

Department for Work and Pensions

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

Thank you for the consultation document inviting comments on The Occupational and Personal Pension Schemes (Conditions for Transfers) Regulations 2021.

I respond on behalf of the Local Government Pensions Committee (LGPC) of the Local Government Association (LGA).

The LGA is a politically led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. In total, 328 local authorities are presently members of the LGA. The LGPC is a committee of councillors constituted by the LGA, the Welsh Local Government Association (WLGA) and the Convention of Scottish Local Authorities (COSLA). The LGPC considers policy and technical matters affecting the Local Government Pension Scheme (LGPS) in the UK, a scheme which has over 6.1 million members.

This letter sets out the LGPC's views on the matters covered in the consultation. I hope our response is helpful; if you have any questions, please do not hesitate to contact me.

Yours faithfully



Jeff Houston

**Head of Pensions**

## **Annex 1: Specific consultation questions**

### **First condition**

1. Please provide details of any additional types of receiving scheme to which transfers should proceed without additional checks, including how they can be identified for the purposes of the regulations.

Draft regulation 3(3)(a) lists a scheme for persons in public service as established under the Public Service Pensions Act 2013 ('the Act'). This will capture transfers made to the reformed public service CARE schemes. It will not capture transfers made to the public service final salary legacy schemes (listed in schedule 5 of the Act), the majority of which were established under the Superannuation Act 1972.

Eligible transfers to the public service final salary legacy schemes retain final salary protection under section 20 and schedule 7 of the Act. We suggest draft regulation 3(3)(a) should be expanded to include such schemes.

### **Second and third conditions**

2. To what extent is the evidence requirement set out in the regulations to demonstrate an 'employment link' sufficient and how could it be strengthened?

We consider the evidence requirements set out in draft regulations 4 and 5 to be sufficient to demonstrate an 'employment link'.

In addition, we have the following comments:

- Part of the qualifying criteria to meet the second condition prescribes that the member must meet the minimum salary requirement specified in draft regulations 4(3)(c) and 5(5) (ie a weekly salary equivalent to the lower earnings limit). If this minimum criterion is not met, there is no option for the transfer to move on to the fourth condition and for the trustees or managers to assess whether there are any red or amber flags present. Is the policy intention that members who request a transfer to an occupational pension scheme must earn at least the lower earnings limit? If this is the case, then this policy may unduly impact on part time employees.

Secondly, this policy does not seem to satisfy the strategic objective set out in paragraph 24 of the consultation document 'we do not want to prevent...transfers where there is minimal or low risk of a pension scam'. We suggest that in this situation there should be an option for the transfer to move on to the fourth condition, allowing the trustees or administrators to assess whether there are red or amber flags present.

- Under draft regulation 5(2), the second condition can be met where the member provides evidence that they have transferred to the same scheme within the previous 12 months. This means that this condition can be satisfied where the previous transfer was made before the draft regulations take effect. Also, for transfers made after the regulations take effect, the condition would be satisfied if the previous transfer was made by a different pension scheme that did not comply with the rules. For example, it may be possible for a scammer to engineer a previous transfer into the receiving scheme so that the second condition is met for the current transfer. We suggest draft regulation 5(2) is adjusted to make clear that ‘within the period of 12 months’ includes ‘taking into account a period before the effective date of these regulations’.
- The consultation document and draft regulations do not set out what evidence would be needed to prove that the prescription in draft regulation 5(2) has been met. We suggest that specifying what evidence would be acceptable in guidance or regulation would be helpful. It may also make it more difficult for a scam scheme to prove that a previous transfer has taken place. We suggest reference to draft regulations 5(3) and 5(4) is added to draft regulation 5(2) to clearly set out what evidence is required.
- Draft regulation 5(4) references ‘the last 3 months’ and ‘the last 3 months of the member’s employment’. We understand that the intention is that the 3 months end with the date the transferring scheme received the transfer request. We suggest that the references to the ‘last 3 months’ in draft regulation 5(4) are amended to reflect the intention.
- Draft regulation 5(4) confirms that employee and employer pension contributions will also need to be paid into the receiving scheme so as not to raise an amber flag. However, there is no legislative requirement to demonstrate that the money has actually been paid into the bank account of the receiving pension scheme, only that a copy of payment schedule should be provided, presumably this will be rectified in the final regulations. If not, then we suggest this flag is removed as obtaining a copy of a payment schedule does not prove the monies have been paid into the bank account of the receiving pension scheme.

### 3. How could the evidence requirement for ‘residency link’ work in practice?

We have the following comments regarding the ‘residency link’:

- There appears to be an error in draft regulation 7(3), we think the regulatory reference should be to regulation 6(3)(a) and 6(3)(b).
- Part of the qualifying criteria to meet the third condition prescribes that the member must be a resident in the same financial jurisdiction (draft regulations 6(3)(a) and

7(3)). If this minimum criterion is not met, there is no option for the transfer to move on to the fourth condition and for the trustees or scheme managers to assess whether there are any red or amber flags present. Is the policy intention that a member who wishes to transfer to a QROPS, must be resident in the same financial jurisdiction as the one in which the QROPS is established? If this is the case then the policy seems to contradict section 244B of the Finance Act 2004, which excludes the transfer from the overseas transfer charge if the member is resident in the country or territory in which the QROPS, that is an occupational pension scheme, is established. By extension, a transfer to a QROPS established in a different country is permitted but is subject to the overseas transfer charge. We believe that in this situation there should be an option for the transfer to move on to the fourth condition, allowing the trustees or managers to assess whether there are red or amber flags present.

- Draft regulation 7(4) says that temporary absences of residence may be included when considering whether the member was resident in the financial jurisdiction for the entirety of the six-month period ending with the date the transferring scheme receive the transfer request. To avoid confusion, we suggest that “may be included” is changed to “is included”. Regulation 7(4) then limits this by saying that temporary absences are only included in so far as the total absence from the jurisdiction in question does not exceed 30 days. Is the intention that absence before the start of the six-month period is included in this? For example, if the member in the six-month period has an absence of 10 days but also had a separate absence of 21 days before the start of the six-month period, was the member resident in the jurisdiction for the entirety of the six-month period?
- It would be helpful if examples of the documentation the member needs to provide to satisfy the third condition could be published. TPR guidance may be the appropriate medium. The majority of overseas transfers are made to the European Union, Australia and the USA. The transferring scheme could request the specific standard residency documentation used by these countries instead of requesting ‘formal residency documentation in the financial jurisdiction concerned’. This approach should assist both members and the transferring scheme administrators.

#### **Fourth condition**

#### **4. How should the ‘red flags’ as set out in the regulations work in practice?**

We have the following comments to make:

- The member will need to be clearly informed what the red flags represent, and what the impact would be if a red flag is present. We believe a flow chart should be

developed that can be used industry wide showing the member the steps they need to take when considering transferring their benefits. This would include all four conditions, when to obtain financial advice and MaPS guidance. If a standard approach can be implemented this will make it easier for all stakeholders who participate in the transfer process.

- Will there be any transitional arrangements to cover those cases where a request for a transfer was made before the regulations take effect and the transfer payment will be paid after the effective date?
- Draft regulations 4(3)(c), 5(5), 6(3)(a) and 7(3) effectively create a red flag where the member is transferring to an occupational pension scheme and is not earning a weekly salary equivalent to the lower earnings limit, or is transferring to a QROPS and is not resident in the same financial jurisdiction in which the QROPS is established. As we have mentioned in our responses to questions 2 and 3, we suggest that if these situations occur there should be an option for the transfer to move on to the fourth condition and for the trustees or managers to assess whether there are any red or amber flags present.

#### 5. How should the 'amber flags' as set out in the regulations work in practice?

We have the following comments to make:

- The member will need to be clearly informed what the amber flags represent, and what the impact would be if an amber flag is present. We believe a flow chart should be developed that can be used industry wide showing the member the steps they need to take when considering transferring their benefits. This would include all four conditions, when to obtain financial advice and MaPS guidance. If a standard approach can be implemented this will make it easier for all stakeholders who participate in the transfer process.
- Regarding the amber points themselves, we are unclear how the scheme administrator from an unfunded defined benefit scheme would have the necessary knowledge or understanding to identify high risk or unregulated investments, unclear or high fees and unclear, complex or unorthodox investment structures. Will TPR provide this information in guidance, or will schemes be expected to seek actuarial advice?

Secondly, if the trustees or managers do not feel qualified to assess the fees and investments adequately, they may choose to direct most or all members to take MaPS guidance before proceeding with a transfer. Such an approach would reduce the risk of scams and their impact on the member and the transferring scheme, though it

would also increase demand for the service offered by MaPS. Any delays in accessing that guidance could impact the transferring scheme's ability to meet statutory deadlines related to pension transfers.

- Draft regulations 4(3)(c), 5(5), 6(3)(a) and 7(3) effectively create red flags where the member is transferring to an occupational pension scheme and is not earning a weekly salary equivalent to the lower earnings limit, or is transferring to a QROPS and is not resident in the same financial jurisdiction in which the QROPS is established. As we have mentioned in our responses to questions 2 and 3, we suggest that if these situations occur there should be an option for the transfer to move on to the fourth condition and for the trustees or managers to assess whether there are any red or amber flags present.
6. Do you have any views on how the requirement to take scams specific guidance from MaPS can work in practice when the pension saver has already taken financial advice?

We have the following comments to make:

- The purpose of the MaPS guidance is to make the member aware of pension scams. This is completely different to financial advice. How will this guidance take place? In our view it would be appropriate to offer face to face appointments for those members who are not comfortable with digital communications.
  - The member will also need to have to hand the information that has triggered the amber flag though there does not seem to be any legislative requirement for them to do so.
  - We are unclear how the MaPS guidance will work. For example, will all users receive the same information or will it be targeted based on the amber flags identified by the transferring scheme. If the information is to be targeted, then there will need to be some form of requirement for the transferring scheme to share the information with both the member and MaPS. If the information is not to be targeted, then any guidance from MaPS will need to be mindful as to the reason why the amber flag was identified in the first place.
7. Annex 3 sets out the proposed list of standard questions that trustees and schemes managers should use to help determine the presence of red or amber flags. Do these questions provide a comprehensive list, which if any questions are not needed and what other questions should be included?

We have the following comments to make:

- Paragraph 51 assumes that trustees or managers know, when a member requests a statement of entitlement, the destination to which the member is considering transferring their pension scheme benefits. If this is the case, it is easy to determine which questions are relevant to the destination. However, in our experience this is not how the transfer process works. A member requests a statement of entitlement and it is only when the transfer forms are returned (with all the necessary evidence, certification etc) that the trustees or managers know the final destination. If the standard questions in Annex 3 are not included with the statement of entitlement, this will cause delays to an already a lengthy process. We believe the questions in Annex 3 should be included with the statement of entitlement together with a flow chart indicating when they should be completed. This approach will then simply expand on the existing transfer process.
- Whilst the content of the questions is appropriate, we suggest that they are restructured in order to elicit a positive response from the member (as opposed to a simple 'yes/no'), as follows:
  - Question 2 assumes that the person who advised or recommended the member to transfer is the same person as referenced in question 1. This might not be the case. We suggest inserting an additional question to identify this point.
  - Question 2 suggest changing to 'How were you initially approached to request a transfer?' and give examples including 'your employer'.
  - Question 3 suggest remove 'If already known'. If we include 'your employer' at Q2 then the member must know who approached them about the transfer.
  - Question 5 suggest changing to 'Were you offered an incentive to transfer? For example...' that way an incentive not on the list might be forthcoming.
  - Question 6 suggest changing to 'How will your money be invested? For example...' this will ensure that the member asks the receiving scheme the right question and must elicit a response.
  - Question 6 does not address the prescription draft regulations 8(5)(a), (c) or (d) concerning whether the investments are high risk or unregulated, the structures are unclear, complex or unorthodox and whether there are overseas investments. We suggest inserting additional questions to identify these points.
  - Question 8 suggest changing to 'What are the costs and charges for your new arrangement? For example...' this will ensure that the member asks the receiving scheme the right question and must elicit a response.
  - Question 9(d) the outcome is the wrong way around. The question asks if it is the first time the member has dealt with the advisor/firm, yet the answer states if 'yes'

please provide details of your previous relationship when there wasn't a previous relationship.