



THE SOCIETY OF PENSION
PROFESSIONALS

making pensions work

The Society of Pension Professionals (SPP) response to the Department for Business and Trade's Call for Evidence on The Transfer of Undertakings (Protection of Employment) Regulations

1. Introduction

- 1.1. The Society of Pension Professionals (SPP) is a representative body for pension professionals so we are confining our response to question five of the consultation relating to the operation of TUPE in relation to pension rights.
- 1.2. We believe the current framework generally provides strong protection for employees while identifying a small number of areas where legislative clarification and simplification could improve outcomes for both employers and employees.

2. Executive summary

- 2.1. **The SPP believes that existing TUPE and pensions legislation already provides strong protection for employees' pension rights during transfers.**
This is the case whether through occupational or personal pension schemes. Increasing protections further could significantly raise costs for employers.
- 2.2. **The mismatch between TUPE processes and the 60-day consultation requirements under the Pension Consultation Regulations when pension schemes change following a transfer is a concern.**
These rules are impractical because pension changes are often unavoidable in TUPE situations and do not align with transaction timelines. Introducing a TUPE-specific exemption so pension consultations can instead be handled within the existing TUPE information and consultation framework would therefore make sense.
- 2.3. **There is uncertainty around whether transferee employers can move employees into alternative pension schemes without additional legal advice.**
This situation could be addressed by clarifying the matter in legislation so employers can place transferring employees into pension arrangements with the same or a higher rate of employer contributions, where employees agree or do not opt-out after being informed.

NOTICE

*Please feel free to share, reprint or quote any of this consultation document providing you acknowledge the source
(The Society of Pension Professionals).*

This response is not meant to give accounting, financial, consulting, investment, legal, or any other form of professional advice. If you require such information, advice or guidance, please speak to a professional adviser. The publisher (The Society of Pension Professionals) cannot accept responsibility for any errors in this publication or accept responsibility for any losses suffered by anyone who acts or fails to act as a result of any information given in this publication.

3. Consultation response

To what extent do you agree or disagree that employee pension rights are sufficiently protected under a TUPE transfer?

- 3.1. The SPP agrees that employee pension rights are sufficiently protected on a TUPE transfer.
- 3.2. The combination of the obligations under TUPE, an employer's duties under the Pensions Act 2008 in relation to auto-enrolment, and sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 mean that employee pension rights are sufficiently protected whether they are a member of a personal pension scheme or an occupational pension scheme.
- 3.3. Increasing the level of protection for transferring employees could materially add to the costs for transferee employers associated with a TUPE transfer, at a time when the costs of employment are already high – and when the Prime Minister has explicitly committed to reducing employers' compliance costs by 25%¹.
- 3.4. Therefore, given that employees' pension rights are already well protected, we suggest that the government should carefully consider the risks associated with doing so.

Pension Consultation Regulations

- 3.5. One area where the current legislative regime does not work particularly well is in relation to the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (the "Pension Consultation Regulations").
- 3.6. The Pension Consultation Regulations 3 (2A) and 15(4) require employers with 50 or more employees to conduct a consultation of at least 60 days with employees before they make a "listed change" to employees' pension benefits. A "listed change" includes ceasing to make employer contributions to the pension scheme (whether occupational or personal) in which their employees participate. The requirement to consult applies even if the employees will be immediately enrolled into a new pension scheme with the same, or even a better, rate of employer contributions.
- 3.7. This obligation does not work well with the TUPE regime for several reasons:
 - (i) the 60-day period does not fit with information and consultation requirements on a TUPE transfer, which do not have a fixed period;
 - (ii) in many cases it is not possible for the employees to remain in their existing scheme (either because it is an own trust scheme set up by the transferring employer or the receiving employer participates in a different workplace pension scheme and wants all its employees to participate in the same scheme), therefore having the consultation requirements apply is misleading because the decision to effect the TUPE transfer often means the decision to change pension schemes has also already been made;
 - (iii) a 60-day consultation period often does not fit well with the wider corporate transaction timetable.
- 3.8. This means employers often have to take legal advice on how they can manage the risk of not being able to fully comply with the Pension Consultation Regulations.
- 3.9. The SPP believes that it would be better if there is a carve-out in the Pension Consultation Regulations for changes to pension benefits as a result of a TUPE transfer. Pension benefits could then be dealt with as part of the TUPE requirements to inform and consult employees. This would make things easier from both an employer and employee perspective as all of their benefits are being dealt with under the same legal requirements.

¹ Prime Minister's speech, March 2025:

<https://www.gov.uk/government/speeches/pm-remarks-on-the-fundamental-reform-of-the-british-state-13-march-2025>

NOTICE

Please feel free to share, reprint or quote any of this consultation document providing you acknowledge the source (The Society of Pension Professionals).

This response is not meant to give accounting, financial, consulting, investment, legal, or any other form of professional advice. If you require such information, advice or guidance, please speak to a professional adviser. The publisher (The Society of Pension Professionals) cannot accept responsibility for any errors in this publication or accept responsibility for any losses suffered by anyone who acts or fails to act as a result of any information given in this publication.

Transferring employees to an alternative pension scheme

- 3.10. It is important to make sure that the current TUPE legislation operates in the best interests of employees in defined contribution schemes.
- 3.11. As currently constructed, the TUPE legislation arguably provides employers with the ability to offer an alternative scheme on a voluntary basis, provided that it has the same or a higher rate of employer contributions than the employee receives under their existing scheme. However, due to the ambiguous nature of the wording here, not every employer may be confident in acting to offer an alternative scheme without going to the expense of legal advice. As a result, pension consultants are likely to refer clients for legal advice in such cases.
- 3.12. It would therefore be helpful if the legislation was amended to make clear that a transferee (i.e. receiving) employer is able to move a transferring employee into a pension scheme that has the same or a higher rate of employer contributions, where a transferring employee agrees to this or where the employee has been told this will happen and they have not opted-out.

4. About The Society of Pension Professionals

- 4.1. The SPP is the representative body for a wide range of providers of advice and services to pension schemes, trustees and employers. Our work harnesses the expertise of our membership, striving for a positive impact on pension scheme members, the pensions industry and its stakeholders.
- 4.2. The breadth of our members is a unique strength for the SPP. Our membership of over 90 corporate organisations employs over 20,000 pension professionals including actuaries, lawyers, professional trustees, DC consultants, investment managers, providers, administrators, covenant assessors, and other pension specialists.

5. Further information

- 5.1. For more information about this consultation response please contact SPP Director of Policy & PR at: phil.hall@the-spp.co.uk or telephone the SPP on 0207 353 1688.
- 5.2. To find out more about the SPP please visit the SPP web site: <https://the-spp.co.uk/>
- 5.3. Connect with us on LinkedIn at: <https://www.linkedin.com/company/the-society-of-pension-professionals/>
- 5.4. Follow us on X (Twitter) at: <https://twitter.com/thespp1>

16 June 2026



NOTICE

Please feel free to share, reprint or quote any of this consultation document providing you acknowledge the source (The Society of Pension Professionals).

This response is not meant to give accounting, financial, consulting, investment, legal, or any other form of professional advice. If you require such information, advice or guidance, please speak to a professional adviser. The publisher (The Society of Pension Professionals) cannot accept responsibility for any errors in this publication or accept responsibility for any losses suffered by anyone who acts or fails to act as a result of any information given in this publication.