
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive [2001/23/EC](#) (“the Directive”) on the approximation of the law relating to business transfers. They revoke the Transfer of Undertakings (Protection of Employment) Regulations 1981 (“the 1981 Regulations”). The provisions introduced by these regulations are similar to those included in the 1981 Regulations. They also include provisions taking advantage of certain policy options conferred by the Directive.

To the extent that the Regulations implement the Directive, they are made under section 2(2) of the European Communities Act 1972. To the extent that they relate to the treatment of employees, and related matters, in relation to a service provision change (in circumstances other than those to which the Directive applies), they are made under section 38 of the Employment Relations Act 1999 (“the 1999 Act”).

These Regulations apply to the UK. However to the extent that they are made under section 38 of the 1999 Act they do not apply to Northern Ireland (paragraph 2 of Schedule 1).

The Regulations make provision for the treatment of employees, and related matters, on the transfer of an undertaking or business or a service provision change.

The principal provisions of the Regulations provide as follows—

(1) Regulation 3 defines a transfer to which these Regulations apply (described as a relevant transfer). The two categories of relevant transfer (which are not mutually exclusive) are the transfer of an undertaking or business to another person and a service provision change.

(2) Regulation 4 provides that a relevant transfer shall not operate to terminate the contract of employment of a person employed by the transferor and assigned to the organised grouping of resources or employees subject to a relevant transfer but that any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee. The transferor’s powers, duties, rights and liabilities under or in connection with that employment contract shall transfer to the transferee. A variation to that employment contract by reason of the transfer is prohibited but that shall not prevent the employer and his employee from agreeing a variation to the contract for a reason unconnected with the transfer or a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce.

(3) Regulation 5 provides that a collective agreement made by a transferor with a recognised trade union shall, after the transfer, have effect as if made by the transferee with that trade union. Regulation 6 provides for the transfer of recognition of an independent trade union.

(4) Regulation 7 provides that the dismissal of an employee by reason of the transfer is unlawful but that a dismissal for a reason connected with the transfer that is an economic technical or organisational reason entailing changes in the workforce is potentially lawful.

(5) Regulation 8 applies where, at the time of the transfer, the transferor is subject to relevant insolvency proceedings, as defined in regulation 8(6). It provides that certain of an employer’s pre-existing debts to employees do not pass to the transferee but are instead met by the National Insurance Fund.

(6) Regulation 9 provides greater scope for the transferee to vary, subject to certain requirements, the terms and conditions of employment of transferring employees in circumstances where the transferor is subject to relevant insolvency proceedings.

Status: This is the original version (as it was originally made).

(7) Regulation 10 provides that regulations 4 and 5 shall not apply to so much of a contract of employment or collective agreement as relates to any provision of an occupational pension scheme relating to old age, survivors or invalidity benefits.

(8) Regulation 11 provides that the transferor shall provide employee liability information in respect of employees assigned to the organised grouping of resources or employees that is subject to a relevant transfer to the transferee in advance of a relevant transfer.

(9) Regulation 12 provides a remedy to a transferee for the failure of a transferor to comply with regulation 11.

(10) Regulation 13 imposes a duty on an employer to provide information to appropriate representatives of affected employees about a relevant transfer and measures he envisages taking in respect of it, long enough before a relevant transfer to enable the employer to consult those representatives with a view to seeking their agreement to the intended measures. Regulation 14 makes provision for the election of employee representatives where there is no recognised independent trade union. Regulations 15 and 16 provide a remedy for a failure of an employer to comply with regulations 13 or 14.

(11) Regulation 21 provides that these Regulations shall apply to a relevant transfer that takes place on or after 6 April 2006 whilst the 1981 Regulations will apply to a transfer to which the 1981 Regulations applied that took place before 6 April 2006.

(12) Schedule 1 provides modifications in the application of the Regulations to Northern Ireland.

(13) Schedule 2 provides amendments consequential on these Regulations.

(14) A Regulatory Impact Assessment of the effect these Regulations will have on business costs, and Transposition Notes showing how Council Directive [2001/23/EC](#) has been implemented in the United Kingdom are available to the public, free of charge, from the Employment Relations Directorate, TUPE Unit, 3rd Floor, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET, and from the DTI website on the links shown below. Copies of each have also been placed in both Houses of Parliament.

http://www.dti.gov.uk/er/individual/tupe_transposition_note_2006.pdf and

http://www.dti.gov.uk/er/individual/tupe_ria_2006.pdf