

On **31 January 2014** the amendments to the Transfer of Undertakings (Protection of Employment) Regulations 2006 will come into force.

Now that the service provision change rules are here to stay, employers do not have much to fear from these amendments – in practice it will pretty much be business as usual.

The five key changes are:

1 Employee Liability Information: Under TUPE transferors are required to notify transferees of certain information about the transferring employees before the relevant TUPE transfer. The deadline for providing this information will change from 14 to 28 days before the transfer. This change should assist transferees, especially those in service provision change scenarios where it can be difficult to obtain such information promptly.

2 Pre-transfer redundancy consultation: Transferees which are proposing to make collective redundancies will be allowed (but not obliged) to consult about the proposed dismissals before the TUPE transfer takes place, provided certain conditions are fulfilled. The Trade Union and Labour Relations (Consolidation) Act 1992 will be amended to make it clear that consultation which begins pre-transfer can count for the purposes of complying with the collective redundancy rules, provided that the transferor and transferee can agree that access and where the transferee has actually carried out meaningful consultation.

3 Restrictions on varying contracts of employment: TUPE contains restrictions on making changes to terms and conditions of employment. The Government has tweaked the wording to try and give employers more flexibility to make changes in a TUPE context, but the amendments are unlikely to make a significant difference in practice.

The amended Regulations now state that a variation will be void if the sole or principal reason for the variation is the transfer. There is nothing, however, to stop employers from making variations if: (i) the sole or principal reason for the change is an economic, technical or organisational reason (a so-called “ETO reason”), entailing changes in the workforce, provided that the employer and employee agree that variation; or (ii) the terms of the contract permit the employer to make such a variation.

Under the amended Regulations, there will also be greater scope to amend terms and conditions that are derived from collective agreements, provided that the change takes place at least one year after the transfer and the new terms are no less favourable overall.

4 Dismissals: The Government has also tweaked the wording governing the fairness of dismissals in a TUPE context, to mirror the changes it is making to the restrictions on varying contracts of employment. Going forward, a dismissal will be automatically unfair if the sole or principal reason for the dismissal is the transfer. This will not be the case if the dismissal takes place for an ETO reason entailing changes in the workforce, e.g. redundancy.

The amended Regulations also make it clear that a change in location of the workplace is within the meaning of “changes in the workforce” and can therefore be classified as an ETO reason for dismissal. This should give greater comfort to transferees, especially in outsourcing scenarios where it is common for the transferee to be based at a different location.

5 Collective agreements: Where a transferring contract of employment incorporates provisions of collective agreements then any rights in relation to such collective agreements which are agreed after the transfer date will not transfer if the transferee is not a party to the collective bargaining for them. This change reflects recent European case law which made it clear that only collective agreements in force at the time of the transfer should bind a transferee.

The amended Regulations also make it clear that for there to be a “service provision change”, the activities carried out after the change must be fundamentally the same as the activities carried out before the change. This amendment reflects recent case law.

Most of the changes will apply to TUPE transfers which take place **on or after 31 January 2014**, but note that the amendments to the Employee Liability Information provisions will apply to transfers which take place on or after 1 May 2014.

The Government has also published new [guidance](#) to accompany the amended Regulations.

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