



The Bar Council

Make Work Pay: Call for evidence on Transfer of Undertakings (Protection of Employment) Regulations

July 2026

About us

The Bar Council is the voice of the barrister profession in England and Wales. Our 18,000+ members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to

- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales.

We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Introduction

This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Department for Business and Trade consultation on Make Work Pay: Call for Evidence on Transfer of Undertakings (Protection of Employment) Regulations.¹

References

¹ [Consultation](#)

Questions for consideration

Q1. To what extent do you agree or disagree that the current TUPE regulations strike the right balance between supporting employer needs and protecting employees' employment rights? Please explain your answer.

- agree

In general, the concept of TUPE is well established within UK employment law. Employers are aware of its existence and whilst there are examples to the contrary, employers are aware that they are subject to legal obligations. On the whole, employers attempt to get the basics of TUPE right.

Q2. To what extent do you agree or disagree that the current TUPE regulations sufficiently protect employees' employment rights when a transfer takes place? Please explain your answer.

- agree

TUPE offers significant protections to employees both prior to and following a TUPE transfer. The positive duty to inform and consult, the protection from dismissal and the fact that any variation which is not for an ETO is void amounts to significant protections.

Q3. To what extent do you agree or disagree that the current TUPE consultation requirements are sufficient to ensure employees are informed and consulted with when a transfer takes place? Please explain your answer.

- neutral

It is easier to evidence whether or not there has been compliance with the duty to inform because TUPE makes clear as to what an employee should be informed about.

Consultation is more complex. Consultation is a genuine two-way exchange of views. The fact of holding a meeting is not sufficient. At the same time, because consultation is two-way, both the employer and the employee have to be engaging in good faith. Accurate minutes help. In order to determine whether there has been genuine consultation, this is a question for the Tribunal that will turn on the nuance and the detail of the evidence. From our experience, we are not convinced that there is a sufficient evidence base to say that genuine consultation regularly takes place.

Q4. To what extent do you agree or disagree that collective agreements are sufficiently protected under a TUPE transfer? Please explain your answer.

- agree

The vast majority of collective agreements will involve a trade union. That trade union is in a position to enforce its rights and to either take informal or formal action about issues that arise out of it, including supporting Tribunal proceedings or bringing Tribunal proceedings for failing to inform and consult.

Under the current rules, pension rights under a personal pension which the old employer was contractually obliged to contribute to will automatically transfer to the new employer. Benefits in occupational pension schemes (sometimes known as workplace pensions), that relate to old age, invalidity, or survivors, are exempt from TUPE, so they do not automatically transfer from the old employer to the new employer.

Q5. To what extent do you agree or disagree that employee pension rights are sufficiently protected under a TUPE transfer? Please explain your answer.

- **disagree**

The question identifies the distinction between what is and what is not protected. It is a question of policy and we do not comment on the policy itself. Rather, we simply note that as drafted, it is the intention of the TUPE Regulations to provide only partial protections to workplace pensions. Depending on your perspective one of the advantages/disadvantages of TUPE is the ability to reduce pension benefits.

Determining whether a 'relevant transfer' has taken place

TUPE applies when a relevant transfer has taken place. The current regulations define this as a transfer of an economic entity which retains its identity, or when there is a service provision change.

Q6. To what extent do you believe that it is clear when a 'relevant transfer' has taken place and TUPE regulations apply? Please explain your answer.

- mostly clear: it could be improved

We consider that in the majority of cases, it is clear whether or not a TUPE transfer has occurred.

We would suggest that there are two scenarios in which the position could be clearer.

The first is where there is a share transfer. As a matter of law, a share transfer is highly unlikely to amount to a TUPE transfer. However, we have seen cases in which a share transfer and all the change that goes with it is sometimes misunderstood as a TUPE transfer. We would suggest that if it is to remain the policy intention that share transfers do not amount to TUPE transfers, then consideration may wish to be given to at least employees being informed that there has been a share transfer and that TUPE does not apply. We have seen employees get into disputes with employers following a share transfer, asserting that TUPE applies only to be told that it does not.

The second is in service provision cases where fragmentation occurs. The case law regarding whether a TUPE transfer has occurred and to whom is somewhat vague. It is these types of cases which can lead to multi-party litigation in the Employment Tribunal as the employee is forced to bring proceedings against multiple parties in order to then determine to whom they should have transferred. That is expensive and undesirable for the parties and the state.

Process of a TUPE transfer

Q7. If you have previously been involved in a TUPE process, in your view, what aspects of the process worked well? Please explain your answer.

Not Applicable

Q8. If you have previously been involved in a TUPE process, did you encounter any issues with the process?

Not Applicable

Q9. At which stage of the transfer process did you encounter these issues? Please select all that apply.

Not Applicable

Q10. Which, if any, of these issues did you face during a TUPE process? Please select all that apply. Please explain your answer.

Not Applicable

Q11. To what extent do you agree or disagree that the TUPE process can be challenging for employers to navigate? Please explain your answer.

- neutral

Many aspects of TUPE are straightforward to navigate. We would suggest the most challenging elements for an employer to navigate are:

- Identifying the point in time in which the duty to inform and consult is triggered.
- Dealing with ETO's
- Post transfer, identifying the full terms and conditions of transferred employees, particularly where the previous employer has not been cooperative.
- Post transfer, identifying potential liabilities or legal risk attached to transferred employees, particularly where the previous employer has not been cooperative.

Q12. In your view, how do you think the TUPE process could be made more efficient for employers?

Consideration should be given to extending employee liability information so as to include all contractual entitlements. At present, this is a somewhat grey area. This adds to the burden of the transferor, but is likely to assist the transferee.

Q13. In your view, how do you think the TUPE process could be strengthened to provide greater protections for employees' employment rights?

The two most important things that need to happen are that a) employees need to understand their ability to enforce their rights in an Employment Tribunal and b) the Tribunal system needs to be fit for purpose in order to promptly adjudicate upon those claims.

Q14. In the process of undergoing TUPE, what support, if any, did you use?

Not Applicable

Q15. How helpful do you believe the guidance (GOV.UK and Acas) currently available on TUPE is? Please explain your answer.

- neutral

The guidance is a good starting point, but TUPE can be very fact-specific and in many cases, the reader will need to take more specific advice. The Acas helpline is unlikely to be a source for anything other than the most basic of advice.

Variation of terms and conditions of employment

Q16. To what extent do you agree or disagree that the current circumstances that an employer can change the contractual terms and conditions of an employee (e.g. ETO reasons), strikes the right balance between supporting employer needs and protecting employees' employment rights? Please explain your answer.

- neutral

This can be one of the most complicated aspects of TUPE. The underlying policy is to protect the contract of employment and then to provide an exception. The exception in the form of 'ETO' is unique to TUPE as is 'entailing changes in the workforce'.

We do not comment on the balance, but do suggest that if there was a way of simplifying what amounts to an ETO, it would be worth consulting on this point further with specific proposals.

Q17. In your view, to what extent do you agree or disagree with the reasons, as outlined above, for being able to vary employment contracts (ETOs)? Please explain your answer.

- neutral

Q18. To what extent do you agree or disagree that the circumstances where employers can change the contract terms and conditions of an employee (for example using ETO exemptions), following a transfer, are sufficiently clear and specific? Please explain your answer.

- disagree

What amounts to an ETO is broadly defined within the wording of the TUPE Regulations, but the real detail is contained within case law. Whether an employer has an ETO is a subject on which it would be sensible for most employers to take specialist legal advice.

The implications of getting this wrong could be significant. Any variation which is not for an ETO is void and it follows that the employer is acting in breach of contract.

Q19. If answered strongly disagree, disagree, or other to question 18, what further guidance/clarifications do you think will be most beneficial and why? Please explain your answer.

Q20. To what extent do you agree or disagree that the overall cost of TUPE-protected

transfers is too high for businesses? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- strongly disagree
- other - Not Applicable

Q21. Please provide information on the types of costs that businesses need to consider during a TUPE-protected transfer and where in the process these costs occur.

Not Applicable

Q22. If have been through a transfer process, please provide an estimate of the total cost of the transfer for your business.

Not Applicable

Additional considerations

Q23. In your view, have the TUPE regulations resulted in any unintended consequences for individuals with a protected characteristic under the Equality Act 2010 or different socioeconomic background? Please explain your answer.

Protected characteristics under the Equality Act 2010 are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.

- yes
- no
- do not know
- other - Not Applicable

Q24. Is there anything else you would like to share your reflections on, that was not covered by the previous questions?

Not Applicable

Contact

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