

2005 No. 649

PENSIONS

The Transfer of Employment (Pension Protection) Regulations 2005

<i>Made</i> - - - -	<i>10th March 2005</i>
<i>Laid before Parliament</i>	<i>16th March 2005</i>
<i>Coming into force</i> -	<i>6th April 2005</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 258(2)(c)(ii) and (7), 315(2) and 318(1) of the Pensions Act 2004^(a) and all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions by virtue of which they are made^(b), hereby makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Transfer of Employment (Pension Protection) Regulations 2005 and shall come into force on 6th April 2005.

(2) These Regulations apply in the case of a person (“the employee”) in relation to whom section 257 of the Act (conditions for pension protection) applies, that is to say a person who, in the circumstances described in subsection (1) of that section, ceases to be employed by the transferor of an undertaking or part of an undertaking and becomes employed by the transferee.

▶¹(3) In these Regulations—

“the Act” means the Pensions Act 2004.

“remuneration period” means a period in respect of which the employee is paid remuneration.

¹Reg. 1(3) substituted & regs. 1(4) & (5) inserted by reg. 4 of S.I. 2014/540 as from 6.4.14.

(4) In calculating the amount of the employee’s remuneration for the purposes of these Regulations—

(a) only payments made in respect of basic pay shall be taken into account and bonus, commission, overtime and similar payments shall be disregarded; and

(b) no account shall be taken of any deductions which are made in respect of tax, national insurance or pension contributions.

(5) In calculating the amount of a transferee’s pension contributions for the purposes of these Regulations in the case of a scheme which is contracted-out by virtue of section 9 of the Pension Schemes Act 1993, minimum payments within the meaning of that Act shall be disregarded. ◀

(a) 2004 c. 35; section 318(1) is cited for the definitions of “prescribed” and “regulations”.

(b) See section 317(2)(c) of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

Regs. 2-3

¹Heading to reg. 2 and reg. 3 substituted and words added to reg. 2(2) by reg. 4 of S.I. 2014/540 as from 6.4.14.

►¹**Requirements where the transferee's pension scheme is not a money purchase scheme.**◄

2.—(1) In a case where these Regulations apply, and the transferee is the employer in relation to a pension scheme which is not a money purchase scheme, that scheme complies with section 258(2)(c)(ii) of the Act (alternative standard for a scheme which is not a money purchase scheme) if it provides either—

- (a) for members to be entitled to benefits the value of which equals or exceeds 6 per cent. of pensionable pay for each year of employment together with the total amount of any contributions made by them, and, where members are required to make contributions to the scheme, for them to contribute at a rate which does not exceed 6 per cent. of their pensionable pay; or
- (b) for the transferee to make relevant contributions to the scheme on behalf of each employee of his who is an active member of it.

(2) In this regulation—

“pensionable pay” ►¹“relevant contributions” means contributions—

- (a) made by the transferee in respect of each remuneration period in respect of which the employee contributes to the scheme; and
- (b) the amount of which is—
 - (i) where the employee's contributions are less than 6 per cent. of the employee's remuneration, not less than the contributions made by the employee; or
 - (ii) where the employee's contributions equal or exceed 6 per cent. of the employee's remuneration, not less than 6 per cent. of that remuneration.◄

means that part of the remuneration payable to a member of a scheme by reference to which the amount of contributions and benefits are determined under the rules of the scheme.

►¹**Requirements where the transferee's pension scheme is a money purchase scheme or stakeholder pension scheme**

3.—(1) In a case where these Regulations apply, the transferee's contributions are relevant contributions for the purposes of subsection (2)(b) (money purchase scheme) and subsections (3) to (5) (stakeholder pension scheme) of section 258 of the Act if—

- (a) the contributions are made in respect of each remuneration period in respect of which the employee contributes to the scheme; and
- (b) paragraph (2) or (3) is satisfied.

(2) This paragraph is satisfied if the amount contributed by the transferee in respect of each remuneration period is—

- (a) where the employee's contributions are less than 6 per cent. of the employee's remuneration, an amount not less than the contributions made by the employee;
- (b) where the employee's contributions equal or exceed 6 per cent. of the employee's remuneration, an amount not less than 6 per cent. of that remuneration,

(3) This paragraph is satisfied if—

- (a) in respect of the remuneration period immediately before the relevant time—
 - (i) the transferor had been required to make contributions; and
 - (ii) those contributions had been solely for the purpose of producing money purchase benefits for the employee; and
- (b) the amount contributed by the transferee is not less than the amount the transferor had been required to contribute.◄

TRANSFER OF EMPLOYMENT (PENSION PROTECTION) REGULATIONS
2005

SI 2005/649

Signed by authority of the Secretary of State for Work and Pensions.

10th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the obligations of an employer under section 258 of the Pensions Act 2004 (c. 35) towards a person in relation to whom section 257 of that Act applies.

Section 257 applies to a person (“the employee”) who becomes the employee of a new employer (“the transferee”) by virtue of a transfer to which the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) apply, and who had actual or contingent rights in relation to an occupational pension scheme immediately before the transfer.

Under section 258, the transferee is required to secure that the employee is, or is eligible to become, an active member of an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993 (c. 48) as substituted by section 239 of the 2004 Act) in relation to which the transferee is the employer and, if it is a money purchase scheme, to make “relevant contributions” to it. Alternatively, the transferee must make such contributions to a stakeholder pension scheme of which the employee is a member (or offer to contribute to a stakeholder scheme of which he is eligible to be a member).

Section 258(2)(c) provides that a scheme in relation to which the transferee is the employer, if it is not a money purchase scheme, must satisfy a standard provided for in the Pension Schemes Act 1993, or, if regulations so provide, comply with prescribed requirements. For the purposes of this provision, regulation 2 requires that either the value of the benefits provided for by the transferee’s scheme must be at least 6% of pensionable pay for each year of employment in addition to any contributions made by him or that the scheme must provide for the employer to make relevant contributions on behalf of his employees.

Section 258(7) provides for “relevant contributions” to be defined in regulations. Regulation 3 provides that such 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 contribution subject to an upper limit of 6% of basic pay.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004 by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

An assessment of the impact on business, charities and the voluntary sector of the provisions in these Regulations is included in the Regulatory Impact Assessment that accompanied the Pensions Act 2004. A copy of that assessment has been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Regulatory Impact Unit, Adelphi, 1-11 John Adam Street, London WC2N 6HT.