**TUPE changes 31 January 2014: Four key points for employers**

**Amendments to the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 come into force today.**

**The four key points that employers may have overlooked.**

### 1. Redundancy dismissals where the workplace changes, as a result of a transfer will no longer be automatically unfair.

A dismissal in a TUPE context will not be automatically unfair dismissal, if it is for an economic, technical or organisational reason, entailing changes in the workforce, even where the dismissal is because of the transfer. Under the amended TUPE Regulations, the definition of “entailing changes in the workforce” is extended to include a change in the location of the workforce.

### 2. The deadline for the old employer to provide the new employer with employee liability information is changing – but not quite yet.

The amended Regulations require the transferor to provide employee liability information earlier in the process. However, this provision comes into force only in relation to transfers that take place on or after 1st May 2014.

### 3. The transferee employer can carry out redundancy consultation with transferring employees before the transfer takes place.

The rules on collective redundancy consultation are amended so that an employer that inherits employees as a result of TUPE, and needs to make redundancies, can carry out some or all of its consultation with the transferring employees before the transfer takes place.

### 4. Some of the amendments might be open to challenge in Europe.

Although the Government has made amendments to the TUPE Regulations 2006, there is still some uncertainty over the extent to which employers can rely on the new rules. This area of law is governed by European legislation – specifically, the Acquired Rights Directive 2001.

There is a question over whether or not some of the amendments to the TUPE Regulations comply with the Directive. Therefore, an employer relying on the amended provisions may find itself challenged by employees, with the issue ultimately being decided at the European Court of Justice.

[Variation to employees’ terms and conditions in the context of a TUPE transfer](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#varying-transferring-employees-terms-and-conditions) is one area that may be open to challenge.

**Significant changes to the TUPE framework are coming into effect on 31st January 2014.**

Changes include:

* Amendments to the effect of collective agreements post transfer.
* The inclusion of “a change in location” in the definition of an “economic, technical or organisational reason entailing changes in the workforce” for the purpose of the dismissal of an employee or a variation of contract.
* New rules allowing employers to use pre-transfer consultation with transferring employees as part of their obligation to inform and consult in a redundancy exercise, provided that certain conditions are met.
* The extension of the time period for the transferor to provide employee liability information to the transferee to not less than 28 days before the transfer.
* Micro businesses (organisations with fewer than 10 employees) being able to inform and consult directly with affected employees in certain cases.
* The amendment of the definition of a service provision change, to provide that the activities carried on after the service provision changes must be “fundamentally or essentially the same” as those carried on before the change, reflecting the approach set out in existing case law.
* Allowing renegotiation of terms agreed in a collective agreement one year after transfer, provided that overall the change is no less favourable to the employee.

# Transfer of Undertakings

## Summary

* When the whole or part of an employer's business or undertaking is sold or transferred as a going concern to another employer that can include a "service provision change" such as the outsourcing of an ancillary function to an outside contractor, a TUPE transfer is said to occur. The term "TUPE" is an acronym for the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (the TUPE Regulations 2006). (See [The Transfer of Undertakings (Protection of Employment) Regulations 2006](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#the-transfer-of-undertakings-protection-of-employment-regulations-2006))
* Various provisions of the TUPE Regulations 2006 were amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (SI 2014/16) (the amending Regulations 2014), which came into force on 31 January 2014. (See [Impact of the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#impact-of-the-collective-redundancies-and-transfer-of-undertakings-protection-of-employment-amendment-regulations-2013))
* The seller of the business is referred to as the "transferor", while the recipient of the business is known as the "transferee". In the case of a service provision change, a client engaging a contractor will be the transferor and the contractor the transferee. When a contract changes hands, the outsourcing contractor will be the transferor and the incoming contractor the transferee. If the client takes the service back in-house, the outgoing contractor will be the transferor and the client will be the transferee. (See [The Transfer of Undertakings (Protection of Employment) Regulations 2006](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#the-transfer-of-undertakings-protection-of-employment-regulations-2006))
* A TUPE transfer is referred to in the Regulations as a "relevant transfer". (See [The Transfer of Undertakings (Protection of Employment) Regulations 2006](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#the-transfer-of-undertakings-protection-of-employment-regulations-2006) and [Meaning of "relevant transfer"](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#meaning-of-relevant-transfer))
* A transfer takes place at a single point in time, which is the date on which responsibility as an employer for carrying on the business of the transferred unit moves from the transferor to the transferee. (See [Timing of a transfer](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#timing-of-a-transfer))
* Whether an employee is assigned to the transferring undertaking is a question of fact in each case. (See [Assignment to the transferred undertaking](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#assignment-to-the-transferred-undertaking))
* When there is a relevant transfer, the transferee inherits the contracts of employment of the persons employed by the transferor immediately before the transfer took place. The transferee also inherits the transferor's rights, power and duties and most of the transferor's liabilities in respect of those employees. (See [Meaning of "relevant transfer"](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#meaning-of-relevant-transfer) and [Effect of a relevant transfer on contracts of employment](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#effect-of-a-relevant-transfer-on-contracts-of-employment))
* Collective agreements (and the rights and obligations that go with such agreements) transfer when there is a relevant transfer. However, in relation to transfers that take place on or after 31 January 2014, the TUPE Regulations 2006, as amended, provide that rights and obligations relating to a provision of a collective agreement do not transfer, where the provision is agreed after the transfer, and the transferee does not participate in the collective bargaining relating to that provision. (see [Effect of a relevant transfer on collective agreements](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#effect-of-a-relevant-transfer-on-collective-agreements))
* Where there is a relevant transfer, and the transferor operated an employer-contributed pension scheme for transferred employees, the transferee is legally bound to offer them a prescribed level of pension provision. (See [Effect of a relevant transfer on pension arrangements](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#effect-of-a-relevant-transfer-on-pension-arrangements))
* An employee who is dismissed where the sole or principal reason is the transfer is treated in law as having been unfairly dismissed. (See [Dismissal of an employee because of a relevant transfer](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#dismissal-of-an-employee-because-of-a-relevant-transfer))
* However, that rule does not apply to an employee dismissed for an "economic, technical or organisational reason entailing changes in the workforce". Such a dismissal will be treated by an employment tribunal as having been for "some other substantial reason" or redundancy, as the case may be. Where the transfer takes place on or after 31 January 2014 and notice is given, or the termination takes effect, on or after that date, the amending Regulations 2014 provide that "changes in the workforce" include a change to an employee's place of work. (See [Dismissal of an employee because of a relevant transfer](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#dismissal-of-an-employee-because-of-a-relevant-transfer))
* Employers contemplating the sale or transfer of the whole or any part of their business or undertaking (or the acquisition or purchase of another employer's business or undertaking) must inform appropriate employee representatives of certain matters. If measures are envisaged in relation to the affected employees, the employer that envisages the measures must consult the employee representatives about them. A failure to do so will lead to the imposition of a punitive award. (See [Duty to inform and consult representatives](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#duty-to-inform-and-consult-representatives))
* An employer that is the transferor of a business must notify the transferee of certain specified items of employee liability information not less than 14 days before the transfer. In relation to transfers that take place on or after 1 May 2014, this information is required no less than 28 days before the transfer. Failure to do so can lead to a complaint to tribunal and a compensation award subject to a minimum of £500 per employee in respect of whom the transferor has failed to provide the information. (See [Duty to notify employee liability information](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#duty-to-notify-employee-liability-information))
* Regulations 4 and 7 of the TUPE Regulations 2006, which deal with the effect of a relevant transfer on contracts of employment, and the dismissal of an employee because of a relevant transfer, do not apply where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of an insolvency practitioner. (See [Effect of bankruptcy or insolvency on a relevant transfer](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#effect-of-bankruptcy-and-insolvency-on-a-relevant-transfer))
* The "Code of practice on workforce matters in local authority service contracts" was withdrawn on 23 March 2011 with immediate effect but remains relevant to local authority service contracts in existence prior to that date. (See [Code of practice on workforce matters in local authority service contracts](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#code-of-practice-on-workforce-matters-in-local-authority-service-contracts-withdrawn))
* The Government's "Principles of good employment practice" sets out what it expects of its suppliers in their employment practices. Compliance with the principles is voluntary.
* The "Code of practice on workforce matters in public sector service contracts" still applies to public sector contracts in existence prior to 13 December 2010. (See [Principles of good employment practice and Code of practice on workforce matters in public sector service contracts](http://www.xperthr.co.uk/employment-law-manual/transfer-of-undertakings/20378/#principles-of-good-employment-practice-and-code-of-practice-on-workforce-matters-in-public-sector-service-contracts-withdrawn))