 1995 (c. 26). Section 183(1) was amended by paragraph 1 of Part III, and paragraph 1 of Part IV, of Schedule 7 to the Pensions Act 1995.
(b) Section 185(1) was amended by paragraph 46 of Schedule 3, paragraph 80 of Schedule 5, and Part 1 of Schedule 7 to the Pensions Act 1995.
(c) 2021 c. 1.

Application of these Regulations and requirement for at least one condition to be satisfied

2.—(1) These Regulations set out the conditions that the Secretary of State is required to prescribe under section 95(6ZA) (conditions to be satisfied before cash equivalent may be used by trustees or scheme managers in a specified way) and section 101F(5A) (conditions to be satisfied before cash equivalent may be used by trustees or scheme managers for an authorised purpose) of the 1993 Act, and the trustees or managers of the transferring scheme may not use the cash equivalent in a way specified or for an authorised purpose, as the case may be, unless at least one of the conditions prescribed in these Regulations is satisfied.

(2) The conditions set out in these Regulations apply to all of the ways and purposes in respect of which the cash equivalent may be used as specified, respectively, in sections 95(2), (2A) and (3) (specified ways) and 101F(2) and (3) (authorised purposes) of the 1993 Act([a]).

(3) In this regulation, in accordance with the specified way or authorised purpose in respect of which the cash equivalent is to be used, as the case may be, under the provisions referred to in paragraph (2)—

(a) "cash equivalent", in respect of a member's transferrable rights, means the cash equivalent referred to in section 94(1) or (2) of the 1993 Act (right to cash equivalent)([b]), and, in respect of a member's pension credit rights, means the cash equivalent referred to in section 101F(1) of that Act (power to give transfer notice)([c]);

(b) "member" means a member of a pension scheme who has transferrable rights or pension credit rights.

(4) In these Regulations, "transfer" means using the cash equivalent in one of the specified ways, or for one of the authorised purposes, referred to in paragraph (2).

The First Condition: transfers into certain receiving schemes

3.—(1) For the purposes of these Regulations, this regulation will be referred to as "the First Condition".

(2) The First Condition applies to a transfer to a receiving scheme of one of the types specified in paragraphs (3) and (4).

(3) The types of schemes referred to in paragraph (2) are any of the following—

(a) a scheme for persons in public service as established under the Public Service Pensions Act 2013([d]);

(b) a Master Trust scheme to which Part 1 of the Pension Schemes Act 2017 (Master Trusts)([e]) applies and which is authorised by the Pensions Regulator under section 5(4)(a) of that Act (decision on application);

(c) a collective money purchase scheme to which Part 1 of the Pension Schemes Act 2021 (collective money purchase benefits) applies and which is authorised by the Pensions Regulator under section 9(4)(a) of that Act (decision on application).

(4) The type of scheme referred to in paragraph (2) is a pension scheme operated by an insurer that is registered and authorised by the Financial Conduct Authority([f]), and authorised by the Prudential Regulatory Authority([g]), where "operated by" includes where the pension scheme is a subsidiary undertaking of a parent undertaking that is such an insurer, within the meanings given by section 1162 (parent and subsidiary undertakings) of the Companies Act 2006([h]).

(a) Section 95(2) was amended by section 68(2) of, and paragraph 9 of Schedule 4 to, the Pension Schemes Act 2015 (c. 8). Section 95(2A) was inserted by section 68(3) of the Pension Schemes Act 2015. Section 95(3) was amended by paragraph 9 of Schedule 4 to the Pension Schemes Act 2015. Section 101F was inserted by section 37 of the Welfare Reform and Pensions Act 1999 and subsection (2) was amended by S.I. 2001/3649.
(b) Section 94 was substituted by paragraph 8 of Schedule 4 to the Pension Schemes Act 2015.
(c) Section 101F(1) was amended by paragraph 15 of Schedule 4 to the Pension Schemes Act 2015.
(d) 2013 c. 25.
(e) 2017 c. 17.
(f) See section 1A of the Financial Services and Markets Act 2000 (c. 8).
(g) See section 2A of the Financial Services and Markets Act 2000.
(h) 2006 c. 46.

(5) The requirements of the First Condition are satisfied where the trustees or managers of the transferring scheme have confirmed, and then notified the member of the confirmation, that the receiving scheme—

(a) is established, in the case of sub-paragraph (a) of paragraph (3), or authorised, in the case of any other sub-paragraph of paragraph (3), in accordance with the legislation referred to in the relevant sub-paragraph; or

(b) is registered and authorised as required in accordance with paragraph (4).

(6) The trustees or managers of the transferring scheme are to make the confirmation required under the relevant sub-paragraph of paragraph (5) and may not require that the member provide evidence for them to make that confirmation.

(7) Where the trustees or managers of the transferring scheme are unable to make the confirmation required in respect of the relevant sub-paragraph of paragraph (5), the First Condition no longer applies.

The Second Condition: transfers into an occupational pension scheme with which the member has an employment link

4.—(1) For the purposes of these Regulations, this regulation will be referred to as "the Second Condition".

(2) The Second Condition applies to a transfer to a receiving scheme that is an occupational pension scheme to which the First Condition does not apply.

(3) The requirements of the Second Condition are that the member can demonstrate to the trustees or managers of the transferring scheme the following ("the employment link"), that—

(a) the member's employer is a sponsoring employer of the receiving scheme;

(b) the member is in employment with the sponsoring employer and this employment has lasted for a continuous period of at least 3 months ending with the date the request to make the transfer was received by the trustees or managers of the transferring scheme;

(c) the member's employment during the last 3 months of that period has met the minimum salary requirement specified in regulation 5(5); and

(d) the member and the sponsoring employer have both contributed to the scheme during those last 3 months.

(4) The trustees or managers of the transferring scheme must request from the member the evidence specified in regulation 5 in order to demonstrate the employment link.

(5) The requirements of the Second Condition are satisfied where the trustees or managers of the transferring scheme decide on the balance of probabilities that the evidence provided by the member in accordance with paragraph (4) demonstrates the employment link.

The Second Condition: evidence and information to satisfy the employment link

5.—(1) The evidence to be requested from the member to satisfy the Second Condition is that specified in paragraph (2), or in paragraphs (3) and (4).

(2) Evidence in writing that the member has made a previous transfer to the same receiving scheme as that to which the current request to make a transfer is made, within the period of 12 months ending with the date the request to make the current transfer was received by the trustees or managers of the transferring scheme.

(3) A letter from the member's employer confirming that—

(a) the employer is a sponsoring employer of the receiving scheme;

(b) the member is employed by them; and

(c) the date from which the member has been continuously in their employment.

(4) A copy or, where the trustees or managers of the transferring scheme request it, the original, of the following documents—

(a) a schedule of contributions or payment schedule showing—

(i) separate entries for the amounts of pension contributions (excluding additional voluntary contributions) to the receiving scheme, paid for the last 3 months of the member's employment by, or on behalf of, the member and the employer in respect of that member; and

(ii) the dates on which those contributions were paid;

(b) payslips, or other evidence in writing advising of pay remittances, showing the salary paid to the member by their employer for the last 3 months; and

(c) personal bank or a building society statements, or a building society passbook, showing the deposit of salary for the last 3 months.

(5) For the purposes of regulation 4(3)(c), the minimum salary requirement is that the member must have been paid a weekly salary, during the last 3 months, which was at, or above, the lower earnings limit determined under section 5 of the Social Security Contributions and Benefits Act 1992([a]).

(6) For the purposes of determining the member's weekly salary referred to in paragraph (5), where the member was paid a fortnightly or monthly salary, the amount of that salary is to be calculated by aggregating those payments during the last 3 months, multiplying by 4, dividing by 365 and multiplying by 7.

(7) Where the salary paid to the member has included commission, bonus or other amounts paid separately from their weekly salary, the amounts of those payments are to be converted to a weekly figure by aggregating those payments during the last 3 months, multiplying by 4, dividing by 365 and multiplying by 7, and the resulting figure is to be included in the determination of the member's weekly salary for the purposes of paragraph (5).

(8) For the purposes of determining the member's weekly salary referred to in paragraph (5), where payment was made in a currency other than Sterling, the value of the payment is to be determined by taking the Sterling equivalent on the date the payment was made.

(9) For the purposes of paragraph (8), the Sterling equivalent of a value of a foreign currency is to be calculated by reference to the London closing rate of exchange on the date the payment was made.

The Third Condition: transfers into a QROPS with which the member has a residency link

6.—(1) For the purposes of these Regulations, this regulation will be referred to as "the Third Condition".

(2) The Third Condition applies to a transfer to a receiving scheme that is a QROPS and in respect of which transfer—

(a) the Second Condition does not apply; or

(b) the Second Condition applies but is not satisfied.

(3) The requirements of the Third Condition are that the member can demonstrate to the trustees or managers of the transferring scheme the following ("the residency link"), that —

(a) the member is resident in the same financial jurisdiction as that in which the QROPS is established; and

(b) the member's residence in that jurisdiction has been for a continuous period of at least 6 months ending with the date the request to make the transfer was received by the trustees or managers of the transferring scheme.

(4) The trustees or managers of the transferring scheme must request from the member the evidence specified in regulation 7 in order to demonstrate the residency link.

(5) The requirements of the Third Condition are satisfied where the trustees or managers of the transferring scheme decide on the balance of probabilities that the evidence provided by the member in accordance with paragraph (4) demonstrates the residency link.

(6) In respect of the Third Condition, "QROPS" means a qualifying recognised overseas pension scheme as defined by section 169 (recognised transfers) of the Finance Act 2004([a]).

(a) 1992 c. 4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c. 30) and section 5(1) was amended by section 1(1)(a) of, and paragraph 1 of Schedule 2 to, the National Insurance Contributions Act 2008 (c. 16).

The Third Condition: evidence and information to satisfy the residency link

7.—(1) The evidence to be requested from the member to satisfy the Third Condition is that specified in paragraph (2) or paragraph (3).

(2) Evidence in writing that the member has made a previous transfer to the same receiving scheme as that to which the current request to make a transfer is made, within the period of 12 months ending with the date the request to make the current transfer was received by the trustees or managers of the transferring scheme.

(3) A copy or, where the trustees or managers of the transferring scheme request it, the original, of the member's formal residency documentation in the financial jurisdiction concerned and such other evidence in writing as the member may hold confirming the matters in paragraph (3)(a) and (b).

(4) For the purposes of the Third Condition, temporary absences of residence in the financial jurisdiction concerned may be included in the continuous period of 6 months of residence but only in so far as the total absence from the jurisdiction in question does not exceed 30 days.

The Fourth Condition: all other transfers

8.—(1) For the purposes of these Regulations, this regulation will be referred to as "the Fourth Condition".

(2) The Fourth Condition applies to a transfer in respect of which the First, Second and Third Conditions do not apply.

(3) The Fourth Condition is satisfied where the following requirements are met—

(a) none of the circumstances in paragraph (4) ("the red flags") are present in respect of the transfer; and

(b) none of the circumstances in paragraph (5) ("the amber flags") are present in respect of the transfer, subject to paragraph (9).

(4) A red flag is present where—

(a) the member has failed or refused to respond to a request for information in respect of the Fourth Condition under paragraph (6);

(b) the trustees or managers of the transferring scheme have required that the member takes specified guidance in accordance with paragraph (8), but the member has not provided the specified evidence that this has been taken in accordance with paragraph (9);

(c) a person or firm without the appropriate regulatory permission to do so has provided financial advice to the member in relation to the transfer, or such a person or firm has recommended that the member make the transfer without formally providing financial advice, except where the receiving scheme includes overseas investments and an overseas adviser has advised the member in relation to those investments;

(d) the member's request to make the transfer was made further to unsolicited contact about making a transfer from a party previously unknown to the member;

(e) the member has been offered an incentive to make the transfer; or

(f) the member has been pressured to make the transfer quickly.

(5) An amber flag is present where—

(a) 2004 c. 12. Section 169(1A) to (1E) was inserted by paragraph 36 of the Finance Act 2005 (c. 7) and section 169(1D) was amended by paragraph 66 of Schedule 16 to the Finance Act 2011 (c. 11) and paragraph 8 of Schedule 1, and paragraph 4 of Schedule 2, to the Taxation of Pensions Act 2014 (c. 30) ("the 2014 Act"). Section 169(2)(ba) was inserted by paragraph 13 of Schedule 4 to the Finance Act 2017 (c. 10) ("the 2017 Act") and section 169(2)(c) was amended by section 53(3) of the Finance Act 2013 (c. 29) ("the 2013 Act"). Section 169(2A) was inserted by paragraph 13 of Schedule 4 to the 2013 Act. Section 169(4), (4A) and (4B) was substituted for section 169(4) as originally enacted by section 53(4) of the 2013 Act. Section 169(4)(ba) to (bc) was inserted by paragraph 92 of Schedule 1 to the Taxation of Pensions Act 2014. Section 169(4A) was amended, and section 169(4ZA) and (4C) was inserted, by paragraph 13 of Schedule 10 to the 2017 Act. Section 169(5) was amended by section 53(5) of the 2013 Act and paragraph 23 of Schedule 7 to the Finance Act 2014 (c. 26). Section 169(6) was inserted by section 53(6) of the 2013 Act. Section 169(7A) to (7D) was inserted by paragraph 13 of Schedule 10 to the 2017 Act. Section 169(8) was inserted by section 53(7) of the 2013 Act and amended by paragraph 8 of Schedule 4 to the 2017 Act.

(a) there are high risk or unregulated investments included in the receiving scheme;

(b) there are unclear or high fees being charged by the receiving scheme;

(c) the investment structures of the receiving scheme are unclear, complex or unorthodox;

(d) the receiving scheme includes overseas investments or an overseas adviser has advised the member in relation to such investments; or

(e) the trustees or managers of the transferring scheme are aware of a high volume of requests to make a transfer from their scheme either to a single receiving scheme, or involving a single adviser or firm of advisers, or both.

(6) The trustees or managers of the transferring scheme may require the member to provide them with information concerning the circumstances relating to the transfer in order for them to decide if the Fourth Condition is satisfied.

(7) A red flag under sub-paragraphs (c) to (f) of paragraph (4), or an amber flag under any of the sub-paragraphs of paragraph (5), is present in respect of the transfer where, on the evidence available to them (including, but not limited to, information obtained in accordance with paragraph (6)), the trustees or managers of the transferring scheme have a reasonable belief that the circumstances set out in the relevant sub-paragraph are present.

(8) Where one or more of the amber flags is present in respect of the transfer, the trustees or managers of the transferring scheme must require that the member takes specified guidance.

(9) The requirement of paragraph (3)(b) is met where the member takes the specified guidance referred to in paragraph (8) and provides to the trustees or managers of the transferring scheme the specified evidence that it has been taken.

Interpretation of the Fourth Condition

9.—(1) For the purposes of the Fourth Condition, the definitions in this regulation apply.

(2) In respect of regulation 8(4) (red flags)—

(a) "the appropriate regulatory permission" means permission, as the case may be, under article 53 or article 53E of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001([a]);

(b) "an incentive" includes an offer of free pension reviews, access to some or all of the member's pension savings before they attain normal pension age, a savings advance, or cashback from their pension savings;

(c) "normal pension age", in respect of transferrable rights, has the meaning given by section 100C of the 1993 Act([b]), and, in respect of pension credit rights, refers to "normal benefit age", as defined in section 101P(1) of that Act([c]);

(d) "overseas" means operating, or administered, wholly or mainly outside of the United Kingdom;

(e) "quickly" includes within a time-limited period of one month or less;

(f) "unsolicited contact" includes contact in person or by telephone call, text message, letter, or email, or via social media.

(3) In respect of regulation 8(5) (amber flags)—

(a) "high fees" means fees disproportionate to the proposed returns of the receiving scheme or at the high end of, or beyond, the normal range of fees in the current financial market;

(b) "high risk" means at the high end of, or beyond, the normal range of risk in the current financial market;

(c) "high volume" means as compared to the rate of transfers over a comparable period;

(a) S.I. 2001/544. Article 53 was amended by S.I. 2016/392 and 2017/500, 488 and 701. Article 53E was inserted by S.I. 2015/731.
(b) Section 100C was inserted by paragraph 14 of Schedule 4 to the Pension Schemes Act 2015.
(c) Section 101P was inserted by section 37 of the Welfare Reform and Pensions Act 1999 and amended by paragraph 21 of Schedule 4 to the Pension Schemes Act 2015.

(d) “overseas” has the meaning given by regulation 9(2)(d);

(e) “unorthodox”, in relation to investment structures, means uncommon in the current financial market, or where their legality may be in doubt.

(4) Apart from the term “overseas”, the meanings of the terms in paragraph (3) are to be applied by trustees or managers of the transferring scheme based on their knowledge of the financial market at the time of the request to make the transfer (“the current financial market”), or information they hold on volumes of transfers from their pension scheme, or by comparing the information provided by the member in accordance with regulation 8(6) to their knowledge of the current financial market.

(5) In regulation 8(8) and (9), and paragraph (6) of this regulation, the “specified guidance” and “specified evidence” are, respectively, the guidance in relation to pension transfer scams provided by the Money and Pensions Service (“the MaPS”) and the evidence provided by the MaPS to those who have completed all of the actions necessary to take that guidance.

(6) Where the trustees or managers of the transferring scheme apply the specified guidance requirement under regulation 8(9), that requirement may be met where the member provides to the trustees or managers of the transferring scheme—

(a) evidence that the member has made a previous transfer to the same receiving scheme as that to which the current request to make a transfer is made, within the period of 12 months ending with the date the request to make the current transfer was received by the trustees or managers of the transferring scheme; and

(b) the specified evidence that the member has taken the specified guidance within the period referred to in sub-paragraph (a).

Information about the conditions for transfers to be provided by the trustees or managers of the transferring scheme

10. The trustees or managers of the transferring scheme must provide the member with information about the conditions for transfers set out in these Regulations, and the requirement for at least one condition to be satisfied before a transfer can proceed, within one month of either the date that the member requests from them a statement of the cash equivalent value of their transferrable rights or the date the member requests to make a transfer, whichever happens first.

General

11. These Regulations do not override anything in the provisions of a transferring scheme, to the extent that there is a conflict.

Signed by authority of the Secretary of State for Work and Pensions

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

[Date]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations create the conditions for pension transfers that the Secretary of State is required to impose further to the amendments made by section 125 of the Pension Schemes 2021 (c. 1) to the Pension Schemes Act 1993 (c. 48), in particular the insertion of subsection (6ZA) to (6ZC) into section 95 and of subsection (5A) to (5C) into section 101F. Those sections provide for the different ways in which trustees or managers of an occupational or personal pension scheme may permit a member of their scheme ("the transferring scheme") to use the cash equivalent value of, respectively, the member's accrued rights to benefits, or pension credit rights, so as to make a transfer of that value into another occupational or personal pension scheme.

Regulation 2 provides that the conditions set out in these Regulations apply to all of the respective ways in which the member may exercise this right to make a transfer and that at least one condition must be satisfied before a transfer can proceed.

Regulations 3, 4, 6 and 8 set out the "First Condition", "Second Condition", "Third Condition" and "Fourth Condition" respectively.

The First Condition applies to a transfer into a scheme ("a receiving scheme") that falls within the types set out in regulation 3(3) and (4). The Second Condition applies to a transfer into an occupational pension scheme to which the First Condition does not apply (regulation 4(2)), which includes where the First Condition no longer applies because it is not satisfied (regulation 3(7)). If the receiving scheme is a qualifying recognised overseas pension scheme (or "QROPS", as defined by section 169 of the Finance Act 2004 (c. 12)) and is an occupational pension scheme, either the Second or Third Condition may apply (regulations 4(2) and 6(2)(b)); if the QROPS is not an occupational pension scheme, only the Third Condition may apply (regulation 6(2)(a)). The Fourth Condition applies to all transfers to which the First, Second and Third Conditions do not apply (regulation 8(2)).

Where the First Condition applies, the trustees or managers of the transferring scheme must confirm whether the receiving scheme is established or authorised, as the relevant type of scheme requires, and provide this confirmation to the member of their scheme seeking to make a transfer (regulation 3(5)). They may not seek evidence from the member to make this confirmation (regulation 3(6)). Where it is made, the First Condition is satisfied and the transfer may proceed.

Where the Second Condition applies, the trustees or managers of the transferring scheme must seek evidence from the member seeking to make the transfer (regulation 4(4)) to establish that there is an employment link between the member, their employer and the occupational pension scheme that is the receiving scheme (regulation 4(3)). The evidential requirements of the Second Condition are set out in regulation 5, including the specific types of evidence required to demonstrate the employment link (regulation 5(3) and (4)) and relating to the member's minimum level of earnings (regulations 4(3)(c) and 5(5) to (9)). The member may instead provide evidence in writing that they have made a previous transfer to the same receiving scheme within the period of 12 months ending with the date of the current transfer request (regulation 5(2)). The trustees or managers of the transferring scheme must decide on the balance of probabilities whether the evidence provided by the member demonstrates the employment link (regulation 4(5)). Where they decide it does, the Second Condition is satisfied and the transfer may proceed; where they decide it does not, the Second Condition is not satisfied and the transfer may not proceed unless the receiving scheme is a QROPS and the Third Condition therefore applies (regulation 6(2)(b)).

Where the Third Condition applies, the trustees or managers of the transferring scheme must seek evidence from the member seeking to make the transfer (regulation 6(4)) to establish that there is a residency link between the member and the QROPS that is the receiving scheme (regulation 6(3)). The evidential requirements of the Second Condition are set out in regulation 7. The member may instead provide evidence in writing that they have made a previous transfer to the same receiving scheme within the period of 12 months ending with the date of the current transfer request (regulation 7(2)). The trustees or managers of the transferring scheme must decide on the balance of probabilities whether the evidence provided by the member demonstrates the residency link (regulation 6(5)). Where they decide it does, the

Third Condition is satisfied and the transfer may proceed; where they decide it does not, the Third Condition is not satisfied and the transfer may not proceed.

The Fourth Condition applies to all other transfers and gives the trustees or managers of the transferring scheme the power to prevent a transfer, where certain circumstances are present in respect of a transfer ("red flags", regulation 8(4)), or to require that the member seeking to make a transfer take transfer scams guidance provided by the Money and Pensions Service ("the MaPS"), where certain other circumstances are present ("amber flags", regulation 8(5) and (8)). The trustees or managers of the transferring scheme are not required to seek information from the member to decide whether the Fourth Condition is satisfied but have the power to seek such information (regulation 8(6)). Where they decide that the red or amber flags are not present in respect of a transfer, the Fourth Condition is satisfied and the transfer may proceed (regulation 8(3)). Where, whether on the basis of information sought from the member or that which is otherwise available to them, the trustees or managers of the transferring scheme decide that one of the red flags in regulation 8(4)(a) and (b) is present, or they have a reasonable belief that one or more of the red flags in regulation 8(4)(c) to (f) is present (regulation 8(3)(a) and (7)), the transfer may not proceed. Where they do not have such a belief in respect of the red flags, but do have a reasonable belief that an amber flag is present in respect of a transfer, the transfer may not proceed unless the member takes the transfer scams guidance from the MaPS and provides the specified evidence from the MaPS that they have taken it (regulation 8(3)(b), (8) and (9)).

The meaning of the terms relating to the red and amber flags, and how those flags are to be assessed under the Fourth Condition, are set out in regulation 9(2) to (4). The scams guidance from the MaPS, and evidence required to demonstrate it has been taken, is specified in regulation 9(5) and (6). Where the member can provide evidence of having made a transfer to the same receiving scheme as that to which the current request to make a transfer is made, within the period of 12 months ending with the date of the current transfer request, and provides the specified evidence from the MaPS of having taken the transfer scams guidance within the same period, the member does not have to provide evidence of having taken the MaPS guidance again.

Regulation 10 provides that, to the extent that there is a conflict, nothing in these regulations overrides anything in the provisions of a transferring scheme in respect of making a transfer to another pension scheme.

An analysis of the impact of this legislation has been undertaken. A copy is available in the libraries of both Houses of Parliament and is published with the Explanatory Memorandum alongside this instrument at www.legislation.gov.uk. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA.

Annex 3: Standard questions

Standard Questions in Respect of Transfer Request:

Q1 – Did someone advise or recommend that you consider a pension transfer?

Yes / No

Q2 - Were you initially approached by e-mail, text, phone call, letter or through social media (e.g. Facebook or LinkedIn).

Yes / No

- Q2(a) - if yes; were you expecting the contact;
- Q2(b) - was this contact uninvited and not from someone associated with your pension scheme (say your employer or someone working for the scheme), or an alternative pension scheme;
- Q2(c) - did you search or make your own enquiries about that pension scheme?

Q3 - Who contacted you and how do you know them?

If already known:

- Q3(a) - how and where from?

Q4 – Was it someone offering independent advice or someone representing a firm that contacted you?

Independent Advisor:

- Q4(a) – what is their name?
- Q4b – what is their business address?
- Q4(c) – what is their FCA registration number?

Representative of Firm:

- Q4(d) - what is the name of the company they represented?
- Q4(e) - what is the address of the company?
- Q4(f) - what is their web-domain?

Q5 - When contacted were any of the following terms used by those who approached you -—

- 'a free pension review'; and/or
- (if before normal pension age) early access to cash or a loan; and/or
- a 'time limited' offer; and/or
- offering a higher tax-free lump sum.

Q6 - Are you aware of how your money will be used/invested?

Yes / No

If yes;

- Q6(a) - where do you expect the money to be invested?
- Q6(b) - have you been promised a specific or guaranteed rate of return once you transfer?

Q7 - Are any of your investments subject to an exit penalty if you wish to access or transfer the investments within an agreed period of time (for example within 5 or 10 years)?

- Q7(a) - what is it and when will it be paid?

Q8 - Do you know what the costs and charges are for your new arrangement?

Yes / No

If yes - investments;

- Q8(a) - what are they?
- Q8(b) – are fees are applied to transfer?
- Q8(c) – are there fees to join the investment?
- Q8(d) - what charges are applied to your investments, whilst they are invested (e.g. this can be a fixed fee or a percentage of the total sum invested?
- Q8(e) – are there any other extra charges that can apply to your investments?

Q9 – Are you working with an adviser or firm based outside the UK?

Yes / No

If yes:

- Q9(a) - what is the name of the adviser/firm?
- Q9(b) - what is their address?
- Q9(c) – who has registered them to provide financial or pension transfer advice?
- Q9(d) – is this the first time you have dealt with this advisor/firm?

Yes / No

If yes;

- Q9(e) - please provide details of your previous relationship with them.