

HRP TUPE – Transfer of Undertakings – QUICK GUIDE

Please note:

This guide is intended to be an easy to follow summary of procedures and is designed to give Manager's a "feel" for the process to follow as well as giving some hints and tips for effective implementation.

Please seek guidance, if necessary, from the HR Service Centre or your HR Manager.

The following pages include:

- **A quick guide summarising the main points extracted from the HRP TUPE procedure.**
- **Information on employees to new employer**
- **FAQ's – Frequently Asked Questions.**

TUPE – WHAT IS IT?

The Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) (often referred to as 'TUPE') were introduced to implement the Acquired Rights Directive 77/187/EC. They are the main piece of legislation governing the transfer of an undertaking, or part of one, to another. The Regulations are designed to protect the rights of employees when a transfer occurs from one employer to another, enabling them to enjoy the same terms and conditions, with continuity of employment, as before.

In incorporating the Acquired Rights Directive into the law of member states, a number of anomalies arose which were addressed by a new Acquired Rights Directive 98/50/EC and various amendments to the UK TUPE regulations. The most recent significant amendments have been subject to an extremely prolonged consultation – changes affecting pensions came into effect on 6 April 2005 with further changes following in April 2006.

The transfer process helps managers follow the appropriate steps to undertake the successful transfer of employees into or out of the Council.

The Regulations protect employees' terms and conditions when a business or undertaking, or part of one, is transferred to a new employer. However any part of any agreement (whether it is a contract of employment or not) is invalid if it excludes or limits the rights granted under the Regulations.

The Regulations have the effect that:

- **Employees employed by the previous employer when the undertaking changes hands automatically become employees of the new employer on the same terms and conditions. It is as if their contracts of employment had originally been made with the new employer.**

Thus employees' continuity of employment is preserved, as are their terms and conditions of employment under their contracts of employment (except for certain occupational pension rights).

- Representatives of employees affected have a right to be informed about the transfer. They must also be consulted about any measures which the old or new employer envisages taking concerning affected employees.

COMMITMENT

- The transfer of employees should be transparent and fair.
- If a TUPE transfer applies, all terms and conditions of work and continuity of employment should be preserved. This principle applies to all employees who were employed in the entity transferred immediately before the transfer; and any employee who has been dismissed as a result of a reason connected with the transfer (such dismissal would automatically be unfair).
- Subject to a minimum of a one year qualifying period (one year's continuous service), from either a combination of "old" and "new" employer such a dismissal will be automatically unfair for a reason connected with the transfer unless it is for an 'economic, technical or organisational' (ETO) reason.
- Although TUPE does not specifically cover the issue of pensions, the Government require that local authorities follow a Cabinet Office Statement of Good Practice which requires the pension arrangements with the new employer should be the same or broadly comparable. The assessment of comparability is made by the Government's Actuary Department and a Certificate is issued. From 6th April 2005 there is a requirement that the new employer provide a pension that meets certain minimum standards. There may be circumstances in which the new employer applies to the Local Government Pension Scheme for Admitted Body Status. As this process can take a significant period of time this should be built into the timetable for the implementation of the transfer.

STEP ONE: PROPOSALS

- Identify if a TUPE situation applies, which may require taking legal advice. Managers should always discuss and take advice on any possible situations with the Directorate HR Manager at the earliest opportunity.
- Identify why the change is required, the anticipated extent of the change and the potential implications of the proposals.
- Where appropriate, seek authorisation to commence the process for change. This could be authorisation from Strategic Director, Director or, in the case of a large scale change, may be referred to CMT and/or Elected Members.

- As the transferee takes over the liability for all statutory rights, claims and liabilities arising from the contract of employment, for example: liabilities in tort, unfair dismissal and discrimination claims, it is vitally important that a comprehensive information gathering process is completed. The exception to this rule applies to criminal liabilities. See *Appendix 1* for example template of information required.

STEP TWO: CONSULTATION

- The employer of any employee who may be affected must tell their representatives:
 - That the transfer is going to take place, approximately when, and why
 - The legal, economic and social implications of the transfer for the affected employees
 - Whether the new employer envisages taking any action (reorganisation for example) in connection with the transfer which will affect the employees, and if so, what action is envisaged. The new employer must give the Council the necessary information so that we are able to meet this requirement, and the information must be provided long enough before the transfer to give adequate time for consultation
 - The pension arrangements that are going to apply.

This should be confirmed in writing to the representatives. [Click here for a sample letter](#)

- If changes are envisaged which will affect the employees, the employer must consult the representatives of the employees affected about that action. The consultation must be undertaken with a view to seeking agreement. During these consultations the employer must consider and respond to any representations made by the representatives. If the employer rejects these representations they must state the reasons.
- If there are special circumstances in which it isn't reasonably practicable for an employer to fulfil any of the information or consultation requirements, they must take such steps to meet the requirements as are reasonably practicable.
- A simultaneous direct consultation should also be carried out with staff that are affected because their duties are wholly or partially affected by the transfer, and depending on the extent of the change, meet with employees as a group or on an individual basis. Where staff are only partially involved in the work which is transferring an assessment must be made about whether or not they are to transfer to the new employer. This assessment would be based on

The employer must:

- Arrange for employees and trades union representatives meet the new employers.
- Write to all the employees with the details of the transfer. Ensure that any employees who are absent receive the same communication. [Click here for a sample letter.](#)
- Consider whether consultation with service users is appropriate, although this may have already been required by this stage.
- Receive feedback from consultation and make any amendments.
- Upon completion of the consultation phase, take into account all feedback received and identify if there are any changes to be made to the proposals.
- Make the final decision about the transfer and how it will be implemented and communicate this decision to trade unions and employees.
- Directorate HR Managers should work closely with managers to advise in the process and support managers direct consultations with employees and their representatives.

STEP THREE: IMPLEMENTATION

- The new employer takes over the contracts of employment of all employees who were employed in the undertaking immediately before the transfer, or who would have been so employed if they had not been unfairly dismissed for a reason connected with the transfer. An employer cannot just pick and choose which employees to take on. Comprehensive details of the employees to transfer will have to be provided to the new employer.
- The new employer takes over any collective agreements made on behalf of the employees and in force immediately before the transfer. Details of the agreements will have to be provided to the new employer. *See Appendix 2* for a list of the types of policies and procedures which the new employer should take on. This list may be added to according to the particular transfer so HR Managers need to be involved.
- An employee's period of continuous employment is not broken by a transfer, and, for the purposes of calculating entitlement to statutory employment rights, the date on which the period of continuous employment started is the date on which the employee started work with the old employer. This should be stated in the employee's written statement of terms and conditions; if it is not, or if there is a dispute over the date on which the period of continuous employment started, the matter can be referred to an employment tribunal.
- Consideration should be given to the ongoing relationship with the Council if, for example, a member of staff applies for a post back in the Council. Agreement would need to be reached about continuity of service.

TUPE – EMPLOYEE FREQUENTLY ASKED QUESTIONS

1. *Who is protected?*

Under the TUPE regulations employees who are employed by the old employer at the time of the transfer automatically become employees of the new employer. This covers all employees. Their status remains the same permanent, temporary, or casual.

2. *How long does protection last?*

There is no time limit specified in the regulations.

3. *What happens to the Conditions of Service, holidays, sickness etc?*

Any existing collective agreements covering holidays, sickness etc are automatically taken over by the new employer therefore the leave and sickness arrangements continue as before. Any changes to these would have to be negotiated.

4. *What happens to service with the Council?*

The service is counted as continuous from the date on which employment commenced with the Council.

5. *Can I opt for redundancy?*

No, it is not a redundancy situation the jobs transfer to the new employer; therefore there is no loss of jobs.

6. *What options are there for early retirement?*

There is no basis for early retirement connected with any transfer that may be agreed. Therefore, there is no change to the present situation.

Anyone who wishes to obtain details of pension information can contact the South Yorkshire Pensions Authority offices based in Rotherham, 01709 823740.

7. *Do I have preferred status for redeployment?*

There is no loss of job and thus no redundancy situation therefore; there will be no preferred status for redeployment. However, employees will be able to apply in the normal way for vacancies within the Council.

8. *Are there any important matters of which I should be aware?*

One key area that is not covered by TUPE is the provision of pensions. The regulations do not require the same scheme to be available however it should be "broadly comparable."

Policies, Procedures and Collective Agreements

The following list of contractual policies and conditions form part of the contracts of employment of Rotherham Metropolitan Borough Council employees which should transfer with employees. Details are contained in the individual documents which can be found on the intranet, or via your Directorate HR Manager.

Equalities/Appointments

- Equal Opportunities in Employment Policy Statement
- Probationary Procedure
- Making Reasonable Adjustments for Disabled Employees
- Cultural and Religious Observance Policy

Official Conduct

- Disciplinary Procedure
- Grievance Procedure
- Confidential Reporting Code
- Code of Practice on Official Conduct
- Capability Procedure
- Bullying and Harassment Policy
- Domestic Violence Policy
- Electronic Communications Policy
- Information Access – Code of Practice
- Information Access – Data Protection

Performance and Learning

- Learning and Development Policy
- Performance and Development Review Policy

Health, Safety and Welfare

- Health and Safety Policy
- Procedure for Reporting Accidents
- Fire and Bomb Procedure
- Violence to Staff Policy
- Aids and HIV Infection
- Working with DSE
- No Smoking Policy
- Racist Incidents Policy
- Substance Misuse Policy

Pay and Grading

- Starting Salaries
- Equal Pay Policy
- Re-grading Application Form
- Re-grading Appeals Process
- Trade Union and Other Payroll Deductions Facilities
- Honorarium

Leave

- Annual and Other Leave
- Bereavement Leave
- Disability Leave
- Career Break Scheme
- Time Off for Public Duties
- Time Off for Interviews With Other Authorities
- Absence Due to Inclement Weather
- Special Leave With and Without Pay

Sickness

- The Sickness Scheme
- What To Do When You are ill
- Third Party Claims
- Access to Medical Reports

Maternity/Family Related

- The Maternity Scheme and Related Maternity and Pre-maternity Issues
- Adoptive Parents Leave
- Maternity Support Leave
- Parental Leave(unpaid) and Time Off for Urgent Family Reasons

Redundancy Modifications Order

- Recognition of previous local government service and impact on certain conditions of service
- Cabinet Office Statement of Practice – Staff Transfers in the Public Sector

Termination of Employment

- Redundancy and Redeployment Policy (inc Grade Protection Policy)
- Notice Periods
- Exit Interviews
- Payments in The Event of Death or Permanent Disablement Due to Assault.

Trade Union Facilities

- Time Off Agreement
- Notification of New Starters to Trade Unions

Miscellaneous

- Access to Personal Files
- Relocation Scheme
- Travel and Subsistence Policy (inc. Excess Travel Scheme)
- Flexible Working Scheme
- Flexible Working Scheme – Right to Apply
- Home-based Working
- Job Share
- Long Service Awards/Gratuity Scheme
- Voluntary Retirement Schemes

- Salary Sacrifice Schemes e.g. child care voucher scheme, home computing scheme

Other areas of consideration

Managers must complete a leaver form for employees who are TUPE transferring, in line with the leavers process – [click here to view](#). This must be done well before the date of transfer to ensure that payroll remove employees from RMBC's payroll and ICT can make arrangements for removal of ICT equipment (where appropriate).

The Data Protection Officer (Legal Services) should also be informed of any TUPE transfer to review any transfer of information.