
STATUTORY INSTRUMENTS

2021 No. 1237

PENSIONS

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

Made - - - - *3rd November 2021*
Laid before Parliament *8th November 2021*
Coming into force - - *30th November 2021*

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) and (3), 182(1) and (2) and 183(1) of the Pension Schemes Act 1993(1).

In accordance with section 185(1) of the Pension Schemes Act 1993(2), 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 30th November 2021.

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

(4) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993;

“the 2000 Act” means the Financial Services and Markets Act 2000(3);

“the 2001 Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(4);

“the 2004 Act” means the Finance Act 2004(5);

(1) 1993 c. 48. Section 95(6ZA) to (6ZC) was 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.

(2) 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.

(3) 2000 c. 8.

(4) S.I. 2001/544.

(5) 2004 c. 12.

“the 2021 Act” means the Pension Schemes Act 2021(6);

“amber flag” has the meaning given by regulation 9;

“cash equivalent” has the meaning given by regulation 2(2)(a);

“the First Condition” has the meaning given by regulation 7(1);

“member” has the meaning given by regulation 2(2)(b);

“pension scheme” means an occupational pension scheme or a personal pension scheme;

“QROPS” means a qualifying recognised overseas pension scheme as defined by section 169(2) of the 2004 Act (recognised transfers)(7);

“receiving scheme” means the pension scheme to which a member is seeking to make a transfer, subject to regulation 7(6);

“red flag” has the meaning given by regulation 8(3) to (6);

“request to make a transfer” has the meaning given by regulation 2(3);

“the Second Condition” has the meaning given by regulation 8(1);

“transfer” has the meaning given by regulation 2(3); and

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

Application of the conditions to all uses of the cash equivalent

2.—(1) The conditions set out in these Regulations apply to all of the specified ways in which the cash equivalent may be used in accordance with the provisions of section 95 of the 1993 Act (ways of taking right to cash equivalent)(8) set out in subsection (6ZA) of that section, and the authorised purposes for which the cash equivalent may be used in accordance with the provisions of section 101F (power to give transfer notice)(9) set out in subsection (5A) of that section.

(2) In these Regulations—

- (a) “cash equivalent”, in relation to a member’s transferrable rights(10), means the cash equivalent referred to in section 94(1) or (2) of the 1993 Act (right to cash equivalent)(11), and, in relation to a member’s pension credit rights(12), means an amount equal to the cash equivalent referred to in section 101F(1)(13); and
- (b) “member” means either a member(14) of a pension scheme who has transferrable rights, or an eligible member(15) of a pension scheme who has pension credit rights.

(3) In these Regulations, “transfer” means using the cash equivalent in one of the specified ways, or for one of the authorised purposes, in accordance with the provisions referred to in paragraph (1), and “request to make a transfer” means, respectively, an application, or giving notice, to use the cash equivalent in one of those ways or for one of those purposes.

(6) 2021 c. 1.

(7) Section 169(2)(ba) was inserted by paragraph 13 of Schedule 4 to the Finance Act 2017 (c. 10) and section 169(2)(c) was amended by section 53(3) of the Finance Act 2013 (c. 29). Section 169(2A) was inserted by paragraph 13 of Schedule 4 to the Finance Act 2013. There are other amendments to section 169 that are not relevant.

(8) 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.

(9) 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.

(10) Defined in section 100D of the Pension Schemes Act 1993.

(11) Section 94 was substituted by paragraph 8 of Schedule 4 to the Pension Schemes Act 2015.

(12) Defined in section 101P(1) of the Pension Schemes Act 1993.

(13) Section 101F(1) was amended by paragraph 15 of Schedule 4 to the Pension Schemes Act 2015.

(14) Defined in section 100D of the Pension Schemes Act 1993.

(15) Defined in section 101P(1) of the Pension Schemes Act 1993.

Transfers to which these Regulations apply

3. These Regulations apply to transfers where, in a case where the member applies for a statement of the cash equivalent value of their transferrable rights under section 93A of the 1993 Act (right to statement of entitlement: benefits other than money purchase)(16), the date of the member's application, and in any other case, the date of the member's request to make a transfer, occurs on or after the day that these Regulations come into force.

Conditions satisfied upon a decision by the trustees or managers of the transferring scheme

4.—(1) The prescribed conditions 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 are the First Condition and the Second Condition, and, for the purposes of those sections, the prescribed conditions are satisfied in respect of a transfer when the trustees or managers of the transferring scheme make a decision that either the First Condition or the Second Condition is satisfied in respect of that transfer.

(2) Where the trustees or managers of the transferring scheme have made a decision that neither the First Condition nor the Second Condition is satisfied in respect of a transfer, in either of the circumstances set out in sub-paragraphs (a) and (b) of paragraph (3) the First Condition or the Second Condition is satisfied in respect of the transfer.

(3) The circumstances referred to in paragraph (2) are where the trustees or managers of the transferring scheme remake the decision referred to in that paragraph, to the effect that either the First Condition or the Second Condition is satisfied, because subsequent to that decision—

- (a) they realise that the decision was incorrect; or
- (b) they receive further evidence or information from the member, which enables them to conclude that the First Condition or the Second Condition is satisfied, and they consider that the delay in this being provided was for good reason and no longer than was necessary in the circumstances.

Requirement to inform the member of the conditions and notify decisions regarding satisfaction of the conditions

5.—(1) Subject to paragraph (2), the trustees or managers of the transferring scheme must ensure that the member is informed about the provision in regulation 4(1), in a case where the member applies for a statement of the cash equivalent value of their transferrable rights under section 93A of the 1993 Act, within the period of one month after the date of the member's application for that statement, or, in any other case, within the period of one month after the date of the member's request to make a transfer.

(2) The requirement in paragraph (1) does not apply where, before the date on which the period of one month referred to in that paragraph has passed, the trustees or managers of the transferring scheme have made the transfer.

(3) The trustees or managers of the transferring scheme must ensure that the member is sent notification of their decision that—

- (a) either the First Condition or the Second Condition is satisfied, by no later than the date on which the member is sent confirmation that the transfer to the receiving scheme has been made; or
- (b) neither the First Condition nor the Second Condition is satisfied, and that the member has lost their right to use the cash equivalent in respect of that request in accordance,

(16) Section 93A was substituted by paragraph 8 of Schedule 4 to the Pension Schemes Act 2015.

as relevant, either with sections 98(2) (loss of right to cash equivalent)(**17**) and 99(2ZA) (trustees' duties after exercise of option)(**18**) of the 1993 Act, or with section 101J(2AA) (time for compliance with transfer notice)(**19**), within the period of 7 working days after the date of that decision.

(4) In paragraph (3)(b), “working day”, in relation to a part of Great Britain in which the transferring scheme is operating, means a day other than—

- (a) a Saturday or Sunday; or
- (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**20**) in that part of Great Britain.

Standards of proof, relevant evidence or information, and timing for decisions regarding satisfaction of the conditions

6.—(1) In order for the trustees or managers of the transferring scheme to decide that the First Condition is satisfied, they must satisfy themselves beyond reasonable doubt either that the receiving scheme is established, or listed as authorised, as set out in regulation 7(4).

(2) Where the trustees or managers of the transferring scheme proceed to make a decision as to whether the Second Condition is satisfied in accordance with regulation 10(2), without making a request for evidence or information from the member in accordance with regulation 10(1) or (3)—

- (a) in order to reach a decision that none of the red flags in regulation 8(5), and none of the amber flags in regulation 9(5), is present, they must decide on the balance of probabilities that none is present; and
- (b) where, after applying sub-paragraph (a), they do not reach a decision that a red flag is present, they must decide that the Second Condition is satisfied.

(3) Where the trustees or managers of the transferring scheme do not proceed to make a decision in respect of the Second Condition in accordance with paragraph (2), and they make a request for evidence or information from the member in accordance with regulation 10(1) or (3)—

- (a) in order to reach a decision that—
 - (i) either of the red flags in regulation 8(4), or the amber flag in regulation 9(2), is present, they must decide beyond reasonable doubt that it is present; and
 - (ii) any of the red flags in regulation 8(5), or any of the amber flags in regulation 9(3) to (5), is present, they must decide whether they have reason to believe that it is present; and
- (b) where, after applying sub-paragraph (a), they do not reach a decision that a red flag is present, they must decide that the Second Condition is satisfied.

(4) In paragraph (3)(a)(ii), “reason to believe” means that there is a reasonable foundation for the belief, on the basis of all of the evidence and information available.

(5) For the purposes of paragraph (4), “all of the evidence and information available” to the trustees or managers of the transferring scheme means not only evidence or information provided by the member in a formal response to a request made in accordance with regulation 10(1) or (3), but also other relevant evidence or information, including in particular—

- (a) any information provided by the member or another party to the transfer other than in such a response;

(17) Section 98 was substituted by paragraph 12 of Schedule 4 to the Pension Schemes Act 2015.

(18) Section 99(2ZA) was inserted by section 50(2) of the Pension Schemes Act 2015.

(19) Section 101J was inserted by section 37 of the Welfare Reform and Pensions Act 1999 and subsection (2AA) was inserted by section 125(7) of the Pension Schemes Act 2021; there are other amendments to section 101J that are not relevant.

(20) 1971 c. 80.

- (b) the fact of a general or specific omission of evidence or information from that formal response; or
 - (c) any evidence or information obtained by the trustees or managers of the transferring scheme, including in the course of carrying out their duties in relation to that, or another, pension scheme.
- (6) Where the trustees or managers of the transferring scheme have made a request for evidence or information in accordance with regulation 10(1) or (3)—
- (a) they may decide that the red flag in regulation 8(4)(a) (failure to provide a substantive response to a request) is present provided that a further request to provide the evidence or information was sent at least one month after the date of the first request and at least one month has passed since the further request was sent;
 - (b) they may decide that the amber flag in regulation 9(2) (incomplete response to a request) is present provided that a further request to provide the evidence or information missing from the member’s response has been sent to the member and at least one month has passed since the further request was sent; and
 - (c) they may decide that any of the red or amber flags other than those referred to in sub-paragraph (a) or (b) are present no earlier than the soonest of—
 - (i) the date on which they have received all of the evidence or information requested;
 - (ii) the date on which they have received sufficient evidence or information in response to their request to decide that the Second Condition is satisfied in accordance with paragraph (3); or
 - (iii) the date on which they may apply the amber flag in regulation 9(2) in accordance with sub-paragraph (b).

The First Condition: transfers into certain receiving schemes

7.—(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 that is one of the types of scheme specified in paragraph (3).

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

- (a) a public service pension scheme as defined in section 1(1) of the 1993 Act (categories of pension schemes)⁽²¹⁾;
- (b) a Master Trust scheme—
 - (i) for the purposes of Part 1 of the Pension Schemes Act 2017 (Master Trusts)⁽²²⁾, which is authorised by the Pensions Regulator for the purposes of that Part and listed as such in accordance with section 13(1) of that Act (list of authorised schemes); or
 - (ii) for the purposes of Part 1 of the Pension Schemes Act (Northern Ireland) 2021 (Master Trusts)⁽²³⁾, which is authorised by the Pensions Regulator for the purposes of that Part and listed as such in accordance with section 13(1) of that Act (list of authorised schemes);
- (c) a collective money purchase scheme—

⁽²¹⁾ Section 1(1) was amended by section 239 of the Pensions Act 2004 (c. 35); there are other amendments that are not relevant.

⁽²²⁾ 2017 c. 17.

⁽²³⁾ 2021 c. 6 (N.I.).

- (i) for the purposes of Part 1 of the 2021 Act (collective money purchase benefits), which is authorised by the Pensions Regulator for the purposes of that Part, and listed as such in accordance with section 26(1) of that Act (list of authorised schemes); or
- (ii) for the purposes of Part 2 of the 2021 Act (collective money purchase benefits), which is authorised by the Pensions Regulator for the purposes of that Part, and listed as such in accordance with section 77(1) of that Act (list of authorised schemes).

(4) The First Condition is satisfied where the trustees or managers of the transferring scheme have satisfied themselves that the receiving scheme is established, in the case of sub-paragraph (a) of paragraph (3), or is listed as authorised by the Pensions Regulator, in the case of sub-paragraph (b) or (c) of that paragraph, in accordance with the legislation referred to in the relevant sub-paragraph.

(5) In satisfying themselves of the relevant matter required by paragraph (4), the trustees or managers of the transferring scheme must not require that the member provide evidence or information apart from the details necessary for the trustees or managers of the transferring scheme to identify the correct receiving scheme.

(6) For the purposes of paragraph (3)(c), where a pension scheme is divided into sections and the transfer is into a section that is a collective money purchase scheme for the purposes of Part 1 or Part 2 of the 2021 Act, receiving scheme means that section of the divided pension scheme.

The Second Condition: transfers into all other receiving schemes

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

(2) The Second Condition applies to all transfers to which the First Condition does not apply.

(3) The Second Condition is satisfied where none of the circumstances in paragraphs (4) and (5) (“the red flags”) are present in respect of the transfer.

(4) There is a red flag present where the trustees or managers of the transferring scheme decide that—

- (a) the member has failed to provide a substantive response to a request for evidence or information in respect of the Second Condition made in accordance with regulation 10(1) or (3); or
- (b) further to requiring that the member takes the specified guidance in accordance with regulation 9(1)(a), due to presence of one or more amber flags in respect of the transfer, the member has not provided the specified evidence that this has been taken in accordance with regulation 9(1)(b).

(5) There is a red flag present where the trustees or managers of the transferring scheme decide that—

- (a) a person without the appropriate regulatory status has carried on a regulated activity for the member in respect of the transfer in breach of section 19 (the general prohibition) or section 20 (authorised persons acting without permission) of the 2000 Act;
- (b) the member’s request to make the transfer has been made further to unsolicited contact for the purpose of direct marketing of the transfer;
- (c) the member has been offered an incentive to make the transfer; or
- (d) the member has been, or considers that they have felt, pressured to make the transfer.

(6) In this regulation—

“appropriate regulatory status”, in relation to carrying on a regulated activity, means being either an authorised person who has, or an exempt person who is exempt from requiring, permission to carry on that activity;

“authorised person” means a person who has permission under Part 4A of the 2000 Act (permission to carry on regulated activities) to carry on one or more regulated activities;

“direct marketing”, in respect of the transfer, has the same meaning as in regulation 21B of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (calls for direct marketing in relation to pension schemes)(**24**) in relation to occupational pension schemes or personal pension schemes;

“exempt person”, in relation to carrying on a regulated activity, means a person who is exempt from section 19 of the 2000 Act in respect of that activity by virtue of an exemption order made under section 38(1) (exemption orders), or as a result of section 39(1), of that Act;

“existing client relationship” has the same meaning as in regulation 21B of the Privacy and Electronic Communications (EC Directive) Regulations 2003;

“incentive”—

- (a) includes an offer of one or more free pension reviews, access to some or all of the member’s pension savings before they attain normal minimum pension age, a savings advance or cashback from their pension savings; and
- (b) does not include an incentive to make the transfer offered by the trustees or managers of the transferring scheme, or by the member’s employer where that employer is a sponsoring employer of the transferring scheme, whether that incentive is provided directly by the trustees, managers or sponsoring employer, or by a person they have authorised to provide it;

“normal minimum pension age” has the same meaning as in section 279(1) of the 2004 Act (other definitions);

“a regulated activity” means—

- (a) the making of any of the arrangements set out in article 25(1) and (2) of the 2001 Order (arranging deals in investments)(**25**);
- (b) advising a person as set out in article 53(1) of the 2001 Order (advising on investments)(**26**);
- (c) advising a person as set out in article 53E(1)(a), (b) and (c)(ii) of the 2001 Order (advising on conversion or transfer of pension benefits)(**27**); or
- (d) agreeing to carry on any of the regulated activities in sub-paragraphs (a) to (c) as set out in article 64 of the 2001 Order (agreeing to carry on specified kinds of activity)(**28**),

save to the extent that the activity falls within an applicable exclusion in the 2001 Order;

“specified evidence” and “specified guidance” have the meanings given by regulation 9(6);

“sponsoring employer” has the meaning given by regulation 11(11);

“substantive response” means one that provides at least part of the evidence or information requested, so that the trustees or managers of the transferring scheme can either reach a decision that part of the employment link or residency link is demonstrated, or that the red flags in paragraph (5) are not present; and

“unsolicited contact” means contact in person, or by telephone call, text message, letter, electronic mail, or direct message via social media, either from a party with whom the member had no existing client relationship or to whom the member states they had not previously notified consent to such contact.

(24) S.I. 2003/2426. Regulation 21B was inserted by S.I. 2018/1396.

(25) Article 25 was amended by S.I. 2003/1476, 2006/3384 and 2017/488.

(26) Article 53 was amended by S.I. 2016/392 and 2017/488, 500 and 701.

(27) Article 53E was inserted by S.I. 2015/731.

(28) Article 64 was amended by S.I. 2013/1881 and 2018/135 and 1253.

The Second Condition: requirement to take specified guidance

9.—(1) Where the trustees or managers of the transferring scheme decide that one or more of the circumstances set out in paragraphs (2) to (5) (“the amber flags”) is present in respect of the transfer they must require that the member—

- (a) takes the specified guidance; and
- (b) provides them with the specified evidence confirming that the member has taken the specified guidance at a time subsequent to being informed of the requirement to do so by virtue of sub-paragraph (a).

(2) There is an amber flag present where the trustees or managers of the transferring scheme decide that the member has provided a substantive response to a request for evidence or information in respect of the Second Condition made in accordance with regulation 10(1) or (3) but the response is incomplete because not all of the evidence or information requested has been provided.

(3) There is an amber flag present where the trustees or managers of the transferring scheme decide that some or all of the evidence provided in response to a request for evidence or information in respect of the Second Condition made in accordance with regulation 10(1) or (3)—

- (a) may not be genuine; or
- (b) may not have been provided directly by the member in accordance with paragraph (4) of that regulation.

(4) There is an amber flag present where the trustees or managers of the transferring scheme decide that all of the evidence required to be provided by the member in accordance with one of the sub-paragraphs of regulation 10(1) has been provided but the evidence does not demonstrate—

- (a) the employment link, which includes where the evidence does not show employer contributions to the receiving scheme required in accordance with regulation 11(1)(d), or where it shows that the member’s average gross weekly salary is below the minimum salary required in accordance with regulation 11(1)(c) and (7); or
- (b) the residency link.

(5) There is an amber flag present where the trustees or managers of the transferring scheme decide that—

- (a) there are any high risk or unregulated investments included in the receiving scheme;
- (b) there are any unclear or high fees being charged by the receiving scheme;
- (c) the structure of investments included in the receiving scheme is unclear, complex or unorthodox;
- (d) there are any overseas investments included in the receiving scheme; or
- (e) there has been a sharp or unusual rise in the volume of requests to make a transfer from the transferring scheme, either to the same receiving scheme as that to which the current request to make a transfer is made, or involving the same adviser or firm of advisers (or both).

(6) In paragraph (1), “the specified guidance” and “the specified evidence” are, respectively, the guidance in respect of pension transfer scams provided to the member 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.

(7) The requirements in regulation 10(4) and (5) that apply in relation to the provision of further evidence or information by the member under that regulation also apply to the requirement in paragraph (1)(b) regarding provision by the member of the specified evidence.

(8) In paragraph (2), “substantive response” has the meaning given by regulation 8(6).

(9) In paragraph (5)—

“fees” means all charges related to the transfer, or to the ongoing investment of the member’s pension savings, or to early access to those savings, or to administration of, or exit from, the receiving scheme, including any charges to be levied by third parties in connection with any of these matters;

“high fees” means fees that do not bear a reasonable relationship to the proposed benefits of the receiving scheme, or that are at the high end of, or beyond, the normal range of fees in the current financial market;

“high risk”, in relation to investments, means investments at the high end of the normal range of risk in the current financial market, and where the proportion of those investments is greater than that of a normally balanced portfolio in the current financial market;

“included in”, in relation to the investments of the receiving scheme or structure of those investments, means investments that the receiving scheme will make with the member’s pension savings immediately after the transfer is made, or is already making with the pension savings of other members of the receiving scheme;

“a sharp or unusual rise”, in relation to the volume of transfer requests, means as compared to the rate of similar transfers over a comparable period;

“overseas” means wholly or partly outside of the United Kingdom;

“unorthodox”, in relation to the structure of investments, means uncommon within a normal portfolio of investments in the current financial market, or where their legality may be in question; and

“unregulated investment” means an investment—

- (a) that is not a specified investment for the purposes of Part III of the 2001 Order (specified investments);
- (b) in respect of which the issuer, operator or provider is not subject to regulatory oversight in the United Kingdom in relation respectively to that issuance, operation or provision; or
- (c) where activities carried on for the member in relation to the investment are not subject to regulatory oversight in the United Kingdom.

(10) Apart from the terms “fees”, “included in”, “overseas” and “unregulated investment”, the meanings of the terms in paragraph (9) are to be applied by trustees or managers of the transferring scheme based on any of the following—

- (a) their knowledge of the financial market at the time of the request to make the transfer (“the current financial market”);
- (b) by comparing the evidence or information provided by the member to their knowledge of the current financial market; or
- (c) information they hold on volumes of transfers from the transferring scheme or other pension schemes of which they have knowledge.

The Second Condition: requirements on trustees or managers of the transferring scheme to request evidence or information

10.—(1) The trustees or managers of the transferring scheme must request from the member the following evidence, where the Second Condition applies to a transfer into one of the following types of receiving scheme—

- (a) where the receiving scheme is an occupational pension scheme, subject to subparagraph (c), the evidence specified in regulation 11 to demonstrate the employment link;
- (b) where the receiving scheme is a QROPS that is not an occupational pension scheme, the evidence specified in regulation 12 to demonstrate the residency link; or

- (c) where the receiving scheme is a QROPS that is an occupational pension scheme, either the evidence specified in regulation 11 to demonstrate the employment link, or the evidence specified in regulation 12 to demonstrate the residency link.

(2) Where paragraph (1) does not apply, the trustees or managers of the transferring scheme may proceed to a decision that the Second Condition is satisfied without making a request for evidence or information in accordance with paragraph (3), on the basis of all other relevant evidence or information including that set out in regulation 6(5)(a) and (c).

(3) Where the trustees or managers of the transferring scheme do not proceed to a decision in accordance with paragraph (2), including because paragraph (1) applies, they may request from the member such evidence or information concerning the circumstances relating to the transfer as they consider relevant in order for them to decide if the red or amber flags are present in respect of the transfer.

(4) Subject to paragraph (5), where the trustees or managers of the transferring scheme make a request from the member for evidence or information in accordance with paragraph (1) or (3), they must require that it is provided to them directly by the member, whether or not the member has a representative acting for them in the transfer.

(5) The trustees or managers of the transferring scheme may permit the evidence or information required to be requested from the member under this regulation to be provided on behalf of the member, by the relevant representative referred to in sub-paragraphs (a) to (d), where—

- (a) the member has a deputy appointed by the Court of Protection under Part 1 of the Mental Capacity Act 2005 (persons who lack capacity)⁽²⁹⁾;
- (b) the member has a receiver appointed under Part VII of the Mental Health Act 1983 (management of property and affairs of patients)⁽³⁰⁾ who is treated as a deputy by virtue of the Mental Capacity Act 2005 with power to make the request for a transfer on the member's behalf;
- (c) there is an attorney with a general power, or a power to make the request for a transfer, appointed by the member under the Powers of Attorney Act 1971⁽³¹⁾, the Enduring Powers of Attorney Act 1985⁽³²⁾, the Mental Capacity Act 2005 or otherwise; or
- (d) in Scotland, the member's estate is being administered by a judicial factor or any guardian acting or appointed under the Adults with Incapacity (Scotland) Act 2000⁽³³⁾ who has power to make the request for a transfer on the member's behalf.

The Second Condition: transfers into an occupational pension scheme and the employment link

11.—(1) There is an employment link between the member and the receiving scheme where the trustees or managers of the transferring scheme decide 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 period of 3 months ending with the date the request to make the transfer was received by the trustees or managers of the transferring scheme

⁽²⁹⁾ 2005 c. 9.

⁽³⁰⁾ 1983 c. 20.

⁽³¹⁾ 1971 c. 1.

⁽³²⁾ 1985 c. 29.

⁽³³⁾ 2000 asp. 4.

- (“the relevant employment period”) has met the minimum salary requirement specified in paragraph (7); and
- (d) contributions to the receiving scheme have been paid by, or on behalf of, the sponsoring employer, or by, or on behalf of, both the sponsoring employer and the member, during the relevant employment period.
- (2) The evidence required to demonstrate the employment link is that specified in paragraphs (3) to (6).
- (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;
- (c) the date from which the member has been continuously in their employment; and
- (d) contributions to the receiving scheme shown as due to be paid by the schedule, required in accordance with paragraph (4), have been paid and the dates of those payments, or, where the amounts of the contributions that have actually been paid are different to those that were due to be paid, those actual amounts and the dates they were paid.
- (4) A schedule of contributions or payment schedule showing—
- (a) separate entries for the amounts of pension contributions (excluding additional voluntary contributions) to the receiving scheme that were due to be paid for the relevant employment period by, or on behalf of, the member and the employer, or the employer only, in respect of that member; and
- (b) the dates on which those contributions were due to be paid.
- (5) Payslips, or other evidence in writing advising of pay remittances, showing the salary paid to the member by their employer for the relevant employment period.
- (6) Copies of the personal bank or a building society statements, or a copy of a building society passbook, showing the deposit of salary for the relevant employment period, or, where the trustees or managers of the transferring scheme request it, a certified copy of each statement or of the passbook.
- (7) For the purposes of paragraph (1)(c), the minimum salary requirement is that the member must have been paid an average gross weekly salary, during the relevant employment period, which was at, or above, the lower earnings limit determined under section 5 of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 contributions)(**34**).
- (8) For the purposes of determining the member’s average gross weekly salary referred to in paragraph (7), whether the member’s regularly paid salary is weekly, fortnightly or monthly, the amount of that salary is to be calculated by aggregating all salary payments during the relevant employment period, multiplying by 4, dividing by 365 and multiplying by 7.
- (9) Any salary paid to the member by way of commission, bonus, or other amounts paid separately from their regularly paid salary, is to be included in the aggregation of payments in the calculation made in accordance with paragraph (8).
- (10) For the purposes of determining the member’s average gross weekly salary referred to in paragraph (7), 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.
- (11) In this regulation—
- “certified copy” means a copy certified as a true copy by the personal bank or a building society; and

(34) 1992 c. 4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 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).

“sponsoring employer” has the same meaning as in section 150(6) of the 2004 Act (meaning of pension scheme and related terms).

The Second Condition: transfers into a QROPS and the residency link

12.—(1) There is a residency link between the member and the receiving scheme where the trustees or managers of the transferring scheme decide that the member is resident in the country or territory in which the QROPS is established.

(2) The evidence required to demonstrate the residency link is—

- (a) a copy or, where the trustees or managers of the transferring scheme request it, a certified copy, of the member’s formal residency documentation in the country or territory concerned; and
- (b) at least two other items of evidence in writing confirming that the member is resident in the country or territory in which the QROPS is established, with, where any item is not in English and the trustees or managers of the transferring scheme request it, a certified translation.

(3) Where the QROPS is established in an EEA state, for the purposes of paragraph (1) being resident in the same country or territory means being resident in that EEA state.

(4) In this regulation—

“certified copy” means certified as a true copy of the original document by a solicitor or notary, or an equivalent office holder;

“certified translation” means certified as a translation of the original document by a professional translator;

“resident in the country or territory in which the QROPS is established” has the same meaning as in section 244B(1)(a) of the 2004 Act (exclusion from overseas transfer charge: member and receiving scheme in same country).

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

3rd November 2021

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the conditions for pension transfers that the Secretary of State is required to prescribe further to the amendments made by section 125 (exercise of right to cash equivalent) of the Pension Schemes Act 2021 (c. 1) to the Pension Schemes Act 1993 (c. 48) (“the 1993 Act”), in particular the insertion of subsections (6ZA) to (6ZC) into section 95 (ways of taking right to cash equivalent) and of subsections (5A) to (5C) into section 101F (power to give transfer notice). Those sections of the 1993 Act provide for the different ways in which trustees or managers of an occupational or personal pension scheme may, further to application or notice from the member of their scheme (“the transferring scheme”), use the cash equivalent value of, respectively, either 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, by paragraph (1), that the conditions set out in these Regulations apply to all of the ways in which the member may exercise their right under the 1993 Act (“the statutory right”) to use the cash equivalent so as to make a transfer (defined in paragraph (3)) into another occupational or personal pension scheme.

Regulation 3 provides that the conditions only apply to transfers where the process of the transfer was initiated on or after the date that these Regulations come into force.

Regulation 4 provides, by paragraph (1), that one of the two conditions set out in these Regulations must be satisfied before a transfer can proceed and that, upon a decision that one of the two conditions is satisfied, the statutory right may be exercised. Paragraphs (2) and (3) provide that, where the trustees or managers of the transferring scheme have decided that neither of the conditions is satisfied, but either they realise a mistake has been made, or further evidence or information is provided by the member, they may remake their decision. Where they do remake the decision, the member’s statutory right in respect of that transfer is not lost and may still be exercised.

Regulation 5 provides, by paragraph (1), that the trustees or managers of the transferring scheme must ensure that the member is informed, within one month of the process of the transfer being initiated, of the requirement for one of the two conditions to be satisfied before their statutory right can be exercised. Paragraph (2) provides an exception to this notification requirement where the transfer has already been made. Paragraphs (3) and (4) provide that they must also ensure that the member is notified of their decision as to whether one of the conditions has been satisfied and for the timescales within which this must be done.

Regulation 6 provides, by paragraphs (1) to (4), for the standards of proof that must be applied in decisions made by the trustees or managers of the transferring scheme as to whether the conditions are satisfied (see further below as to when they apply); and, in the case of the Second Condition (defined below), for the constituent decisions as to the presence of the pension scam risk indicators (the “red flags” and “amber flags”, also defined below) relevant to satisfaction of that condition. Paragraph (5) provides for the evidence that may be relied upon in making these decisions (see further below) and paragraph (6) provides for the timing of decisions as to whether the Second Condition is satisfied.

Regulation 7 sets out the “First Condition”. By paragraph (2), it applies to a transfer into a scheme (“a receiving scheme”) that falls within one of the types set out in paragraph (3). Paragraph (4) provides that, in order for the First Condition to be satisfied, the trustees or managers of the transferring scheme must confirm, beyond reasonable doubt (see regulation 6(1)), that the receiving scheme is established or authorised as the relevant type of scheme requires. By paragraph (5), they may not

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seek evidence from the member to make this confirmation, except insofar as necessary to identify the correct receiving scheme. By paragraph (6), where the member of a transferring scheme is seeking to make a transfer into a section of a divided pension scheme, and that section is a collective money purchase scheme, the First Condition may be satisfied.

Regulation 8 sets out the “Second Condition”. By paragraph (2), it applies to all transfers to which the First Condition does not apply. Paragraph (3) provides that, in order for the Second Condition to be satisfied, the trustees or managers of the transferring scheme must decide that none of the “red flags”, set out in paragraphs (4) and (5), are present in respect of the transfer.

Regulation 9, by paragraphs (1) and (6), provides that pension transfer scams guidance, from the Money and Pensions Service (“the MaPS”), must be taken by the member where the trustees or managers of the transferring scheme decide that any of the “amber flags”, set out in paragraphs (2) to (5), are present in respect of the transfer. Where the member is required, but fails, to provide to the trustees or managers of the transferring scheme the specified evidence from the MaPS of having taken the guidance, this is a red flag (by regulation 8(4)(b)). Paragraph (7) applies the requirement in regulation 10(4) to provision of the specified evidence, so that the member themselves must provide it directly to the trustees or managers of the transferring scheme, unless the exception in regulation 10(5) applies (see below).

Regulation 10 sets out the requirements relating to seeking evidence or information from the member in order for the trustees or managers of the transferring scheme to decide whether the Second Condition is satisfied. By paragraph (1), where the receiving scheme is an occupational pension scheme or a qualifying recognised overseas pension scheme (a “QROPS”, defined in regulation 1), the trustees or managers of the transferring scheme must seek evidence from the member to establish respectively that there is an “employment link” (defined below), between the member, their employer and the occupational pension scheme; or that there is a “residency link” (also defined below), between the member and the QROPS; or in the case of a QROPS that is an occupational pension scheme, they must seek evidence of either the employment link or the residency link.

Paragraph (2) provides that, where the mandatory requirement to seek evidence in paragraph (1) does not apply, the trustees or managers of the transferring scheme may proceed to decide that the Second Condition is satisfied without formally seeking further evidence or information from the member under paragraph (3). They may reach that decision by relying on all relevant evidence or information. This includes that which they may have received from the member otherwise than in response to a formal request, or that which they already hold, such as information obtained in the course of carrying out their duties in relation to the transferring scheme or another pension scheme. In order to reach a decision under paragraph (2), the standard of proof in regulation 6(2) applies so that they must decide on the balance of probabilities that none of the red flags in regulation 8(5), and none of the amber flags in regulation 9(5), are present. (The red flags in regulation 8(4), and the amber flags in regulation 9(2) to (4) cannot apply where they proceed to such a decision as they relate to a request for evidence or information under paragraph (1) or (3), or to failure to supply evidence of taking the MaPS guidance, which is only required to be taken by the member after an amber flag has been found to be present.) Where they do not subsequently reach a decision that a red flag is present, they must decide that the Second Condition is satisfied.

Paragraph (3) provides that, where they do not proceed to a decision under paragraph (2), the trustees or managers of the transferring scheme have the discretion to seek from the member such further evidence or information as they consider relevant in order to reach a decision as to whether the Second Condition is satisfied. Where they exercise that discretion, the standards of proof in regulation 6(3) apply to the constituent decisions as to the presence of any of the red and amber flags. They must decide beyond reasonable doubt whether either of the red flags in regulation 8(4), or the amber flag in regulation 9(2), is present; and they must decide whether they have reason to believe that any of the red flags in regulation 8(5), or any of the amber flags in regulation 9(3) to (5), is present. Where they do not subsequently reach a decision that a red flag is present, they must decide that the Second Condition is satisfied.

Paragraph (4) provides that the member themselves must provide any evidence or information requested of them directly to the trustees or managers of the transferring scheme, with the exception of where they have one of the representatives set out in paragraph (5) acting for them, who may provide it on their behalf.

Regulation 11 sets out the employment link and specifies the evidence required to demonstrate it.

Regulation 12 sets out the residency link; also one item of specified evidence, and the form and accompanying requirements of two other pieces of evidence, to demonstrate it.

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.