

Your protected rights

If you were a member of the BR Pension Scheme and employed by the British Railways Board or one of its successors at midnight on 30 September 1994, your pension rights were transferred to the Railways Pension Scheme.

The rights referred to in this guide come under the Railways Act 1993 and a parliamentary order known as the Railway Pensions (Protection and Designation of Schemes) Order 1994, which came into force on 31 May 1994. However, where your rights under the Order are better than those under the Scheme, or vice versa, the better of the two will apply.

The Order is detailed and complex, as it has to cover a range of circumstances, many of which are exceptional. Therefore, this guide summarises some of the main provisions of the Order as they may apply to you. It should **not** be treated as a definitive statement of your own rights under the Order, as Railpen Limited (Railpen) have no authority to absolutely confirm your eligibility under the Protection Order. If it is not clear from the terms of the Order, and/or there is any dispute, you may have to take your own legal advice.

The guide explains what will happen if you change employer and also covers:

- What Protection is?
- Who is a Protected Person
- How you continue to be a Protected Person
- When you will cease to be a Protected Person
- What the indefeasible right is
- How the indefeasible right continues
- Why the indefeasible right ends

What Protection is

For so long as you remain a Protected Person, the Railway Pensions (Protection and Designation of Schemes) Order 1994 requires that:

- your pension rights in the Scheme must be at least as favourable as the rights which the BR Pension Scheme provided on 31 May 1994; and
- your employer has a legal obligation to provide an adequately funded occupational pension scheme which meets these requirements.

If in the future the pension rights you have built up under the Scheme (including rights transferred from the BR Pension Scheme) are transferred to another scheme in circumstances where the Protection continues, you must be credited with past service pension rights at least as favourable as those in the Scheme at the time you transferred.

Who is a Protected Person

You are a Protected Person if at midnight on 4 November 1993:

- you were in the BR Pension Scheme and were employed by the British Railways Board or one of its subsidiaries; or
- you were not working for the Board but have since exercised a statutory or contractual right to return to employment with the Board or one of its successors. In this case, you must have been a member of the BR Pension Scheme when you were last employed by the Board and you must not

have taken a transfer payment from the BR Pension Scheme in respect of that previous period of employment (i.e. your pension rights should have remained preserved, or frozen, in the BR Pension Scheme and not transferred to an alternative scheme or arrangement); or

- you had pension rights in the BR Pension Scheme but were not participating in that scheme.

The statutory or contractual right mainly applies to people on maternity leave or seconded to another employer. You may also be a protected member if you acquired pension rights as a result of the death of a person falling within one of the categories above.

You will continue to be a Protected Person if:

- the ownership of your employer changes, for example on the sale of its shares;
- your contract of employment is transferred compulsorily, for example on the sale of all or part of a business or a change of franchisee; or
- there are other circumstances where you remain in continuous employment under the Employment Protection legislation.

You will cease to be a Protected Person if you:

- leave your current employer or
- decide not to remain a member of the Scheme.

However, you will remain a Protected Person in respect of your accrued pension rights under the Scheme unless you:

- transfer those rights to another scheme or arrangement; or
- voluntarily give up some, or all of your protection.

You can give up your protection (or part of it) if you and your employer agree that your benefits may be varied for future service. Railpen will explain the procedure to be followed. Once you have given up Protection for part or all of your benefits, you cannot reverse your decision.

If you choose to give up part of your protection in this way, your protection is forfeited even if you move between employers.

In certain circumstances, you will remain a Protected Person where there is a break in your contract of employment for the purposes of the Employment Protection legislation or you voluntarily withdraw from the Scheme. These circumstances are exceptional and will apply to very few people, e.g. if you have moved voluntarily between employers in the railway industry before 1 October 1994.

What the indefeasible right is

This is your statutory right to continue to be a member of the Scheme until the Right ends.

You have the 'indefeasible right' if at midnight on 4 November 1993:

- you were in the BR Pension Scheme and were employed by the British Railways Board; or
- you were not at the time employed by the Board, but have since exercised a statutory or contractual right to return to employment in the railway industry. You must also have been a member of the BR Pension Scheme when you were last employed by the Board and must not have taken a transfer payment in respect of that previous period of employment.

How the Right continues

You will retain the indefeasible right while you remain in employment. However, if you leave you will only retain this if you:

- are employed with a railway industry employer within six months of leaving;
- apply to re-join the Scheme within six months and to take effect from the start of that employment; and
- have not been employed outside the railway industry between leaving and re-joining.

If you transfer to another railway employer, without a break in service, you will retain your indefeasible right.

Why the Right ends

You will lose your indefeasible right if, other than in the circumstances detailed above, you:

- leave your railway employment; or
- choose to give up the right.

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