

Technical
Note **04**



Defined benefit transfers: when is FCA regulated advice required?

Technical Note 4

Defined benefit (“DB”) transfers: when is FCA-regulated advice required?

Introduction

We have recently become aware of some (perfectly reasonable) misunderstandings about exactly when, and in relation to what, the requirement for FCA regulated advice to be provided applies in respect of DB pension scheme transfers to defined contribution (“**DC**”) pension schemes, including QROPS and SIPPS.

In this note we clarify these requirements.

Purpose of Note

This Note covers:

- A. the relevant legislation; and
- B. what the legislation means.

Background

The introduction of flexible benefit options from UK DC schemes came into effect from 6 April 2015.

The UK government decided that in introducing those options it was necessary to take steps to protect the interests of DB schemes. The only way that DB scheme members can access flexible benefits is by transferring to a DC scheme.

The two steps that were taken were:

1. to prohibit transfers from **unfunded** public sector schemes to DC schemes altogether from 6 April 2015 and
2. to require transfers from other DB schemes to be accompanied by advice provided by a person subject to relevant FCA authorisation.

A. The relevant legislation

The advice requirement for transfers out of DB schemes (strictly speaking relating to transfers of “safeguarded benefits”, which really means DB rights) was introduced as a last-minute amendment to the Pension Schemes Bill, which has become the Pension Schemes Act 2015 (“**PSA15**”). This amendment was inserted into what is now section 48 of PSA15:

Where a member of a pension scheme [has]..... safeguarded benefits, the trustees or managers must check that the member or survivor has received appropriate independent advice.

The term “appropriate independent advice” is defined as:

advice that.....is given by an authorised independent adviser.....

“Authorised independent adviser” is in turn defined as:

..... a person who... has permission under Part 4A of the Financial Services and Markets Act 2000..... to carry on a regulated activity specified in regulations made by the Secretary of State....

On the same day as the insertion of this wording in what has become Section 48, a draft statutory instrument was published. This is now law as SI 2015/732, effective on and from 6 April 2015. SI 2015/732 includes that:

A person who immediately before 6th April 2015 had permission ... to carry on an activity of the kind specified by article 53 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b) (advising on investments) in respect of rights under a pension scheme, is to be treated as having that permission varied with effect from 6th April 2015 to include the activity of the kind specified by article 53E of that Order (advising on conversion or transfer of pension benefits).

These are transitional arrangements because the actual requirements associated with activity 53E will not be finalised until June 2015, following an FCA consultation exercise¹. The FCA will amend its rulebook as stated at paragraph 2.1 of the consultation document “to implement the extension of our regulatory remit to the new specified activity of advising on conversions or transfers of safeguarded benefits to flexible benefits.”

Paragraph 2.2 of the FCA consultation paper (which should be read bearing in mind it was written before the Pension Schemes Bill became law as PSA15) also says:

The proposed amendment [to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO)], expected to come into force on 6 April 2015, will introduce to the RAO a new article, Article 53E, for the new specified activity. This new specified activity mirrors the independent advice

¹ Financial Conduct Authority. *Proposed changes to our pension transfer rules.*

requirement in the Pension Schemes Bill 2014-15, which requires that the trustees or managers of a scheme check that a scheme member has received appropriate independent advice before allowing a conversion or transfer of safeguarded benefits to flexible benefits.

So, although the FCA consultation document refers to June 2015, that is the date for the FCA finalising its actual requirements. 6 April 2015S is the date from which SI2015/732 obliges DB scheme trustees or managers to check that appropriate independent advice has been given.

B. What the relevant legislation means

Faced with an application for a statement of entitlement and a transfer value, trustees of DB pension schemes must, unless the £30,000 advice exemption outlined below applies, explain in writing that they are required to check that appropriate independent advice has been received by the member before they are able to carry out a relevant transaction, meaning for our purposes a transfer out.

In addition, the trustees must explain that the member must to provide confirmation of this in a specified form. The confirmation must be in the form of a statement in writing from the authorised independent adviser, which includes the following:

1. the member's name and that of the scheme in which the member has DB benefits to which the advice given applies;
2. confirmation that advice has been provided which is specific to the type of transaction proposed by the member; and
3. the FCA authorisation number of the company or business in which the adviser works.

Once the trustees have received the confirmation, they must check the Financial Services Register maintained by the FCA to confirm that the company or business has permission to provide the advice against. However, trustees are not responsible for checking what advice was given to the member or that any recommendation is being followed.

Exception and transitional provisions

Trustees need not carry out the checks described above (and therefore independent advice is not required) where the total value of the member's DB rights under the pension scheme is £30,000 or less.

In addition, under transitional provisions, these requirements do not apply to DB transfers where:

1. the transfer payment is made after 5 April 2015 but the application for a statement of entitlement and CETV was made before then;
2. before 6 April 2015, the trustees confirmed in writing to the member “that they agree in principle to carry out the transfer payment” or the trustees made an offer in writing to the member of a transfer payment.

If you have any questions about this note, please do not hesitate to contact us.

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