

First Briefing, November 2021 – New transfer regulations

The Department of Work and Pensions (DWP) has published regulations that set out when statutory pension transfers can and cannot take place. These regulations, which come into effect on 30 November 2021, give trustees the power to refuse a transfer where there is a risk that it's part of a pension scam.

Requirements for trustees and managers

[The Occupational and Personal Pension Schemes \(Conditions for Transfers\) Regulations 2021](#) require trustees to refuse a statutory transfer where circumstances indicate it may be part of a pensions scam.

Trustees are now required to carry out specific checks before they process a member's statutory request to transfer their pension savings to another pension arrangement.

The checks require trustees to be satisfied that one of two conditions have been met. These two conditions are:

1. The receiving scheme is of a type listed in the transfer regulations
2. Checks for an employment link and overseas residency have not uncovered any red or amber flags.

Condition 1: The scheme type is listed in the regulations

Under the first condition, trustees *must be satisfied beyond reasonable doubt* that the receiving scheme is one of the following:

- A public service pension scheme
- An authorised master trust listed by The Pensions Regulator (TPR)
- An authorised Collective Defined Contribution (CDC) scheme included on a list to be published by TPR.

The transfer can proceed without any further checks if this condition is met.

Condition 2: Employment link and overseas residency checks

Where the receiving scheme is not one of those listed under the first condition, the second condition will apply. Under this condition, trustees must consider additional scam risk indicators related to employment and overseas residency and in each case judge whether they are *red or amber flags*.

If the trustees, on the basis of their knowledge of the receiving scheme, conclude that they have sufficient evidence *to say that on the balance of probabilities there are no substantive red or amber flags*, they can decide that the second condition has been met.

In this situation, the transfer can proceed without the additional checks set out in the regulations. This will allow transfers to personal pensions with authorised UK insurers, for example.

Two additional considerations also apply. If the receiving scheme is:

- an occupational pension scheme – trustees must also request evidence to demonstrate that there is an *employment link*
- a qualifying recognised overseas pension scheme (QROPS) – trustees must also request evidence to demonstrate that there is a *residency link* or an *employment link*, depending on the member's employment status.

Employment link

The trustees must request the following evidence to determine whether an *employment link* exists and the transfer can proceed:

- A letter from the member's employer confirming their continuous employment
- Payment/contribution schedules
- Payslips
- Bank statements.

The transfer will only proceed if trustees decide there is an employment link with no red or amber flags.

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Residency link

If the transfer is being made to a QROPS, the trustees must either determine that there is an *employment link* or confirm that the *residency link* applies by requesting a copy of the member's formal residency documentation, together with two other items of evidence which may include:

- Utility bills
- Television subscriptions
- Insurance documents relating to the member's overseas home
- The address registered on their driving licence
- Bank account and credit card statements
- Evidence of local tax being paid
- Registration at that address with a local doctor.

The transfer will only proceed if trustees decide there is a residency link and no red or amber flags.

Red flags

TPR lists the following red flags in its guidance:

- The member has failed to provide the required information
- The member has not provided evidence of receiving MoneyHelper guidance
- There is evidence that someone has carried out a regulated activity without the required regulatory status
- The member requested a transfer following unsolicited contact
- The member has been offered an incentive to make the transfer
- The member has been pressurised to make the transfer.

Trustees must refuse a transfer where, on the balance of probabilities, they decide a red flag is present.

Amber flags

The amber flags set out in the regulations are:

- The member has not demonstrated an employment link or residency link
- The member cannot demonstrate an employment link or residency link
- High-risk or unregulated investments are included in the scheme
- The scheme charges are unclear or high
- The scheme's investment structure is unclear, complex or unorthodox
- Overseas investments are included in the scheme

- A sharp, unusual rise in transfers involving the same scheme or adviser.

If, on the balance of probabilities, the trustees decide an amber flag is present, they must tell the member to attend a guidance session with MoneyHelper before the transfer can proceed.

The purpose of MoneyHelper guidance is to help identify common risks involved in transfers, highlight the dangers of pension scams, and allow the member to consider whether to proceed with their transfer.

Non-statutory transfers

Scheme rules may allow trustees to offer non-statutory transfers to their members. Trustees should consider the new regulations when assessing whether to grant a non-statutory transfer.

In its [guidance on dealing with transfer requests](#), TPR says:

“Our expectation is that trustees will carry out enough due diligence on a non-statutory transfer to be confident that they have fulfilled their fiduciary duties to the transferring member.”

How First Actuarial is preparing for the new regulations

To ensure compliance with the new transfer regulations, we are:

- reviewing and updating our transfer communication documents
- reviewing and updating our internal processes and due diligence procedures.
- providing training to our staff.

Find out [how we help protect scheme members against pension scams](#) in our day-to-day work.

Further information and references

For further information, please contact your usual First Actuarial consultant.