



In Touch technical update

New regulations to limit transfer rights

The Pension Schemes Act 2021 introduced provisions that will require trustees to block transfer requests where certain conditions are not met. Following consultation, the necessary regulations have now been laid before Parliament, to take effect on 30 November.

At a glance...

- Proposed transfers must meet certain conditions in order for the member to retain a statutory right to transfer
- “Red Flags” will remove the statutory right
- “Amber Flags” will require members to take mandatory guidance from The Money and Pensions Service before they can transfer

Background

The powers granted by the Pension Schemes Act 2021 are designed to help scheme trustees combat the threat of pension scams, with regulations restricting the statutory right to transfer where certain conditions are not met or where there are warning signs. The Government’s initial consultation on regulations resulted in numerous concerns regarding the proposals, and the final regulations have been amended to address these.

The Pensions Regulator has also published new guidance, entitled “Dealing with transfer requests”, to support the new requirements.

The redrafted regulations now comprise two conditions. One or other of the conditions will need to be satisfied for the transfer to proceed.

First condition – certain types of receiving scheme

The first condition applies to transfers to schemes which are:

- A public service pension scheme;
- An authorised Master Trust scheme; or
- An authorised collective money purchase scheme.

Why bring you this note?

From 30 November 2021, trustees will have new duties where transfer requests are made.

Next steps

Trustees will need to confirm that their administrators’ processes will meet the new requirements.

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If this condition applies, trustees need to confirm the receiving scheme falls within one of the categories in the above list and that the scheme is established or authorised as relevant.

Members transferring to these schemes will be able to exercise their statutory right to transfer, and trustees cannot make any further requests for evidence or information.

Second condition – transfers to other schemes

Many transfers will not be to one of the types of schemes satisfying the first condition. For these transfers the second condition imposes potentially onerous requirements to assess whether a transfer can proceed or not.

When transferring to an occupational pension scheme, the transferring member must provide specific evidence to demonstrate an employment link. For a transfer overseas the member must show a residency link.

Where the transfer is not to an occupational pension scheme or overseas scheme, the trustees can decide that the second condition is satisfied without requesting further evidence or information, based on other relevant evidence or information - including information collected in respect of other transfers. TPR guidance explains that lists could be maintained of low-risk personal pension schemes, often referred to as a 'clean list', and that "These records may allow you to maintain a smooth transfer process where due diligence analysis shows no risk". The consultation response document states that "The intention is to ensure that transfers, where trustees and scheme managers have no suspicions, can proceed without any additional processes".

For transfers to occupational pension schemes, overseas schemes and pension arrangements which cannot be readily identified as low-risk, a consideration of scam risk indicators will be required.

The scam risk indicators are set out in the form of red and amber flags, to allow trustees to act on the results of their due diligence processes.

Red flags

A red flag is where the transferring scheme member has failed to provide a substantive response to the trustees' request for evidence, or fails to provide evidence that he has taken the required guidance (see below). A red flag also occurs where the transferring scheme trustees decide that someone without the appropriate regulatory status has advised the member in respect of the transfer, the transfer request has been made further to unsolicited contact, or due to an incentive or pressure to make the transfer.

If a red flag is identified, the second condition is not satisfied and this will prevent the transfer from proceeding.

Amber flags

An amber flag arises where the member has not fully responded to a request for information, or where the trustees have doubts on some of the evidence provided.

An amber flag also arises where the receiving scheme has high risk, overseas or unregulated investments (or a complex investment structure);

unclear or high fees, or where there has been a sharp or unusual rise in the volume of requests to transfer to that receiving scheme (or involving the same adviser).

If an amber flag is present, the transfer can only proceed when the member provides evidence that they have taken scam-specific guidance from the Money and Pensions Service (MaPS).

Having made a decision that neither the first nor the second condition is met, the trustees can revisit this if they subsequently receive information that shows a condition is satisfied.

Communication with members

The trustees of the transferring scheme must ensure that, within one month after the member's application for a transfer statement, the member is informed about the conditions that have to be satisfied in order for the member to use the statutory right to transfer.

If the trustees decide that neither the first nor second conditions are met, they must ensure that the member is sent notification of this within 7 working days after the date of that decision.

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