
STATUTORY INSTRUMENTS

2021 No. 1237

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

The Second Condition: requirement to take specified guidance

9.—(1) Where the trustees or managers of the transferring scheme decide that one or more of the circumstances set out in paragraphs (2) to (5) (“the amber flags”) is present in respect of the transfer they must require that the member—

- (a) takes the specified guidance; and
- (b) provides them with the specified evidence confirming that the member has taken the specified guidance at a time subsequent to being informed of the requirement to do so by virtue of sub-paragraph (a).

(2) There is an amber flag present where the trustees or managers of the transferring scheme decide that the member has provided 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) but the response is incomplete because not all of the evidence or information requested has been provided.

(3) There is an amber flag present where the trustees or managers of the transferring scheme decide that some or all of the evidence provided in response to a request for evidence or information in respect of the Second Condition made in accordance with regulation 10(1) or (3)—

- (a) may not be genuine; or
- (b) may not have been provided directly by the member in accordance with paragraph (4) of that regulation.

(4) There is an amber flag present where the trustees or managers of the transferring scheme decide that all of the evidence required to be provided by the member in accordance with one of the sub-paragraphs of regulation 10(1) has been provided but the evidence does not demonstrate—

- (a) the employment link, which includes where the evidence does not show employer contributions to the receiving scheme required in accordance with regulation 11(1)(d), or where it shows that the member’s average gross weekly salary is below the minimum salary required in accordance with regulation 11(1)(c) and (7); or
- (b) the residency link.

(5) There is an amber flag present where the trustees or managers of the transferring scheme decide that—

- (a) there are any high risk or unregulated investments included in the receiving scheme;
- (b) there are any unclear or high fees being charged by the receiving scheme;
- (c) the structure of investments included in the receiving scheme is unclear, complex or unorthodox;
- (d) there are any overseas investments included in the receiving scheme; or
- (e) there has been a sharp or unusual rise in the volume of requests to make a transfer from the transferring scheme, either to the same receiving scheme as that to which the current

request to make a transfer is made, or involving the same adviser or firm of advisers (or both).

(6) In paragraph (1), “the specified guidance” and “the specified evidence” are, respectively, the guidance in respect of pension transfer scams provided to the member by the Money and Pensions Service (“the MaPS”) and the evidence provided by the MaPS to those who have completed all of the actions necessary to take that guidance.

(7) The requirements in regulation 10(4) and (5) that apply in relation to the provision of further evidence or information by the member under that regulation also apply to the requirement in paragraph (1)(b) regarding provision by the member of the specified evidence.

(8) In paragraph (2), “substantive response” has the meaning given by regulation 8(6).

(9) In paragraph (5)—

“fees” means all charges related to the transfer, or to the ongoing investment of the member’s pension savings, or to early access to those savings, or to administration of, or exit from, the receiving scheme, including any charges to be levied by third parties in connection with any of these matters;

“high fees” means fees that do not bear a reasonable relationship to the proposed benefits of the receiving scheme, or that are at the high end of, or beyond, the normal range of fees in the current financial market;

“high risk”, in relation to investments, means investments at the high end of the normal range of risk in the current financial market, and where the proportion of those investments is greater than that of a normally balanced portfolio in the current financial market;

“included in”, in relation to the investments of the receiving scheme or structure of those investments, means investments that the receiving scheme will make with the member’s pension savings immediately after the transfer is made, or is already making with the pension savings of other members of the receiving scheme;

“a sharp or unusual rise”, in relation to the volume of transfer requests, means as compared to the rate of similar transfers over a comparable period;

“overseas” means wholly or partly outside of the United Kingdom;

“unorthodox”, in relation to the structure of investments, means uncommon within a normal portfolio of investments in the current financial market, or where their legality may be in question; and

“unregulated investment” means an investment—

- (a) that is not a specified investment for the purposes of Part III of the 2001 Order (specified investments);
- (b) in respect of which the issuer, operator or provider is not subject to regulatory oversight in the United Kingdom in relation respectively to that issuance, operation or provision; or
- (c) where activities carried on for the member in relation to the investment are not subject to regulatory oversight in the United Kingdom.

(10) Apart from the terms “fees”, “included in”, “overseas” and “unregulated investment”, the meanings of the terms in paragraph (9) are to be applied by trustees or managers of the transferring scheme based on any of the following—

- (a) their knowledge of the financial market at the time of the request to make the transfer (“the current financial market”);
- (b) by comparing the evidence or information provided by the member to their knowledge of the current financial market; or

- (c) information they hold on volumes of transfers from the transferring scheme or other pension schemes of which they have knowledge.