

Ellisons

SOLICITORS

Essential Information Leaflet: EMPLOYMENT

TRANSFER OF UNDERTAKINGS

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The relevant legislation

The relevant legislation is The Transfer of Undertakings (Protection of Employment) Regulations 2006 which are often still overlooked or underestimated by employers. The Regulations are almost invariably referred to as **the TUPE REGULATIONS**.

How the Legislation Operates

Basically, where there is a 'transfer' of a recognisable business entity, these Regulations will apply to afford certain protections to the affected employees. The TUPE REGULATIONS also operate to require the Transferor and the Transferee to inform and consult with employees. Taking the example of the sale of a business, **the Seller** of the business is known as **the Transferor** and **the Purchaser** known as **the Transferee**.

What Constitutes a Transfer?

The most common form of a transfer occurs when there is a sale of a business, but there are a number of other situations in which a transfer will be effected which are beyond the scope of this information leaflet – for example, the loss of a contract to another business or trader

The Obligations to Inform and Consult

The Transferor will, in all cases, need to provide the Transferee with certain information about its employees and their contracts of employment, terms and conditions etc known as '**employee liability information**'. The Transferor is also obliged to advise the Transferee in timely fashion of any changes proposed on completion of the sale.

Both Transferor and Transferee must ensure that their obligations to inform and consult are complied with in order to avoid the potential for claims being brought against either or both of the parties, as the obligation to inform and consult is joint and several. Consultation can take place variously with individuals, unions, specially elected representatives or an existing consultation body.

From both the employee's perspective and the Transferee's perspective, probably the most important aspect of the Regulations is the intent that the new employer (the Transferee or buyer) will, to all intents and purposes, stand in the place of the old employer (the Transferor or seller) with regard to the employees' terms and conditions which should remain unchanged.

The financial penalty for failing to inform and consult is likely to be 13 weeks actual salary for each affected employee.

Unfair Dismissal

Where an employee is dismissed for a reason connected with the transfer, an unfair dismissal claim may be brought. For compensation for unfair dismissal, see [Unfair Dismissal](#).

The information given herein is not a comprehensive guide to the law and is intended to be a brief and non-exhaustive summary only. Specific legal advice should be sought for actual cases.

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