

TUPE Guidance

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.

1 Principles of TUPE	1
2 The TUPE process	3

Where the headteacher is the employee concerned, any reference to the headteacher in this policy should be replaced with the chair of governors.

1 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.

The 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.

1.1 When does TUPE apply?

TUPE applies to employees who are part of an organisation that is transferring in the UK. Two types of transfers are protected:

Business transfers	Where a business or part of a business moves from one employer to another e.g. a school converts to an Academy or an Academy converts to a MAT.
Service provision changes	<p>This is where contracts are taken over. This can be because:</p> <ul style="list-style-type: none">• A service provided in-house is taken over by a contractor (outsourcing)• A contract ends and the work is transferred in-house (insourcing)• A contract ends and is taken over by a new contractor (retendering) <p>Service provision changes often include contracts to provide services such as catering and cleaning.</p>

TUPE applies to public sector transfers if the transfer is from the public sector into the private sector or from one public authority to another e.g. NHS to a local authority.

TUPE does not apply to transfers within the public sector where the employer does not change e.g. transfers within the council, but similar protections will be applied.

1.2 Who transfers to the new employer?

Anyone who is employed, either permanently or temporarily, in the school or service within the school e.g. cleaning at the date of service/employer change will be transferred to the new employer and protected by TUPE.

If an employee's contract ends before the date of transfer, they will not transfer to the new employer.

Casual/supply workers may transfer but will be considered on a case-by-case basis. Agency workers are not employees and will not normally transfer, but this should be discussed with the transferor or transferee.

1.3 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

1.4 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 changes to the employment contract must be for an economical, technical or organisation (ETO) reason, 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.

1.4.1 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 doesn't have to continue an identical pension scheme however, the Government Actuaries Department must confirm that a new scheme is broadly comparable. The new employer must auto enrol transferring employees into a pension scheme if they are eligible.

Academies and MATs tend to have admitted body status for the LGPS, so pensions are not usually affected.

2 The TUPE process

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

All TUPE transfers will need to be approved by the governing body/appropriate committee before consultation begins.

2.1 Planning

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. There is no set timescale for a TUPE consultation period but there must be enough time to allow for meaningful consultation to take place.

2.1.1 Employees transferring out

- 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 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.

2.1.2 Employees transferring in

- The headteacher and the HR Advice and Support representative have an initial meeting with the transferor (current employer) to identify those employees and workers 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 section 1.4)
- 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.

2.2 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. The TUPE Frequently Asked Questions should also be included. A template letter and FAQs are available from HR Advice and Support.

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 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 is expected to represent the school at the meeting, with support from a representative from HR Advice and Support.

Where the council are not the employer e.g. academies, catholic or voluntary aided schools, the Chair of Governors/Trustee should also attend the meeting.

Trade Union consultation	It is recommended that this consultation meeting is scheduled 10 school days after the consultation letter is issued.
Collective employee consultation	Should take 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	Should be 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.

2.3 Implementation

2.3.1 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.

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.

2.3.2 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.



This policy has been developed by the HR Advice and Support team, based on current legislation and best practice. If you would like any advice on the application of this policy, please do not hesitate to contact the team:

Telephone	03000 266688
Email	hradvice@durham.gov.uk

Further support can be accessed by contacting (subject to SLA buy in):

Payroll and Employee Services	pesschools@durham.gov.uk
Occupational Health	occhealthadmin@durham.gov.uk
Health and Safety	hsteam@durham.gov.uk
Employee Assistance Programme	www.healthassuredeap.com Username: durham Password: council 0800 716017

Author	Version	Last review	Next review
LK	v 2.1	September 2021	September 2023

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.