

Key issues

TUPE refers to the regulations enacted in 2006 to protect the rights of employees whose employer changes as a result of mergers or acquisitions.

The Regulations set out exactly what provision must be made to ensure that the employees' benefits are not reduced by the new employer.

Where the old employer had a Group Personal Pension scheme (GPP) any employer contribution level must be maintained, but a new scheme can usually be selected.

New employers are not obliged to continue Occupational Pension schemes but must ensure that they provide an alternative which meets strict criteria.

TUPE rules can result in difficulties for administration because there may be many different entitlements for different groups and grades of staff.

Harmonising benefits is desirable to enable simpler administration and management, but care must be taken not to diminish the benefits.

The acquiring employer should always seek advice before making any changes to the benefits package.

What is TUPE

Pensions and wider employee benefits are often a thorny issue in mergers and acquisitions. What are transferring employees entitled to and how does this affect harmonisation of benefits with those already employed? The **Transfer of Undertakings (Protection of Employment) Regulations** were created in order to protect the interests of employees in such circumstances.

Transferring employees' terms and conditions

The Regulations require that employees' terms and conditions, including their remuneration and benefits packages, must be retained when their employment is transferred under TUPE. So if the acquired business provided a Life Assurance benefit of four times annual salary, the same benefit should continue to be offered.

Non-occupational pensions

Where the previous employer made contributions to non-occupational pension schemes such as stakeholder or Group Personal Pensions (GPPs), those contribution levels must be maintained. However, the new employer is normally perfectly entitled to direct those contributions into a GPP or stakeholder arrangement of their choosing.

Occupational pensions

Under TUPE the new employer is not required to continue identical occupational pension arrangements for transferring employees. Instead, transferring employees must be provided with access to one of the following:

- a defined benefit scheme, provided it meets certain statutory standards (the reference scheme test) or an alternative standard; or
- a scheme which provides benefits based on an employer contribution of at least 6% of pensionable pay plus member contributions; or
- a money purchase scheme (including GPPs) where the employer matches employee contributions up to at least 6% of basic pay

However, employers and transferring employees **are** able to validly opt out of these obligations and agree alternative arrangements at any time after the transfer has taken place.

Harmonising pensions and wider benefits

Normally it makes sense to harmonise benefits across equivalent grades and types of employee. However, *"according to the way in which the courts have interpreted the Acquired Rights Directive, the desire to achieve 'harmonisation' is by reason of the transfer itself"....* meaning that such moves can be challenged. In time, harmonisation can be achieved, although the regulations are silent as to how much time must elapse for the link to the transfer to have disappeared.

Of course, no one is likely to challenge moves to harmonise to the highest common denominator and this may be a sensible path to follow, perhaps over a year or two if the costs of harmonisation are significant.

More information

Transfer of Undertakings (Protection of Employment) Regulations 2006

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

Scheme reference tests

<http://www.legislation.gov.uk/ukpga/1993/48/contents/enacted>

Guidance on TUPE from Dept for Business, Innovation & Skills

<http://www.bis.gov.uk/tupe>

(PDF document available to download from this page).