



simply pensions

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➔ TUPE

Pensions Act 2004 – update for 6 April 2005 changes

Here we give updated information about the final TUPE (Transfer of Undertakings (Protection of Employment)) regulations as they affect occupational pension schemes.

Our November 2004 and February 2005 TUPE newsletters gave details about the Government's proposed changes to the TUPE requirements. The Government made some changes to the draft regulations and final regulations have now been issued. The information given below sets out the full details of the changes to the TUPE regulations as they affect occupational pension schemes.

The TUPE regulations

The TUPE regulations were changed with effect from 6 April 2005 to require employers (the 'new employer') to provide a certain level of pension provision to some employees who transfer to them from their previous employer under the TUPE regulations on or after 6 April 2005.

Transferring employees covered

If the previous employer provides a defined benefit occupational pension scheme

Transferring employees will be covered by the new regulations if, at the time of the transfer, they were:

- an active member of that scheme
- eligible to be an active member of that scheme
- in a waiting period, at the end of which they would have become eligible to be an active member of that scheme

If the previous employer provides a money purchase occupational pension scheme

Transferring employees will be covered by the new regulations if, at the time of the transfer, they were:

- an active member of that scheme and the employer was required to make contributions to the scheme in respect of the employee, or was not required to make such contributions, but had done so
- eligible to be an active member of that scheme
- in a waiting period, at the end of which they would have become eligible to be an active member of that scheme

Pension arrangements to be offered by the new employer

The new employer can offer one of the following types of pension arrangement to the eligible transferring employees.

Type of arrangement	Minimum level of benefits to be provided by the new employer
Money purchase occupational pension scheme or stakeholder scheme	Relevant contributions (see below)
Defined benefit occupational pension scheme	<ul style="list-style-type: none">• Benefits which meet reference scheme test requirements or• Benefits with a value at least equal to 6% of the employee's pensionable pay (see below) for each year of employment. Employees' contributions cannot be included in this calculation.• If employees are required to contribute to the scheme, their level of compulsory contributions must not be more than 6% of pensionable pay (see below).

Effective date of new arrangement

The new arrangement must be provided from:

- the date of the transfer, for an employee who was either an active member or eligible to be an active member of the old employer's scheme at the time
- the end of the employee's waiting period, for employees who were in a waiting period at the time of the transfer.

Relevant contributions

The new employer will only have to make contributions to a money purchase scheme or stakeholder pension scheme for an eligible transferring employee if the employee also contributes to the scheme.

If the employee makes contributions, the new employer must match these, up to a maximum of 6% of the employee's basic pay. The employee's pay must be calculated in each salary payment period. Bonus, commission, overtime and any similar payments are excluded from the definition of basic pay. Minimum payments made for a contracted-out employee cannot be taken into account.

Pensionable pay

Pensionable pay means the amount of the employee's remuneration that is used to determine scheme contributions and benefits under the rules of the new employer's scheme.

Opt-out

At any time after the employee has transferred to the employment of the new employer, the employee and the new employer can agree to opt out of the new requirements.

Action

If any of your scheme's participating employers are, or are likely to be, involved in any transfer of undertaking, you should contact your legal or financial advisers as soon as possible.

This information is based on Scottish Equitable's understanding of the legislation and proposed regulations as at 6 April 2005. However, whilst every effort has been made to ensure its accuracy, Scottish Equitable cannot accept any legal responsibility for the information provided.