

PENSIONS BULLETIN

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In this month's Pensions Bulletin, we look at the Government consultation on legislation intended to help address pension scams by imposing new conditions on a member's statutory right to transfer their pension benefits. We then consider draft regulations and statutory guidance that will require defined contribution schemes used for auto-enrolment to provide simpler annual benefit statements. Finally, we cover a joint consultation from the Pensions Regulator and the Pension Protection Fund on proposed changes to the asset information provided by defined benefit (DB) schemes in their annual scheme returns, which may also have relevance for measuring investment risk under the new DB scheme funding code. Our watch list is included at the end of the Bulletin.

Together with our colleagues in Financing, we have written an article on the new powers for the Pensions Regulator introduced by the Pension Schemes Act 2021. The [article](#) "*The Pensions Regulator's new teeth: how might they bite lending transactions?*" outlines how DB pension risk might affect financing transactions and how far the new Act's provisions might change practice in the area.

GOVERNMENT CONSULTATION ON TRANSFER RESTRICTIONS

Draft regulations, expected to come into force in Autumn 2021, will significantly change the position on statutory transfer rights. Transfers will only be permitted where certain conditions guarding against pension scams are satisfied. This is intended to help trustees who suspect a scam but are currently required by legislation to make a transfer (because the member has a statutory right). However, trustees may have to make difficult judgment calls, in particular where there is a suspicion of a "red flag" arising but this has not been substantiated. They may need to document their decisions carefully to protect against future claims.

Draft regulations under the Pension Schemes Act 2021 amend Section 95 of the Pension Schemes Act 1993 so that trustees may proceed with a transfer only if one of four conditions is satisfied - even if the member has taken regulated financial advice in relation to the transfer. The short [consultation](#) on the draft regulations - *Empowering trustees and protecting members* - ends on 10 June 2021.

Trustees must tell members about the conditions and that at least one condition must be met before a transfer can proceed, within one month of a member's request for a CETV or request to transfer, whichever happens first. The draft conditions are:

1. **Transfer to certain receiving schemes:** The receiving scheme is a public sector scheme, an authorised master trust, an authorised collective money purchase scheme (when the appropriate regulations come into force) or a personal pension

scheme operated by a registered and authorised insurer; and the transferring trustees have confirmed (and notified the member) that the receiving scheme is authorised/registered. The draft regulations make the transferring trustees responsible for confirming the status of the receiving scheme; they are not allowed to place that onus on the member. (It is possible that the list of approved transferees may be extended; certain providers have already expressed frustration that they are not automatically included.)

2. **Employment link:** If the transfer is not to a scheme in 1, members can exercise their statutory right to transfer by demonstrating an “employment link”. This requires the member to show that:
 - a. the member’s employer is a sponsoring employer of the receiving scheme;
 - b. the member is employed by that employer and was so employed for three months up to the date on which the transferring trustees received the transfer request;
 - c. the member’s pay during that three month period was at least equal to the National Insurance Lower Earnings Limit; and
 - d. both the employer and the member contributed to the receiving scheme during that three-month period.

The transferring trustees must request evidence from the member to demonstrate the employment link: a letter from the member’s employer, a schedule of employer and member contributions to the receiving scheme, payslips or other evidence of salary, and bank statements showing the receipt of salary. Alternatively, if the member has already made a transfer to the same receiving scheme within the previous 12 months, the member may provide evidence of the earlier transfer and this will be taken to demonstrate the employment link. It will be for the transferring trustees to decide “on the balance of probabilities” whether the employment link has been demonstrated.

3. **QROPS and residency link:** alternatively, if the receiving scheme is a qualifying recognised overseas pension scheme (QROPS) and no employment link can be demonstrated, the member has the right to transfer if they can show that there is a “residency link”. This requires that for at least six months before the transferring trustees received the transfer request, the member was resident in the same financial jurisdiction as the QROPS (disregarding absences that do not exceed 30 days).

The transferring trustees must request evidence from the member, including formal residency documentation and other written evidence which the member may hold. It will be for the transferring trustees to decide (again, on the balance of probabilities) whether the residency link has been demonstrated.

4. **Red and amber flags:** Where a proposed transfer does not meet any of the first three conditions, the transfer can go ahead only if there are no red or amber flags (see below), or, if there are amber flags, the member has taken specific guidance on pension scams from the Money and Pensions Service (MaPS). The member will have to provide evidence of taking MaPS guidance (or evidence of having taken MaPS guidance in relation to an earlier transfer to the same scheme within the previous year). There will be no exceptions to the MaPS guidance requirement where the amber flags apply, including where the member has been required to take regulated financial advice from a financial adviser. If the member does not provide the evidence, this in itself is a red flag and the transfer cannot proceed.

The trustees may require the member to provide information to identify whether the red or amber flags are present but are not obliged to do so. The consultation explains that trustees may be able to decide that the red and amber flags are not present without the need for additional checks or activity over and above that which they already undertake as part of their current processes.

Red flags:

- the member refuses to provide information required by the transferring trustees to enable them to decide if there are red or amber flags;

- there is an amber flag, the transferring trustees have required the member to take guidance from MaPS, but the member has not provided evidence of having done so; or
- the transferring trustees have a reasonable belief that:
 - the member has received financial advice on the transfer, or a recommendation to transfer, from someone unauthorised to give the advice or recommendation (except for advice from an overseas adviser on overseas investments);
 - the transfer request arose from an unsolicited approach to the member;
 - the member has been offered an incentive to transfer (including a free pension review, early access to pension savings, or cashback); or
 - the member has been pressured to transfer quickly.

Amber flags - the transferring trustees have a reasonable belief that:

- the receiving scheme includes high risk, overseas or unregulated investments; charges high or unclear fees; or has investment structures which are unclear, complex or unorthodox;
- an overseas adviser has advised the member in relation to overseas investments in the receiving scheme; or
- the transferring trustees are aware of a high volume of transfer requests from their scheme to a single receiving scheme or involving a single adviser or advisory firm.

The consultation includes (at Annex 3) a proposed set of standard questions for trustees to ask members before deciding if a condition is met. The legal position for trustees who do not receive clear answers to questions remains uncertain.

The Pensions Regulator is expected to issue guidance for schemes on applying the new provisions. The recently updated Industry (PSIG) Code of Practice and the scams module of the Pension Regulator's draft consolidated Code of Practice will need to be amended.

Next steps for trustees: Trustees will need to check with administrators to ensure processes are updated and in place by Autumn, as the regulations may come in with immediate effect. In the meantime, trustees should continue to conduct due diligence in accordance with the Pension Regulator's scheme transfer checklist and the PSIG Code of Practice (see our [Pensions Bulletin April 2021](#)).

CONSULTATION ON SIMPLER ANNUAL BENEFIT STATEMENTS FOR DC AUTO-ENROLMENT SCHEMES

As announced last year, simpler annual benefit statements are coming in from April 2022. The Government is consulting on regulations and statutory guidance that will require DC schemes used for auto-enrolment to fulfil their annual obligation to provide benefit statements through simpler means. The statements will be limited to two sides of A4, with any further detail, such as on charges, provided in a separate document.

The Government has published a [consultation](#) (running until 29 June 2021) on draft regulations and guidance to underpin simpler annual benefit statements, for members of DC schemes used for auto-enrolment. The consultation seeks views on [draft regulations](#) and [draft statutory guidance](#), including an [illustrative statement template](#). The consultation follows the DWP's October 2020 response to a previous consultation on simplifying benefit statements.

The draft regulations, which amend the Disclosure Regulations, are due to come into force on 6 April 2022, and the new framework will be subject to review every three years. A transitional provision will ensure that the changes do not apply to information already given by trustees to members before 6 April 2022.

Trustees of DC qualifying schemes will be required to provide annual statements that do not exceed a maximum of one double-sided sheet of A4 paper when printed. The new obligation on length will not apply where a member has asked the trustees to supply a statement in an alternative format, provided the trustees are reasonably satisfied this is

necessary under the Equality Act 2010, for example if a member requests the statement in a different format or language.

The illustrative [template](#) of the two-page statement, based on the two-page simpler statement [template](#) published on the PLSA's website and endorsed by the Pensions Regulator, is divided into five sections: the member's personal (and scheme) details; how much they already have in their pension plan; how much they could have when they retire; what they could do to increase this; and links to other resources for further information. As indicated in the DWP's October 2020 response, displaying information on charges is not included. Instead, the template has a link to the place where a more detailed assessment of this information is already required to be provided (under 2018 amendments to the Disclosure Regulations). Other signposting is to how money goes in and out of the member's pension plan; how to transfer money in from another pension scheme; and investment (including pooled funds and, where applicable, information on climate change).

There is no mention in this consultation of the possibility of mandatory rules on the timing of benefit statements - there have been suggestions that there should be a "statement season". As for DB schemes, the Government says that the new rules for DC schemes will provide "*an opportunity to learn lessons about the potential applicability to DB schemes in the future*".

Next steps for trustees: Trustees of DC schemes within scope should plan ahead to comply with the new requirements. Trustees of other schemes may want to consider how these developments might affect their own member communication strategies.

PROPOSED CHANGE IN ASSET INFORMATION COLLECTED IN SCHEME RETURNS

A joint [consultation](#) from the Pensions Regulator (TPR) and the Pension Protection Fund (PPF) proposes changes to the information about scheme assets collected through scheme returns, in order to improve the measurement of investment risk. The proposals are derived from the detailed set of asset categories used in the stress calculation for the PPF levy and those asset categories appear likely to be used as the basis for measuring investment risk in TPR's new defined benefit (DB) scheme funding code.

The TPR/PPF [consultation](#) proposes changes to the asset class information collected by TPR from DB schemes through the annual scheme return. TPR uses this information to help measure investment risk and the PPF to help calculate its risk-based levy.

The consultation explains the developments in pension scheme investment that have triggered the need for a better assessment of investment risk. Given the steady increase in allocation to bonds over the last 10 years, it is important to be able to assess the investment risks within schemes' bond allocations by maturity, credit quality and currency, rather than simply to distinguish them from growth assets such as equities. There has also been a change in growth assets, with schemes diversifying away from traditional equities and increasing their use of diversified growth funds.

TPR/PPF report that, in the first consultation on a revised DB funding code, there was strong support for the use of a PPF stress test to measure investment risk, to enable trustees to determine the appropriateness of the risks being taken, in the context of their scheme's maturity and covenant. TPR is actively considering this as part of its response to consultation and it appears likely to feature in the second consultation, on the wording of the draft code, later this year. TPR believes that, in order to get a clearer picture of investment risk (part of the information required to meet the standards expected under the new regime), trustees should report their asset data in a more granular way.

PPF/TPR is proposing a tiered approach, based on scheme size:

- Smaller schemes (Tier 1 - with liabilities at the latest valuation below £20m) will see only minor changes.
- Larger schemes (Tier 2 - up to £1.5bn of liabilities) will be asked to provide more detailed data.
- The largest schemes (Tier 3 - over £1.5bn of liabilities) will continue to carry out the bespoke stress calculation, as required under the PPF levy rules.

Schemes will be able to "trade up" tiers and voluntarily provide more information if they wish.

The consultation says that the more detailed asset breakdown should be relatively straightforward for most schemes to provide and, in many cases, will already be included in regular reporting from investment managers. The bespoke stress calculation also requires information on the sensitivity of the portfolio to changes in interest rates and inflation and calculating the impact of the specified risk-factor stresses, but this will continue to be required for only the largest schemes.

Consultation closes on 10 June 2021 and it is intended that the scheme return changes will operate in time for the introduction of the new DB funding code - now expected to be December 2022. The PPF would then propose changes to the PPF levy rules, after the usual consultation.

Next steps for employers and trustees: Sponsors and trustees will want to monitor the progress of this consultation, along with the next stages of TPR's new DB funding code.

PENSION LEGISLATION AND REGULATION WATCH LIST

No	Topic	Expected effective date	Further information/action
1	Statement of Investment Principles (SIP) annual implementation statement	Annual reports which are signed off on or after 1 October 2020	This applies to all pension schemes required to have a SIP in place.
2	Include annual implementation statement on website	Annual reports which are signed off on or after 1 October 2020	For DC schemes only. (The requirement for DB schemes applies in part only, and later - see 7 below.)
3	Draft DB Funding Code of Practice	Regulations expected for consultation "later" in 2021 Part 2 of consultation on draft Code expected "later in" or "towards end" of 2021 and new Code expected to be operational in December 2022.	Once in force, the Code will apply to triennial valuations submitted to TPR thereafter.
4	Pensions Schemes Act 2021: TPR powers; scheme funding; CMP schemes; pension dashboards	Different implementation dates expected for different parts	Regulations and further consultation expected. Climate risk provisions - see 8 below. Pension scams - see 10 below.
5	TPR consolidated Code of Practice		TPR consultation issued 17 March 2021 and closes 26 May 2021
6	Trustee oversight of fiduciary managers and investment consultants	Under the Investment Consultancy and Fiduciary Management Market Investigation Order 2019, compliance statements,	Consultation response and new DWP regulations have been delayed until June 2022.

No	Topic	Expected effective date	Further information/action
		confirming the extent to which requirements have been met, had to be provided to CMA by 7 January 2021.	
7	Include annual statement on compliance with policy on stewardship and engagement activities, and voting behaviour, on website	1 October 2021	DB schemes only.
8	Climate risk governance and reporting requirements under the Pension Schemes Act	1 October 2021	<p>Applies to schemes (DB and DC) with £5 billion or more in net assets on the first scheme year to end on or after 1 March 2020. They will be required to have governance for the scheme year underway from 1 October 2021 and publish the first annual report within seven months of the end of the scheme year.</p> <p>Consultation on draft Regulations under the Pension Schemes Act and draft statutory guidance issued with response to consultation.</p>
9	Proposals to improve DC scheme governance and disclosure and to encourage consolidation, including changes to the annual Chair's statement and charge cap changes	October 2021	<p>DC schemes only.</p> <p>Response to March 2021 consultation and remaining parts of 2020 consultation, together with final statutory guidance and final regulations, expected June 2021.</p> <p>DWP to review whether fines for non-compliance with Chair's statement requirements should be mandatory (DWP review of Charges and Governance Regulations April 2021).</p>

No	Topic	Expected effective date	Further information/action
10	Restrictions on transfers of a member's cash equivalent transfer value by trustees/managers of occupational or personal pension schemes unless prescribed conditions are met.	Regulations to be introduced Autumn 2021	Consultation on draft regulations closes 10 June 2021.
11	DB superfunds	Interim regulatory regime in place from October 2020	New legislation promised.

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