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PENSIONS NEWSLETTER

TUPE Transfers – Extension of Pension Protections

Most clients of GAD will be familiar with the pension protection given by Fair Deal. These protections apply only to staff transferred under the terms of Fair Deal – generally to employees transferred from public to private sector employment as part of PPP or PFI initiatives. Protected employees must be provided with access to a pension scheme in the private sector which provides them with benefits which are ‘broadly comparable’ to those they had in the public sector. This protection continues for ex-public sector employees on subsequent re-tender resulting in an onwards transfer within the private sector.

Until recently TUPE did not cover occupational pension entitlements. There was no general requirement for employers to offer pension protection to transferring employees affected by corporate transactions. New requirements from 6 April 2005 give some protection of pension benefits on all future TUPE transfers. The new provisions apply alongside Fair Deal. Fair Deal should provide protection at least as good as the new provisions and so there is no change for those employees covered by Fair Deal.

For other employees the new provisions will generally prove much less valuable than Fair Deal. The new provisions require any employer taking on pensioned*, TUPE’d employees to provide them with access to a pension arrangement which satisfies certain minimum criteria. These criteria are unrelated to the benefits provided in the previous employer’s scheme. A defined benefit scheme can be replaced with a money purchase arrangement and vice versa. A replacement defined benefit scheme has to satisfy either the Reference Scheme Test (broadly providing 80ths accrual) or provide benefits worth at least 6% of pensionable pay (on top of the value of a member’s contributions). A money purchase arrangement has to provide for matching employer contributions of up to 6% of basic pay. This can be constituted as either an occupational scheme or a stakeholder arrangement.

[* Those who immediately before transfer were in an occupational pension arrangement, or eligible to be in it, or who would have become eligible to be in it had they completed a qualifying period.]

Since most defined benefit schemes offer benefits of far greater value than 6% of pay it is clear many transferring employees may be worse off after the transfer, although to a lesser degree than before April 2005. The provisions do however go some way to addressing the loss of pension rights on TUPE transfer.

Contracting authorities are advised to ensure contractors comply with the new provisions. They will mainly affect re-tendering exercises or functions moving into the public sector which:

- involve the transfer of staff who were never in public sector employment, and/or
- involve the transfer of ex-public sector employees whose jobs were transferred from the public sector before Fair Deal was introduced in July 1999.

If you require any further information on the new requirements at any stage please contact either your normal GAD contact, Andrew Johnston (0207 211 2651), Stephen Humphrey (0207 211 2646), or email pensionsnews@gad.gov.uk