

# New requirements for statutory transfers

## ➤ Matthew Swynnerton, who is a member of the Pension Scams Industry Group (PSIG), looks at the new requirements for statutory transfers under the Conditions for Transfer Regulations

On 8 November the DWP published the response to its May consultation on draft regulations prescribing additional conditions to be met in order for members to have a statutory transfer right. The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021 will apply to statutory transfer requests from 30 November 2021.

The regulations are intended to address the issue that, under the current legislation, if a member has a statutory transfer right, trustees are required to implement it even if they have pension scam concerns. The regulations are intended to give trustees the tools to act in these circumstances.

### Changes made to the draft regulations

There have been some significant changes to the regulations since the consultation, including:

- Rather than setting out four conditions, the final version of the regulations only specifies two conditions. Whilst that might seem simpler, the four conditions have been combined, and the result is fairly complex.
- The First Condition continues to provide a list of types of receiving scheme to which transfers can proceed without the trustees completing further checks. However, the list now only includes public service pension schemes, authorised master trusts and authorised collective money purchase schemes. A key change since the consultation is that personal pension schemes are no longer listed.
- The other three conditions in the

consultation draft have been merged into one new Second Condition, allowing for a holistic consideration of the employment and residency links with the red and amber flags.

- The Second Condition applies to all transfers to which the First Condition does not apply and can be divided into two broad types – Type 1 and Type 2:
  - Type 1 transfers enable trustees to proceed, (except where the proposed receiving scheme is an occupational pension scheme or a QROPS), based on information they already hold if they conclude on the balance of probabilities that certain red and amber flags are not present;
  - Type 2 transfers to an occupational pension scheme or a QROPS, require specified evidence to be requested in relation to the employment link or residency link;
    - irrespective of the type of receiving scheme, for Type 2 transfers, trustees have the power to request evidence or information concerning the circumstances relating to the transfer in order to decide if the red or amber flags are present; and
    - the way that the relevant flags are assessed and the standard of proof used differs between Type 1 and Type 2 transfers.

### Comment

Regulatory intervention which protects pension savers against scammers is to be welcomed and, for some time, the statutory transfer right has placed trustees in an invidious position when faced with statutory transfer requests to suspected scam vehicles. Greater powers

to block transfers to scam vehicles and refer members for guidance from the Money and Pensions Service where there are signs of a potential scam will help the industry better protect members. However, the final version of the regulations is complex and contains significant changes and due diligence may not be straightforward. Trustees will need to consider their current transfer processes and take decisions on a number of issues, including:

- which cases should be referred to the trustee board, and how the trustee will determine subjective tests;
- updates needed to member information requests;
- ensuring the correct standard of proof is applied;
- the trustees' position in relation to complicated areas, including the extent to which:
  - enhanced due diligence will be required due to the difficulty of concluding "on the balance of probabilities" that no amber flags (one of which is the receiving scheme having overseas investments) are present, even where the transfer is to a "green list" scheme; and
  - discretionary transfer powers will be used
  - reviewing and updating transfer communications.

Given the 30 November implementation date and statutory transfer deadlines, trustees should liaise with their administrators and take legal advice as quickly as possible to ensure that their transfer processes are updated in time.



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