

PENSION TRANSFERS AND CONVERSIONS INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service amends the Voluntary jurisdiction provisions in Annex D of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 227 (Voluntary jurisdiction);
 - (2) paragraph 8 (Information, advice and guidance) of Schedule 17; and
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making and amendment of the rules and standard terms in Annex D by the Financial Ombudsman Service Limited is subject to the approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in or under 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);
 - (4) section 137R (Financial promotion rules); and
 - (5) section 226 (Compulsory Jurisdiction).
- D. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the Voluntary jurisdiction rules made and amended by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force on 8 June 2015.

Amendments to the FCA Handbook

- G. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Supervision manual (SUP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D

Amendments to material outside the Handbook

- H. The Perimeter Guidance manual (PERG) is amended in accordance with Annex E to this instrument.

Notes

- I. In Annex A 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

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

By order of the Board of the Financial Ombudsman Service Ltd
3 June 2015

By order of the Board of the Financial Conduct Authority
4 June 2015

Annex A

Amendments to the Glossary of definitions

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

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

<i>advising on conversion or transfer of pension benefits</i>	the <i>regulated activity</i> specified in article 53E of the <i>Regulated Activities Order</i> , which is described in <i>PERG</i> 2.7.16FG.
<i>flexible benefits</i>	has the meaning given in section 74 of the Pension Schemes Act 2015 which in relation to a <i>member of a pension scheme</i> or a <i>survivor of a member of a pension scheme</i> is: (a) a money purchase benefit (defined in section 181 of the Pension Schemes Act 1993 and section 176 of the Pension Schemes (Northern Ireland) Act 1993); or (b) a cash balance benefit (defined in 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).
<i>guaranteed annuity rate</i>	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.
<i>member of a pension scheme</i>	has the same meaning as it has in article 53E(2) of the <i>Regulated Activities Order</i> , which is, a member of a pension scheme within the meaning of section 1(5) of the Pension Schemes Act 1993 (and section 1(5) of the Pension Schemes (Northern Ireland) 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(1)(c)(i) and (iii) of the *RAO*]
- safeguarded benefits* has the meaning given in section 48(8) 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) 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 any of the following regulated activities:

- (a) *advising on investments* in respect of *pension transfers* and *pension opt-outs* (article 53);
- (b) *advising on conversion or transfer of pension benefits* (article 53E).

designated investment business

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)~~ a deferred annuity *policy*, where the eventual
(vi) 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.

pension transfer specialist

an individual appointed by a *firm* to check the suitability of a
pension transfer, pension conversion or pension opt-out who
has passed the required examinations as specified in *TC*.

personal recommendation

(except in *CONRED*) a recommendation that is *advice on
investments, advice on conversion or transfer of pension
benefits*, or *advice on a home finance transaction* and is
presented as suitable for the person to whom it is made, or is
based on a consideration of the circumstances of that person.
A recommendation is not a personal recommendation if it
issued exclusively through distribution channels or to the
public.

...

regulated activity

(in accordance with section 22 of the Act (Regulated
activities) the activities specified in Part II of the Regulated
Activities Order (Specified Activities) which are, in
summary:

...

(p) *advising on investments* (article 53); for the purposes of the *permission* regime, this ~~is subdivided into~~ includes:

...

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

(pf) *advising on conversion or transfer of pension benefits*
(article 53E);

...

retail investment activity

(a) ...

(b) *arranging (bringing about) deals in investments*; ~~or~~

(c) *making arrangements with a view to transactions in investments*; or

(d) *advising on conversion or transfer of pension benefits*;

...

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*, *pension conversion*, *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*, *pension conversion*, *pension opt-out* or *FSAVC*, indefinitely;

...

...

8.1 Client agreements: designated investment business

Providing a client agreement

...

8.1.2 R If a *firm* carries on *designated investment business*, other than *advising on investments*, or *advising on conversion or transfer of pension benefits*, with or for a new *retail client*, the *firm* must enter into a written basic agreement, on paper or other *durable medium*, with the *client* setting out the essential

rights and obligations of the *firm* and the *client*.

...

...

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) a pension transfer, pension conversion or pension opt-out in relation to which the only safeguarded benefit is a guaranteed annuity rate;
 - (b) a pension transfer in which the retail client proposes to transfer out of a defined contribution occupational pension scheme where that client has no safeguarded benefits under that scheme.

Preparing and providing a transfer analysis

- 19.1.1 R If an individual who is not a *pension transfer specialist* gives advice or 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 or advice 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, in good time, and in any case no later than when the *key features document* is provided; and
 - ...
- 19.1.2A R A firm need not carry out the comparison described in COBS 19.1.2R if:
- (1) the retail client wishes to crystallise benefits immediately after the pension transfer or pension conversion; and

(2) the *retail client* is at normal retirement age under the rules of the ceding scheme.

19.1.3 G In particular, the comparison should:

...

(3) explain the assumptions on which it is based and the rates of return that would have to be achieved to replicate the benefits being given up; ~~and~~

(4) be illustrated on rates of return which take into account the likely expected returns of the assets in which the *retail client's* funds will be invested; and

(5) where an immediate crystallisation of benefits is sought by the *retail client* prior to the ceding scheme's normal retirement age, compare the benefits available from crystallisation at normal retirement age under that scheme.

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 including, where relevant, 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.

- 19.1.10 G Where a *firm* has advised a *retail client* in relation to a *pension transfer*, *pension conversion* or *pension opt-out*, and the *firm* is asked to confirm this for the purposes of section 48 of the Pension Schemes Act 2015, then the *firm* should provide such confirmation as soon as reasonably practicable.

Schedule 1 Record keeping requirements

...

Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
COBS 8.1.4R	<i>Client agreements</i>	Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>	From date of agreement	From whichever is the longer of 5 years or the duration of the relationship with the <i>client</i> . Record relating to a <i>pension transfer</i> , <u><i>pension conversion</i></u> , <i>pension opt-out</i> or FSAVC must be retained indefinitely
...				

Annex C

Amendments to the Supervision manual (SUP)

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

10A FCA Approved persons

...

10A.10 Customer-dealing functions

...

Customer function (CF 30)

10A.10.7 R The *customer function* is the function of:

- (3) giving advice or performing related activities in connection with *pension transfers*, *pension conversions*, or ~~opt-outs~~ *pension opt-outs* for *retail clients*;

...

...

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2 Jurisdiction of the Financial Ombudsman Service

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

- 2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

...

- (1B) ~~the regulated activity specified in article 53E (advising on conversion or transfer of pension benefits) of the *Regulated Activities Order*;~~
[deleted]

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at 24 April 2015

The activities which were covered by the Compulsory Jurisdiction (at 24 April 2015) were:

- (1) for *firms*:

- (h) ~~the regulated activity specified in article 53E (advising on conversion or transfer of pension benefits) of the *Regulated Activities Order*;~~ [deleted]

...

The activities which (at 24 April 2015) were *regulated activities* were, in accordance with section 22 of the *Act* (The classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*:

...

- (29B) *advising on conversion or transfer of pension benefits* (article 53E);

...

Annex E

Amendments to the Perimeter Guidance manual (PERG)

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*.

...

2.6.19B G Under section 48(8) of the Pension Schemes Act 2015 *safeguarded benefits* means benefits other than:

A

- (1) money purchase benefits (defined in section 181 of the Pension Schemes Act 1993 and section 176 of the Pension Schemes (Northern Ireland) 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(8) 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~~). ...

...

2.7.16F [text to follow]

Advising on conversion or transfer of pension benefits

2.7.16G 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.

2.7.16H G The transactions in PERG 2.7.16FG 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*.

2.7.16I G *Advising on conversion or transfer of pension 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) [text to follow]

(7) *advising on conversion or transfer of pension 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) ...	
<i>(ja) advising on conversion or transfer of pension benefits (article 53E) is contained in the permission of <u>advising on pension transfers and pension opt-outs</u> [see note 4 to Table 1]</i>	...
...	

3 Table

Notes to Table 1
...
Note 4: For the purposes of the <i>permission</i> regime, the activity in (j)(ii) of <i>advising on pension</i>

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 pension 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), *PERG* 12.6 (Advising on conversion or transfer of pension benefits), *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* or amounts to carry on *advising on conversion or transfer of pension benefits*; 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; or
 - (f) [text to follow]
 - (g) to do any of the following in the context of *advising on conversion or transfer of pension benefits*:
 - (i) convert *safeguarded benefits* into different benefits that are *flexible benefits* under the scheme; or
 - (ii) 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
 - (iii) pay a lump sum that would be an *uncrystallised funds pension lump sum* in respect of any of the benefits.

...

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 pension 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 pension 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 pension benefits (see PERG 2.7.16FG).

...

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 pension 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 pension 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 pension 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.	...
<u>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.</u>	<u>This is likely to amount to <i>advising on conversion or transfer of pension benefits</i> but only where it is carried on by way of business, the guidance in Q6, Q44 and Q45 is applicable.</u>
...	

...

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 pension 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 pension 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 pension 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* is a *specified investment* exclusively in respect of *advising on conversion or transfer of pension benefits* and not any other *regulated activity*.