

TUPE: call for evidence heralds possible reform

The statutory regime that is contained in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (*SI 2006/246*) (TUPE) has barely changed since 2006. The call for evidence on TUPE, which the government published on 8 April 2026, is therefore an opportunity to update the legislative framework and to address difficulties that corporate and transactional employment lawyers and HR professionals have long identified. The call for evidence, which closes on 1 July 2026, seeks evidence from all interested parties, including businesses, employees and employee representatives.

For corporate lawyers advising on mergers, acquisitions and outsourcings, the impact of TUPE in transactions is commonplace (see box “Employee transfers under TUPE”).

TUPE often goes to the heart of the risk profile of a transaction. The number of transferring employees and what liabilities are attached to them will often affect deal value, the level of due diligence carried out, post-completion integration and the position taken in relation to warranty and indemnity protection.

The call for evidence

The government has not taken forward the previous government’s May 2024 consultation, which proposed to restrict TUPE to employees rather than workers, and to prevent the splitting of employment contracts between multiple transferees (www.gov.uk/government/consultations/smarter-regulation-employment-law-reform/consultation-on-clarifications-to-the-transfer-of-undertakings-protection-of-employment-regulations-2006-tupe-and-abolishing-the-legal-framework-f).

The call for evidence poses detailed questions on:

- The adequacy of existing protections, including consultation, collective agreements and pensions (see feature article “Collective agreements and TUPE: more than you bargained for?”, www.practicallaw.com/w-037-2619).
- Whether it is sufficiently clear when there is a relevant transfer and TUPE applies.

Employee transfers under TUPE

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) (*SI 2006/246*) (TUPE) operates in two scenarios:

- On a business transfer, where there is a transfer of an economic entity which retains its identity. This covers most business and asset sales.
- On a service provision change. This was introduced in 2006 and is a gold plating that is unique to the UK (see feature articles “Ringing the changes: the new TUPE”, www.practicallaw.com/2-203-1131 and “Changes to TUPE: more room for manoeuvre?”, www.practicallaw.com/4-554-3047). It is designed to more easily establish a TUPE transfer in the context of an outsourcing, re-tendering or insourcing of services.

Where TUPE applies, the employment contracts of all employees who work wholly or mainly in the transferring business or services transfer automatically on their existing terms and conditions, save for occupational pension schemes, with continuous service preserved. Significantly, the transferee inherits pre-transfer employment liabilities.

Harmonising terms and conditions of employment is generally not permitted, outside of an insolvency situation (see feature article “TUPE and insolvency: risks, redundancy and reality”, www.practicallaw.com/w-022-2696). Where the sole or principal reason for a change is the TUPE transfer, it will be invalid to the extent that it is detrimental, even if consensual. Changes are only permissible where there is an economic, technical or organisational (ETO) reason entailing changes in the workforce, which is a threshold that is often difficult to meet.

Both the transferor and the transferee have obligations in relation to the TUPE information and consultation process, including:

- The transferor must provide the transferee with employee liability information at least 28 days before the transfer, although this usually happens significantly earlier in a negotiated transaction.
- The transferee must provide the transferor with a measures letter and the transferor must inform and, potentially, consult with appropriate employee representatives.

Failure to comply can result in an award of compensation of up to 13 weeks’ uncapped pay per employee.

- The TUPE process, including the information and consultation requirements.
- The adequacy of the guidance and support that is currently available.
- Whether the regulations governing when an employer may vary contractual terms and conditions strike the right balance, are appropriate, and are sufficiently clear and specific.
- The cost and impact on businesses.
- Any unintended consequences, including equality impacts.

The government has indicated that the intention of the call for evidence is to find ways to simplify TUPE for businesses and to strengthen protections for impacted employees. The government has identified two key objectives. Firstly, it wants to ensure that “TUPE is easy to follow for businesses” and “can support growth through facilitating smoother mergers and acquisitions”. Secondly, and perhaps somewhat inconsistently, it has stated that it will be “strengthening

the existing set of rights and protections for workers subject to TUPE processes.”

Employment Rights Act 2025. The call for evidence should be seen in the context of the Employment Rights Act 2025 (2025 Act), which includes several provisions that are likely to affect TUPE transactions (see *Briefing “Employment Rights Act 2025: board-level workforce planning”, this issue and feature article “Employment Rights Act 2025: rights, rules and remedies”, www.practicallaw.com/w-049-2018*). For example:

- The six-month qualifying period for unfair dismissal rights, which will apply to dismissals on and after 1 January 2027, will mean that transferees will inherit more employees with unfair dismissal protection. This materially increases the risk profile of the workforce, particularly where there are existing disciplinary or grievance processes.
- The fire and rehire provisions in the 2025 Act will significantly limit the ability for transferees to harmonise terms and conditions following a TUPE transfer by way of dismissal and re-engagement.

What reforms could be made?

The call for evidence provides the government with an opportunity to address several longstanding difficulties with TUPE. Based on the issues that were raised both in the 2024 consultation and more widely, a number of areas could be open to reform.

Workers or employees. An employment tribunal decision in *Dewhurst and others v Revisecatch Limited t/a Ecourier and City Sprint (UK) Ltd* held that so-called “limb (b) workers”, that is, individuals who are neither employees nor genuinely self-employed, may be protected by TUPE (ET/2201909/2018; www.practicallaw.com/w-023-7577). The decision is not binding but it has created uncertainty for buyers of businesses where workers are engaged alongside employees. The previous government proposed to exclude limb (b) workers from TUPE’s scope. Given its broader commitment to extending worker rights, the current government’s position is less clear. However, the practical difficulties of consulting workers who may work only occasionally and owe no ongoing obligation to the business mean that the issue does need to be resolved.

Splitting employment contracts. The European Court of Justice decision in *ISS Facility Services NV v Govaerts* confirmed that, where a single business or service is transferred to more than one transferee, employment contracts may be split between them (C-344/18; www.practicallaw.com/w-027-1170). This is particularly problematic in the context of the UK’s service provision change regime, where a single services contract may be divided between two or more incoming services providers that are often competitors. Clarity that a contract should transfer to a single employer, and a workable mechanism for

determining which employer that should be, would be helpful to both employers and employees.

Varying terms and conditions. The prohibition on changing terms and conditions of employment where the sole or principal reason is the TUPE transfer remains difficult for buyers that are often seeking to harmonise terms across their workforce. Although this prohibition is central to the employee protection purpose of TUPE, there is scope to provide greater clarity around when an ETO reason exists, and to allow genuinely consensual variations to be made.

Redundancy and ETO framework. The interaction between TUPE and redundancy law can create unhelpful outcomes. Where a reduction in headcount is commercially sensible, for example, following an offshoring exercise, the absence of an ETO reason before the transfer means that redundancies are frequently deferred until after completion, with cost and uncertainty for all parties. Reform to provide a cleaner mechanism for pre-transfer redundancies in clearly defined circumstances would assist both transferors and transferees.

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The call for evidence is at https://assets.publishing.service.gov.uk/media/69d632f55f858b0a771d2a52/tupe_call_for_evidence.pdf.
