



How the Conditions for Transfers Regulations 2021 apply when transferring to a QROPS?

Introduction

This document explains how [the Occupational and Personal Pension Schemes \(Conditions for Transfers\) Regulations 2021](#) ('the new regulations') apply to transfers to qualifying recognised overseas pension schemes (QROPSs).

We cover how the new regulations apply to certain other types of transfer in the non-club transfers out technical guide. You can find this guide in the Administrator guides and documents pages of www.lgpsregs.org and www.scotlgpsregs.org. We do not cover transfers to QROPS ('QROPS transfers') in that guide.

In this document, for transfers of deferred benefits or pension credits to a QROPS, we set out:

- which parts of the non-club transfers out technical guide covering the new regulations are also relevant, and
- where the new regulations apply differently.

Neither this document nor the non-club transfers out technical guide explains the other rules relevant to QROPS transfers.

Summary

The new regulations apply to deferred members who apply for a statement of entitlement and pension credit members who elect to transfer their pension credit, on or after 30 November 2021, in a similar way to other types of transfer. The main difference is that members must demonstrate a residency link to the country in which the QROPS is based, or, where the QROPS is an occupational pension scheme, either an employment or residency link.

Which parts of the non-club transfers out technical guide covering the new regulations are also relevant to QROPS transfers?

Table 1

New regulation requirements	Relevant sub paragraph in section 4 (CETV questions and answers) of the non-club transfers out technical guide	How does this apply to QROPS transfers?
<p>You must inform the member that for the transfer to proceed, you must be satisfied that either the First or Second condition has been met.</p> <p>We have created two template letters for this purpose:</p> <ul style="list-style-type: none"> • ‘Transfers out initial enquiry’ for deferred members • ‘Transfers out initial enquiry AVCs and Pension Credits’ for AVC and pension credit members. <p>You can find these on the Administrator guides and documents pages of www.lgpsregs.org and www.scotlgpsregs.org.</p>	<p>Information to be provided to member upon initial enquiry.</p>	<p>This applies to QROPS transfers in the same way as it applies to transfers to other UK registered pension schemes.</p>

New regulation requirements	Relevant sub paragraph in section 4 (CETV questions and answers) of the non-club transfers out technical guide	How does this apply to QROPS transfers?
If you are satisfied beyond reasonable doubt that the receiving scheme is a 'safe scheme', the transfer may proceed.	The Conditions – First condition	This does not apply as QROPS transfers will not satisfy the First condition.
You can decide that the Second condition is met without requesting further information. You can do this where the receiving scheme is a personal pension scheme on your 'clean list' and, on the balance of probabilities, based on the information you hold, you decide that none of red flags three to six or amber flags four to eight are present.	The Conditions – Second condition <ul style="list-style-type: none"> • Stage one – the balance of probability test 	This does not apply to QROPS transfers. You will always need to request further information, such as residency link information or, for occupational schemes, residency or employment link information.

<p>Unless the case fell within the First Condition, or Stage one of the Second condition (set out in the previous two rows) you must formally request further information before you can decide whether the member meets the second condition, including sending reminders.</p> <p>Where the receiving scheme is an UK occupational pension scheme, you must request the employment link information and, if necessary, reasonable and proportionate evidence / information. For personal pensions, you must request reasonable and proportionate evidence / information.</p>	<p>The Conditions – Second condition</p> <ul style="list-style-type: none"> • Stage two – formally request information <p>The Conditions – Employment link</p> <p>The Conditions – Residency link (set out in this document)</p>	<p>For QROPS transfers, you must request–</p> <ul style="list-style-type: none"> • where the QROPS is an occupational scheme, the residency link or employment link information, or • otherwise, the residency link information. <p>If necessary, you must also request reasonable and proportionate evidence / information.</p> <p>For occupational schemes, the flowchart in the Pensions Regulator’s guidance says that members must provide both the residency and employment link information. In our view, this is incorrect. Our interpretation of the new regulations is that members must provide either the residency or employment link information. We have raised this with the Pensions Regulator. TPR confirmed on 9 March 2022 “I can confirm that when the transfer is to an occupational scheme based overseas, the trustees will look to confirm if there is either a residency link</p>
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New regulation requirements	Relevant sub paragraph in section 4 (CETV questions and answers) of the non-club transfers out technical guide	How does this apply to QROPS transfers?
		<u>or employment link. They are not required to check for both.”</u>
<p>When the member provides all the further information you formally requested, or, if the member does not do so, one month has passed since sending a reminder, you must decide whether the member meets the second condition. This involves assessing whether any red and / or amber flags are present.</p>	<p>The Conditions – Second condition</p> <ul style="list-style-type: none"> • Stage three – assess whether red flags one and amber flags one, two or three are present • Stage four – assess whether red flags two to six and amber flags four to eight are present. <p>The Conditions – Residency link (set out in this document)</p>	<p>You assess whether red flags one and amber flags one, two or three are present in respect of the employment link information, residency link information, and reasonable and proportionate evidence / information in the same way as if the transfer was to a UK registered pension scheme.</p> <p>When assessing these flags against the residency link information, when reading the guide, substitute references with “employment link information” with “residency link information.</p> <p>Unless you refused the transfer because red flag one is present, you then assess whether the other red and amber flags are present in the same way as you would do for transfers to UK schemes.</p>

New regulation requirements	Relevant sub paragraph in section 4 (CETV questions and answers) of the non-club transfers out technical guide	How does this apply to QROPS transfers?
Record all the information you requested and received, together with details of your assessment, decision making and communications	The Conditions – Second condition <ul style="list-style-type: none"> • Stage five – record your decisions 	This applies to QROPS transfers in the same way as it applies to transfers to other UK registered pension schemes.
Where you decide that one or more amber flags are present and no red flags are present, you must direct the member to obtain mandatory guidance from MoneyHelper	The Conditions – MoneyHelper	This applies to QROPS transfers in the same way as it applies to transfers to other UK registered pension schemes.

New regulation requirements	Relevant sub paragraph in section 4 (CETV questions and answers) of the non-club transfers out technical guide	How does this apply to QROPS transfers?
<p>If you are not satisfied that either the First or Second condition is met, you must refuse the transfer. You must inform the member in writing within seven working days of your decision. The letter must set out:</p> <ul style="list-style-type: none"> • the reasons for your decision, • the address from which further information about it may be obtained, and • information on the right to appeal. <p>We have created a template letter for this purpose called ‘Transfers out refusal to transfer’. You can find this on the Administrator guides and documents pages of www.lgpsregs.org and www.scotlgpsregs.org.</p>	<p>Can the member lose the right to a CETV?</p> <p>The Conditions – Refusing a transfer</p>	<p>This applies to QROPS transfers in the same way as it applies to transfers to other UK registered pension schemes.</p>

New regulation requirements	Relevant sub paragraph in section 4 (CETV questions and answers) of the non-club transfers out technical guide	How does this apply to QROPS transfers?
<p>If you are satisfied that either the First or Second condition is met and you pay the transfer, you must write to the member confirming that:</p> <ul style="list-style-type: none"> • you have made the payment, • the amount of the payment, • you are satisfied that either the First or Second condition is met, and • the member’s right to appeal your decision to pay the transfer under IDRP (including your decision as to its amount). <p>We have created a template letter for this purpose called ‘Transfers out confirmation of payment’. You can find this on the Administrator guides and documents pages of www.lgpsregs.org and www.scotlgpsregs.org.</p>	<p>CETV confirmation of payment</p>	<p>This applies to QROPS transfers in the same way as it applies to transfers to other UK registered pension schemes.</p>

Evidence to demonstrate the Residency link

You must request the following information from the member to demonstrate the residency link:

- a copy of the member's formal residency documentation in the country or territory in which the QROPS is established.
 - you can decide to request a certified copy of the documentation. A certified copy means certified as a true copy of the original documentation by a solicitor or notary, or an equivalent office holder. This should be paid for by the member. When deciding whether to request a certified copy, [TPR guidance](#) says that “you should consider whether this is proportionate to the level of risk you have identified and whether you need it to reach a decision.”
- at least two other items of evidence in writing confirming that the member is resident in the country or territory in which the QROPS is established.
 - where an item is not in English, you may request a certified translation. A certified translation means certified as a translation of the original document by a professional translator. This should be paid for by the member. When deciding whether to request a certified translation, [TPR guidance](#) says that “you should consider whether this is proportionate to the level of risk you have identified and whether you need it to reach a decision.”
 - [TPR guidance](#) provides examples of the evidence the member could provide and a link to information on the evidence Her Majesty's Revenue & Customs uses to review someone's residency for tax purposes.

You must require that the information is provided to you directly by the member (whether or not they have a representative acting on their behalf in respect of the transfer – such as a financial adviser). The only exceptions to this are in the following circumstances:

- the member has a deputy appointed by the Court of Protection under Part 1 of the Mental Capacity Act 2005 (persons who lack capacity)
- the member has a receiver appointed under Part VII of the Mental Health Act 1983 (management of property and affairs of patients) 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
- 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, the

Enduring Powers of Attorney Act 1985, the Mental Capacity Act 2005 or otherwise

- 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 who has power to make the request for a transfer on the member's behalf.

Deciding whether there is a Residency link

There is a residency link between the member and the QROPS where you decide that the member is resident in the country or territory in which the QROPS is established.

Residency means residency for tax purposes. The definition of tax residency will vary from country to country. When assessing the overseas transfer charge, you will already need to consider whether the member is resident for tax purposes in the same country as the QROPS (for more information see [PTM102300](#)).

The regulations are silent on when the residency link should be assessed.

[TPR guidance](#) infers that you assess this on the date you received the election to transfer. ~~We have asked TPR for confirmation and we will update this document when we receive this.~~ TPR confirmed the following on 10 February 2022:

“Neither the regulations nor the guidance require trustees to check that the residency evidence is current at both the date of request and the date of payment of transfer; the condition is to allow trustees to satisfy themselves on whether the member is requesting a transfer to a QROPS established in a country to which the member has no connection, which is a known risk factor. As the residency evidence will include evidence demonstrating a right to reside, and evidence which indicates actual residence, then where the trustees are satisfied that the evidence demonstrates residency at the time it is submitted and they have no reason to believe that it will not continue, we would not expect trustees to have to carry out these checks again immediately before payment. In practice, it would be unlikely that there would be a prolonged period between the trustees receiving sufficient evidence to conclude that the residency condition is met and the date upon which the payment is made.”