



Overseas Transfers of Pension Savings

Draft guidance
20 December 2011

Introduction

On 6 December 2011 draft secondary legislation to make changes to the system for transfers of pension savings to qualifying recognised overseas pension schemes (QROPS) was published for an 8 week consultation.

This document contains the draft guidance in relation to the changes to the system for transfers of pension savings to QROPS that is the subject of an 8 week consultation.

Once the regulations take effect the guidance will be incorporated into the Registered Pension Schemes Manual which is available on the HM Revenue & Customs website.

To aid ease of reading a 'qualifying recognised overseas pension scheme' is referred to throughout this guidance as a QROPS.

This guidance applies with effect from 6 April 2012

For guidance applicable before 6 April 2012 see RPSM14101020

Overview of changes

- Summary of what the changes are
 - firm up the tests to be an overseas pension scheme to make the rules work as always originally intended.
 - new member information and signed acknowledgement to be provided to the RPS pre transfer out of RPS
 - revised timeframe for an RPS to report a transfer to a QROPS as well as additional information to be provided and a switch to reporting via a paper form
 - changes to the period in which a QROPS has to report information on payments to HMRC
 - payments by QROPS to be reported within 60 days on new paper form
- When changes take effect
 - the changes come into effect on 06 April 2012 although there are a couple of transitional aspects The key changes for affected parties to be aware of are:
- New overseas schemes seeking to attract transfers of UK tax-relieved funds:
 - A revised form APSS251 is available for schemes to notify HMRC that they meet the requirements to be a recognised overseas pension scheme. This information will be required for any notifications dealt with by HMRC after 5 April 2012.
 - The new reporting process will be applicable to any payments made or treated as made by these schemes.
- Existing overseas schemes that have already notified HMRC that they meet the requirements to be a recognised overseas pension scheme.
 - These schemes will need to ensure that they meet Conditions 3 and 4 of the requirements to be considered an overseas pension scheme. Any scheme that is established in New Zealand will also need to look at the revision that has been made to the definition of a recognised overseas pension scheme.
 - There is a new reporting requirement for a scheme that ceases to be a QROPS after 5 April 2012.
 - The revised reporting requirements are applicable to any payments made from a QROPS after 5 April 2012.
 - There is a new obligation to notify HMRC of any material changes to information that has been provided to HMRC previously in relation to the information requirements.
- Registered Pension Schemes
 - Need member information before transfer. Need to report transfer within 30 days on APSS262. Transfer made on or before 05.April 2012 report online on 'old' basis.

- Changes for members
 - for transfer requests made/effectuated from 6 April 2012 will need to provide information and signed statements. Form APSS263 or similar

Background and summary tax position on a transfer to a QROPS

A transfer is the moving of an individual's accrued pension rights from one scheme to another. The pension tax legislation specifies which transfers may be made without adverse tax consequences. These transfers are known as "recognised transfers" and are a type of authorised member payment. To be an authorised member payment transfers must be made to either a registered pension scheme or a QROPS.

A transfer from a registered pension scheme to a non-UK pension scheme that is not a QROPS is not a recognised transfer. If a transfer is not a recognised transfer, it will be an unauthorised payment and generate unauthorised payment charges and scheme sanction charge. For further information see RPSM14102020.

Summary tax position on transfer to a qualifying recognised overseas pension scheme

Tax relief

The transfer is not a contribution so no UK tax relief is due in respect of it. The transfer is merely re-locating the pension rights represented by UK tax-relieved contributions to a different pension scheme.

Annual allowance

The transfer is treated in the same way as a transfer from a registered pension scheme to another registered pension scheme. See RPSM14101010 (of relevance only to the transferring registered pension scheme).

Lifetime Allowance

The transfer is a benefit crystallisation event for the purpose of the member's lifetime allowance (see RPSM11100010 onwards). The amount crystallised is the amount of the transfer. If the transfer results in the member's lifetime allowance being exceeded, the rate of tax chargeable is 25%.

The taking of benefits relating to the transferred amount from a QROPS is not a benefit crystallisation event for the purposes of the individual's lifetime allowance.

Member payment charge

Any future payment from the overseas scheme which is a type of payment which would not have been authorised from a UK registered scheme will potentially give rise to a member payment charge under Schedule 34 Finance Act 2004 on a resident or recently resident individual (for more details see RPSM13102110).

Inheritance tax

When a member transfers from one pension scheme (here a UK registered scheme) to another (here a QROPS) then he has the right to determine the basis upon which the new death benefits under the transferee scheme are to be paid. That "right" is property and an

asset of the member's estate in terms of section 272 Inheritance Tax Act 1984. So when he exercises that right by electing to have the death benefits paid on discretionary trusts outside his estate then there is a loss to his estate in terms of section 3(1) Inheritance Tax Act 1984. That loss and the consequent chargeable transfer is largely dependent on the member's state of health and life expectancy at the time of the transfer. If in normal health then the value will be nominal — he would be expected to survive to take his full retirement benefits at which time the death benefits would lapse. If in ill health then the value could be substantive given the short period of time before a purchaser in the hypothetical open market would expect the death benefits to be paid out.

The transitional relieving provisions under paragraphs 56-58 of Schedule 36 to Finance Act 2004 apply and there is grandfathering of the IHT exemption for the pre-6 April 2006 fund on a transfer to a QROPS.

What makes a scheme a QROPS?

There are 4 tests that a scheme must meet in order to be a QROPS. It must be

1. a pension scheme
2. An overseas pension scheme as defined by the legislation,
3. A recognised overseas pension scheme, and
4. A qualifying recognised overseas pension scheme.

If a scheme is not designed to provide benefits in respect of retirement, ill-health, death or similar circumstances then it's unlikely to be a pension scheme so won't be a QROPS.

If a pension scheme fails the level 2 test (i.e. it is not an overseas pension scheme) it is not necessary to see if it meets the level 3 test it is not a QROPS. Similarly if a scheme meets the level 2 test but then fails to meet the level 3 recognised overseas pension scheme test it cannot be a QROPS.

Tests 2 – 4 are covered in more detail later in this guidance.

Relevance of QROPS Status for UK Tax Purposes

QROPS status does not confer on an overseas scheme the UK tax exemptions to which a registered pension scheme is entitled. In particular, it does not affect the scheme's liability to UK tax on any income it has from UK property.

If a QROPS invests in an unauthorised unit trust any gains accruing to that unit trust remain chargeable if the overseas scheme is exempt from capital gains tax or corporation tax on such gains only by reason of its residence.

QROPS status does not directly affect every aspect of the pension scheme and is principally of relevance to the transfer of UK tax-relieved pension savings and to the treatment of payments from such schemes. For example there is no change to UK tax treatment of pension income from a QROPS it is treated in the same way as a pension from any other pension scheme outside of the UK.

Overseas pension scheme

For a scheme to be classed as an overseas pension scheme under section 150(7) Finance Act 2004, it:

- cannot be a registered pension scheme,
- must be established outside the United Kingdom.

Normally, a scheme will be treated as established in the country where its registered office and main administration is, or, if there is no registered office, where its main administration is. The scheme's location of main administration is where the scheme's decisions are made. In the case of a trust-based scheme that would normally be determined by reference to where the scheme trustees are resident as that is where the decision-making responsibilities in respect of the scheme will lie. It should be noted that the country in which a scheme is established may change if the location of the main administration and decision-making changes. In such a case, the scheme manager would have to revisit whether the scheme still met the requirements to be an overseas pension scheme.

For a scheme to be classed as an overseas pension scheme it must also meet the following requirements that are prescribed under The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 [SI2006/206], as amended:

- it must meet the 'regulation requirements' test.
- it must meet the 'tax recognition test' by the country or territory in which it is established. This means that it must meet the tax recognition conditions 1-4 set out below

Exceptionally, if it is a scheme established by an international organisation it must meet the conditions set out in the paragraph below headed "Established by an International Organisation" instead of meeting the above conditions.

An overseas pension scheme can be an occupational pension scheme (including a public sector scheme), a personal pension scheme or a social security scheme.

The 'Regulation Requirements'

The requirements set out below look at whether there is a body in the other country which regulates pension schemes. There is a distinction between regulation of a pension scheme and regulation of, say, pension providers or trustee companies. The test is aimed at identifying a regulator in the other country that oversees legislation/guidelines that impact on the operation of the pension scheme to ensure that pension schemes are administered soundly in order to protect members' interests. Regulation tends to vary from country to country but such regulation might extend to submitting accounts, investment guidelines, rules on trustees, etc. In considering this test, HMRC would expect the scheme to be fully subject to the regulation in that country that covers these aspects.

Dependent on the country or territory in which a scheme is established, it may be necessary to identify whether the scheme is an occupational pension scheme or some other type of

pension scheme. An occupational pension scheme is a scheme established by an employer and in order to provide benefits for its own employees although it may also admit other types of member. For example it may also admit employees of other companies within the same group.

The regulation test is met if one of the following requirements is satisfied:

Requirement (a) –

- (1) the scheme is an occupational pension scheme,
- (2) there is in the country or territory in which it is established a body which regulates occupational pension schemes and
- (3) the scheme is regulated by that body.

Requirement (b) –

- (1) the scheme is not an occupational pension scheme
- (2) there is in the country or territory in which it is established a body which regulates pension schemes other than occupational pension schemes and
- (3) it is regulated by that body

This requirement needs to be satisfied if there is a regulator for any other type of pension scheme (other than occupational pension schemes) in the other country. If, for whatever reason, a pension scheme does not come within the remit of that regulator then this requirement cannot be met.

Requirement (a) or (b) here relates to the relevant pension regulator body of the relevant country or territory that regulates the scheme. This is not the same as the tax authorities test at condition 3 of the tax recognition test described later.

Requirement (c) –

Neither requirement (a) or (b) is met by reason only that no such pension regulatory body exists in the country or territory and, either,

- (1) the scheme is established in a Member State of the European Union or in Norway, Iceland or Liechtenstein, or
- (2) the scheme's rules provide that at least 70% of a member's UK tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life. The pension benefits payable to the member (and any associated lump sum) must be payable no earlier than they would be if pension rule 1 in section 165 Finance Act 2004 applied.

In many cases, "UK tax-relieved scheme funds" will simply mean the sums and assets that have been transferred from the UK registered pension scheme to the QROPS. The term has a definition that extends to all UK tax-relieved pension savings - the sum of the member's UK tax-relieved fund and their relevant transfer fund. Those terms are explained in RPSM13102150 and in RPSM13102170.

Pension rule 1 in section 165 Finance Act 2004 provides that no payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the scheme. Guidance on the normal minimum pension age is provided at RPSM08100010 to RPSM08100030, and there is guidance on the ill-health condition in RPSM08100070.

A scheme cannot ignore Regulation Requirements (a) and (b) and opt to meet (c)
Requirement (c) is only provided for use in a situation where the country or territory in which the scheme is established does not regulate schemes of its type, whether an occupational pension scheme or not an occupational pension scheme. For example, if a scheme is an occupational pension scheme established in a country where there is regulation of occupational pension schemes then in order to be able to be an overseas pension scheme it must be so regulated. If it is not the scheme does not meet the Regulation Requirement test so cannot be an Overseas Pension Scheme so it cannot be a QROPS.

The ‘Tax Recognition’ Requirement

The pension scheme needs to be ‘recognised for tax purposes’ under the tax legislation of the country or territory in which it is established.

This requirement is met if all the following 4 conditions are met.

Condition 1

The scheme must be open to persons resident in the country or territory in which it is established.

HMRC’s view of this condition is that membership of the scheme should be genuinely available to residents of the country or territory in which it is established. If there are membership criteria, it would be of concern if these only applied to residents of the country of establishment.

Condition 2

The scheme is established in a country or territory where there is a system of taxation of personal income under which tax relief is available in respect of pensions, and test (a), (b) or (c) is met.

- (a) tax relief is not available to the member on contributions made to the scheme by that individual or, if the individual is an employee, by their employer in respect of earnings to which benefits under the scheme relate, or
- (b) the scheme is liable to taxation on its income and gains, and is a complying superannuation plan as defined in section 995-1 (definitions) of the Income Tax Assessment Act 1997 of Australia, or
- (c) all or most of the benefits paid by the scheme to members who are not in serious ill-health are subject to taxation.

For the purposes of this condition tax relief includes the grant of an exemption from tax.

If the tax regime of the country or territory does not tax personal income then schemes based in that country or territory will not meet the requirements of condition 2. Such schemes cannot meet the necessary requirements to be an overseas pension scheme and consequently cannot be a QROPS.

It is necessary for the country or territory as part of its tax regime for taxing personal income to give some tax relief incentive in respect of pensions. The tax relief that is referred to here (and which is considered under (a) and (c) above) must be specifically in respect of pension savings. Given the regulation requirement, see paragraph above headed “The ‘Regulation Requirements’”, and the other conditions, it follows that the test cannot be met by some other form of tax-advantaged saving product in the other country that is not a pension scheme but is simply capable of being used to pay out pension savings on retirement.

Looking at the treatment of contributions to or benefits from the scheme in the country or territory where the scheme is established, at least one of the following statements must be true:

- tax relief is not available to the member on contributions made to the scheme by them or by their employer, or
- all or most of the benefits paid by the scheme to members (who are not in serious ill-health) are subject to taxation.

So tax relief or an exemption from tax either applies at the point money goes into the scheme as a contribution or the point it leaves as a benefit payment. It cannot be exempt at both of these points. Either the contribution into the scheme or most of the benefit payments out of it (excepting serious ill health benefits) must be taxable.

HMRC provides a form APSS251 for the purposes of an overseas scheme to notify that it meets the requirements to be a QROPS. It is necessary to state on form APSS 251 which sections of the tax legislation provide either for the tax relief on contributions or for the taxation of benefits paid.

Condition 2(b) is only applicable to Australian schemes. A scheme must be a complying superannuation plan as defined in section 995-1(definitions) of the Income Tax Assessment Act 1997 of Australia.

Any serious ill-health provision under the pension tax regime of the country or territory in which the scheme is established must reflect the provision applying in respect of a member of a registered pension scheme under paragraph 4(1)(a) of schedule 29 to Finance Act 2004. The provision does not have to apply the same conditions as are set out in RPSM08100080, but the approach must be fundamentally similar in order for the requirement at (c) to be met.

Condition 3

The scheme is approved or recognised by, or registered with, the relevant tax authorities as a pension scheme in the country or territory in which it is established.

This requirement relates to the relevant tax authorities of the relevant country or territory that recognise the scheme and is not the same as the pension regulator body that applies to

the Regulation Requirements test, see the page above headed “The ‘Regulation Requirements’”

This condition is based on the other country or territory needing to have some sort of mechanism for identifying the pension schemes that can qualify for the tax relief that is available in the tax system as referred to at condition 2. The words ‘approved’, ‘recognised’ and ‘registered’ should be read accordingly. In the United Kingdom, tax reliefs are available in respect of ‘registered’ pension schemes. In other countries, the tax legislation may use the concept of approval or some other form of recognition.

The scheme will satisfy condition 3 if it is accepted by the tax authority of the country in which it is established as being of a type that can qualify for the tax reliefs available there.

Condition 4

Where an exemption from tax in respect of benefits paid from the scheme is available to members of the scheme who are not resident in the country or territory in which the scheme is established, the exemption must,

- (a) also be available to members of the scheme who are resident in the country or territory; and
- (b) apply regardless of whether the member was resident in the country or territory,
 - (i) when the member joined the scheme; or
 - (ii) for any period of time when they were a member of the scheme.

For the purposes of this condition “exemption” means any exemption available under the system of taxation of personal income in the country or territory in which the scheme is established. It does not refer to an exemption that applies by virtue of double taxation arrangements i.e. an arrangement made between 2 countries to afford relief from double taxation.

If the country’s tax regime does not meet these conditions then schemes based in that country will not be able to be a recognised overseas pension scheme

If there is no exemption from tax available to members who are not residents in the country or territory where the scheme is established then Condition 4 will be met. For example, if the country taxes benefits paid out of schemes established there regardless of residence and there is no exemption provided for non-residents elsewhere in the tax legislation, the condition is met. For the purposes of this condition, any exemption provided due to a double taxation agreement is ignored.

If there is an exemption then it must apply equally to residents and non-residents of that country. There must also be no qualification around whether residents receive the exemption.

Example:

Country X does not tax benefits paid out of a scheme established in Country X if they are paid to a non-resident. It is also possible for residents of Country X to claim exemption from tax on such benefits provided they did not contribute to the scheme in any period in which they were resident in Country X. As the exemption in relation to residents is qualified, condition 4 cannot be met. The scheme cannot be a QROPS.

Established by an International Organisation

There are separate rules to meeting the definition of an overseas pension scheme if the scheme is established outside the United Kingdom by an international organisation.

An international organisation means an organisation to which section 1 of the International Organisations Act 1968 applies by virtue of an Order in Council under subsection (1) of that section. This category includes the United Nations and the European Union.

(International organisation in this context does not extend to multinational companies that operate or have subsidiaries in several countries)

A scheme established by an international organisation for the purpose of providing benefits for, or in respect of, past service as an employee of the organisation must meet the following conditions;

(1) its rules must provide that at least 70% of a member's UK tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life, and

(2) the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) must be payable no earlier than they would be if pension rule 1 in section 165 Finance Act 2004 applied.

“UK tax-relieved scheme funds” means the sum of the member's UK tax-relieved fund and their relevant transfer fund. Those terms are explained in RPSM13102150 and in RPSM13102170.

Pension rule 1 in section 165 Finance Act 2004 provides that no payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the scheme. Guidance on the normal minimum pension age is provided at RPSM08100010 to RPSM08100030, and there is guidance on the ill-health condition in RPSM08100070.

Recognised overseas pension scheme

Under section 150(8) Finance Act 2004 a recognised overseas pension scheme is an overseas pension scheme that meets the following requirements prescribed under The Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 [SI 2006/206].

It must:

- (a) be established in a Member State of the European Union, Norway, Liechtenstein or Iceland, or

- (b) be established in a country or territory, other than New Zealand, with which the UK has a Double Taxation Agreement that contains exchange of information and non-discrimination provisions, or
- (c) satisfy the requirement that, at the time of the recognised transfer, the rules of the scheme provide that:
1. at least 70% of the funds transferred will be designated by the scheme manager for the purpose of providing the member with an income for life,
 2. the pension benefits (and any associated lump sum) payable to the member under the scheme, to the extent that they relate to the transfer, are payable no earlier than they would be if pension rule 1 in section 165 applied, and
 3. membership of the scheme is open to persons resident in the country or territory in which it is established, or
- (d) satisfy the requirement that, at the time of the recognised transfer the transfer is made to a pension scheme which is a KiwiSaver scheme as defined in section 4(1)(interpretation) of the KiwiSaver Act 2006 of New Zealand.

Pension rule 1 in section 165 Finance Act 2004 provides that no payment of pension may be made before the day on which the member reaches normal minimum pension age, unless the ill-health condition was met immediately before the member became entitled to a pension under the scheme. Guidance on the normal minimum pension age is provided at RPSM08100010 to RPSM08100030, and there is guidance on the ill-health condition in RPSM08100070.

Qualifying recognised overseas pension scheme

A scheme that meets the requirements to be a recognised overseas pension scheme can be a QROPS if the scheme manager gives HMRC certain undertakings. This includes an undertaking to comply with prescribed information requirements found in The Pension Schemes (Information Requirements - Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pensions Schemes and Corresponding Relief) Regulations 2006 [SI 2006/208] as amended.

The scheme manager is the persons or persons administering or responsible for the management of the pension scheme.

The scheme manager must:

- notify HMRC that the scheme is a recognised overseas pension scheme, and have provided evidence of that if required,
- inform HMRC of the name of the country or territory in which the scheme is established. If the scheme qualifies as a recognised overseas pension scheme under the requirement described at paragraph (c) in the paragraph above headed “Recognised overseas pension scheme” evidence of this qualification must be

supplied. The form APSS251 asks for a set of the scheme rules as part of this evidence.

- provide any other evidence required by HMRC,
- undertake to notify HMRC if the scheme ceases to be a recognised overseas pension scheme, and
- undertake to provide HMRC with certain information on making payments in respect of certain scheme members. The paragraph below headed “What information an accepted QROPS has to give to HMRC” gives more detail on this.

In addition, the scheme must not have ceased to be a QROPS as a result of HMRC notifying the scheme manager that it is excluded from being one, see paragraph below headed “Exclusion of a scheme”.

Submitting a QROPS notification

The guidance in RPSM14101050 applies where HMRC deals with the notification prior to 6 April 2012. This guidance applies to all other notifications.

The scheme manager must send the required notification and undertakings to
HM Revenue & Customs
Pension Schemes Services
FitzRoy House
Castle Meadow Road
Nottingham
NG2 1BD
United Kingdom

Form APSS251 is for use by a scheme manager to provide the required information and notifications. There is a set of APSS251 notes available to help fill in this form.

On receipt of APSS251, HMRC may ask the scheme manager for more evidence or information before deciding whether to issue the scheme with a QROPS reference number. The QROPS reference is used for administrative purposes by HMRC in its dealings with the scheme.

In many cases the issue of a QROPS reference will be done on the basis of the information that the scheme has provided to HMRC on the form APSS251 stating that it meets the requirements to be a QROPS. If it transpires that there are errors in that information such that the scheme cannot meet the requirements to be a QROPS, this will be considered to have always been the position regardless of the issue of the QROPS reference.

Changes to information supplied

If, at any time after information has been supplied to HMRC, it becomes apparent to the scheme that there is a material change to that information, the information is incomplete or it contains a material inaccuracy the scheme must provide to HMRC details of the change, the complete information or correction of the inaccuracy without undue delay.

QROPS List

When completing form APSS 251 the scheme manager indicates whether or not the name of the scheme can be published on the HMRC internet site. The published list is provided as a means for UK registered pension scheme administrators and overseas pension scheme managers to verify that a scheme has notified HMRC that it meets the conditions to be a QROPS. The list is not intended for use for any other purpose and is not intended to give assurance that HMRC has checked all the information provided by any named scheme. The list is updated twice a month by Pension Schemes Services (PSS). A scheme's name will be removed from the list as a matter of urgency if it ceases to be a QROPS. If HMRC has concerns about the scheme's status at any time, the scheme's name may be removed whilst HMRC carries out further checks.

Administrators and members of registered pension schemes need to bear in mind that:

- not all QROPS will necessarily feature within the list,
- the list is not to be taken as a recommendation for a particular scheme or product,
- publication on the list should not be seen as confirmation by HMRC that it has verified all the information supplied by the scheme in its QROPS application, and
- if a scheme has been included on the list in circumstances where it should not have been included e.g. because it did not satisfy the conditions to be a recognised overseas pension scheme, any transfer will potentially not be a recognised transfer. As such, the transfer could give rise to an unauthorised payments charge and unauthorised payments surcharge liability for the member and to a scheme sanction charge liability for the scheme administrator (see RPSM14102020 and RPSM14101055).

If your scheme is on the published list, the UK scheme administrator will know that your scheme has notified HMRC that it meets the requirements to be a QROPS. If it is not on the list, we can only confirm to them that your scheme has sent such a notification if we have your written permission to do so.

Due to HMRC confidentiality rules, PSS will not be able to answer queries about the QROPS status of an unlisted overseas pension scheme unless it has received written authorisation from the manager of that scheme to disclose this information to a named person. The letter or form providing authorisation must be signed by the manager of the overseas scheme in order for PSS to answer the query.

Administrators of registered pension schemes can phone the PSS helpline to:

- ask if, since the last list was published, an overseas pension scheme has been noted for inclusion on the next publication of the list. PSS will not be able to answer such an enquiry if it is waiting to find out if the scheme is prepared to go on the published list, and

- check if the omission from the latest published list of a scheme that had been included previously was deliberate.

Removal from QROPS published list

There are a number of reasons why a pension scheme might no longer appear on the published list. Due to confidentiality rules HMRC cannot say why a particular scheme is no longer included unless it receives written authorisation from the scheme manager to divulge information to a named individual.

The following is an overview of the main reasons why a scheme may no longer appear and of the implications of each scenario on transfers to the scheme:

- a QROPS has asked to be removed from the list but it is still a QROPS.

Transfers to the scheme made before and after removal from the published list will be recognised transfers under section 169. They will not give rise to an unauthorised payments charge (or an unauthorised payments surcharge) on the member or to a scheme sanction charge on the administrator.

- a scheme was eligible to be a QROPS when it originally notified HMRC but no longer has that status. For example, the scheme might no longer meet the requirements to be a recognised overseas pension scheme or HMRC could have excluded the scheme from being a QROPS.
- Transfers to the scheme made before withdrawal of its QROPS status will be recognised transfers so they will not give rise to an unauthorised payments charge (or a surcharge) on the member or to a scheme sanction charge on the administrator. Transfers made after the date on which the scheme ceased to be a recognised overseas pension scheme or it was excluded will not be recognised transfers. These transfers will give rise to an unauthorised payments charge (and surcharge) on the member and to a scheme sanction charge on the administrator (see RPSM04104500, RPSM04104600 and RPSM04104800).
- HMRC has temporarily suspended the QROPS listing, see paragraph below headed “Temporary suspension of QROPS listing from HMRC published list”.
- HMRC has discovered that a scheme’s original notification that it was a recognised overseas pension scheme was incorrect.

Transfers made to the scheme will not be recognised transfers because the scheme will not, as a fact, have been a QROPS at any time. They will give rise to an unauthorised payments charge (and surcharge) on the member and to a scheme sanction charge on the administrator.

Where the scheme administrator has relied in good faith on the fact that the overseas scheme is included on the latest published QROPS list when making a transfer to it this should provide just and reasonable grounds for HMRC to discharge their liability to the scheme sanction charge if the scheme is subsequently withdrawn from the list by HMRC (see RPSM04104870).

This is on the basis that the administrator is expected to have carried out reasonable checks. Before making an overseas transfer the administrator should have checked the published QROPS list, and in particular must have done so no more than one day before the transfer was made. The administrator should keep in their file a printout of the page from the list including the QROPS from the day before the transfer (and also retain a copy of the overseas scheme's QROPS reference notification letter if this has also been obtained).

There may still be an unauthorised payments charge/surcharge liability for the member in these circumstances (see RPSM04104510 and RPSM04104780). Enforcement of those charges will depend on the particular facts and circumstances of each individual case.

Exclusion of a scheme

A scheme may be excluded from being a QROPS under section 169(5) if HMRC decides that there has been a significant failure to comply with any information requirements such that it is inappropriate for transfers from registered pension schemes to the recognised overseas pension scheme to be recognised transfers. A failure will be significant if a substantial amount of information has not been provided or if the failure to provide information is likely to result in serious prejudice to the assessment or collection of tax.

HMRC must notify the person or persons appearing to be the scheme manager that the scheme has been excluded. The scheme manager can appeal against an exclusion decision. Pages at RPSM12102000 onwards explain the appeals process including the possibility of a HMRC review of the decision. It is also possible for HMRC to decide that a scheme is no longer excluded.

If a scheme is excluded from being a QROPS it can no longer receive a recognised transfer under section 169 Finance Act 2004.

Temporary suspension of QROPS listing from HMRC published list

HMRC may temporarily remove a scheme from the published list in certain circumstances. For example, if it has concerns about the scheme's operation or is unable to contact the scheme. This will not necessarily mean that the scheme has been excluded by HMRC from being a QROPS but the scheme will be removed from the published list until we have completed our review. Dependent on the circumstances of the case, the outcome of that review could be

- The scheme is reinstated to the list
- The scheme is found not to meet the requirements to be a recognised overseas pension scheme from a point in time
- The scheme is excluded from being a QROPS.

The implications for transfers to the scheme will be as set out in the section above headed, “Removal from QROPS published list”.

Process of transferring from registered pension scheme to QROPS

Can a transfer be made to any QROPS?

UK scheme administrators and members should be aware that a transfer may not be permissible even though an overseas pension scheme is a QROPS. QROPS status has significance for UK tax purposes only. Whether or not a transfer to a QROPS can be made will depend also on the scheme being able to accept a transfer under the legislation of the country in which it is established. In particular, it is HMRC Pension Scheme Service’s (PSS) understanding that transfers to US “qualified” retirement plans, including individual retirement arrangements (IRAs), cannot be made as such plans are not permitted to accept a transfer of funds from a UK registered pension scheme. UK scheme administrators and members should contact the relevant overseas authority for confirmation, not PSS.

What form can a transfer take – cash or assets or both?

Transfers are valued in cash terms.

Although most transfers will be in the form of cash, a transfer can also be made by way of insurance policies, or other assets, or as a combination of these.

If a transfer involves an asset (for example, a property or a holding of company shares) being transferred between pension schemes, that asset must be valued in cash terms by an appropriately qualified independent person before being transferred.

When do the new member requirements and registered pension scheme transfer procedures apply?

The requirements and procedures explained below apply to recognised transfers which are requested by the member after 5 April 2012.

A transfer requested before 6 April 2012 has to be reported in the electronic Event Report, see RPSM14101070.

Member requirements

When arranging a transfer the member will have to complete any forms and provide such information as is required by the administrators of the schemes involved. This is to enable the scheme to make the transfer, ensure that the member receives the benefits to which they are entitled and to pay the correct amount of tax due where appropriate.

When transferring to a QROPS the member will need to advise the administrator of the UK scheme whether they have sufficient lifetime allowance to cover the amount transferred. This is because such a transfer counts as a benefit crystallisation event. Failure to confirm that they have sufficient lifetime allowance may result in a lifetime allowance charge being payable in relation to the amount transferred.

Where the member asks for a transfer to a QROPS they must, when requested by the scheme administrator, provide information and make a written and signed member acknowledgement to the scheme administrator containing the following:

Information

The member's;

- (a) Name
- (b) Date of birth,
- (c) Principal residential address and , where that address is not in the United Kingdom, the member's last principal residential address in the UK,
- (d) National insurance number or, where applicable, confirmation in writing that the member does not qualify for a national insurance number,
- (e) Telephone number, if any, which the member provides for use by the scheme administrator or HMRC in relation to the scheme,
- (f) The name and address of the QROPS and the country or territory under the law of which the QROPS is established and regulated.

Acknowledgement

The member must sign a statement to confirm they acknowledge that they are aware that a transfer other than a recognised transfer to a qualifying recognised overseas pension scheme of sums and assets held for the purposes of, or representing accrued rights under, an arrangement under a registered pension scheme,

- (a) gives rise to a liability under section 208 (unauthorised payments charge), and
- (b) may give rise to a liability under section 209 (unauthorised payments surcharge).

For more information on these tax charges see RPSM04104010.

The precise manner in which this information and the acknowledgement can be made to the scheme administrator is not dictated and most schemes will produce their own paperwork for this purpose. However as the member's signature is required for the acknowledgement it will need to be done in a paper document. HMRC has made available form APSS263 which can be used for this purpose as well as APSS 263 notes to help fill in this form.

The information and the signed acknowledgement must be provided by the member to the scheme within 2 months from the date the member requests the scheme transfer. If the transfer to a QROPS goes ahead and the scheme administrator calculates that the member has sufficient lifetime allowance available for the transfer they will advise the member of the amount of lifetime allowance that the transfer overseas will use up. The member should keep this information for possible future reference as they will need to take it into account if they were to take benefits from a registered pension scheme.

If the transfer to a QROPS goes ahead and the scheme administrator calculates that the member does not have sufficient lifetime allowance available they will work out how much tax by way of lifetime allowance charge is payable and deduct it from the amount being transferred overseas.

What a registered pension scheme has to do before making the transfer

Before making an overseas transfer the UK scheme administrator should have checked the published QROPS list, and in particular must have done so no more than one day before the transfer was made, see guidance above starting at paragraph headed “QROPS List”.

In the paragraph above headed “Member requirements”, there are details of the information that a member should pass to the scheme administrator prior to a transfer taking place. The scheme administrator is expected to send the member details of these requirements within 30 days from the date the member requests the transfer.

A transfer from a registered pension scheme to a QROPS is a benefit crystallisation event 8(BCE). The amount of the transfer value will be the amount crystallised for lifetime allowance purposes. The scheme administrator needs to calculate whether the member has sufficient lifetime allowance left to cover this amount. If the member does not have sufficient lifetime allowance available to cover the amount to be transferred, there will be a lifetime allowance charge (see RPSM11105000).

What a registered pension scheme has to do after making the transfer

These transfers are not included within the scheme annual Event Report. Transfers should be reported to HMRC on form APSS262 within 30 days of the date of the transfer. The scheme administrator must submit a paper form APSS 262 and cannot do this electronically or via Pension Schemes Online. HMRC has provided APSS 262 notes to help fill in this form.

The information required on form APSS 262 is, in addition to the member’s name and national insurance number, the following;

- (a) The member’s principal residential address and, where that address is not within the United Kingdom, the member’s last principal residential address in the UK.
- (b) The member’s date of birth.
- (c) The member’s telephone number, if any, which the member has provided to the scheme administrator for use by HMRC in relation to the scheme.
- (d) The member acknowledgement.
- (e) The date of the recognised transfer.
- (f) The amount of the sums transferred, if any.
- (g) A description and valuation of each type of asset transferred, if any, including the value of any unquoted shares, quoted shares and real property.
- (h) The name and address of the QROPS to which the sums or assets have been transferred.
- (i) The country or territory under the law of which the QROPS is established and regulated.
- (j) The name, address, business telephone number and, where available, the electronic mail address of the manager of the QROPS.

The completed APSS262 must be provided to HMRC within 30 days beginning on the relevant transfer date.

QROPS that receives a transfer from another Overseas Pension Scheme

The scheme manager of a QROPS that receives a transfer from another overseas pension scheme will need to check whether or not the transferring member has a UK tax-relieved fund (see RPSM13102150) or a relevant transfer fund in the transferring scheme. This is in order to establish if HMRC will have to be provided with information about payments made in respect of the individual. It would be reasonable for the scheme manager to ask the individual to declare whether or not the transferred funds include any amounts that have received UK tax relief or have originated in a UK registered pension scheme. If the answer is "yes" more detailed information will need to be obtained by the QROPS scheme manager to establish if the individual will have a relevant transfer fund in their receiving scheme.

Information that a QROPS must automatically give to HMRC

The scheme manager of a recognised overseas pension scheme must have undertaken to comply with the information requirements imposed under The Pension Schemes (Information Requirements - Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pensions Schemes and Corresponding Relief) Regulations 2006 [SI 2006/208] if the scheme is to be a QROPS.

Cessation Information - The scheme manager must undertake to inform HMRC if it ceases to be a recognised overseas pension scheme

A scheme which ceases to be a QROPS must provide to an officer of HMRC,

- (a) the value at the cessation date of the relevant transferred sums and assets pertaining to each relevant transfer fund under the scheme; and
- (b) the name, principal residential address, date of birth and, if any, the national insurance number of each member in respect of whom there is a relevant transfer fund at the cessation date.

This information must be provided within 30 days beginning with the day on which the cessation takes place (the cessation date).

Payment Information- The scheme manager must notify HMRC when they make a payment, or are treated under certain provisions as making a payment, in respect of a relevant member. However, the scheme manager does not have to notify HMRC if

- the payment is made 10 years after the day of the transfer that created the relevant transfer fund and
- the relevant member is a person to whom the member payment provisions do not apply under paragraph 2 of Schedule 34 (see RPSM13102120).

The member payment provisions do not apply unless:

- the member is resident in the UK when the payment is made (or treated as made), or
- although not resident at that time, has been resident in the UK earlier in the tax year the payment is made or in any of the 5 tax years immediately preceding that tax year.

In the United Kingdom a tax year runs from 6 April to the following 5 April. A payment includes a transfer from the scheme.

The provisions under which a scheme manager is treated as making a payment are sections 172 to 174A, paragraph 2A of Schedule 28 and paragraph 3A of Schedule 29 to Finance Act 2004. Guidance on those deemed payments is provided in RPSM09100170. A payment to a transfer member has to be notified to HMRC regardless of whether or not it is more than 10 years after the day of transfer if it is deemed to have been made from their taxable asset transfer fund (see RPSM13102180).

A relevant member is one in respect of whom there is a relevant transfer fund within the meaning in paragraph 4(2) of Schedule 34 to Finance Act 2004. Broadly speaking, a member will have a relevant transfer fund within the scheme if they have transferred sums or assets into it that relate to UK tax-relieved contributions. That includes transfers from registered pension schemes and certain transfers from non-UK schemes that are not registered pension schemes. Further details are provided at RPSM13102170.

Where a non-pension payment such as a lump sum or a transfer is made a notification is needed in respect of each payment. Where a pension payment is made it is only necessary to send a notification of the first such payment to any individual.

The scheme manager must provide HMRC with the following information:

- (a) the name and principal residential address of the relevant member, and
- (b) the date, amount and nature of the payment.

This information must be provided within 60 days beginning on the day;

- on which the payment is made or treated as made; or
- by such other time as may be agreed between HMRC and the scheme manager.

HMRC provides a form APSS253 for the purposes of reporting these payments as well as APSS253 notes to help fill in the form.

Does QROPS complete old or new form APSS253?

For a payment made or treated as made on or before 05 April 2012 a report should be made on the old process using old forms APSS 253 and 253 (insert) together with their APSS 253 notes. Reports for the tax year 2011/12 have to be submitted by 31 January 2013, see RPSM14101070.

For each payment made or treated as made on or after 6 April 2012 the new process applies. Reports on new forms APSS 253 and 253 (insert) should be made within 60 days. There are completion notes APSS 253 notes to help scheme manager do this.

Changes to information supplied

If at any time after any information has been supplied to HMRC it becomes apparent to the QROPS that there is a material change affecting the information or that the information is incomplete or contains a material inaccuracy the QROPS must provide to HMRC details of the change, the complete information or correction of the inaccuracy without undue delay.

Other Information that a QROPS may need to provide to HMRC

The previous section dealt with information that a QROPS must automatically supply to HMRC when specific events happen. There are other circumstances in which the trigger for the supply of information is a request for that information from HMRC.

The information requirements state that the following information must be provided in response to a written notice from HMRC:

1. Where the scheme manager is a company the names and addresses of the directors of the company.

This information must be provided by the time specified in the HMRC notice requiring it.

2. Where there has been a transfer to a QROPS from a registered pension scheme or another QROPS, of sums and assets which have been held for the purposes of, or representing accrued rights under, a registered pension scheme.
- (a) The date of the transfer to the QROPS.
 - (b) The name and address of any bank and details of any bank account which the QROPS has used in relation to the transfer.
 - (c) Details of the sums and assets and how they have been applied.
 - (d) Where the transfer is from a registered pension scheme the name and address of that scheme.
 - (e) The name, principal residential address, date of birth and the national insurance number, if any, of the member who is connected with the sums and assets.
 - (f) Where the member is a person to whom the member payment provisions do not apply by virtue of paragraph 2 of Schedule 34 to Finance Act 2004, the date that the member ceased to be resident in the United Kingdom.
 - (g) The name and address of the body that regulates the QROPS and the reference number, if any, issued to the QROPS by that regulator.
 - (h) The name and address of the tax authority which administers the taxation of the QROPS and the reference number, if any, issued to the QROPS by that tax authority.

- (i) Evidence to show that the QROPS met at the time of the transfer or continues to meet the requirements specified in regulations 2 and 3 of the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006 [SI2006/206].
- (j) Any other evidence relating to the transfer.

This information must be provided within 60 days beginning on the day;

- on which the requirement is notified by the officer of HMRC; or
- by such other time as may be agreed between HMRC and the QROPS

Changes to information supplied

If at any time after any information has been supplied to HMRC it becomes apparent to the QROPS that there is a material change affecting the information or that the information is incomplete or contains a material inaccuracy the QROPS must provide to HMRC details of the change, the complete information or correction of the inaccuracy without undue delay.