

BBSRC Best Practice Guidance Note

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS

What is a transfer of undertaking?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended by the 2014 Regulations) are known as TUPE and protect employees when a business changes to a new employer and apply to what are known as 'relevant transfers'. The two broad categories of transfer are business transfers (which are more likely to affect BBSRC), and service provision changes (e.g. where a catering contract is re-tendered to a different provider).

This guidance note is written for those who may transfer from BBSRC to another employer under a business transfer.

What does TUPE do?

TUPE is intended to safeguard employee's rights when there is a transfer of a business or part of a business (the 'undertaking'), from one organisation (the transferor) to another (the transferee). This means that employees who are employed in the business or part of the business that is to transfer are covered by TUPE; they will transfer to the new employer and become their employee.

When does TUPE apply?

TUPE applies if there is a transfer of an 'economic entity' that retains its identity and where the activities being done before and after the transfer are fundamentally the same.

What happens to employees who are transferred under TUPE?

Employees who transfer to the new employer will retain their existing terms and conditions of employment as at the date of the transfer.

What happens to the service built up with BBSRC at the date of transfer?

The transfer does not break service or continuous employment. The new employer takes on the liability for all statutory rights arising from the contract of employment.

What happens to pension?

The new employer may apply to be an 'admitted body' to the RCPS. In this case transferring employees would retain access to their current pension arrangements. If the new employer does not apply to be an admitted body, they are required to offer a broadly comparable alternative pension scheme.

What consultation will BBSRC carry out?

Full and meaningful consultation with Trade Union representatives will be carried out and information will be provided on the reason for the transfer, timescales, implications for employees, and any measures that BBSRC and the new employer expect to take in relation to the employees.

Can terms and conditions of service be changed after the transfer?

TUPE protects against change/harmonisation for an indefinite period if the sole or principal reason for the change is the transfer. Any such changes will be void.

Sometimes change may be valid if:

- The reason for the change is not the transfer.
- The sole or principal reason for the change is an economic, technical or organisational reason entailing changes in the workforce (ETO). However, the employee must agree the change. Changes for an ETO reason can only be binding if there is an ETO for the change, e.g. to do with the day-to-day running of the business, and the ETO reason entails changes in the workforce. This means there have to be changes to the numbers in the workforce or changes to job functions.

What if the new employer dismisses me because of the transfer?

Under TUPE it is automatically unfair to dismiss an employee because of the transfer itself. A dismissal may be fair if it is linked to an ETO entailing changes in the workforce (see above) or it can be shown to be for genuine redundancy reasons and a fair procedure was followed. Where the new employer intends making redundancies after the transfer, the redundancy consultation may begin before the transfer takes place, if BBSRC agrees.

What other circumstances would allow me to claim for unfair dismissal?

If your new employer does not provide comparable overall terms and conditions of service, including pension arrangements or you are financially worse off, you may have a claim for unfair dismissal.

Can I object to being transferred?

Employees have the right to object to the transfer and can refuse to work for the new employer. This is the same as resigning and so there is no redundancy pay. Notice isn't required; the employee simply tells BBSRC and/or the new employer before the transfer happens and employment then ends at the time the transfer takes place.

What does BBSRC have to tell the new employer about the employees who are affected?

Under TUPE BBSRC has a duty to provide information about the transferring employees to the new employer at least 28 days before the transfer takes place. This includes information on the identity of the employees, their age and any employment particulars, disciplinary and grievance records, details of any collective agreements, and details of any outstanding claims against BBSRC. Any such personal data will be dealt with in accordance with the Data Protection Act 1998.

Who can I contact if I have any further questions about TUPE? Please speak initially to your local HR department or your Trade Union representative. Further information can also be found on the ACAS website.