



**Oxford Professional Education**

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### **TUPE Policy**

Oxford Professional Education (OxPE) has a responsibility to protect employee rights during a transfer and is committed to applying the principles of the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013.

**Scope:** All employees employed by OxPE

The aims of this policy are to:

- Set out the provisions of the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013

### **TUPE Policy**

#### **What the law says:**

The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2013 protect employee rights in connection with the transfer of an undertaking.

The main purpose of the Regulations is to preserve continuity of employment and terms and conditions of those employees transferred to a new employer when a relevant transfer takes place.

General Data Protection Regulations (GDPR) 2016 and the Data Protection Act 2018 – aim to protect the rights of living individuals regarding information about them held by other people.

#### **Exceptions where TUPE does not apply:**

- The employer remains the same during an administrative reorganisation. For example, if employees transfer within OxPE or if there is a shared service within OxPE where employees are pooled but the employer does not change
- There is a sale of property
- A one-off buying in of services of short duration.

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## Principles

The basic principles of TUPE are:

- Assigned employees automatically transfer to the transferee and become their employees
- The terms and conditions of employees who transfer must not be unnecessarily changed by the transferee when the work they were doing previously still exists
- Continuity of service and other rights is preserved
- Employers are obliged to inform appropriate representatives of the transfer and relevant information
- Employers are obliged to consult appropriate representatives of any proposed measures
- A TUPE transfer should have a 'people engagement plan' to ensure those affected are engaged in the process and receive regular communication on progress
- The transferee must provide to the transferor employee information in advance of the transfer date
- Changes to the terms and conditions of transferred employees can only take place when certain conditions are met.

## When TUPE applies:

TUPE applies to a Relevant Transfer in the following two circumstances:

- A business transfer - the whole, or part of a business or undertaking, is transferred from one employer to another as a going concern. This means moving from one legal entity to another
- A service provision change, effectively:
  - outsourcing - where one organisation engages a contractor
  - second-generation outsourcing – re-tendering/reassigning a contract to another contractor
  - insourcing – taking work back in-house.

## What Transfers TUPE Protects

TUPE protects the employment contract and any liabilities associated with the contract, this can include:

- Terms and conditions of employment
- Continuity of service
- Employment law claims made by transferring employees as a result of acts or omissions by the transferor.
- collective agreements.

The transferee must ensure that they adopt current policies that relate to employment. If there are benefits that cannot be matched, for example, bonus schemes or profit share, the option of a buyout can be explored. The transferee must provide a comparable benefit.

## What Does Not Transfer

Usually, the transferee must provide a broadly comparable scheme, where employees are entitled to a pension with the transferor. The transferee is obliged to make some minimum pension provision but does not need to mirror the previous pension provisions.

Old age, invalidity and survivors' benefits under occupational pension schemes do not transfer.

In public sector transfers, where a new pension scheme is offered, the Government Actuaries Department must confirm that the new scheme is broadly comparable.

### **What Does Transfer**

The transferee takes over the liability for all statutory rights, claims and liabilities arising from the contract of employment, for example unfair dismissal, equal pay and discrimination claims. All terms and conditions of work and continuity of employment are preserved. This applies to all employees who were employed immediately before the transfer took place, by the entity which transferred.

### **Policy stages**

There are five areas of activity:

- Planning and preparation
- Informing and consulting
- Determining which employees transfer
- Disclosure of employee information
- Post transfer.

Regardless of whether OxPE is transferring employees in or out of the organisation, the above areas apply. However, the responsibilities and tasks carried out under each differ. The order may vary depending on the TUPE situation and some tasks run simultaneously.

### **Planning and Preparation**

TUPE is a complex area of law and therefore it is vital any potential TUPE exercise is managed correctly. The manager must contact HR Operations at this stage. A case-by-case assessment is required to decide whether TUPE applies to the particular circumstances. OxPE must liaise with the other organisation to assess which employees are likely to be affected, across both organisations. This group is broader than those who ultimately transfer. The due diligence process may start at this stage.

### **Informing and Consulting**

OxPE seeks to inform and consult employees whether individually, as a group or with informal representatives of the group.

### **Duty to Inform**

OxPE has an obligation to inform appropriate representatives of:

- That a transfer is to take place
- The reason for the transfer and when it is expected to take place

- The legal, economic, and social implications of the transfer for the employees
- The measures that are expected to be taken in relation to the employees, or if none, that fact
- The measures that the transferee expects to take in relation to the employees, or if none, that fact
- Information on the use of agency workers.

OxPE will seek to share information as soon as possible.

### **Duty to Consult**

OxPE, whether acting as the transferor or transferee, also has a duty to consult appropriate representatives regarding any measures it envisages taking because of the transfer itself, in relation to any affected employees. OxPE must have an ETO reason for any measures proposed or the measure must not be connected to the transfer. OxPE seeks to allow sufficient time for meaningful consultation ahead of the transfer taking place. Determining which employees transfer TUPE generally only transfers employees who are:

- Employed at the point of transfer and
- Assigned to the service / economic entity that is transferring.

Where only part of an undertaking is transferring, only those employees assigned to that part transfer.

### **Disclosure of Staff Information**

Due diligence is used by the transferee to investigate and evaluate potential costs in relation to employees transferring. As employees transfer on their existing terms and conditions of employment with their service preserved, this has significant cost implications. There is no statutory minimum information which must be shared at this stage.

Information is anonymous and must comply with TUPE Policy data protection legislation. Due diligence information is often shared as part of a tendering process.

### **Employee Liability Information**

The transferor is obliged to provide full and accurate information about each employee who is to be transferred and of their associated rights and obligations. The information must include:

- The identity and age of the employees
- Details as contained within the employee's Statement of Particulars
- Any disciplinary proceedings taken against the employees within the previous two years
- Any grievance proceedings taken by the employees within the previous two years
- Information of any court or tribunal case, claims or actions brought by the employees within the previous two years
- Information of any court or tribunal claims that the transferor has reasonable grounds to believe that the employees may bring against the transferee (this is a matter of judgement and will depend on the facts)
- Information on any collective agreement which will continue post transfer.

The transferor must provide information in writing no later than 28 calendar days before the transfer date.

### **Post Transfer**

#### **Where OxPE is the transferee:**

The TUPE regulations and the protection they offer continue to apply post transfer. OxPE inherits the contracts of employment of the transferring employees, including their terms and conditions. There may come a time where OxPE, in relation to TUPE transferred employees, may need to:

- Make dismissals and redundancies
- Vary terms and conditions of employment; OxPE can make changes to employment terms where the sole or principal reason is either:
  - A reason unconnected with the transfer
  - A reason connected with the transfer which is an ETO reason entailing changes on the workforce.

### **Pay Awards**

OxPE is not bound by a pay increase that is negotiated by the transferor, after the transfer has taken place. Neither are TUPE transferred employees entitled to any OxPE pay award, because they remain on different terms and conditions to those receiving the award. However, the OxPE may take a pragmatic approach where employees transferred on lower salaries compared to employees of OxPE.

### **Collective Agreements**

OxPE inherits collective agreements for those employees who have transferred. A subsequent change to a collective agreement made between the transferor and employee or even a trade union does not usually have to be adopted by OxPE. The exception to this is where a legislative change made after a TUPE transfer has an impact on a collective agreement. OxPE is bound to recognise and implement this change

Terms derived from collective agreements can be renegotiated one year after transfer, provided that overall, the change is no less favourable for the TUPE transferred employees.

### **Policies and Procedures**

Where a policy or procedure is part of the employee's terms and conditions, it transfers.

### **Union Recognition**

Where an undertaking that has transferred to OxPE maintains a distinct identity from the rest of OxPE's business, any trade union recognised by the transferor must be recognised by OxPE, to the same extent and for the same purpose. Where a distinct identity is not maintained, the recognition agreement may no longer apply.



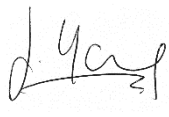
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### **Employment Checks and Right to Work in the UK**

Evidence of all TUPE transferred employees' right to work in the UK must be provided to OxPE as part of the employee liability information and this information must be reviewed by OxPE. The passport and visa documentation for any employee who is not a UK or European national must be checked by OxPE to ensure the visa is still valid. OxPE conducts a criminal record check for any employee and a DBS enhanced check when transferring into OxPE where relevant for their role. This is carried out immediately upon transfer and regardless of whether details of a previous check have been provided.

N.B. ETO reason: is an acronym which stands for economic, technical, or organisational reason. The ETO reason must also include changes in numbers or functions of employees, although it does not need to entail changes to the whole of the workforce.

Signed: 

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