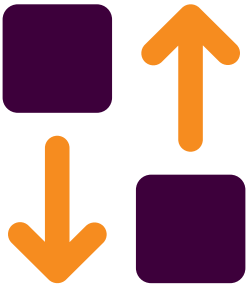


Hot topic

November 2021

Are you ready? The new statutory transfer regime



New regulations coming into force on 30 November introduce significant changes to the statutory transfer regime. Whilst administration is clearly important to the transfer process, this isn't just an admin issue and trustees will need to make decisions about the governance of their process and how they intend to manage the risks associated with transfers.

This is a practical guide for trustees on preparing for the new regime. For more information about the detail of the new requirements, please also refer to our recent [Alert](#).

Trustees should think about:

Delegation

Governance

Risk

Administration

There is a lot of detail in the regulations and accompanying guidance to work through, and schemes won't necessarily have all of their ducks in a row by 30 November. Do not panic! In this guide we summarise how the new regime will work in practice and the actions for trustees.

»» When do the new requirements kick in?

The new requirements apply to statutory transfers that are initiated on or after 30 November. This means a request for a statement of entitlement for DB or a transfer request for DC benefits which is made on or after that date.

The general rule is that transfer requests which are already in train should not be caught by the new requirements. But care needs to be taken where a member with both DB and DC benefits applies to transfer all their benefits on or after 30 November 2021. If the member requested a DB statement of entitlement before 30 November, the new requirements will not apply to the subsequent transfer of those DB benefits. In contrast, the transfer of the member's DC benefits will be caught by the new requirements.

»» So, what should the trustees' priority be?

It's easy to get into the weeds of the new due diligence requirements. But, in most cases, the due diligence checks won't need to be undertaken straight away as members take time to consider their options and may take financial advice before requesting a transfer (particularly where they have DB benefits).

Are you ready? The new statutory transfer regime cont.

The more pressing issue will be the new disclosure requirement to tell the member about the new conditions within one month of their request for a statement of entitlement for DB or their transfer request for DC benefits. This is a significantly shorter timeframe than the three month window for providing a statement of entitlement. Schemes will need to be mindful of timing and, if the statement of entitlement is likely to take longer than one month to prepare, a separate communication with the disclosure information should be sent upfront.

»» What about non-statutory transfers?

The new requirements apply to statutory transfers only. However, if the scheme offers non-statutory transfers, the working assumption is that they will be treated consistently. There may be circumstances where the trustees want to take a different approach, but these are likely to be limited and trustees should be cautious about waving through non-statutory transfers that don't pass the "sniff test" of the new statutory conditions.

»» Lots of DB members ask for a transfer value, but don't then apply for a transfer. Are the new due diligence checks going to be relevant to them?

The new statutory conditions are only relevant to DB transfers if the member actually makes a transfer application. If a statement of entitlement is requested, but not acted upon within the guarantee period, the trustees will still need to meet the disclosure requirement but won't need to carry out due diligence checks.

»» What if you're not ready by 30 November?

We don't know yet what the Pensions Ombudsman's expectations will be. In the past, the Ombudsman has taken the view that updates to scheme practice should be made within one month of new requirements coming into force.

Most schemes won't have a fully developed, tested and formally adopted transfer process on 30 November. But trustees and administrators should ensure that everything possible is done to implement the changes as quickly as possible. Straightforward changes like the new disclosure requirement should be easy wins.

This is likely to be an iterative process for some months as schemes work through the first few transfer requests under the new regime. Trustees and administrators will need to be ready to adapt their processes to take account of lessons learned as well as revised industry guidance, such as the PSIG code which is expected later this year.

»» Isn't this just an administration issue?

Unfortunately not. There is more to this than simply asking your administrators to update their transfer process.

Transfers remain a high-risk area for schemes and individuals. If the transfer process is found to be inadequate, the consequences could be severe. At worst, a member could lose all of their retirement savings and be entitled to have their benefits reinstated in the transferring scheme.

Are you ready? The new statutory transfer regime cont.

What should trustees be thinking about?

Governance review

Now that pension scam checks have been put on a legislative footing, trustees should look again at the governance around their transfer process and, in particular, their delegated authority for decision-making.

Trustees should also decide how they want to monitor the transfer process going forwards and what reporting they will need to do so. This may simply mean asking for more detailed information in the administration report or adding another item to your regular admin catch-up.

Appropriate delegation

Trustee boards may want to delegate authority to a sub-group to oversee the implementation of the new requirements and to be the first port of call for cases requiring a trustee decision. As ever, it's important to be proportionate, and what will be appropriate will depend on the circumstances of the scheme and its transfer activity.

Some of the red and amber flags for pension scams are subjective. Trustees will need to decide who is best placed to determine whether a red or amber flag is present and what information they will require in order to do so.

Subjective decisions may be subject to future challenge, so it will be important to keep a detailed record of both the rationale and any supporting evidence relied upon in reaching the decision.

Trustee duties

Trustees should be mindful of their duties and not be influenced by extraneous factors, such as their own personal view of the member's reasoning and approach.

Acting dispassionately, consistently and in line with the regulations will put trustees in the best position to justify the actions taken.

Risk management

For the limited number of cases that do require additional due diligence checks, this is likely to delay the transfer process and may mean that the statutory deadline for paying a transfer is unachievable. When this happens, it's vital that members are kept in the loop regarding the progress of their transfer request to mitigate the risk of complaint.

Trustees should also be clear on the circumstances in which their administrators have authority to request an extension of the statutory payment deadline from TPR on their behalf.



Over the page we set out some other points for trustees to think about to get ready for the new transfer regime.

Legal issues

We can provide support to trustees and administrators working through the new requirements, including:

- ✓ training for trustees and/or administrators
- ✓ advice on governance, delegation and risk management
- ✓ support with strategy and design of transfer process
- ✓ health checks of the transfer process against the new requirements
- ✓ writing and/or reviewing communications
- ✓ advise on technical issues (eg on the standards of proof)
- ✓ running a case study
- ✓ assisting with individual member queries and/or complaints



Getting ready for the new statutory transfer regime cont.

	Delegation	Governance	Risk	Administration
Check	What authority do your administrators have to make decisions and are they accountable for those decisions?	What reporting do you have in place and will this continue to be sufficient?	Do your administrators have a “clean list” of schemes that they consider to be low risk? If so, how is it prepared and updated, and will they accept responsibility for it?	How will your administrators manage transfer requests going forwards? Review the process against the legal requirements and regulatory guidance.
Decide	When cases should be escalated to the trustees.	Who will be responsible for monitoring the process going forwards?	There is risk associated with asking for more information than you need. What information will you request from the member and when?	Member communications will need to be updated. What is your communications strategy and do your transfer comms fit within it? There may be opportunities for improvement.
Consider	Who is best placed to make a trustee decision (eg a sub-committee) and what information / training will they require?	Run a test case to trial the new process. You could use a recent transfer request you received under the existing regime.	The majority of cases will be low risk and should be processed without delay to mitigate the risk of complaints.	Member experience and how best to manage expectations, particularly in cases where transfers are likely to take longer.
Discuss	Do you want your administrators to make (and stand behind) a recommendation?	Do you want to offer non-statutory transfers, and if so on what basis?	The guidance allows trustees to exercise judgement and adopt a risk-based approach to due diligence. Do you want to agree criteria for streaming cases?	Will your administrators operate a standard transfer process or will it be tailored to your scheme? Be proportionate.

