
STATUTORY INSTRUMENTS

2021 No. 1237

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

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)⁽¹⁾ in relation to occupational pension schemes or personal pension schemes;

(1) [S.I. 2003/2426](#). Regulation 21B was inserted by [S.I. 2018/1396](#).

“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)(2);
- (b) advising a person as set out in article 53(1) of the 2001 Order (advising on investments)(3);
- (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)(4); 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)(5),

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.

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

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

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

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