

1. Purpose

The SES Group has a responsibility to protect employee rights during a transfer and is committed to the principles of 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.

The main purpose of the Regulations is to preserve continuity of employment and terms and conditions of those employees transferred to a new employer when a relevant transfer takes place.

This policy aims to set out the provisions of the Regulations and ensure that due process is clear and that employees' rights are protected when either the service or organisation transfers to a new employer.

2. Scope

There are two situations when the TUPE regulations may apply: business transfers and service provision transfers.

In business transfers

The TUPE regulations apply if a business or part of a business moves to a new owner or merges with another business to make a brand-new employer.

In service provision transfers

The TUPE regulations apply in the following situations:

- A contractor takes over activities from a client (known as outsourcing).
- A new contractor takes over activities from another contractor (known as re-tendering).
- A client takes over activities from a contractor (known as in-sourcing).

The transfer must include a supply of services. TUPE will not apply if the service is for single-event activities, or for activities of short-term duration.

The following must exist immediately before the transfer for the TUPE regulations to apply:

An organised grouping of employees - The group has to be deliberately organised by the employer to provide a service for a particular client (some groups may include just one person). Employees working together randomly on a client contract are unlikely to meet this requirement. Similarly, employees who happen to have been working on the same contract for the same client will not necessarily be regarded as being in an organised grouping of workers for that client.

Employees should be assigned to the group - The roles that transfer should be linked to the delivery of services for a particular client. Employees who carry out activities not related to the contract are unlikely to be part of the group. This could include managers who work on maintaining relations with the client.

The client should remain the same - If the client changes there will be no TUPE transfer.

The activities should not become overly fragmented - The more split up the activities become between different providers the less likely it is that the TUPE regulations will apply.

The activities should remain fundamentally the same - If the same work is being performed, with the same equipment at the same premises then TUPE is likely to apply. However, if the work activities are fundamentally different after the transfer, then TUPE will not apply.

All staff employed by the SES Group may potentially be covered by the TUPE Regulations, but this will depend on the service transferring.

3. Principles

The basic principles of TUPE are:

- Assigned employees automatically transfer to the transferee and become their employees
- The terms and conditions of employees who transfer must not be unnecessarily changed by the transferee when the work they were doing previously still exists
- Continuity of service and other rights are preserved
- Employers are obliged to inform appropriate representatives of the transfer and relevant information
- Employers are obliged to consult appropriate representatives of any proposed measures
- A TUPE transfer should have a communication plan to ensure those affected are engaged in the process and receive information on progress
- The transferee must provide to the transferor employee information in advance of the transfer date
- Changes to the terms and conditions of transferred employees can only take place when certain conditions are met

4.Procedure

There are 4 key stages within the process regardless of transferring in or out. The below sets out the process for both.

Stage 1 – Before committing	
Where SES are the outgoing employer	Where SES are the incoming employer
<p>At this stage we should consider whether to:</p> <ul style="list-style-type: none"> • Inform representatives/employees of a potential sale/expiry • Consider whether to bid or rebid for a contract or service (in service provision changes) 	<p>At this stage we should</p> <ul style="list-style-type: none"> • Consider informing trade unions (where recognised) and employee representatives/employees of a potential purchase/bid • Weigh up the pros and cons of committing to a transfer/service provision • Begin to construct a TUPE process plan
Stage 2 – Prepare for transfer	
<p>At this stage we must:</p> <ul style="list-style-type: none"> • Inform/consult about the transfer and any measures • Identify who will transfer • Provide Employee Liability Information to the incoming employer 	<p>At this stage we must:</p> <ul style="list-style-type: none"> • Inform/consult about the transfer and any measures • Identify who will transfer • Request Employee Liability Information from the outgoing employer
Transfer occurs	
Stage 3 – The transfer	
<p>At this stage we lose the transferring staff and:</p> <ul style="list-style-type: none"> • Must inform/consult about the transfer with remaining staff • Should ensure that all remaining employees are managed, settled and clear about their duties 	<p>At this stage we gain the transferring staff and:</p> <ul style="list-style-type: none"> • Must inform/consult about the transfer • Should ensure that all employees/teams are managed, settled and clear about their duties

Stage 4 – After the transfer	
<p>At this stage we:</p> <ul style="list-style-type: none"> • Must inform/consult about potential redundancies (if any) • Should inform/consult in general as good practice to preserve good morale • Should address concerns to avoid drops/falls in performance and quality of work 	<p>At this stage we:</p> <ul style="list-style-type: none"> • Must inform/consult about potential redundancies (if any) • Should inform/consult in general and ensure reasonable allowances are made whilst employees adjust and integrate • Should review the effectiveness of procedures

There are many considerations when considering TUPE and how it is applied. Employee Liability Information (ELI) and Due Diligence take time to collate and review. ELI must be provided not less than 28 days before the transfer.

TUPE Measures

If as the incoming employer we have plans to make changes to employment arrangements after the transfer, (these are called “measures”) we must consult about any potential changes as a result of the transfer. Measures can include:

- Redundancies
- Workplace relocation
- Changes to staff pay dates
- Different working patterns
- Different pension arrangements

Some minor changes to terms and conditions may be included as measures although there are tight restrictions under TUPE on when terms and conditions may be altered.


Appendix

SES TUPE welcome pack revised November 2019

For current information:

www.acas.org.uk

www.gov.uk/government/publications/tupe-a-guide-to-the-2006-regulations

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