Financial Conduct Authority

Proposed changes to our pension transfer rules

March 2015

Consultation Paper

CP15/7**

Contents

We are asking for comments on this Consultation Paper by 15 April 2015.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp15-07-response-form.

Or in writing to:

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London E14 5HS

Email: cp15-07@fca.org.uk

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Abbreviations used in this paper

CBA	Cost benefit analysis
CETV	Cash equivalent transfer value
CII	Chartered Insurance Institute
COBS	Conduct of Business Sourcebook
DB	Defined benefit
DC	Defined contribution
FRN	Firm Reference Number
FSMA	Financial Services and Markets Act 2000
GAR	Guaranteed annuity rate
IA	Impact assessment
PERG	Perimeter Guidance Manual
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
UFPLS	Uncrystallised funds pension lump sum

1. Overview

Introduction

1.1 We are consulting on proposed changes to our rules which will be necessary following a proposed amendment[1] to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) that will make advising on the conversion or transfer of safeguarded pension benefits into flexible benefits a regulated activity.

1.2 We are also consulting on related changes to ensure that our Conduct of Business Sourcebook (COBS) pension transfer requirements will apply to all pension transfers. That is, all pension transfers advice will be required to be carried out, or checked by a Pension Transfer Specialist[2], regardless of when the transferred benefits are being crystallised.

Who does this consultation affect?

1.3 This paper will primarily be of interest to financial advisory firms advising on pension transfers and pension providers receiving transfer business. It may also be of interest to employer sponsors of defined benefit (DB) schemes and employee benefit consultancies.

Is this consultation of interest to consumers?

1.4 Our proposals will affect retail consumers seeking to transfer benefits from DB schemes to defined contribution (DC) arrangements. This consultation paper may therefore be of interest to these consumers or to consumer groups representing them.

Context

1.5 From 6 April 2015, the Government's new flexible pensions regime will allow DC pension schemes to offer pension savers aged 55 and over immediate access to their pension savings. Members of DB schemes will not have this flexibility. We expect that more DB scheme members will seek to transfer their benefits to DC schemes for early and more flexible access to their pension savings.

1 www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi_9780111128237_en.pdf

2 A Pension Transfer Specialist is an individual holding a qualification that meets our pension transfer exam standard (see our Handbook for details).

1.6 To protect consumers who might otherwise lose valuable DB benefits, the Government is introducing, through legislation,[3] a requirement that individual scheme members take advice from an adviser authorised by the Financial Conduct Authority (FCA) before a transfer is allowed to proceed. The legislation refers to transfers of 'safeguarded benefits', which are primarily benefits in DB schemes but may also be benefits such as guarantees or other promises in other types of scheme.

1.7 Transfers from DB schemes can be to personal pension schemes or to occupational DC schemes. We already regulate advice on transfers to personal pension schemes. We do not currently regulate advice on transfers to occupational DC schemes. So while the legislation will require that advice be taken from an FCA-authorised adviser on transfers from DB to occupational DC schemes, the advice itself would not be regulated.

1.8 To address this gap in regulation, the Government is amending the RAO to make advising on conversions[4] or transfers of safeguarded benefits to flexible benefits[5] a specified activity, to be regulated by us. In particular, this will bring advice on transfers from DB schemes to occupational DC schemes within our remit. Therefore, we need to incorporate the new specified activity within our rules.

1.9 A related issue is when the advice of a Pension Transfer Specialist is required for pension transfers. Our rules currently require that advice on pension transfers must be provided by, or checked by, a Pension Transfer Specialist and that firms wishing to provide advice on pension transfers and pension opt outs must apply for and obtain special permission to carry out that activity.

1.10 In 2011, the FSA issued a factsheet for financial advisers: 'Pension transfers – who can do what and when?'[6] That document sought to summarise the pension transfer provisions contained in our rules and highlighted the need for the advice of a Pension Transfer Specialist prior to a transfer from a DB to a DC arrangement. The document also indicated that this requirement did not apply where there was evidence that the transfer was for the purpose of crystallising benefits.

1.11 The Government's new flexible pension regime will make advising on pension transfers significantly more complex, so we now wish to require the Pension Transfer Specialist qualification for advice on all transfers from DB schemes to DC arrangements, regardless of when the transferred benefits are being crystallised.

Summary of our proposals

1.12 We propose to:

- amend our rules to incorporate the new specified activity of advising on conversions or transfers of safeguarded benefits to flexible benefits, and
- require that all advice on DB to DC pension transfers be provided or checked by a Pension Transfer Specialist

3 the Pension Schemes Bill 2014-15

4 Conversions in this context covers both converting safeguarded benefits to flexible benefits within the same scheme, and taking uncrystallised funds pension lump sums in respect of safeguarded benefits.

5 Strictly speaking, such transfers are in respect of safeguarded benefits, since the safeguards are not transferred, and the transfer payment is to acquire a right or entitlement to flexible benefits.

6 www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/pension_transfers.pdf

1.13 Chapters 2 and 3 contain further background and details regarding the proposed rule changes.

Equality and diversity considerations

1.14 We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. Overall, we do not consider that our proposals raise concerns with regard to equality and diversity issues. We do not consider that they will result in direct discrimination for any of the groups with protected characteristics, i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender.

1.15 We will continue to consider the equality and diversity implications of our proposals during the consultation period, and will revisit them when publishing the final rules. In the interim we welcome any input respondents to this consultation have on such matters.

Next steps

What do you need to do next?

1.16 We are asking for feedback on the proposals set out in this Consultation Paper, and in particular we would welcome responses to consultation questions 1 to 5 as set out at Annex 3.

1.17 Please send your responses to us at: cp15-07@fca.org.uk by 15 April 2015. This is a shortened consultation period, to enable us to have updated rules in place for June 2015.

How?

1.18 Use the online response form on our website or write to us at the address on page 2.

What will we do?

1.19 We will consider your feedback and publish our rules in a Policy Statement in June 2015.

2. Advice on the conversion or transfer of pension benefits

2.1 This chapter sets out proposed changes to our rules 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.

Amendment to the RAO

2.2 The proposed amendment, expected to come into force on 6 April 2015, will introduce to the RAO a new article, Article 53E, for the new specified activity.[7] This new specified activity mirrors the independent advice 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.

2.3 'Safeguarded benefits' and 'flexible benefits' are new terms:[8]

- 'Safeguarded benefits' are primarily benefits in DB schemes but may also be benefits such as guarantees or other promises in other types of scheme. The term is defined in the negative, and referred to as any benefits other than money purchase benefits or cash balance benefits.

- 'Flexible benefits' are benefits to which the new pension flexibilities apply. The term is defined as money purchase benefits, cash balance benefits, or benefits, other than money purchase benefits or cash balance benefits, which are calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor).

2.4 The intention behind the use of these terms is to ensure that, whenever guarantees or other promised benefits may be lost as a consequence of a conversion or transfer, the consumer must take advice from an FCA-authorised adviser before being allowed to proceed with the conversion or transfer and that the advice must be regulated by us.

2.5 The transfer aspect of the new specified activity covers advising on:

- transfers from DB schemes to personal pension or stakeholder pension schemes. We already regulate advice on this type of transfer.

7 www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi_9780111128237_en.pdf

8 defined in Article 53E and identically in the Pension Schemes Bill 2014-15

- transfers from DB schemes to occupational DC schemes. Advice on this type of transfer is currently unregulated, although the Pensions Regulator (TPR) regulates the schemes themselves.

- transfers of any safeguarded benefits in occupational DC or other non-DB schemes to either flexible benefits in occupational DC schemes or to personal pension or stakeholder pension schemes.

2.6 The conversion aspect of the new specified activity covers advising on:

- conversions of safeguarded benefits into flexible benefits within the same scheme, and

- payments of uncrystallised funds pension lump sums (UFPLSs) in respect of safeguarded benefits [9]

Our proposed approach

2.7 Our proposed approach is to focus, at present, on those changes we consider necessary to bring the new specified activity under Article 53E within our rules. This is so that we can publish new rules as soon as possible after 6 April 2015, which is when the amendment to the RAO is expected to come into force. We explain in paragraph 2.45 how we have begun work to assess the need for further changes to our rules in the context of the new pension flexibilities.

2.8 Since our proposed approach is driven by and follows the proposed legislation, which has been subject to impact assessments carried out by the Department for Work and Pensions (DWP) and HM Treasury, a further cost benefit analysis (CBA) is not needed. However, we do provide a CBA for our additional proposal in Chapter 3 that all advice on DB to DC pension transfers must be provided by, or checked by, a Pension Transfer Specialist.

2.9 The amendment to the RAO and the enactment of the Pension Schemes Bill are expected to come into force before our new rules. During the period before our new rules come into force, firms carrying on the regulated activity under Article 53E may want to take into account our proposed rules in this consultation paper.

Adviser qualification

2.10 We have considered whether we should specify the standard of advice required for some or all aspects of the new specified activity.

2.11 We propose requiring that the advice be provided by, or checked by, a Pension Transfer Specialist, just as we do for advice on transfers from DB to personal pension or stakeholder pension schemes. This is because safeguarded benefits will be foregone if the scheme member proceeds with the conversion or transfer, as they are for transfers from DB to personal pension or stakeholder pension schemes.

9 'Uncrystallised pension funds lump sum' or 'UFPLS' within the Taxation of Pensions Bill 2014.

2.12 The exception to the above is where the advice is on conversions or transfers in respect of pension policies with a guaranteed annuity rate (GAR). We explain why in the section on GARs later in this chapter.

> **Q1: Do you agree that, in general, we should require that advice under the new specified activity be provided by, or checked by, a Pension Transfer Specialist?**

Pension transfer definition

2.13 Currently, our requirement for a Pension Transfer Specialist hinges on a transaction being defined as a pension transfer in our rules. Our existing definition of pension transfer includes transfers from occupational schemes to personal pension or stakeholder pension schemes. Where a transaction is not within our definition of pension transfer, but involves moving pension benefits from one scheme to another scheme of the same type, we refer to it as pension switching. For example, an individual moving pension benefits from one personal pension scheme to another is switching personal pension schemes.

2.14 We propose amending our existing definition of pension transfer to incorporate the transfer aspect of the new specified activity under Article 53E. We intend to do this by adding the relevant part of Article 53E to our existing definition of 'pension transfer' in our Handbook glossary and by adding definitions for 'safeguarded benefits' and 'flexible benefits' that mirror the definitions in Article 53E.

2.15 We also propose requiring a transfer value analysis[10] for advice on all transfers of safeguarded benefits to flexible benefits, including advice on transfers from DB to occupational DC schemes, just as we require it for advice on transfers from DB to personal pension and stakeholder pension schemes.

2.16 We considered taking the opportunity to amend our definition of pension transfer to exclude transfers from occupational DC schemes without safeguards to personal pension or stakeholder pension schemes.[11] Since our requirement for a Pension Transfer Specialist hinges on a transaction being defined as a pension transfer, this alternative approach would have removed the need for a Pension Transfer Specialist on such transactions. We could have done this by replacing our existing definition of pension transfers in its entirety with the new specified activity under Article 53E as it relates to pension transfers.

2.17 However, we do not propose, at this time, to exclude such transactions from our definition of pension transfer, because we consider that the involvement of a Pension Transfer Specialist may help protect consumers. While our rules do not require a transfer value analysis for advice on transfers from occupational DC schemes without safeguards, since it would be meaningless, there may still be non-safeguarded benefits that need to be assessed in any trade off. Furthermore, a Pension Transfer Specialist is more likely to be able to recognise and avoid pension scams and investment scams.

2.18 Therefore, we intend to incorporate the new specified activity as it relates to pension transfers by adding it to the existing definition. We acknowledge the overlap between our existing definition and the relevant part of Activity 53E, which we would add to our existing definition,

10 A transfer value analysis is a methodology set out in our rules (in COBS section 19.1) for comparing the benefits likely to be paid under a DB scheme with the benefits afforded by a personal pension or stakeholder pension scheme.

11 The very large majority of pension benefits in occupational DC schemes are not safeguarded

in that both cover advising on transfers from DB to personal pension and stakeholder pension schemes. However, this does not change the regulatory effect. We may consider tightening and revising the definition in due course as part of a wider review of our rules relating to pensions.

2.19 We will make clear in our rules when we expect a Pension Transfer Specialist to carry out a transfer value analysis. We propose that this should be carried out for all transfers involving the exchange of safeguarded benefits for flexible benefits. This is because the transfer value analysis will help illustrate to the client the value of the guaranteed benefits that they would be giving up.

Q2: Do you have any comments on the proposed new definition of pension transfer and subsequent requirements?

Q3: For future consideration, do you have views on whether or not we should continue to include transfers from occupational DC schemes without safeguards in our definition of pension transfer?

Pension conversion definition

2.20 We propose to define 'pension conversion' in our Handbook glossary to cover pension conversions in respect of safeguarded benefits. We intend that this new definition follow the terminology used in Article 53E for pension conversions such that it includes:

- conversion of safeguarded benefits into flexible benefits within the same scheme, and
- payments of UFPLSs in respect of safeguarded benefits

2.21 We believe that conversions of safeguarded benefits into flexible benefits within the same scheme are currently very rare. The scheme would have to offer flexible benefits and at the same time include safeguarded benefits. However, such conversions have the potential to arise in the future in the context of shared risk (defined ambition) schemes.

2.22 UFPLS payments are not yet permitted. For an UFPLS to be paid in respect of safeguarded benefits, the scheme would again have to offer flexible benefits and at the same time include safeguarded benefits. UFPLS payments in respect of safeguarded benefits have the potential to arise in the future in the context of pension policies with a GAR, which we cover in the section on GARs later in this chapter. They also have the potential to arise in the future in the context of shared risk schemes.

2.23 We intend to amend our rules on pension transfers and opt outs to include pension conversions. This will have the effect of requiring that advice on pension conversions must be provided by, or checked by, a Pension Transfer Specialist. We consider that pension conversions require the expertise of a Pension Transfer Specialist to assess the value of the safeguarded benefits that would be lost.

2.24 We also propose that a transfer value analysis should be carried out for pension conversions, including when the client seeks immediate access to their pension savings. This is because the transfer value analysis will help illustrate to the client the value of the guaranteed benefits that they would be giving up.

2.25 We note that the independent advice requirements in the Pension Schemes Bill 2014-15 do not require that advice be taken on drawdown or UFPLS payments in respect of flexible benefits, which are the large majority of benefits in DC schemes.

> **Q4: Do you have any comments on the proposed new definition of pension conversion and subsequent requirements?**

Other consequential changes to our Handbook

2.26 We propose amending our Perimeter Guidance Manual (PERG) to reflect the extension of our remit. In particular, we intend to incorporate the new specified activity and related specified investment within PERG. We will make clear that advising on pension conversions and advising on pension transfers to occupational DC schemes are regulated by us.

2.27 There are various references to pension transfer in our COBS. We propose to make changes to the surrounding context, as appropriate, to make clear that transfers may be to occupational DC schemes as well as to personal pension and stakeholder pension schemes. We will also incorporate the possibility of pension conversion into our rules.

Guaranteed annuity rates

2.28 In the course of HM Treasury's discussions with us and other stakeholders about the independent advice requirement in the Pension Schemes Bill 2014-15, the question arose as to whether or not pension policies with a GAR fall within the definition of safeguarded benefits.

2.29 Our opinion is that pension policies with a GAR do fall within the definition of safeguarded benefits, which was the government's policy intent. Safeguarded benefits are defined in the negative, as benefits other than money purchase benefits or cash balance benefits. In our view, benefits with a GAR are not cash balance benefits and do not meet the definition of money purchase benefits[12] because the benefits are calculated by reference to the guarantee and not just by reference to the value of the pot.

2.30 We consider that a GAR constitutes a promise as to the rate of the pension and that this excludes it from the definition of money purchase benefits. In our view, it does not matter that a GAR is an option on the rate of the annuity. Moreover, it does not matter that there may be an insurance company behind the promise or that there can never be a shortfall in scheme assets.

2.31 As a consequence, there will be a requirement under the Pension Schemes Bill 2014-15 that advice must be taken on conversions or transfers of pension benefits from pension policies with a GAR. However, the requirement will not apply, although advice can still be taken, where the pension benefits in the scheme are less than £30,000 or where the benefits are used to buy an annuity, whether or not the GAR is used.

2.32 When advice is provided on the transfer of benefits from a pension policy with a GAR, we do not currently require a Pension Transfer Specialist. This is because an adviser with the investment advice permission, but not the pension transfer and opt out permission, must still prominently

12 See s181 and s181B of the Pension Schemes Act 1993, as amended by the Pensions Act 2011

highlight the value of the GAR to their client. The adviser should do this as part of the suitability assessment report for their client.

2.33 In the context of the new pension flexibilities, and the potential for consumers with GARs to convert or transfer their pension benefits to take advantage of these flexibilities, we have considered whether to extend our requirement for a Pension Transfer Specialist to conversions or transfers of pension policies with a GAR. While a Pension Transfer Specialist may be better placed to model the value of the GAR, we must also take into account the additional cost that a more in-depth analysis may require. Moreover, requiring a Pension Transfer Specialist for transactions involving GARs may add to any transitional capacity issues in the industry for the provision of advice in respect of safeguarded benefits.

2.34 On balance, and at this time, we do not propose extending our requirement for a Pension Transfer Specialist to conversions or transfers of pension policies with a GAR.

2.35 We have considered how best to formulate this policy in our rules. We do not currently include transfers of benefits from pension policies with a GAR within our definition of pension transfer. However, our proposed new definitions follow Article 53E and include conversions and transfers in respect of all safeguarded benefits, including pension policies with a GAR. As a consequence, and unless we specify otherwise, a Pension Transfer Specialist would be required.

2.36 We do not propose to exclude conversions and transfers in respect of pension policies with a GAR from our new definitions of pension conversion and pension transfer. This is because the permission for the new specified activity would refer to the new definitions and must include such transactions. Therefore, we propose to exclude such transactions from the requirement for a Pension Transfer Specialist within our rules on pension transfers and opt outs in our COBS.

> **Q5: Do you agree that we should not require a Pension Transfer Specialist for advice on the conversion or transfer of benefits from pension policies with a GAR?**

Permissions and grandfathering firms

2.37 Currently, for the purposes of the permission regime, the existing specified activity 'advising on investments' is subdivided into:

- advising on investments (except pension transfers and pension opt outs), and
- advising on pension transfers and pension opt outs

2.38 In our view, all firms that currently have permission for advising on pension transfers and pension opt outs should be competent to advise on conversions and transfers of safeguarded benefits to flexible benefits. Therefore, we have sought additional legislation to enable the automatic grandfathering of firms with the existing permission. HM Treasury intends to bring forward this additional legislation as a consequence to the proposed amendment to the RAO.

2.39 We propose incorporating the new activity into our register by changing the existing named activity 'advising on pension transfers and pension opt outs' to 'advising on pension transfers, conversions and opt outs.' This newly titled activity will encompass both the existing named activity and the new specified activity under Article 53E. To accommodate the possibility of a firm having permission for one specified activity but not the other, we intend to introduce limitations to the named activity as it appears on our register.

2.40 This approach will allow us to make the change to our register as soon as possible. We do not see the need to list two separate but overlapping activities, in particular since we expect firms to be grandfathered to the new activity. In future, it may be that a firm seeks permission for one specified activity and not the other, but we consider that this will be unusual and can be shown by limitations on the named activity as it appears on our register.

2.41 The Government intends that trustees and managers will be required to check that appropriate advice has been taken before undertaking a conversion or transfer in respect of safeguarded benefits.[13] Scheme members seeking a conversion or transfer in respect of safeguarded benefits will need to provide a letter from their adviser as proof they have taken appropriate independent advice. This 'advice confirmation' letter would contain four pieces of information:

a. that advice has been provided which is specific to the type of transaction proposed by the member or survivor

b. that the adviser has permission under Part 4A of FSMA, or resulting from any other provision of that Act, to carry on the regulated activity in Article 53E of the RAO

c. the firm reference number (FRN) of the company or business in which the adviser works for the purposes of authorisation from the FCA to carry out regulated activity in Article 53E of the RAO, and

d. the member's or survivor's name, and the name of the scheme in which the member or survivor has subsisting rights in respect of safeguarded benefits.

2.42 Trustees and managers checking our register will be able to see quickly and easily whether the firm's permission includes 'advising on pension transfers, conversions and opt outs' and that there is no limitation 'excluding activity under Article 53E.'

2.43 We expect that the additional legislation to grandfather firms will be made into law and have effect from 6 April 2015. Should this not happen, we would consider using our powers to vary the permissions of firms. However, this must be done on a firm by firm basis and is not our preferred approach.

Q6: Do you have any comments on our proposed approach to permissions and grandfathering firms?

Next steps

2.44 Following consultation and finalisation of our policy and rules, we intend to make the changes to our rules and permissions regime as soon as possible. We expect firms to be grandfathered as of 6 April 2015, in which case firms may continue to or begin to advise on activity that will

13 For conversions or transfers in respect of safeguarded benefits of more than £30,000 in that scheme.

from that date be newly regulated, in particular advising on transfers from DB to occupational DC schemes.

2.45 We are currently considering further changes to our rules in the context of the new pension flexibilities. In particular, we are looking at changes to our COBS rules on pension transfers, disclosure, and the suitability of advice, including advice on drawdown and now UFPLS. We will consult on proposed changes later in 2015, once we have a better sense of how the market is likely to develop.

3. Pension transfers for the purpose of crystallising benefits

3.1 In this chapter we outline our proposals for changing our rules to require that all advice on pension transfers is provided by or checked by a Pension Transfer Specialist, regardless of when the benefits being transferred are being crystallised.

Background

3.2 Our general presumption – reflected in our COBS – is that transfers from DB schemes to DC arrangements are unlikely to be in consumers' best interests. However, we accept that there may be a limited number of circumstances where a valid case for transferring can be made – e.g. where a consumer has a limited life expectancy.

3.3 Our COBS rules require that advice on pension transfers must be provided by, or checked by, a Pension Transfer Specialist. However, a 2011 FSA factsheet[14] indicated that this requirement does not apply to transfers from DB schemes to DC arrangements, provided there is evidence that the transfer was for the purpose of crystallising benefits.

New flexible pension regime

3.4 The 2014 Budget announced changes to introduce greater freedom and choice with regard to pensions. From April 2015, individuals aged 55 and over will be able to withdraw savings from their DC pensions as they wish, subject to their marginal rate of income tax.

3.5 In particular, there will be no limit to the amount that individuals can draw down from their pension in any year, whereas previously the flexible drawdown option was limited to individuals who could demonstrate a guaranteed income of at least £20,000 per year (£12,000 since April 2014). In addition, the legislation will permit consumers to withdraw the whole amount of their pension fund, either at once or as smaller UFPLSs over time.

3.6 These changes will make giving advice on pension transfers significantly more complex. The greater variety of options for accessing pension wealth will increase the complexity of comparing the long-term outcomes of a switch from a DB scheme to a DC arrangement. Although the Government has mandated that consumers must take regulated financial advice on such transfers, the increased complexity raises the risk of unsuitable advice from non-specialist financial advisers.

14 www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/pension_transfers.pdf

3.7 Assessing the suitability of this type of transfer is not a trivial exercise. It will require a comparison between the DB guarantees and benefits the client would be giving up, relative to the resultant DC benefits, taking into account the transfer value offered by the trustees of the DB scheme and in the context of the client's overall financial situation and future needs.

3.8 We, therefore propose requiring the Pension Transfer Specialist qualification for advice on all transfers from DB schemes to DC arrangements, regardless of when the transferred benefits are being crystallised.

Proposal

3.9 The existence of information asymmetries means that consumers often lack the knowledge to make appropriate decisions when considering transferring from a DB scheme to a DC arrangement. They may not understand the implications of losing the underlying guarantees provided by a DB scheme and that their pension is now reliant on uncertain investment returns and annuity rates. They are, therefore, likely to be heavily reliant on advice.

3.10 Under the new flexibilities consumers transferring from DB schemes to DC arrangements will have a number of options to consider, e.g. cashing in the whole amount at once or in smaller UFPLSs over time. While detriment to consumers can result from their being wrongly advised to pursue any of these options, the risk of detriment is significantly higher when they wish to access their benefits immediately as this carries the greatest risk of them running out of money in retirement.

3.11 Behavioural biases may further increase the risk where consumers wish to transfer with a view to accessing their benefits immediately. They may place more value on accessing their benefits now and underestimate how much they will need to draw on in the future. They may also underestimate the value of the future guarantees of their pension income implicit in a DB scheme.

3.12 The added complexity arising from the new flexibilities is such that the resultant information asymmetries are unlikely to be adequately addressed by financial advisers without specific expertise in pension transfers.

3.13 We have, therefore, concluded that the position set out in our 2011 factsheet no longer provides an adequate level of consumer protection and we propose changing our COBS rules to require that all pension transfers advice is provided by, or checked by, a Pension Transfer Specialist.

3.14 We provide in Annex 1 a Cost Benefit Analysis (CBA) and in Annex 2 a Compatibility Statement relating to our proposal.

Q7: Do you agree with our proposal that all advice on DB to DC pension transfers – including any provided for the purpose of crystallising the benefits being transferred – must be carried out or checked by a Pension Transfer Specialist?

Annex 1
Cost benefit analysis

1. The Financial Services and Markets Act 2000 (FSMA), as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish 'an analysis of the costs together with an analysis of the benefits' that will arise if the proposed rules are made. It also requires us to quantify these costs and benefits, unless they cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.

Market failure analysis

Position under current rules

2. Our general presumption – reflected in our COBS – is that transfers from DB schemes to DC arrangements are unlikely to be in consumers' best interests. However, we accept that there may be a limited number of circumstances where a valid case for transferring can be made, e.g. where a consumer has limited life expectancy.

3. Our COBS rules generally require that advice on pension transfers must be provided by, or checked by, a Pension Transfer Specialist. However, we have previously expressed the view that this requirement does not apply in instances where the transfer is from a DB scheme to a DC arrangement and there is evidence that the transfer was for the purpose of crystallising benefits. This view was set out in an FSA factsheet published in 2011[15], which states that such transfers are outside our glossary definition of 'pension transfer'.

Position under new flexible pension regime

4. The 2014 Budget announced changes to introduce greater freedom and choice in pensions. From April 2015, members will be able to withdraw savings from their DC schemes as they wish, subject to their marginal rate of income tax. Under the previous system, only those individuals with small or very large amounts of DC pension wealth were able to access them flexibly, with the majority of individuals effectively required to purchase an annuity or face a 55% tax rate on withdrawals. It is likely that a greater proportion of individuals in DB schemes will seek to take advantage of this increased flexibility, and will therefore consider transferring from a DB scheme to a DC arrangement.

5. These changes will make giving advice on pension transfers significantly more complex. The greater variety of options for accessing pension wealth will increase the complexity of comparing the long-term outcomes of a switch from a DB scheme to a DC arrangement. Although the Government has mandated that consumers take regulated financial advice on such transfers, the increased complexity raises the risk of unsuitable advice from non-specialist financial advisers.

6. The greater variety of options also increases the potential detriment from a 'wrong' decision to transfer out of a DB scheme. Under the current situation, consumers transferring out of a DB

15 www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/pension_transfers.pdf

scheme only have the option of buying an annuity or a drawdown product (after taking up to 25% as a lump sum). However, under the new flexibilities there will be no limit to the amount that consumers can draw from their pension, introducing the possibility that consumers run out of money and in the most extreme cases are left destitute.

7. We, therefore, wish to require the Pension Transfer Specialist qualification for advice on all transfers from DB schemes to DC arrangements, regardless of when the transferred benefits are being crystallised.

Product complexity and information asymmetries

8. There is an information imbalance – or 'asymmetry' – between consumers and providers of financial services. Products are widely sold but, for many consumers, will be bought only a few times during their lives, so the potential for consumer learning is very low. Products themselves are often complex and opaque in terms of the way they work, so there is a significant risk of detriment where a consumer has not fully understood what the product can or cannot deliver, and where risks lie.

9. This asymmetry is particularly prevalent with pensions, which may be regarded as credence goods, i.e. goods whose quality is not readily or immediately observable, even after purchase.

10. This complexity is compounded in instances where consumers are contemplating transferring benefits accrued in a DB occupational pension scheme[16] to some type of DC individual pension arrangement.

11. The existence of information asymmetries means that consumers often lack the knowledge to make appropriate decisions when considering transferring from a DB scheme to a DC arrangement. They may not understand the implications of losing the underlying guarantees provided by a DB scheme and that their pension is now reliant on uncertain investment returns and annuity rates. They are, therefore, likely to be heavily reliant on advice.

12. Moreover, consumers transferring from DB schemes to DC arrangements under the new flexibilities will have a number of options to consider. These include:

- cashing in the whole amount at once or in smaller lumps over time
- investing in a drawdown product
- buying an annuity, or
- delaying drawing the benefits and keeping the pension invested

Within these there are further options, e.g. money withdrawn might then be invested in financial products or physical assets.

While detriment to consumers can result from their being wrongly advised to pursue any of these options, the risk of detriment is significantly higher in instances where they wish to access their pension wealth immediately, as this carries the greatest risk of them running out of money in retirement or having an uncertain and fluctuating income.

16 A DB occupational pension scheme is a scheme that promises the member a defined level of benefit on death or retirement. Employers' contributions must then be determined from time to time so as to cover the cost of the promised benefits.

13. The added complexity of these transfers, arising from the new flexibilities, is such that the resultant information asymmetries are unlikely to be adequately addressed by financial advisers without specific expertise in pension transfers.

Behavioural biases

14. Behavioural biases may further increase the risk where consumers wish to transfer with a view to accessing their pension wealth immediately.[17]

15. For example, 'present bias', whereby consumers overvalue the present compared with the future, may lead them to place more value on accessing their pension wealth now and to underestimate how much they will need to draw on in the future. It may also lead them to underestimate the value of the future guarantees of their pension income implicit in a DB scheme.

Cost benefit analysis

16. When assessing the costs and benefits of our proposed intervention, we consider these against the case were no intervention to take place (the baseline), but do take into account the Government's mandate that all pension transfers should now receive regulated financial advice from April 2015. Consequently our analysis relates to the incremental costs and benefits arising from requiring this advice to be provided by a Pension Transfer Specialist.

Information base

17. In completing this analysis, beyond the input of pensions market specialists at the FCA, we have mainly relied on two sources of data:

- the impact assessment (IA) that HM Treasury completed in respect of the pension freedoms announced in the 2014 Budget[18], and
- the Office for National Statistics (ONS) Statistical Bulletin '2013 Annual Survey of Hours and Earnings: Summary of Pension Results'[19]

18. We also approached a sample of provider firms to gather information on the proportion of the transfers into their individual DC arrangements that were completed for the purpose of crystallising the transferred benefit, and the split of such transfers between those that were advised and those that were not. Firms were generally unable to provide robust data, and we are consequently only able to rely on these responses for our analysis in a very limited way.

Nature of benefits

19. The greater variety of options arising from the new flexibilities increases the potential detriment from a 'wrong' decision to transfer out of a DB scheme. Currently consumers transferring out of a DB scheme only have the option of buying an annuity or a drawdown product (after taking up to 25% as a cash lump sum). From April 2015 there will be no limit to the amount that consumers can draw from their pension wealth, introducing the possibility that consumers could run out of money in retirement, and in the most extreme cases be left destitute. An exacerbating factor to any detriment is that the decision to transfer out of a DB scheme is, on the whole, irreversible.

17 These issues are discussed in depth in: *Applying behavioural economics at the Financial Conduct Authority* (April 2013) www.fca.org.uk/static/documents/occasional-papers/occasional-paper-1.pdf

18 www.parliament.uk/documents/impact-assessments/IA14-13A.pdf

19 www.ons.gov.uk/ons/dcp171778_355168.pdf

20. We expect requiring the pension transfer qualification for advice on all transfers where the purpose is immediately accessing pension wealth to mitigate the detriment that may result from a 'wrong' decision.

21. We expect these benefits to flow through better quality advice from advisers holding the Pension Transfer Specialist qualification as, after completing it, they should be able to evaluate the needs of complex clients and recommend appropriate solutions based upon detailed understanding and analysis of:

- HM Revenue & Customs' tax regime for pensions
- the broader legal framework
- the features and risks of DB schemes and DC arrangements
- state retirement benefits
- the choices facing early leavers – transfer value analysis and transfer advice, and
- the options for drawing income – their features, risks and tax treatment

22. We cannot accurately predict the number of consumers who will exercise the new flexibilities and transfer from a DB scheme to a DC arrangement for the purpose of accessing their pension wealth immediately.

23. However, in completing its IA, HM Treasury considered the four key segments of the population who are most likely to consider transferring their pension following the introduction of the new freedoms. These include those facing high cost debt (e.g. credit cards), low cost debt (e.g. arranged loans), mortgage debt and other investment opportunities.

24. For these groups, it will be rational to transfer from a DB to a DC scheme at varying levels of cash equivalent transfer value (CETV). Table 1 summarises the Treasury's findings, showing the expected aggregate increase in demand for transfers from a private DB scheme to a DC arrangement for various levels of CETV as a result of the wider flexibility in DC pensions.

Table 1: Treasury estimates for demand for transfers from private DB scheme to DC arrangements

Cash equivalent transfer value (%)	Demand for transfers (%)
100	30.0
95	24.2
90	18.5
85	12.7
80	7.6
75	5.0
70	4.4
65	3.8

Source: HM Treasury, *Amendments to Pension Schemes Bill (private sector defined benefit transfers),* Impact Assessment RPC14-HMT-2212 (September 2014), p. 37[20]

20 www.parliament.uk/documents/impact-assessments/IA14-13A.pdf

25. The Treasury's IA assumes that only those whose DB pensions are crystallising will consider taking advantage of the new flexibilities. Current pensioners are excluded from transferring, and it is assumed that individuals will not seek to transfer before crystallising their pension, because that would mean forgoing subsequent accumulation of DB rights.

26. The Treasury's IA estimates that on average, across all key segments of the population, the CETV will be around 80%, leading to an increase in demand for transfers of approximately 9,000 (7.6% of the estimated 120,000 private sector DB pensions crystallised each year). In the Treasury's analysis a pension transfer to a DC arrangement is rational for these consumers, as it can help to pay off other debts or make use of more appropriate investment opportunities.

27. That said, given behavioural biases and information asymmetry problems (as discussed in 'Market failure analysis' above) it is likely that some consumers will be tempted to transfer their pension even when it is not in their best financial interest.

28. We do not have a credible way of determining the scale of the number of these 'irrational' consumers. However, given the estimate of the likely increase in *rational* demand (7.6%) calculated in the Treasury's IA, we can build a scenario assuming a further one-third to two-thirds (i.e. 2.5–5.0%) of consumers may be tempted to transfer 'irrationally'. This would amount to an additional 3,000–6,000 potential transfers which, if they took place, might lead to material consumer detriment.

29. This is not to say that our proposal would bring benefits equal to the elimination of detriment for this entire group of potential irrational transferees:

- Even in the absence of regulation, it is likely that many of these potential transfers would be averted as a result of advice provided.
- The Treasury legislation will require advice in all such cases going forward.
- Because of the nature of the transfers it is likely that in some portion of these cases the advice or sign-off would be provided by Pension Transfer Specialists in any case.
- Just because advice is provided by a Pension Transfer Specialist does not guarantee that an individual will then make the right decision.

30. We therefore build in a further assumption that the amount of detriment that our proposal might prevent is related to perhaps 25% of all potential irrational transferees (because some of these potential transfers will be addressed by market drivers and Treasury requirements, and because not all of the remaining amount will be addressed by our proposal). This suggests, in our scenario, that our proposal would benefit 750–1,500 potential transferees annually.

31. Determining the median size of these potential transfers is not straightforward as the new flexibilities are likely to make smaller transferable amounts relatively more attractive. The best proxy available is the median amount of retained pension wealth as set out by the ONS, as shown in Table 2.

Table 2: Percentage of individuals with wealth in current occupational DB pensions and average amount of wealth held in such pensions 2010/12

Age	Percentage of people with wealth in DB pensions	Median
16–24	6	3,400
25–34	25	12,400
35–44	32	35,300
45–54	35	95,800
55–64	20	140,300
65+	1	99,900
All	***20***	***43,800***

Source: ONS Statistical Bulletin, *2013 Annual Survey of Hours and Earnings: Summary of Pension Results* (March 2014)

32. The most likely age group to decide to transfer their pension to a DC arrangement (aged 55–64) has a median amount of wealth in their current DB scheme of £140,300. The total value of the pension pots for the 750–1,500 individuals beneficially impacted by our proposals in our scenario is £105–210m.

33. It is difficult to accurately estimate the value of the benefit that these individuals might gain from advice provided by a Pension Transfer Specialist. However, we note that even if this were equal to 5% of the total value of their pension wealth, this would imply benefits to consumers in the range of £5–10m per year.

Direct costs to the FCA

34. We expect these to be minimal and limited to the additional cost of our having to regulate a marginally larger population of advisers who hold the Pension Transfer Specialist qualification.

Compliance costs to firms

35. These will largely be the costs to advisers of having to obtain the Pension Transfer Specialist qualification. The aggregate cost can be calculated as follows:

Aggregate costs	=	Additional advisers requiring qualification	x	Costs of acquiring qualification

Additional advisers requiring qualification

36. The ONS estimates that there are, currently, of the order of 20,000 transfers taking place annually from private sector DB pension schemes.[21] The Treasury's IA estimates an increase in demand leading to a further 9,000 transfers. In our scenario for this CBA we assume a further 3,000–6,000 potential transferees would require advice. In total this suggests a potential 35,000 individuals requiring advice which according to our proposals would have to be provided or signed off by a Pension Transfer Specialist.

21 For this analysis we assume that the vast majority of these transfers are for the purpose of crystallisation.

37. The Treasury assumes in its IA that 7.5 hours are needed for advice on one transfer. This would indicate 175 Pension Transfer Specialists per year for the 35,000 individuals requiring advice.

38. However, even in the absence of our proposal it is likely that a significant portion of such advice (or sign-off) would be provided by Pension Transfer Specialists. Responses to our survey of firms did not reveal credible estimates for these percentages. However, given the specialist nature of the advice required and the fact that a substantial number (perhaps around 7,000) of individuals have the appropriate Pension Transfer Specialist qualifications, we assume that even without our proposals a significant number of these transfers would be advised by or signed off by a Pension Transfer Specialist.[22]

39. For the purpose of this analysis if we assume then that a Pension Transfer Specialist will incrementally be required in only 25% of cases, this would indicate, if the market is already operating at maximum capacity, the need for approximately 45 additional Pension Transfer Specialists.[23]

Costs of acquiring qualification

40. In estimating costs we have adopted the approach set out by NMG Consulting in *The cost of implementing the Retail Distribution Review professionalism policy changes* (June 2010).[24] We have calculated costs under each of the following headings:

- Qualification costs
- Professional body costs
- CPD costs
- Opportunity costs

41. The estimated figures are based on qualification via Unit AF3 of the Chartered Insurance Institute's (CII) Advanced Diploma in Financial Planning – the route taken by a significant majority of current Pension Transfer Specialists.

42. The NMG report suggests that the average qualification cost per adviser is £3,265 However, this estimate does not include the opportunity costs associated with the time spent studying for a qualification.

43. The CII recommends 150 hours of study for its AF3 qualification. We assume that this will be undertaken during candidates' working hours and we apply the hourly cost of £29 used in the NMG report. This gives us a per-candidate opportunity cost of £4,350 and therefore a total cost of qualification of £7,615. Across the industry we estimate our proposal to lead to total one-off costs of around £340,000, as shown in Table 3.

22 The Chartered Insurance Institute has provided us information stating that there are 7,022 advisers with the appropriate qualifications.

23 In line with Treasury estimates, this assumes that the 35,000 cases will each take 1 day (7.5 hours) to process. In addition, we assume that each transfer specialist will work 200 days per year.

24 www.fsa.gov.uk/pubs/policy/nmg_rdr.pdf

Table 3

Summary of compliance costs to firms

Costs of acquiring qualification	X	Additional advisers requiring qualification	=	Total one-off costs to train additional advisers (rounded to nearest ten thousand)
£7,615		45		**£340,000**

Summary

Summary of costs and benefits

	One-off	Ongoing (annual)
Benefits (scenario-based)		£5–10m
Costs	£340,000	

Q8: Do you have any comments on our cost benefit analysis?

Annex 2
Compatibility statement

Compatibility with the FCA's general duties

1. We are required by section 138I(2)(d) of FSMA to explain why we believe our proposed rules are compatible with our strategic objective, advance one or more of our operational objectives and have regard to the regulatory principles in section 3B of FSMA. We are also required by section 138K(2) of FSMA to state whether the proposed rules will have a significantly different impact on mutual societies, as opposed to other authorised persons.

2. This annex also sets out our view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) of FSMA). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

Compatibility with the FCA's regulatory objectives

3. The proposals in this consultation paper are compatible with our strategic objective of ensuring that the relevant markets function well, since they ensure that, in general, all pensions transfer and conversion advice is carried out or checked by a Pension Transfer Specialist, in order to reduce the possibility of poor consumer outcomes.

4. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in section 3B of FSMA.

The need to use our resources in the most efficient and economical way

5. We expect the costs to the FCA of these proposals to be minimal and limited to the additional cost of our having to regulate a marginally larger number of advisers with the appropriate pension transfer qualification.

The principle that a burden or restriction should be proportionate to the benefits

6. Our proposed approach is driven by and follows the proposed legislation, which has been subject to impact assessments by the DWP and HM Treasury. We believe that the additional costs to the sector of our additional proposals are proportionate to the benefits for the reasons set out in our CBA.

The desirability of sustainable growth in the UK economy in the medium or long term

7. Our proposals support the Government's policy objective of people saving more for their retirement and thereby relieving the tax burden on future generations.

The general principle that consumers should take responsibility for their decisions

8. While we believe that consumers should take responsibility for their decisions, the existence of information asymmetries means that they often lack the knowledge to make appropriate decisions when considering transferring from a DB scheme to a DC arrangement. They may not understand the implications of losing the underlying guarantees provided by a DB scheme and that their pension is now reliant on uncertain investment returns and annuity rates. They are, therefore, likely to be heavily reliant on advice and our proposals help ensure that this is of an appropriate quality.

The responsibilities of senior management

9. Our proposals do not place any new obligations on the senior management or governing bodies of firms.

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons

10. We do not believe that our proposals discriminate against any particular business model or approach.

The desirability of publishing information relating to persons

11. We not believe that our proposals affect or undermine this principle.

The principle that we should exercise our functions as transparently as possible

12. We believe that by consulting on our proposals we are acting in accordance with this principle.

Compatibility with the duty to promote effective competition in the interests of consumers

13. In preparing the proposals in this Consultation Paper, we have had regard to our duty to promote effective competition in the interests of consumers under section 1B(4) of FSMA. This duty applies in so far as` promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

14. We believe that requiring that all pension transfer and conversion advice be carried out or checked by a Pension Transfer Specialist is likely to reduce the possibility of poor consumer outcomes and that this is consistent with our duty to promote effective competition in the interests of consumers.

Expected effect on mutual societies

15. Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.

16. We see no reason why our proposed rules would affect mutual providers differently from firms with other structures.

Annex 3
List of questions

Q1: Do you agree that, in general, we should require that advice under the new specified activity be provided by, or checked by, a Pension Transfer Specialist?

Q2: Do you have any comments on the proposed new definition of pension transfer and subsequent requirements?

Q3: For future consideration, do you have views on whether or not we should continue to include transfers from occupational DC schemes without safeguards in our definition of pension transfer?

Q4: Do you have any comments on the proposed new definition of pension conversion and subsequent requirements?

Q5: Do you agree that we should not require a Pension Transfer Specialist for advice on the conversion or transfer of benefits from pension policies with a GAR?

Q6: Do you have any comments on our proposed approach to permissions and grandfathering firms?

Q7: Do you agree with our proposal that all advice on DB to DC pension transfers – including any provided for the purpose of crystallising the benefits being transferred – must be carried out or checked by a Pension Transfer Specialist?

Q8: Do you have any comments on our cost benefit analysis?

Appendix 1
Draft Handbook text

PENSION TRANSFERS AND CONVERSIONS INSTRUMENT 2015

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (The FCA's general rules);
(2) section 137T (General supplementary powers);
(3) section 139A (The FCA's power to give guidance); and
(4) section 137R (Financial promotion rules).

B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [*date*].

Amendments to the FCA Handbook

D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Amendments to material outside the Handbook

F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex C to this instrument.

Notes

G. In the Annexes to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

H. This instrument may be cited as the Pension Transfers and Conversions Instrument 2015.

By order of the Board of the Financial Conduct Authority
[*date*]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.
[*Editor's Note*: references in square brackets are to enactments that have not come into force at the time of this draft instrument.]

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

advising on conversion or transfer of pensions benefits	the *regulated activity* specified in [article 53E of the *Regulated Activities Order*], which is described in *PERG* 2.7.16FG.
flexible benefits	has the meaning given in [section 74 of the Pension Schemes Act 2015] which in relation to a *member of a pension scheme* or a *survivor* of a *member of a pension scheme* is: (a) a money purchase benefit; or (b) a cash balance benefit (see [Section 75 of the Pension Schemes Act 2015]); or (c) a benefit, other than a money purchase benefit or cash balance benefit, calculated by reference to an amount available for the provision of benefits to or in respect of the member (whether the amount so available is calculated by reference to payments made by the member or any other person in respect of the member or any other factor).
guaranteed annuity rate	an arrangement in a pension scheme to provide benefits whereby in defined circumstances and irrespective of the prevailing market rate for annuities when those benefits come into payment, a member is entitled to: (a) an annuity at a minimum specified rate; or (b) benefits equivalent to that annuity at that minimum specified rate.
member of a pension scheme	has the meaning given in [article 53E(2) of the *Regulated Activities Order*] which is a member of a pension scheme within the meaning of section 1(5) of the Pension Schemes Act 1993.

pension conversion	a transaction resulting from a decision of a *retail client* to require the trustees or managers of a pension scheme to: (a) convert *safeguarded benefits* into different benefits that are *flexible benefits* under that pension scheme; or (b) pay an *uncrystallised funds pension lump sum* in respect of any of the *safeguarded benefits*. [**Note:** see Article 53E(c)(i) and (iii) of the *RAO*]
safeguarded benefits	has the meaning given in [section 48(7) of the Pension Schemes Act 2015] which is, benefits other than money purchase benefits and cash balance benefits.
subsisting rights	has the meaning given in [section 76 of the Pension Schemes Act 2015] which is: (a) for a *member of a pension scheme*: (i) any right which has accrued to or in respect of the member to future benefits under the scheme; or (ii) any entitlement to benefits under the scheme, (b) for a *survivor* of a *member of a pension scheme*, any right to future benefits, or entitlement to benefits, which the *survivor* has under the scheme in respect of the member.
survivor	has the meaning given in [section 76 of the Pension Schemes Act 2015] which, for a *member of a pension scheme*, means a *person* who has survived the member and has a right to future benefits, or is entitled to benefits, under the scheme in respect of the member.
uncrystallised funds pension lump sum	has the meaning given by [paragraph 4A of Schedule 29 to the Finance Act 2004] which, subject to the exceptions in the Finance Act 2004, includes a lump sum that: (a) is paid on or after 6 April 2015 in respect of a money purchase arrangement; (b) is paid when all or part of the member's lifetime allowance is available; (c) is paid when the member has reached normal minimum pension age (or the ill-health condition is met); (d) it is not a lump sum that, for the purposes of Part 9 of ITEPA 2003 (pension income), is treated by

regulations under section 164(1)(f) and (2) of the Finance Act 2004 as a trivial commutation lump sum paid to the member; and

(e) immediately before the member becomes entitled to it, the sums or assets that are to be used to provide it:

(i) represent rights of the member under the scheme that are uncrystallised rights as defined by section 212(1) and (2) of the Finance Act 2004; and

(ii) do not to any extent represent rights attributable to a disqualifying pension credit.

Amend the following definitions as shown.

advising on pension transfers and pension opt-outs

advising on investments in respect of *pension transfers* and *pension opt-outs* and *advising on conversion or transfer of pensions benefits*.

designated investment business

(B) In the FCA Handbook:

any of the following activities,…,which is carried on by way of business:

…

(m) *advising on investments* (article 53), but only in relation to *designated investments* (other than *P2P agreements*); for the purposes of the *permission* regime, this ~~is sub-divided into~~ includes:

…

(ii) ~~*advising on pension transfers* and *opt-outs*~~ *advising on investments* in respect of *pensions transfers* and *pension opt-outs*,

(ma) *advising on conversion or transfer of pension benefits* (article 53E).

…

pension transfer

a transaction, resulting from the decision of a *retail client* who is an individual:

(a) to transfer deferred benefits (regardless of when the *retail client* intends to crystallise such benefits) from:

~~(a)~~ (i) …

~~(b)~~ (ii) …

~~(c)~~ (iii) …

~~(d)~~ (iv) …

~~(e)~~ (v) …

~~(f)~~ (vi) a deferred annuity *policy*, where the eventual benefits depend on investment performance in the period up to the date when those benefits will come into payment~~.~~; or

(vii) a *defined contribution occupational pension scheme*; or

(b) to require the trustees or manager of a pension scheme to make a transfer payment in respect of any *safeguarded benefits* with a view to obtaining a right or entitlement to *flexible benefits* under another pension scheme.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3.8 Policies, procedures and records

…

Records

3.8.2 R …

(3) The relevant periods are:

(a) indefinitely, in relation to a *pension transfer*, <u>*pension conversion*,</u> *pension opt-out* or *FSAVC*;

…

…

4.11 Record keeping: financial promotion

4.11.1 R …

(3) A *firm* must retain the record in relation to a *financial promotion* relating to:

(a) a *pension transfer*, <u>*pension conversion*,</u> *pension opt-out* or *FSAVC*, indefinitely;

…

…

8.1 Client agreements: designated investment business

…

Record keeping: client agreements

8.1.4 R …

(2) The record must be maintained for at least whichever is the longer of:

…

(c) in the case of a record relating to a *pension transfer*, *pension conversion,* *pension opt-out* or *FSAVC,* indefinitely.

…

9.4 Suitability reports

Providing a suitability report

9.4.1 R A *firm* must provide a *suitability report* to a *retail client* if the *firm* makes a *personal recommendation* to the *client* and the *client*:

…

(4) enters into a *pension transfer*, *pension conversion* or *pension opt-out*.

…

…

9.5 Record keeping and retention periods for suitability records

…

9.5.2 R A *firm* must retain its records relating to suitability for a minimum of the following periods:

(1) if relating to a *pension transfer*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;

…

…

19.1 Pension transfers, conversions, and opt-outs

Application

19.1.-1 R (1) This section applies to a *firm* that gives advice or a *personal recommendation* about a *pension transfer*, a *pension conversion* or *a pension opt-out.*

(2) This section does not apply to a *firm* that gives advice or a *personal recommendation* in relation to a *pension transfer*, *pension conversion*

or *pension opt-out* in relation to which the only *safeguarded benefit* is a *guaranteed annuity rate.*

Preparing and providing a transfer analysis

19.1.1 R If an individual who is not a *pension transfer specialist* gives a *personal recommendation* about a *pension transfer*, a *pension conversion* or *pension opt-out* on a *firm's* behalf, the *firm* must ensure that the recommendation is checked by a *pension transfer specialist*.

19.1.2 R A *firm* must:

(1) compare the benefits likely (on reasonable assumptions) to be paid under a *defined benefits pension scheme* or other pension scheme with *safeguarded benefits* with the benefits afforded by a *personal pension scheme*, ~~or~~ *stakeholder pension scheme* or other pension scheme with *flexible benefits*, before it advises a *retail client* to transfer out of a *defined benefits pension scheme* or other pension scheme with *safeguarded benefits*;

…

(3) give the *client* a copy of the comparison, drawing the *client's* attention to the factors that do and do not support the *firm's* advice, no later than when the *key features document*, if applicable, is provided; and

…

…

19.1.4 R When a *firm* compares the benefits likely to be paid under a *defined benefits pension scheme* or other pension scheme with *safeguarded benefits* with the benefits afforded by a *personal pension scheme*, ~~or~~ *stakeholder pension scheme* or other pension scheme with *flexible benefits*, (*COBS* 19.1.2R(1)), it must:

…

…

Suitability

19.1.6 G When advising a *retail client* who is, or is eligible to be, a member of a *defined benefits occupational pension scheme* or other scheme with *safeguarded benefits* whether to transfer, convert or opt-out, a *firm* should start by assuming that a transfer, conversion or opt-out will not be suitable. A *firm* should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the *client's* best interests.

19.1.7 G When a *firm* advises a *retail client* on a *pension transfer*, *pension conversion* or *pension opt-out*, it should consider the *client's* attitude to risk in relation to the rate of investment growth that would have to be achieved to replicate the benefits being given up.

19.1.7A G When giving a *personal recommendation* about a *pension transfer* or *pension conversion*, a *firm* should clearly inform the *retail client* about the loss of the ~~fixed benefits~~ *safeguarded benefits* and the consequent transfer of risk from the *defined benefits pension scheme* or other scheme with *safeguarded benefits* to the *retail client*, including:

(1) the extent to which benefits may fall short of replicating those in the *defined benefits pension scheme* or other scheme with *safeguarded benefits*;

…

19.1.7B G In considering whether to make a *personal recommendation,* a *firm* should not regard a rate of return which may replicate the benefits being given up from the *defined benefits pension scheme* or other scheme with *safeguarded benefits* as sufficient in itself.

…

19.1.9 G If a *firm* proposes to advise a *retail client* not to proceed with a *pension transfer*, *pension conversion* or *pension opt-out*, it should give that advice in writing.

Annex C

Amendments to the Perimeter Guidance manual

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

2.6 Specified investments: a broad outline

…

Rights under a pension scheme

2.6.19 G ~~Two~~ Three types of *investment* are specified here:

(1) rights under a *stakeholder pension scheme*; ~~and~~

(2) rights under a *personal pension scheme*; and

(3) rights or interests under a pension scheme which provides *safeguarded benefits*.

…

2.6.19BA G Under section 48(7) of the Pension Schemes Act 2015 *safeguarded benefits* means benefits other than:

(1) money purchase benefits (defined in section 181 of the Pension Schemes Act 1993); and

(2) cash balance benefits (defined in section 75 of the Pension Schemes Act 2015).

2.6.19C G (1) Rights under *stakeholder pension schemes* and *personal pension schemes* are *specified investments* for the purposes of the entire *Regulated Activities Order*.

(2) Rights or interests under a pension scheme which provides *safeguarded benefits* as defined by section 48(7) of the Pension Schemes Act 2015 are only *specified investments* for the purposes of article 53E (Advising on conversion or transfer of pension benefits) and not in relation to any other *regulated activity*.

(3) There are no exclusions in the Order.

…

2.7 Activities: a broad outline

…

2.7.15 G The *regulated activity* of *advising on investments* under article 53 of the *Regulated Activities Order* applies to advice on *securities* or *relevant investments*. It does not, for example, include giving advice about *deposits*, or about things that are not *specified investments* for the purposes of the *Regulated Activities Order* ~~(such as interests under the trusts of an *occupational pension scheme*)~~. …

…

Advising on conversion or transfer of pension benefits

2.7.16F G Under article 53E of the *Regulated Activities Order* giving advice to a person (“P”) who has *subsisting rights* in respect of any *safeguarded benefits* in their capacity as:

(1) a *member of a pension scheme*; or

(2) a *survivor* of a *member of a pension scheme*;

is a *regulated activity* if the advice is on the merits of P requiring the trustee or manager of the pension scheme to carry out any of the transactions listed in *PERG* 2.7.16G

2.7.16G G The transactions in *PERG* 2.7.16F are:

(1) converting any of the *safeguarded benefits* into different benefits that are *flexible benefits* under the scheme; or

(2) making a transfer payment in respect of any of the *safeguarded benefits* with a view to acquiring a right or entitlement to *flexible benefits* for P under another pension scheme; or

(3) paying a lump sum that would be an *uncrystallised funds pension lump sum* in respect of any of the *safeguarded benefits*.

2.7.16H G *Advising on conversion or transfer of pensions benefits* can only be carried on in respect of one type of specified investments (see *PERG* 2.6.19CG (2)).

…

2.8 Exclusions applicable to particular regulated activities

…

2.8.12 G In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the *regulated activities* of: …

…

(4) *advising on a home purchase plan*; ~~and~~

(5) *advising on a regulated sale and rent back agreement*; and

(6) *advising on conversion or transfer of pensions benefits*.

…

2 Annex 2G Regulated activities and the permission regime

…

2 Table

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	**Specified investment in relation to which …**
…	
(j) …	…
(ja) *advising on conversion or transfer of pensions benefits* (article 53E) is contained in the permission of *advising on pension transfers, conversions and opt-outs* [see note 4 to Table 1]	
…	

3 Table

Notes to Table 1
…
Note 4: For the purposes of the *permission* regime, the activity in (j)(ii) of *advising on pension transfers and pension opt-outs* includes the following two *regulated activities*: (1) *advising on investments* where it is carried on in respect of the following specified investments: *unit* (article 81);

stakeholder pension scheme (article 82(1));

personal pension scheme (article 82(2));

life policy (explained in note 5); and

rights to or interests in investments in so far as they relate to a *unit*, a *stakeholder pension scheme*, a *personal pension scheme* or a *life policy*.

(2) *advising on conversion or transfer of pensions benefits* where it is carried on in respect of rights or interests under a pension scheme which provides *safeguarded benefits*.

…

…

7.3 Does the activity require authorisation?

…

7.3.1E G Under article 53E of the *Regulated Activities Order* (Advising on conversion or transfer of pension benefits), advising a *person* ("P") is a specified kind of activity if the advice:

(1) is given to P in their capacity as

(a) a *member of a pension scheme*; or

(b) a *survivor* of a *member of a pension scheme*;

where P has *subsisting rights* in respect of any *safeguarded benefits*; and

(2) is on the merits of P requiring the trustee or manager of the pension scheme to:

(a) convert any of the *safeguarded benefits* into different benefits that are *flexible benefits* under the scheme; or

(b) make a transfer payment in respect of any of the *safeguarded benefits* with a view to acquiring a right or entitlement to *flexible benefits* for P under another pension scheme; or

(c) pay a lump sum that would be an *uncrystallised funds pension lump sum* in respect of any of the *safeguarded benefits*.

7.3.2 G Articles 53, 53A, 53B, 53C~~, and~~ 53D and 53E of the *Regulated Activities Order* contain a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on these *regulated activities*, see *PERG* 8 (Financial promotion and related activities), *PERG* 4 (Guidance on regulated activities connected with mortgages), <u>*PERG* 12.6 (Advising on conversion or transfer of pension benefits),</u> *PERG* 14.3, *PERG* 14.4 and *PERG* 14.4A (Guidance on home reversion, home purchase and regulated sale and rent back agreement activities).

…

7.4 Does the article 54 exclusion apply?

…

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is not:

(1) to advise on *securities* or *relevant investments* or *home finance transactions* <u>or amounts to carry on *advising on conversion or transfer of pensions benefits*</u>; or

(2) to lead or enable *persons*:…

…

(e) to enter as *SRB agreement seller* or *SRB agreement provider* into *regulated sale and rent back agreements* or to vary the terms of *regulated sale and rent back agreements* entered into by them as *SRB agreement seller* or *SRB agreement provider* where the agreement was originally established on or after 1 July 2009<u>; or</u>

<u>(f)</u> <u>to do any of the following in the context of *advising on conversion or transfer of pensions benefits*:</u>

<u>(i)</u> <u>convert *safeguarded benefits* into different benefits that are *flexible benefits* under the scheme; or</u>

<u>(ii)</u> <u>make a transfer payment in respect of any of the benefits with a view to acquiring a right or entitlement to *flexible benefits* under another pension scheme; or</u>

<u>(iii)</u> <u>pay a lump sum that would be an *uncrystallised funds pension lump sum* in respect of any of the benefits</u>.

…

10.1 Background

Q1. What is the purpose of these questions and answers ("Q&As") and who should be reading them?

…

The Q&As are primarily concerned with identifying the regulated activities (such as dealing or arranging deals in investments, managing investments or advising on investments) that may be carried on by persons (including trustees) who are involved with *occupational pension schemes*, ~~and~~ *personal pension schemes* or any pension scheme that provides *safeguarded benefits*. They are also concerned, but only in relation to *personal pension schemes* and *stakeholder pension schemes*, with identifying when the regulated activity of operating such a scheme will be carried on (see Q26).

…

10.2 General issues

…

Q3. How will I know if my proposed activities are regulated?

…

- *advising on investments* (broadly, advising an investor on the merits of his *buying* or *selling* certain particular investments);

- *advising on conversion or transfer of pensions benefits* (broadly advising a *member of a pension scheme* on converting, transferring or paying out *safeguarded benefits* in a pension scheme);

…

Q4. What kind of investments do these regulated activities relate to?

…

The activity of *advising on conversion or transfer of pensions benefits* relates exclusively to rights or interests under a pension scheme which provides *safeguarded benefits.*

…

10.4 Pension scheme service providers other than trustees

Q31. I provide administration services to pension schemes. Will I require authorisation or exemption?

Yes, if your services include any of the following activities and you cannot make use of an exclusion.

…

(8) Advising a *member of a pension scheme* or their *survivor* on the merits of requiring a trustee or manager of a pension scheme to convert, transfer or cash out *safeguarded benefits* could amount to *advising on conversion or transfer of pensions benefits* (see *PERG* 2.7.16F G).

…

Q39. I give advice to the members of a pension scheme. Is this likely to be regulated advice and mean that I must be authorised or exempt?

It is likely to be regulated advice under article 53 of the *Regulated Activities Order* if the advice concerns a *personal pension scheme* but probably not if it concerns an OPS that is not a *stakeholder pension scheme*. ~~The~~ In respect of the activity of *advising on investments*, the same factors apply to advice given to a member as apply to advice given to trustees (see Q38). But a particular factor will be whether the member is himself *buying* or *selling* a *security* or *relevant investment* (a "regulated investment").

…

In addition to advice that may fall under article 53 of the *Regulated Activities Order*, giving advice to *members of a pension scheme* could amount to *advising on conversion or transfer of pensions benefits* where the advice relates to rights or interests under a pension scheme which provides *safeguarded benefits* (see *PERG* 2.7.16FG). This is the case regardless of how the rights or interests are held (see *PERG* 12.6).

…

10.5 Employers and affinity groups (such as trade unions)

…

Q43. When am I, as an employer, likely to be carrying on a regulated activity?

You are unlikely to be carrying on a *regulated activity* in the case of an OPS (other than one that is also a *stakeholder pension scheme*) unless you provide services that involve *regulated activity* to the trustees (such as giving them advice or arranging trust transactions). Any service that you might provide to your employees concerning their rights under the OPS will not be a regulated activity unless you are *advising on conversion or transfer of pensions benefits*. But if you provide your staff with the opportunity to participate in a *personal pension scheme* or a *stakeholder pension scheme*, you are likely to be *arranging*. You may also be *advising on investments* if you provide your employees with advice on the merits of their joining the scheme (see Q39).

In respect of any pension scheme that provides *safeguarded benefits*, you may be *advising on conversion or transfer of pensions benefits* where as part of your services to employees you provide advice on the merits of requiring a trustee or manager of a pension scheme to convert, transfer or cash out *safeguarded benefits* (see *PERG* 12.6).

…

10 Annex 4G Table summarising regulatory position of employers and affinity groups.

Activity carried on by employer or affinity group	Potential implications in terms of regulated activities and the need for authorisation
…	…
Advising employees on the merits of participating in an occupational pension scheme or a group personal pension scheme or a stakeholder pension scheme, including advising employees against joining a personal pension scheme or advising them to transfer from a personal pension scheme.	…
Advising employees in their capacity of members of a pension scheme or advising their *survivor* on the merits of requiring a trustee or manager of a pension scheme to convert, transfer or cash out safeguarded benefits.	This is likely to amount to *advising on conversion or transfer of pensions benefits* but only where it is carried on by way of business, the guidance in Q6, Q44 and Q45 is applicable.
…	

…

12.1 Background

Q1. What is the purpose of these questions and answers ('Q&As') and who should be reading them?

These Q&As are aimed at, and should be read by, *persons* involved in the running of a *personal pension scheme* and those who give advice about or provide services to such schemes. They are intended to help such persons understand whether they will be carrying on a *regulated activity* and need *authorisation* or exemption under section 19 of the Financial Services and Markets Act 2000 following the changes to pension legislation that took effect on 6 April 2007 and on 6 April 2015. The Q&As complement the general *guidance* on regulated activities which is in Chapter 2 of our Perimeter Guidance manual ('PERG') and the general guidance about pensions-related activities which is in Chapter 10 of PERG.

The Q&As are set out under ~~four~~ five sections:

- …
- the application of EU Directives (*PERG* 12.4); ~~and~~
- *financial promotion* issues (*PERG* 12.5); and
- *advising on conversion or transfer of pension benefits* (*PERG* 12.6).

…

12.3 Rights under a personal pension scheme

Q15. I am a financial intermediary dealing with pensions. Am I affected by the fact that rights under a personal pension scheme are a specified investment?

…

In addition, rights or interests under a pension scheme which provides *safeguarded benefits* is a specified investment in respect of *advising on conversion or transfer of pensions benefits* (see *PERG* 12.6).

…

Q19. For advice to be regulated, it needs to relate to the merits of buying or selling a particular investment. When do rights under a personal pension scheme become 'particular' rights and so particular investments?

…

In addition, it should be noted that advising a client P in their capacity as *member of a pension scheme* who has *subsisting rights* in respect of any *safeguarded benefits* on the merits of P requiring the trustee or manager of the pension scheme to:

(a) convert any of the *safeguarded benefits* into different benefits that are flexible benefits under the scheme; or

(b) make a transfer payment in respect of any of the *safeguarded benefits* with a view to acquiring a right or entitlement to flexible benefits for P under another pension scheme; or

(c) pay a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the *safeguarded benefits*;

is a regulated activity on its own and would require the person carrying it out to be *authorised* for *advising on conversion or transfer of pensions benefits* (see *PERG* 12.6).

…

Q21. What exclusions may be available for advising on investments in connection with acquiring or disposing of rights under a personal pension scheme?

The usual exclusions for *advising on investments* and *advising on conversion or transfer of pensions benefits* will potentially be available. In particular, article 67 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the *Regulated Activities Order*):

…

After PERG 12.5 (Financial promotion issues) insert the following new section. The text is not underlined.

12.6 Advising on conversion or transfer of pension benefits

Q29. What is the background to this *regulated activity*?

The effect of the Pension Schemes Act 2015 is that trustees or managers must ensure that a *member of a pension scheme* or a *survivor* has taken appropriate independent advice before converting or transferring pension benefits, where the conversion or transfer is of *safeguarded benefits* to *flexible benefits*.

The *Regulated Activities Order* was amended so that the appropriate independent advice to be sought by a *member of a pension scheme* or a *survivor* is regulated.

Q30. Does this mean that there is an overlap between “advising on conversion or transfer of pension benefits” and “advising on investments”?

Yes, there is an overlap between both activities. Under the *Regulated Activities Order* rights under a *stakeholder pension scheme* and under a *personal pension scheme* fall within the definition of *security*. This means that advising on any of these investments would fall under *advising on investments*.

Where a pension scheme provides *safeguarded benefits* then a person who is *advising on investments* may also be *advising on conversion or transfer of pension benefits* at the same time.

In practice, we expect that a person *advising on conversion or transfer of pension benefits* will also carry on *advising on investments.*

Q31. What is the difference between both advising activities?

The regulated activity of *advising on conversion or transfer of pension benefits* applies to any *pension scheme* that has *safeguarded benefits.* This means it includes advising on transfers between occupational pension schemes where the transfer payment is in respect of *safeguarded benefits* with a view to acquiring a right or entitlement to *flexible benefits*.

In the context of pension schemes, *advising on investments* in respect of rights under a *personal pension scheme* or a *stakeholder pension scheme* is limited to these types of schemes and would not include occupational pension schemes.

Q32. Does a person who advises on the conversion or transfer of flexible benefits need to seek authorisation?

When the conversion or transfer of *flexible benefits* involves advising on the merits of *buying*, *selling*, subscribing for rights in a *personal pension scheme* or in a *stakeholder pension scheme* or exercising any of these rights, either as the ceding scheme or the receiving scheme or both, then that would amount to *advising on investments* and authorisation is required. This is because the *regulated activity* of *advising on investments* applies in relation to rights under a *personal pension scheme* or rights under a *stakeholder pension scheme*.

When the conversion or transfer of *flexible benefits* involves occupational pension schemes only and is not in respect of *safeguarded benefits,* then no regulated activity is being carried on.

For example, advice on the switching of *flexible benefits* between defined contribution occupational pension schemes. Similarly, advice on an *uncrystallised funds pension lump sum* payment out of a defined contribution occupational pension scheme is not regulated.

Q33. Does a *guaranteed annuity rate* (GAR) mean that a pension policy has a *safeguarded benefit*?

In our opinion, a pension policy with a GAR has a *safeguarded benefit* and a person advising on it may be *advising on conversion or transfer of pension benefits.*

Q34. Can advising on conversion or transfer of pension benefits be carried on in respect of any other *specified investments?*

No, the only *specified investment* relevant for *advising on conversion or transfer of pension benefits* is rights or interests under a pension scheme which provides *safeguarded benefits*.

It should be noted that rights or interests under a pension scheme which provides *safeguarded benefits* are a specified investment exclusively in respect of *advising on conversion or transfer of pension benefits* and not any other *regulated activity*.

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