



**ASLEF Response to The Transfer of Employment (Pension Protection)
(Amendment) Regulations 2013 Consultation**

1. The Associated Society of Locomotive Engineers and Firemen (ASLEF) is the UK's largest train drivers' union representing approximately 18,000 members in train operating companies and freight companies as well as London Underground and light rail systems. ASLEF have over 2,000 members in Rail Freight.
2. ASLEF whilst being glad to contribute to this consultation, is disappointed that trade unions and employee representatives were not included in the list of organisations under the heading 'who this consultation is aimed at' given that there is a legal right to consult with unions in the event of a TUPE transfer.
3. The Transfer of Employment (Pension Protection) Regulations 2005 – made under the Pensions Act 2004 – was a positive step in establishing a regulatory framework for pension schemes. However it was rather limited. Current regulations do not provide fully protected pension provision in the event of a TUPE transfer. They only apply to occupational and stakeholder schemes and are only provide up to a capped level of contributions.
4. In fact, members of contract-based DC schemes may have greater protections in the event of a transfer under TUPE than members of occupational schemes.
5. ASLEF believes that all pension scheme members should receive their pension provision in full in the event of a transfer, regardless of whether

they are in an occupational Defined Benefit or Defined Contribution scheme.

6. The proposals in the consultation document would further undermine the existing protections in place for employees in the event of a transfer. This is contrary to the government's policy initiatives on reinvigorating workplace pensions and saving through auto-enrolment.
7. ASLEF are concerned that the proposed regulations do not properly reflect the stated intention of the DWP as set out in the Explanatory Memorandum. In practise the changes are in fact unworkable.
8. ASLEF questions the intention of revising the regulations given the purpose of auto-enrolment is to increase the number of people saving for retirement and the amount they are saving.
9. The Union is also concerned that proposed Regulation 3 would mean that the transferee employer would not be obliged to make any contribution if the transferor employer had not made any contribution in the period immediately before the transfer. It cannot be right that the Regulations take away rights given to transferring employees by the Pensions Act 2004.
10. Further, there would be no obligation on a transferee employer to make contributions to a MPS post-transfer where the employee was not an active member of the scheme pre-transfer either because they had not chosen to take up active membership pre transfer; or because they did not satisfy the schemes' eligibility rules (e.g. did not have sufficient service) pre transfer.
11. ASLEF do not accept that the current Regulations will leave the transferring employee in a "*more favourable position than they would have been had they remained with the transferor*".

12. As well as the Pensions Act 2004, railway staff employed at the time of privatisation also have pension protection through the 1993 Railways Act. Any other protections afforded to workers must not be watered down by new legislation. Protections must be enhanced and the DWP must be careful to ensure new legislation does not dilute existing safeguards as an unintended consequence.

13. These regulations appear to further erode workers' rights. ASLEF therefore reject these changes and believe they contradict the DWP's own stated intention. Further, the Union seeks improvements in the regulations and for the DWP to lift the 6 per cent contribution cap.

Mick Whelan
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