



Department  
for Work &  
Pensions

# The Transfer of Employment (Pension Protection) (Amendment) Regulations 2013

Public consultation

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February 2013

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# Introduction

This consultation asks for views on changes to the Transfer of Employment (Pension Protection) Regulations 2005 S.I. 649, attached at **Annex A** which affect pension protection arrangements following a Transfer of Employment. These are:

- To clarify the policy intention in relation to pension protection following a transfer of employment subject to the Transfer of Undertakings (Protection of Employment) Regulations 1981 S.I. 1794, and
- To more closely align the pension protection requirements following a transfer of employment with the Automatic Enrolment legislation.

## About this consultation

### Who this consultation is aimed at

We welcome comments on the draft regulations from pension scheme trustees, their advisers and employers who sponsor workplace pension schemes.

### Purpose of the consultation

The purpose of this consultation is to obtain comments on the proposed changes contained in the draft regulations.

### Scope of consultation

This consultation applies to England, Wales and Scotland. It is anticipated that Northern Ireland will make corresponding regulations.

### Duration of the consultation

The consultation period begins on 25 February 2013 and runs until 5 April 2013. Please ensure your response reaches us by that date as any replies received after this may not be taken into account.

The Government's new Consultation Principles were introduced on 17 July 2012. The new Principles are at <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>.

### Impact Assessment

The proposed changes are deregulatory in nature and do not add additional burden to employers. A full Impact Assessment has not therefore been prepared.

## How to respond to this consultation

Please send your consultation responses, preferably by e-mail, to:

[ADELPHI.SFT@DWP.GSI.GOV.UK](mailto:ADELPHI.SFT@DWP.GSI.GOV.UK)

or, by post to:

Jerry King

TUPE Pension Protection Regulations Consultation

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1<sup>st</sup> Floor, Caxton House

6-12 Tothill Street

London

SW1H 9NA

Please ensure your response reaches us by 5 April 2013.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear whom the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

We have sent this consultation document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

We will publish the response to the consultation in a report in the [Consultations](#) section of the DWP website. The report will summarise the responses and the action that we will take as a result of them.

## Queries about the content of this document

Please direct any queries about the subject matter of this consultation to the e-mail address given above.

## How we consult

### Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act

2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Freedom of Information Team  
Caxton House  
6-12 Tothill Street  
London  
SW1H 9NA

[Freedom-of-information-request@dwp.gsi.gov.uk](mailto:Freedom-of-information-request@dwp.gsi.gov.uk)

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at [www.dwp.gov.uk/freedom-of-information](http://www.dwp.gov.uk/freedom-of-information)

## The consultation criteria

The consultation is being conducted in line with the new [Cabinet Office consultation principles](#). The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be ‘digital by default’, but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected

## Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Elias Koufou  
DWP Consultation Coordinator  
2<sup>nd</sup> Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA

Phone 020 7449 7439

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In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

# Part 1 – Clarifying the policy intention of the Transfer of Employment (Pension Protection) Regulations 2005

## Background

1. The Transfer of Employment (Pension Protection) Regulations 2005, came into force on 6 April 2005. They were intended to ensure that where an individual becomes the employee of a new employer as a result of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) (the ‘TUPE regulations’) apply, and had rights in relation to an occupational pension scheme immediately before the transfer, the new employer (transferee) will ensure that the employee is, or is eligible to become, an active member of an occupational pension scheme.
2. The 1981 Regulations were subsequently replaced by the Transfer of Undertakings (Protection of Employment) Regulations 2006 S.I. 246.
3. To comply with the 2005 regulations, the transferee’s occupational pension scheme must meet prescribed standards.
4. A defined benefit scheme must satisfy the Reference Scheme Test provided for in the Pension Schemes Act 1993 or alternatively, the value of benefits should be at least 6% of pensionable pay for each year of employment in addition to any employee contributions. The scheme will qualify if the transferee makes ‘relevant contributions’ as defined in the 2005 Regulations.
5. For a money purchase or stakeholder scheme, the transferee is required to make ‘relevant contributions’. It was intended that the employer contributions should match the rate of contributions chosen by the employee to an upper limit of 6% of basic pay.

## The Issue

6. The original policy intent, as set out in the Explanatory Memorandum attached to the 2005 Regulations stated that ‘relevant contributions’ must be made in respect of each period for which the employee contributes to the pension scheme, and that the amount contributed must equal the employee’s contributions subject to a maximum of 6% of basic pay.
7. We now believe that the wording of the 2005 Regulations does not clearly and unambiguously set out the original policy intent as there is nothing that explicitly gives the member the right to choose their rate of contribution.

## **Proposed amendment**

8. The Government proposes that that the wording of the 2005 Regulations should be amended to reflect the original policy intention and confirm the employee's right to choose the level of his own contributions (subject to any minima in the scheme rules) which must be matched by the employer up to a maximum of 6%.
9. The draft amending regulations are regulations 2(1B) and 2(1C) in the Annex.

## **Costs and benefits of the amendment**

10. This amendment clarifies the wording of the 2005 Regulations and removes any ambiguity whilst adding no additional financial burdens to employers transferring under the TUPE Regulations.

## **Consultation question 1**

Do you consider that the proposed changes to regulation 3 will correctly reflect the original policy intention as set out in the Explanatory Memorandum attached to the 2005 Regulations, and do the changes make the regulations workable in practice? If you do not believe that this has been achieved, please set out detailed reasons.



# Part 2 – Interaction between Transfer of Employment (Pension Protection) Regulations and Automatic Enrolment legislation

## Background

11. July 2012 saw the commencement of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 S.I. 772 which require employers to enrol their workers into a qualifying workplace scheme if they are not already in one and make minimum contributions.
12. From July 2012 to September 2017, the minimum contribution will be 2% of earnings, increasing to 5% for the period between October 2017 and September 2018 and 8% from October 2018.

## The Issue

13. Introduction of the Automatic Enrolment regime specifying a minimum level of employer contributions may lead to unintended consequences in relation to the interaction with the requirements of the 2005 regulations requiring an employer to match employee contributions to a maximum of 6%.
14. Giving transferring employees the right to choose the level of their own contributions could lead to higher pension contributions for the transferee in respect of this group of employees. With Automatic Enrolment there arises the possibility that a transferor employer could automatically enrol its employees in an occupational Defined Contribution or a stakeholder scheme with, initially, minimum contributions of 1% (employer) and 1% (employee). If during the initial phasing period such employees are transferred under the terms of the TUPE Regulations, the transferee employer could be required to pay contributions at the rate of 6%.
15. This would lead to the transferred employees being placed in a more favourable position than they would have been had they remained with the transferor. They might also be in a more favourable position than their peers in the transferee's scheme, leading to a two tier workforce.

## Proposed amendment

16. In order to address this concern the Government proposes that transferee employers will be able to satisfy the 'relevant contributions' provisions of the 2005

Regulations by matching the contributions paid by the transferor immediately prior to the transfer as an alternative to matching the level of contributions chosen by the employee. It would be for the transferee to decide how they will meet their pension protection obligations.

## **Costs and benefits of the amendment**

17. This amendment introduces a further option for transferee employers to satisfy the ‘relevant contributions’ requirement of the 2005 Regulations by matching the level of contributions under the transferor employer’s scheme offering greater flexibility for employers allowing a wider effective choice of pension provider but no increase in the actual costs of pension provision.

## **Consultation question 2**

Do you consider that the proposed introduction of an alternative method of satisfying the ‘relevant contributions’ will remove the risk that transferee employers might face substantially higher pension contributions than the transferor employer whilst maintaining the principle of adequate pension protection for transferring employees?

# Annex A - Draft Regulations

[Draft Transfer of Employment \(Pension Protection\) \(Amendment\) Regulations 2013](#)