TUPE



GUIDANCE

# Introduction

TUPE refers to the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 and protect employee rights in connection with the transfer of an undertaking. TUPE rules protect employees’ rights when the organisation or service they work for transfers to a new employer.

There are implications for both the employer who is making the transfer (transferor) and the new employer who is taking on the transfer (transferee).

This document provides guidance on how to manage the transfer of staff protected by TUPE, either in or out of the school. Headteachers should contact HR Advice and Support as soon as possible when there may be a potential transfer of staff in or out of the school.

If the school does not have an SLA with Payroll and Employee services, where this is referenced in this guidance, please contact your own payroll provider.

# Principles of TUPE

TUPE regulations preserve the continuity of employment and terms and conditions of employees who transfer to the new employer when a relevant transfer takes place. TUPE regulations place a duty on both the current employer (transferor) and the new employer (transferee) to inform employees and their representatives that a transfer is to take place, as well as the implications of the transfer and consult on any measures which may be taken in connection with the transfer. The transferor must also provide employee information to the transferee in advance of the transfer date.

## When does TUPE apply?

TUPE regulations apply:

* where services transfer from the school to an external contractor or organisation (e.g. school catering or cleaning)
* where services transfer in to the school from an external contractor or organisation (e.g. school catering or cleaning)
* to a subsequent transfer (e.g. where services transfer from the first external contractor to a different external contractor)
* where a school converts to an Academy
* where a school or Academy transfers to a multi academy trust (MAT)

## Who transfers to the new employer?

Anyone employed in a school/organisation or, assigned to a service or part of a service that is transferring, and who are in permanent or temporary posts at the point of transfer are included in the transfer. Apprentices and absent employees are included.

Casual/supply workers may transfer but this needs to be considered on a case by case basis.

If an employee’s contract ends before the date of transfer, then they will not transfer. Agency workers are not ordinarily employees and will not normally transfer but this needs to be discussed with the transferor or transferee.

## What transfers to the new employer?

TUPE protects the employment contract and any liabilities associated with the contract, including:

* Terms and conditions of employment, both national and local;
* Continuity of service;
* Claims arising out of acts or omissions by the transferor including liabilities arising from the contract of employment e.g. unfair dismissal, equal pay and discrimination claims;
* Collective agreements but not terms agreed after the date of the transfer unless the transferee is a participant to the collective bargaining.
* Trade union recognition.

## What are measures?

Measures refers to any action or change that the transferor or transferee proposes to make to employment arrangements because of the transfer. Employees affected by the transfer and trade unions must be informed and consulted about any proposed measures or informed that there are no measures.

Measures can include:

* a change of pay date
* a change to working patterns
* relocation
* restructure or redundancy
* different pension arrangements
* changes to roles

Any measures must be for an ETO reason (economic, technical or organisational) unless they are unrelated to the transfer i.e. the changes would have happened anyway. Measures must be identified as early as possible and discussed between the transferor and transferee.

## What happens to pensions?

Occupational pensions (e.g. the LGPS) do not transfer under TUPE but pension rights earned up to the time of a transfer are protected. The new employer must auto enrol transferring employees into a pension scheme if they are eligible. The new employer doesn’t have to continue an identical pension scheme however, the Government Actuaries Department must confirm that a new scheme is broadly comparable.

Generally, with academy conversions and transfers to MAT’s, they tend to have admitted body status for the LGPS so pensions would not be not affected.

# The TUPE process

TUPE is a complex area of law and, therefore, it is important that you contact HR Advice and Support as soon as possible to ensure that the process is managed correctly.

There is no set timescale for a TUPE consultation period as it will vary depending on circumstances but there must be enough time to allow for meaningful consultation to take place. In all cases the employee liability information must be provided to the transferee **at least** 28 days before the transfer date. In cases where there is a transfer out of staff Payroll and Employee Services collate the employee liability/due diligence information and share this with the transferee.

The TUPE transfer will need to be approved by the governing body/appropriate committee before consultation begins. There are three stages in the process – planning, consultation, implementation.

## Planning

HR Advice and Support will support headteachers with the TUPE consultation process. As soon as there is approval for the transfer the headteacher should arrange an initial meeting with HR

Advice and Support who will explain the TUPE process and subsequent timeline. Information will need to be prepared to share with trade unions and affected employees:

### Transfers out of the school

* The measures letter will be drafted by HR and the headteacher and sent to the transferee requesting written notification of any measures they propose. A template letter will be provided by HR.
* The HR Advice and Support representative will provide a list of employees and anyone assigned to a service at the school and agree with the headteacher who is affected by the transfer and identify any initial liabilities.
* Payroll and Employee Services will provide an anonymised employee schedule for trade unions.
* The HR Advice and Support representative will provide the headteacher with a list of trade union contacts.
* The headteacher will provide contact details of the transferee.
* Agree dates for joint consultation meetings with the transferee and ensure an appropriate room/venue is available.
* Payroll and Employee Services prepare the employee liability information and provide it to the transferee no later than 28 days prior to transfer. This is part of the due diligence process.
* HR Advice and Support will provide the transferee liability information in relation to e.g discipline/grievance/legal claims.
* Employees who are not transferring should be kept informed of what is happening and any impact on them.
* The headteacher will liaise with Payroll and Employee Services to obtain details of personal data verification for school to issue to employees.

### Transfers into the school

* The headteacher and the HR Advice and Support representative have an initial meeting with the transferor (current employer), wherever possible, to identify those employees and people assigned to services at the school who are eligible to transfer into the school. The information is usually anonymous at this stage.
* Any measures proposed by the school in connection with the transfer are identified and confirmed in writing to the transferor as soon as possible. (see paragraph 2.4)
* Agree dates for joint consultation meetings with the transferor and ensure an appropriate room/venue is available.
* The transferor will be responsible for writing to trade unions and affected employees to inform them of the proposed transfer and consultation process and the headteacher and HR should attend any consultation meetings.
* Existing school employees should be kept informed of what is happening and any impact on them.
* The headteacher should request the employee liability information from the transferor as early as possible. The transferor is required by law to provide this information **no later than 28 days prior to the transfer date** as part of the due diligence process. This must legally include:
* Employee identity
* Age of employees who are transferring
* Information contained in their Statement of Particulars
* Information relating to any collective agreements that apply
* Disciplinary action within the previous two years (where statutory procedure applied)
* Grievances raised by employees within the preceding two years (where statutory procedure applied)
* Any legal action taken by the employees against the school within the preceding two years and potential legal action the school has reasonable grounds to believe such action might occur
* Once the employee information is received the headteacher must send this to Payroll and Employee Services as soon as possible.

## Consultation

A TUPE notification letter for trade unions and affected employees will be provided by the transferor with details of the consultation process, reason for the transfer, date of transfer and any proposed measures. A template letter will be provided by HR. Copies of the TUPE Frequently Asked Questions should be made available to the employees by the headteacher which will be provided by HR.

The transferor will circulate the consultation information to the trade unions and affected employees which starts the formal consultation process. It is important to ensure that the consultation information is sent to absent employees. It is recommended that formal consultation lasts at least a minimum of 3 weeks.

It is recommended that representatives from both the current and new employers attend the consultation meetings with the trade unions and employees. The headteacher and Chair or Vice Chair of Governors should also attend where DCC are not the employer. The school will be supported at the meetings by HR Advice and Support.

**Trade union consultation** – it is recommended that this consultation meeting is scheduled 10 working days after the consultation letter is issued.

**Collective employee consultation** – takes place as soon as possible following the trade union meeting. Where there are small numbers it can be combined with the trade union meeting.

**Individual employee consultation** – arranged via the headteacher if requested by employees within the consultation period. Employees and trade unions can make written representations for consideration.

The meetings are an opportunity for trade unions and employees to make representations and/or ask questions about the transfer of their employment. It is also an opportunity for any proposed measures to be discussed.

Any points raised at the meetings in relation to the transfer should be noted and considered and a response provided in writing after the meeting within a reasonable timescale.

If an employee objects to the TUPE transfer they are effectively resigning from their contract of employment and the transferor and transferee should be informed.

## Implementation

### Employees transferring out

After the consultation period has ended but before the transfer date, the headteacher should write to the affected employees confirming that they will TUPE transfer, the effective transfer date and confirming any measures the transferee (new employer) intends to make. A template will be provided by HR.

The headteacher should also ensure that the Payroll and Employee Services and HR Advice and Support have sent the employee liability information to the new employer by no later than 28 days prior to the transfer date. Details in paragraph 3.1.

Where applicable, the headteacher should arrange with the new employer to hand over employee files for all employees that are transferring. It is important that GDPR requirements are complied with and it is recommended that the school’s data controller is involved. Only relevant and essential personal information is passed to the transferee and this does not need the individual’s consent. Any unnecessary or irrelevant information must be securely destroyed.

The school’s policies and procedures also need to be provided to the transferee. HR Advice and Support will ensure that all relevant terms and conditions of service and collective agreements are provided to the new employer.

The headteacher should notify Payroll and Employee Services of the transfer of the employees via SAIL.

### Employees transferring in

After the consultation period has ended but before the transfer date, the transferor (current employer) should write to the affected employees at the school to confirm that they will TUPE transfer, the effective transfer date and confirming any measures the school intends to make.

The school will provide details of the transferring employees to Payroll and Employee Services who will ensure that appropriate employment checks are in place for the transferring employees (e.g. DBS checks/right to work in the UK/visas) where appropriate.

Payroll and Employee Services are responsible for adding the transferred employees to the school’s establishment and the Resourcelink system.

The headteacher must request the personal files, documents, including contractual policies and procedures, from the transferor. These must be reviewed and any information that is out of date, unnecessary or irrelevant must be securely destroyed. The files should be stored securely and appropriately. It is recommended that the schools data controller is involved.

It is recommended the headteacher should arrange for an induction programme to take place for the transferring employees and appraisals where necessary. Headteachers should also identify any initial training needs for the new employees and organise training where required.

For advice regarding the application of this policy please contact:

HR Advice and Support hradvice@durham.gov.uk

Relevant forms or letters should be forwarded to Payroll and Employee Services:

Schools PESSchools@durham.gov.uk

Further support can be accessed by contacting:

Occupational Health occhealthadmin@durham.gov.uk

03000 268 999

Health and Safety hsteam@durham.gov.uk

Employee Assistance Programme [www.healthassuredeap.com](http://www.healthassuredeap.com)

 Username: durham Password: council

 0800 716 017

The school complies with all relevant statutory obligations. The school privacy notice provides more specific information on data collected and how it is handled, a copy of which can be accessed from the school. For more information please contact the school directly.

If you have any concerns about how your data is handled, please contact either the school Data Protection Officer (details available from the school office), or the Information Commissioner’s Office.

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