

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS

What is TUPE?

The Transfer of Undertakings (Protection of Employment) Regulations 1981 and 2006, which are known as TUPE. These regulations, and any subsequent amendments, implement the European Community Acquired Rights Directive 1977.

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

What does TUPE do?

TUPE is intended to safeguard your interests if you are working in an undertaking which is transferred from one employer to another. They provide employment rights to employees when their employer changes as a result of a transfer of an undertaking.

What is an undertaking?

An undertaking is an organised grouping of resources which has the objective of pursuing an economic activity. TUPE also applies when a service provision change takes place.

What is the transfer of an undertaking?

According to the legal definition, the transfer of an undertaking occurs when the grouping of resources (as referred to above) or service activity is transferred as a going concern and retains its identity after the transfer. In other words the assets of a business, or a part of it, are acquired by another company which then runs the business or entity. The assets transferred can be people, or people plus equipment.

How big does an undertaking have to be?

TUPE can apply regardless of the size of the transferred undertaking. It can apply to the transfer of a large business with thousands of employees or a small one (for example, the transfer of a cleaning contract into or out of BBSRC).

So that's all?

The law on the application of TUPE is complex and each case is judged on its merits. BBSRC will always seek legal advice as necessary. However, the Government advises that public sector employers, such as BBSRC, should always try to ensure that their staff are covered by TUPE or TUPE terms when they are being transferred to another employer.

What happens to me if I am transferred under TUPE?

The contracts of employment of all BBSRC staff employed within the entity (area of work) are automatically transferred to the new employer (i.e. you retain your terms and conditions of service at the date of transfer).

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

The transfer does not break your service or continuous employment. The date your continuous employment started with BBSRC is the one on which entitlement to statutory employment rights is based.

Can my terms and conditions of service be changed?

The new employer is obliged to honour your contract of employment, which means that they must maintain your existing terms and conditions of service. The new employer may only vary the terms and conditions if there is a clear economic, technical or organisational reason entailing changes in the workforce. The new employer may not change employment contracts for the sole purpose of harmonising terms and conditions in its existing workforce.

So if I transferred to the private sector under TUPE I would take all my terms and conditions of service with me?

There is one exception - pension rights (including injury benefits) are not transferred as a whole. However, the Government requires BBSRC to ensure your new employer provides you with a 'broadly comparable' private sector scheme for your future service, and to allow you, if you wish, to maintain a link between your future earnings growth and your past service pension benefits (called 'bulk transfer'). This means that BBSRC must have the pension arrangements being offered to you by the proposed new employer scrutinised and agreed with the Government Actuary's Department.

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

Your new employer cannot dismiss you upon transfer, unless the main cause of dismissal is a carefully defined 'economic, technical or organisational' reason, which requires changes to the workforce and they are acting 'reasonably' in treating that reason as sufficient to justify a dismissal. If your new employer does dismiss you for one of these reasons, they must pay you redundancy compensation in accordance with the BBSRC compensation arrangements which are in place at the time of your redundancy. You can still claim for unfair dismissal against your new employer, if you believe that you have not been treated fairly.

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. However, the Government requires BBSRC to ensure, through the tendering and TUPE process, that this does not happen.

What does the Government require BBSRC to do to safeguard those in my position?

- i. BBSRC should ensure that potential bidders are aware that their tenders should be based on the principle that TUPE will apply to staff associated with the undertaking. This does not prevent the bidder submitting a bid on the basis that TUPE does not apply, but BBSRC will reserve its right not to accept a bid where it is unable to agree with the bidder on TUPE (legal advice will be sought as necessary).
- ii. BBSRC must also ensure that it gives the bidders all the information they require to make an informed TUPE bid.
- iii. BBSRC should satisfy itself that the bidder's proposals fully meet the requirements of TUPE.

Can I object to being transferred?

You have the right to object to the transfer by informing either BBSRC or your new employer. However, you should note that this means you will be treated as if you had resigned, not as if you had been dismissed, unless there are, or would have been, substantial changes to your terms and conditions of service to your detriment that would justify you considering yourself dismissed (see above).

What does BBSRC have to tell me?

The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999, the Information and Consultation of Employees Regulations 2004, and TUPE Regulations 2006 mean that BBSRC has to tell affected employees and consult their representatives (usually trade unions recognised by BBSRC):

- i. that a transfer is being considered and why it is being considered;
- ii. about the legal, economic and social implications of the transfer, e.g.
 - that your terms and conditions of service will transfer to the new employer (TUPE applies);
 - what differences, if any, it will make to you – changes in pensions etc.;
 - whether you will be moving to new premises to work for the new employer etc.;
- iii. about any measures to be taken in connection with the transfer which will affect you, or if there are no such measures;
- iv. about any measures likely to be taken by the new employer which will affect you, or if there are no such measures.

When does BBSRC have to tell me?

You must have this information in sufficient time for you/your representatives to make meaningful representations to BBSRC and, if any of those representations are rejected, to be given the reasons rejecting them before the transfer takes place.

What does BBSRC have to tell the bidder about me?

TUPE Regulations lay out specific information about affected employees which has to be provided by BBSRC to the new employer, including the identity and age of transferring employees. Any such personal data will be dealt with in accordance with the Data Protection Act 1998 (see BBSRC Guidance Note).

Who will ensure that I and/or my representatives have this information?

Your managers and the sections dealing with the proposed transfer, Procurements and Contracts Section and your local Human Resources Manager will ensure that you and your representatives are kept fully informed about what is happening, as set out above.

Information will be sent by post to the full-time union official at union head office for any relevant unions.

Who can I contact if I have any further questions about TUPE?

Please speak initially to your local Human Resources Manager, who will liaise with HR & Corporate Services Group, BBSRC Office.