
STATUTORY INSTRUMENTS

2021 No. 1237

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

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 sub-paragraph (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)⁽¹⁾;
- (b) the member has a receiver appointed under Part VII of the Mental Health Act 1983 (management of property and affairs of patients)⁽²⁾ 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;

(1) 2005 c. 9.
(2) 1983 c. 20.

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- (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⁽³⁾, the Enduring Powers of Attorney Act 1985⁽⁴⁾, 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⁽⁵⁾ who has power to make the request for a transfer on the member's behalf.

(3) 1971 c. 1.
(4) 1985 c. 29.
(5) 2000 asp. 4.