

**EFFECTIVENESS OF TRANSFER
OF UNDERTAKINGS (PROTECTION
OF EMPLOYMENT) REGULATIONS
2006:**

Government response to call for
evidence

SEPTEMBER 2012

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GOVERNMENT RESPONSE TO CALL FOR EVIDENCE: Effectiveness of Transfer of Undertakings (Protection of Employment) Regulations 2006

MINISTERIAL FOREWORD

**By Jo Swinson MP, Minister for
Employment Relations and Consumer Affairs**



In November last year the Government called for evidence on the effectiveness of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

The call for evidence and this interim Government response are further steps in the Parliament-long Employment Law Review, launched in May 2010. The Employment Law Review is a wide-ranging examination of legislation that affects the functioning and flexibility of the labour market. The Review seeks to reduce unnecessary burdens on business, whilst protecting fairness to employees, and provide a framework which supports a competitive environment and economic growth. Our reforms and proposals are designed to make sure that the employer and employee relationship works effectively for all parties, and to give business greater confidence to take on staff.

We are making good progress on our employment law reforms, with recent changes to streamline the employment tribunals system, including increasing the qualifying period for unfair dismissal from one to two years, and the current consultation on collective redundancy rules. We are also taking forward a number of employment law changes through the Enterprise and Regulatory Reform Bill, which we believe will make a real and positive difference to how difficult working relationships are resolved.

TUPE was added to the Employment Law Review in 2011. The work we are doing on TUPE demonstrates further that we are taking seriously the comments we receive on the difficulties businesses experience as a result of these rules, and that we will not shy away from dealing with tough issues. I am very grateful for all the extremely useful comments and contributions we have received. There will now be a period of policy development and stakeholder engagement, following which the Government will issue a consultation document focusing on its proposals for amendments to the TUPE Regulations.



Jo Swinson
Minister for Employment Relations, Consumer and Postal Affairs

EXECUTIVE SUMMARY

Commencing in November 2011 and ending on 31 January 2012, the Government conducted a call for evidence on the effectiveness of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE or “the Regulations”). The Department for Employment and Learning carried out the call for evidence in Northern Ireland, where employment law is a devolved matter. Information from respondents has indicated that there is scope for the Regulations to be improved and for better guidance.

The responses to the call for evidence broadly reflect the following common concerns from business and business organisations that:

- Employee liability information should be provided earlier than 14 days before transfer;
- There is no provision for the post-transfer harmonisation of terms and conditions of employment with existing employees;
- The Regulations gold plate the Acquired Rights Directive by including service provision changes in the scope;
- Pensions are a concern in transfer situations for various reasons (for example, there is uncertainty as to how TUPE applies to occupational pensions and some respondents would welcome guidance on the benefits that do transfer under TUPE);
- The Regulations do not specify which insolvency proceedings (where the transferor is subject to them) give rise to regulations 4 and 7 of TUPE applying and which do not;
- The approach to economic, technical or organisational (ETO) reasons entailing changes in the workforce needs attention. (It is treated as unfair dismissal to dismiss an employee if the sole or principal reason for the dismissal is either the transfer itself, or it is a reason connected with it which is not an ETO reason entailing changes in the workforce and similarly, variations of contract for such reasons are void). Some respondents say guidance would help as there is no statutory definition of the phrase, and instead there is a list of what is likely to be included as an ETO reason, and how entailing changes in the workplace has been interpreted by the courts. Others find the rules themselves (as interpreted by the courts) unduly restrictive. For example, some consider the meaning of “entailing changes to the workforce” (which is restricted to changes in the numbers employed or changes in the functions performed by employees) too restrictive and that it causes uncertainty.

However, for almost all these issues there are counter arguments against change, and in some instances the degree to which they are problematic is unclear, or the way they might be tackled is not simple. It will be appreciated that the room for any amendments to TUPE is inevitably limited by the fact that they implement the Acquired Rights Directive. While mentioning a

number of points for improvement, the Trade Unions are generally content with the Regulations as they improve clarity and transparency. There will now be a period of policy development and stakeholder engagement during which the Government and the Department for Employment and Learning in Northern Ireland, will examine the issues respondents have raised, consulting in due course on proposals for amendments. In other instances improving the guidance or other actions may suffice.

INTRODUCTION

Legislative Framework

Regulations on the transfer of undertakings were originally introduced in 1981 in order to implement the 1977 EC Acquired Rights Directive (sometimes known as the Business Transfers Directive). The Directive was revised in 1998, and a consolidated version was adopted in 2001. The 1981 Regulations were replaced in 2006 by the current Regulations¹, which made a number of changes to the position under the 1981 Regulations. They sought to provide greater certainty over whether or not they applied to particular situations, in particular, by extending the scope to most service provision changes (contracting out, re-tendering etc).

Subject to certain qualifying conditions the Regulations apply:

- (a) when a business or undertaking, or part of one, is transferred to a new employer; or
- (b) when a 'service provision change' takes place (for example, where a contractor takes on a contract to provide a service for a client from another contractor).

These two circumstances are jointly categorised as 'relevant transfers'.

Broadly speaking, the effect of the Regulations is to preserve the continuity of employment and terms and conditions of those employees who are transferred to a new employer when a relevant transfer takes place. This means that employees employed by the previous employer (the 'transferor') immediately before the transfer takes effect automatically become employees of the new employer (the 'transferee') on the same terms and conditions (except for certain occupational pensions rights). It is as if their contracts of employment had originally been made with the transferee employer.

There is also protection for employees against variations to their terms and conditions where the reason for the variation is related to the transfer. However, the Regulations provide some limited opportunity for the transferee or transferor to vary, with the agreement of the employees concerned, the terms and conditions of employment contracts for a range of stipulated reasons connected with the transfer.

The Regulations contain specific provisions to protect employees from dismissal before or after a relevant transfer.

Representatives of affected employees have a right to be informed about a prospective transfer. They must also be consulted about any measures which

¹ The Transfer of Undertakings (Protection of Employment) Regulations 2006, apply on a UK-wide basis, with the exception of the Service Provision Change elements, which apply in Northern Ireland via the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006.

the transferor or transferee employer envisages taking concerning the affected employees.

The Regulations also place a duty on the transferor employer to provide information about the transferring workforce to the new employer before the transfer occurs.

The Regulations make specific provision for cases where the transferor employer is insolvent by increasing, for example, the ability of the parties in such difficult situations to vary the contracts of employment, thereby ensuring that jobs can be preserved because a relevant transfer can go ahead. In some insolvencies the main provisions of TUPE do not apply at all (i.e. staff do not automatically transfer, and the protection against unfair dismissal does not apply).

The Regulations can apply regardless of the size of the transferred businesses: so the Regulations equally apply to the transfer of a large business with thousands of employees or a very small one (such as a shop, pub or garage). The Regulations also apply equally to public or private sector undertakings engaged in economic activities – and whether or not the business operates for gain.

An evolving working environment

The working environment is constantly evolving. Business has become more global and markets have become more competitive as a result, requiring rapid adaptation in response. The current economic difficulty has quickened the pace of change. The UK labour market has become more flexible. There are 29 million people employed in the UK and millions of movements each year between jobs and between employment, unemployment and inactivity. The legislative balance has also shifted so that there is greater emphasis on individual rights than collective employment rights. It is important that regulation is kept up to date, so as to reflect the dynamic nature of our labour market and be fit for purpose.

THE CALL FOR EVIDENCE

TUPE was included in the Employment Law Review, because the Government was keen to take stock and gauge whether the 2006 revisions had achieved their goal of providing greater certainty over whether or not the Regulations applied in certain situations. Added to which, some business groups believe that the Regulations gold plate the Acquired Rights Directive by going beyond its requirements and are overly bureaucratic. In particular, it has been suggested by some respondents that:

- The Regulations are far too complex and it is difficult to be certain when they apply;
- The Regulations' service provision changes in the context of professional services should be reviewed; and

- A large number of respondents would like further guidance with regard to insolvencies.

In light of this, the Government and the Department for Employment and Learning in Northern Ireland published a call for evidence in November 2011 which sought evidence on the effectiveness of the TUPE and how it might be improved, if at all. The call for evidence consisted of a published document seeking respondents' views on a series of questions listed in the Annex.

175 responses were received to the questions posed in the document. The responses were submitted by:

- 32 Business representative organisations/trade bodies
 - 1 Central Government
- 15 Charities or social enterprises
- 26 Individuals
- 32 Large businesses (over 250 staff)
- 22 Legal representatives
 - 7 Local Government organisations
 - 3 Medium businesses (50 to 250 staff)
 - 0 Micro businesses (up to 9 staff)
 - 2 Small businesses (10 to 49 staff)
- 19 Trade unions or staff associations
- 16 Other respondents

Clarity and transparency

Respondents generally feel that the 2006 Regulations have improved clarity and transparency but that further improvements can be made. Nearly 20% of respondents (including some key business representative groups and Legal representatives) indicated that the current requirement to provide Employment Liability Information (ELI) at least 14 days before the transfer is insufficient.

Some respondents have commented that public sector transfers can be problematic. Collective agreements can be very complex and sometimes there are many historic documents involved. Provision of information from public sector organisations can be poor, with some failing to provide material which public sector guidance requires. One call was for commissioners to have the power to compel existing providers to provide full and accurate information concerning liabilities. Conversely, other respondents believe that transparency obligations are generally handled better in the public sector than the private sector. The Cabinet Office, BIS and the Department for Employment and Learning in Northern Ireland will examine this area further with a view to determining whether action (e.g. guidance) is needed.

Key made points in responses

- Further guidance is needed in relation to service provision changes. The aspects of service provision changes which cause confusion are where there is a fragmentation of services, deciding whether employees are assigned to the transferring group and knowing which activities must transfer.
- Further guidance is needed on the application of TUPE in cases of insolvency.
- The current requirement to provide ELI at least 14 days before the transfer should be increased, as it is felt that is too close to the transfer and can make transfers less transparent. ELI should also be provided with sufficient detail to aid transparency.
- Further guidance is needed on what changes to contract are due to the transfer itself or connected with it and what constitutes an “economic, technical or organisational reason (ETO) entailing changes in the workforce” justification to a change in contract.
- Further guidance is needed on public sector pension arrangements.

Service Provision Changes

Approximately 38% of respondents thought that the inclusion of service provision changes within the 2006 Regulations provided benefits in terms of increased transparency and reduced burdens on business. Trade Union respondents were particularly content. However many respondents have asked for further guidance.

Key points made in responses

- There is general agreement that more transfers now fall within TUPE than hitherto, but attitudes to this vary. The Trade Unions said their members were broadly content, but some business representative groups are unhappy about the extra business costs, caused by the larger number of transactions coming under TUPE. This can be a particular burden for SMEs, who may have to seek external legal or HR expertise.
- Concerns expressed by respondents include:
 - Uncertainty about when employees are ‘assigned’ to the group being transferred. This can cause confusion in the professional services sector, where employees may work on several different accounts;
 - Uncertainty about whether TUPE applies when activities are redistributed to a number of contractors. Is there a point where activities are sufficiently split up and fragmented to avoid the necessity for TUPE to be applied?

- Unwillingness by some transferors (especially those in the public sector) to treat the process seriously, and even using TUPE as an excuse to discard underperforming employees;
- The continuing complexity of TUPE leads business to seek legal advice, even when it might not be strictly necessary to do so;
- There are mixed views about whether professional services should continue to be covered by the service provision changes for the purposes of TUPE. The advertising sector, in particular, argued strongly that professional services should be excluded from the definition of 'service provision'. However, many respondents thought it would be difficult to agree a watertight definition of 'professional services'.

Harmonisation of Terms and Conditions

The majority of respondents feel that provision for harmonisation of terms and conditions is needed, as they feel that - post transfer - the current Regulations create a two tier system and cause an administrative and cost burden for employers. This response is generally typical of private companies, whilst trade unions tend to disagree.

Key points made in responses

- Having an arrangement whereby changes made after a defined period should not be viewed as changes "by reason of transfer" may help with allowing harmonisation. However, some respondents consider that this would breach the Directive.
- Some respondents feel that harmonisation could be achieved by agreeing with employees a renegotiation of their contract provided that, overall, the resulting contract was no less favourable than at the point of transfer (as long as both parties agree). However, they noted that a clear definition of "less favourable" would be required.
- There was much comment about whether a 'static' or 'dynamic' approach to the observance of terms and conditions derived from collective agreements, should be taken. The ongoing litigation in *Alemo-Herron v Parkwood Leisure*, is concerned with precisely this issue. In this case, the Supreme Court has referred various questions related to the issue to the Court of Justice of the European Union (CJEU).

Insolvency and Liabilities

Many respondents wanted to see greater clarification of how TUPE applies in insolvency situations, but there were mixed views about whether there should be amendments to TUPE or more guidance on the issue. However, Trade Union respondents were generally content with the current Regulations in this respect.

Some respondents mentioned the case *Spaceright Europe Limited v (1) Baillavoine (2) Secretary of State Business Innovation and Skills* (which is now under appeal to the Supreme Court). This case concerns dismissals by the administrator of a company which has gone into administration and the circumstances in which they may be automatically unfair under regulation 7 of TUPE in the event of a subsequent transfer of the undertaking or part of it.

A number of respondents also flagged the relevance of the *Key2Law (Surrey) LLP v De' Antiquis* case, which is now also under appeal to the Supreme Court. This raises a point of law regarding how TUPE applies to transfers of an undertaking from a transferor in administration, to a new solvent employer. Currently, in all administration transfer situations, employees of the part of the business which is transferring are entitled to protection of their employment rights under TUPE. This means that they usually automatically transfer to the new employer and retain most (pensions generally excluded) of their employment rights/conditions. The new employer takes on certain employment-related liabilities of the old employer, including some of the outstanding debts owing to employees. The protection afforded is because administration is regarded as falling under the definition in regulation 8(6) which covers insolvency proceedings (under the supervision of an insolvency practitioner) which have been opened not with a view to the liquidation of the employer's assets

Some respondents underlined that the decision in *Key2Law (Surrey) LLP v De' Antiquis* (of the EAT and Court of Appeal) (that the purpose of administration is to try and rescue a business and as such all administration transfers will fall under the criteria in regulation 8(6)) had satisfactorily resolved any uncertainty and made clarification of the application of TUPE to insolvency situations unnecessary. However, others argued that more detailed guidance reflecting this would be helpful.

The 2006 changes appear to have generally resulted in greater awareness among transferees of potential liabilities, but, again, there is concern among some respondents that some transferors are not facing their responsibilities for unresolved HR disputes. There are strong views both for and against the concept of 'joint and several liability' of transferor and transferee in respect of pre-transfer obligations, which applies in some other EU member States.

Key points made in responses

The Regulations:

- May discourage buyers from rescuing failing businesses;
- Are generally favoured by Trade Unions as the best way of safeguarding employee rights;
- Provide extra certainty about what liability transfers from transferor to transferee
- Do not motivate the transferor to take responsibility for liabilities which arose while an employee worked for them;

Guidance

55% of respondents feel that overall the 2006 changes provide greater clarity and transparency on the application of TUPE. Approximately 32% of respondents feel that the provision on “Economic, Technical or Organisational reason entailing changes in the workforce” is not sufficiently clear and that additional guidance would help. Some feel that, in particular, the second part (“entailing changes in the workforce”), especially in cases which involve geographical changes requires amendment. One of the major business representative bodies argues that further clarity is needed as employers do not make full use of this part of the Regulations, due to the fear that it will result in disagreements and legal costs. Others felt that other areas of the Regulations would benefit from additional guidance or clarification.

Key Points made in responses

- Examples/case studies could be included to aid understanding of ETO reasons;
- There should be further guidance on how the Regulations apply to pensions;
- A duty to hold a consultation on the transfer between trade unions and both the transferor and transferee, prior to the transfer should be included;
- A concern of some respondents are cases of post transfer changes in location of employment and whether such a change would give the transferee an economic technical or organisational reason entailing changes in the workforce
- Further guidance is needed on service provision changes, in particular where there is fragmentation of services;
- Further guidance is needed on the application of TUPE in cases of insolvency.

Implementation of TUPE in other EU Member States

We asked respondents for their experiences of the implementation of the Acquired Rights Directive (ARD) in other EU Member States, and what the UK could learn from this. The most detailed responses came from international employment lawyers. There were also responses from Trade Unions and some global employers.

Key points made in responses

- There are many detailed differences in the implementation of ARD across Europe, which can lead to complications in cross-border negotiations, e.g. the varying interpretations of what constitutes a ‘business transfer’;

- Many respondents stated that other Member States allow greater flexibility than the UK in allowing transferees and employees to agree revised employment terms and conditions post-transfer;
- Some respondents said that some Member States take a more flexible attitude to pre-transfer employee liabilities. In the UK, these liabilities normally transfer automatically to the transferee. In some other Member States a system of 'joint and several liability' is applied.
- The Trade Unions point to a variety of different ways the ARD has been implemented across the EU and note that these differences often reflect the existence of sectoral and national collective agreements in many Member States. The UK's industrial relations systems operate on a rather different basis however, and at least one respondent commented that it is therefore not always helpful to draw on experience from Member States

Interaction of TUPE and other areas of Employment Law

We asked respondents for examples of problems from the interaction of TUPE with other areas of employment law. We also asked specifically about the interaction of TUPE and Collective Redundancies legislation. This was also asked about in the Collective Redundancies Call for Evidence.

The Government launched a consultation on proposed changes to the GB Collective redundancy rules in June 2012. The consultation document contained a summary of the responses to the collective redundancies call for evidence. It can be found on the BIS website at:

<http://www.bis.gov.uk/Consultations/collective-redundancies-consultation-on-changes-to-the-rules?cat=open>

Key Points made in responses

The major concerns were:

- Agency Worker Regulations – e.g. the requirement to provide employee representatives with details of all agency workers employed by the transferor, not just those working on the activities to be transferred;
- Equality Act/Equal Pay – the protection of pay after a TUPE transfer may conflict with Equal Pay legislation requirements;
- Data Protection – the requirement to provide information about individuals involved in a transfer may conflict with the requirements to protect personal information;
- Other issues include pensions, whistleblowers, immigration, and compromise agreements.

On Collective Redundancy, the major issue is the way that the differing consultation requirements interact. At present, employers do not feel that they can fulfil their collective redundancy consultation obligations before the

transfer. They therefore delay consultation until after the transfer has taken place, reducing the opportunity for meaningful consultation on redundancies. The Trade Union side would like to see a rule where redundancy consultation has to start with the transferee before the transfer takes place. Many respondents would like employers to be able to run TUPE and Collective Redundancy consultations at the same time. A number of respondents would like pre-transfer redundancy consultation to be permitted; some Trade Union respondents would like it to be mandatory.

Collective redundancy legislation in Northern Ireland, which is governed by the Employment Rights (Northern Ireland) Order 1996, is currently being examined by the Department for Employment and Learning as part of its separate Employment Law Review.

Pensions

Although the call for evidence was on TUPE (which does not generally cover pensions), many respondents took the opportunity to voice concerns about the way pensions are treated where there is a TUPE transfer. Occupational pensions do not generally transfer under TUPE (though some aspects of them do), but there are requirements regarding pension provision following a TUPE transfer under the Pensions Act 2004 and Regulations under it. This legislation is being reviewed under the Red Tape Challenge and was in the spotlight in April. 'Fair Deal' which was introduced in 1999, provides protection for public sector workers' pension provision when transferring out of the public sector. The rules around Fair Deal were set out in Treasury guidance in 1999, and were updated in 2004.

Key Points made in responses

- Fair Deal needs to be considered. Some respondents refer to the complexity caused by public sector to private sector transfers, where “broadly comparable” pension rights are preserved under Fair Deal²;
- Final salary pension liabilities are a burden;
- Pension costs should be excluded for the purposes of assessing public sector bids, ensuring a level playing field;
- Underlining the uncertainty surrounding the protection of occupational pension rights with regard to TUPE and the importance of pensions in the due diligence process, some respondents seek greater clarity through guidance, e.g. setting out specific examples of which pension rights are covered by TUPE and those which are not and making clear what the rules are on future changes.

OTHER

Although respondents tend to feel that the transparency of the current Regulations should be maintained and that some areas, such as service provision changes should be kept, the majority believe that updating the Regulations could be valuable.

Key Points made in responses

- In general, respondents are content with the current application of TUPE concerning the application of TUPE to different managerial levels of employees within the same organisation;
- Gold plating should be removed;
- The requirement to elect an employee representative should be removed when the affected group is very small;
- The ability for employees to opt out of TUPE should be considered.

NEXT STEPS

TUPE was included in the GB Employment Law Review following criticisms of the impact it has on the labour market. The call for evidence was designed to obtain views from the range of people who are affected by TUPE. It is clear that there are several areas which should be examined further with a view to

² It should be noted that the Government has reviewed the Fair Deal policy and agreed to maintain the overall approach, but deliver this by offering access to public service pension schemes for transferring staff. When implemented, this means that all staff whose employment is compulsorily transferred from the public service under TUPE, including subsequent TUPE transfers, to independent providers of public services will retain membership of their current employer’s pension arrangements. These arrangements will replace the current broad comparability and bulk transfer approach under Fair Deal, which will then no longer apply. The Government will bring forward detailed proposals for implementing this in the autumn.

improving the Regulations' operation in practice, whether by amendments to TUPE or through improved guidance. Among the points the Government will consult on in due course are:

- whether the 2006 service provision changes should be retained or repealed;
- whether, generally, liability should pass entirely to the transferee as now, or be held jointly and severally by transferee and transferor;
- whether employee liability information should be provided earlier to the transferee;
- whether an amendment to TUPE would be possible to ensure that a change of location of the workplace following a transfer does not necessarily lead to automatic unfair dismissal, ie, it is capable of constituting an Economic, Technical or Organisational reason entailing changes in the workforce.

TUPE is relevant to a number of other Government Departments' policies; for example, the Cabinet Office is analysing the impact of TUPE on staff spinning out from the public sector to form public service mutuals, and has fed in their emerging conclusions to BIS. Further information on how emerging public service mutuals can handle TUPE liabilities effectively when spinning out will be made available on the Mutuals Information Service website (<http://mutuals.cabinetoffice.gov.uk/>) in due course. The work of the Department of Work and Pensions (DWP) on pensions is also relevant. While the protection of occupational pension rights is dealt with under separate legislation - the Pensions Act 2004 - and remains outside the scope of this review, BIS has brought to DWP's attention the comments which have been received in response to the call for evidence and we will work together to ensure joined up policy outcomes.

As indicated above, the Department for Employment and Learning also has a major interest and involvement from the Northern Ireland perspective.

As is widely recognised, TUPE is highly complex and the scope for change is limited by the requirements of the parent Directive. The Government will look closely at what can be done.

The call for evidence has helped BIS and the Department for Employment and Learning to establish the main issues with regard to TUPE, and has helped identify areas where further work, including policy development, is merited.

There will now be a period of policy design, during which the Government will look at the issues respondents have raised and seek to determine where action might be desirable, engaging with key stakeholders (including employer groups, the Unions and legal profession representative groups) to test its thinking. As started above, we will, in due course, bring forward a consultation to amend TUPE in some respects, while in other instances improving the guidance might suffice instead.

ANNEX

Questions posed in the (November 2011) Call for evidence regarding the Effectiveness of Transfer of Undertakings (Protection of Employment) Regulations 2006

Clarity and Transparency of 2006 Regulations Overall

Question 1: Have the 2006 amendments provided greater clarity and transparency on application of TUPE rules?

Question 2: Do the 2006 Regulations provide enough transparency around employment rights and obligations being transferred to ensure a smooth transition? If not, how could this be improved?

Question 3: Do employers and commissioners generally comply with the transparency obligations under the 2006 Regulations? If not, are there particular problems around timing and/or accuracy of the information they provide; and are problems particularly noticeable in respect to transfers from the public or private sector?

Service Provision Changes

Question 4: Does inclusion of service provision changes within the 2006 Regulations provide benefits in terms of increased transparency and reduced burdens on business? If yes what are these benefits? If no, what additional burdens have resulted from their inclusion?

Question 5: Have the 2006 amendments led to less need to take legal advice prior to tendering or bidding for contracts?

Question 6: Have the 2006 amendments led to fewer tribunals resulting from service transfers?

Question 7: Is the inclusion of service provision changes in principle helpful, but there are alternative models for their inclusion that would lead to improvements? What might these look like?

Question 8: Should professional services be included in the definition of service provision and be covered by the Regulations?

Question 9: Would the exclusion of professional services lead to uncertainty over whether TUPE did or did not apply, requiring businesses to seek further legal advice?

Harmonisation of Terms and Conditions

Question 10: Is lack of provision for post-transfer harmonisation a significant burden? How might the Regulations be adjusted to enable this whilst remaining in line with the Directive?

Question 11: Would it be helpful to have a provision limiting the future observance of terms and conditions derived from collective agreements?

Question 12: Would it be helpful to agree with employees a renegotiation of their contract provided that overall the resulting contract was no less favourable than at the point of transfer?

Insolvency and Liabilities

Question 13: Should more be done to clarify the application of TUPE in insolvency situations? If so, would this require changes to the legislation, for example, by setting out which insolvency procedures fall under which provisions, or would more detailed guidance than currently provided be sufficient?

Question 14: Have the 2006 amendments meant that transferees (i.e. businesses taking over the contract) have a greater awareness of potential liabilities, and has this helped to reduce transaction costs and risks? If not, how could this be improved?

Question 15: Should liability for pre-transfer obligations be transferred entirely to the transferee as is the case currently in the Regulations ie should the business taking on the contract take on all the liabilities of the business or part of the business they are taking over? Or should both parties be jointly liable, as permitted by the Directive?

Guidance

Question 16: Is the provision on 'Economic, Technical or Organisational reason entailing changes in the workforce' sufficiently clear? Would additional guidance be helpful and if so in what form?

Question 17: Are there other areas of TUPE that would benefit from additional guidance/clarification?

Implementation of TUPE in other EU Member States

Question 18: Do you have experience of the implementation of the Acquired Rights Directive (TUPE) in other EU Member States? If so, are there any problems you have encountered, or conversely are there lessons that the UK could learn, from their implementation of the Directive?

TUPE and other areas of employment law

Question 19: Have you experienced problems from the interaction of TUPE with other areas of employment law?

Question 20: The Government is also calling for evidence on collective redundancy consultation rules. Please identify any issues that you have in terms of how the TUPE Regulations and the rules on collective redundancy consultation fit together.

Other

Question 21: Do you have particular concerns around the application of TUPE to different managerial levels of employees within the same organisation? If so, what are these and how would you like to see them addressed, bearing in mind the requirements of the Directive?

Question 22: Have developments in case law since 2006 raised issues that mean the 2006 Regulations would benefit from updating?

Question 23: Are there other areas of the Regulations that would benefit from change/review? Conversely are there areas that it is important to keep?

Question 24: Are there any other issues you wish to raise?

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