

TUPE Transfers - Implications for Transferring LGPS Members

What is TUPE?

TUPE stands for the '**Transfer of Undertakings (Protection of Employment) Regulations 2006**'.

The TUPE regulations protect employees' terms and conditions when a business (outsourcing of services or conversion to Academy) is transferred to a new employer. The TUPE rules apply to organisations of all sizes.

Employment rights covered by TUPE include pay and holidays, but not pensions. However there are government measures to ensure that your Local Government Pension Scheme (LGPS) pension is protected should your job be transferred to another employer. The name of this protection is '**The Best Value Authorities Staff Transfers (Pensions) Direction 2007**'. This protection means that:



The contract that is set up must provide that the new employer secures pension protection for each transferring employee.



The provision of pension protection is enforceable by the employee.

The new employer (admitted body), will have signed a legal document called an admission agreement. This is a binding agreement on the admitted body, the Fund and the previous employer. It should be signed prior to the transfer of the employees.

This means that your new employer must either become an admitted body of the LGPS through an admission agreement, or provide a scheme that is broadly comparable to, or better than, the LGPS.

Who is protected?

The protection applies to all employees that are eligible to be a member of the LGPS, even if they were not actively contributing to the scheme on the date of the TUPE transfer.

The protection continues to apply for as long as the employee is wholly or mainly employed in connection with the provision of services under the service contract.

Academies

Academies transferring out services are not covered by the Best Value Authorities Staff Transfers (Pensions) Direction Order 2007, as they are covered by HM Treasury guidance, Fair Deal for Staff transfers from Central Government. This also covers schools that are not local authority maintained. So an admission agreement must be entered into; a broadly comparable scheme is not an option.



What is the TUPE process?

As a part of the consultation stage of the TUPE process, your current employer should make sure that your new employer has sufficient pension arrangements.

Your current employer will tell you if your new employer will provide you with continuing membership in the LGPS via an admission agreement, or provide you with a broadly comparable scheme which you would be transferred into. Please note that Academies and non Local Authority maintained schools transferring out services will only have the option to continue in the LGPS.

If you have been offered a broadly comparable scheme instead of continuing membership in the LGPS, a transfer of pension rights would be calculated. This may take some time, but while it is being finalised you will continue building up a pension in your new scheme.

Do I have to transfer my benefits?

The transferring employee does not have to transfer their past pension rights to their new employer, as they elect to defer their benefits. A deferred pension in the LGPS is revalued yearly in line with the Consumer Prices Index (CPI), and can be paid from age 55. Alternatively, if you are over 55 at the date of the TUPE transfer you could request immediate payment of your benefits, and still continue paying pension contributions with your new employer.

Even if you don't transfer your LGPS benefits, you would still be able to transfer any additional previous pension rights you may have, as long as you request this within 12 months of starting with your new employer.

Protection on Final Salary—Regulation 10

Regulation 10 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007. provides protection to members whose pensionable pay suffers a reduction on or after 1st April 2008, whether it be due to an employer's decision or not.

If in the past your pay has been reduced, or increases to your pay have been restricted, and you transfer your rights and leave within 12 years of the reduction, then we will be able to calculate your benefits based on the highest average of any 3 consecutive years during that 13 years.

Where can I find out more information regarding a TUPE transfer?

If you are unsure about the impact, in any way, of your job transferring to a new employer, you should speak to your line manager or HR Advisor who will be able to assist.

You can find more information regarding the TUPE process by following the below link:

<http://www.legislation.gov.uk/ukxi/2006/246/contents/made>

IMPORTANT NOTE: This factsheet has been written using our current understanding of the scheme and cannot supersede any future changes to the Regulations. The Dorset County Pension Fund cannot provide financial advice. If you need advice before making a decision regarding your pension benefits, you may wish to contact an Independent Financial Advisor.

Please contact us: Dorset County Pension Fund, Colliton Park, Dorchester, Dorset, DT1 1XJ

Telephone: 01305 224845

Email: pensionshelpline@dorsetcouncil.gov.uk

Website: www.dorsetpensionfund.org

Published April 2019