

IMSPo6oBJ: TUPE Policy

Version 1.2 (05/2025)

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Departments: HR

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Document History			
Version number	Edited by	Date reviewed	Summary of changes
1.0		March 2019	Version 1
1.1	LAW	April 2023	Updated format
1.2	HR	May 2025	Cyclical Review

1. PURPOSE

The purpose of this policy and procedure is to enable Mears Group PLC to meet its obligations and to set out a process when TUPE may be applicable and how this process will be followed. To ensure we put in place measures to support all employees affected by a TUPE process requiring the commitment and active involvement of all parties..

The main aims of this policy and procedure are:

- To enable employees in a TUPE situation to be supported throughout the process;
- To ensure that employees are treated with dignity during the TUPE process;
- To ensure a fair and consistent approach to TUPE; and
- To mitigate the effects of the proposed actions.

Mears Group PLC is committed to ensuring that it complies with its legislative obligations when carrying out the provision of information and consultation with regards to transfers of employment as part of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as “TUPE”).

This policy provides guidance to all those involved in the transfer of employees either into or out of Mears Group PLC, or where employees are transferring their employment to another Company within Mears Group PLC, (referred to as an “intragroup transfer”). It provides an explanation of TUPE, when it applies, as well as confirming the duties of the new employer (transferee), the old employer (transferor), together with explaining the rights of employees under the regulations.

2. SCOPE

This policy covers all employees who are employed by Mears Group PLC and all its subsidiary companies. Hereafter any reference to Mears Group PLC includes Mears Group PLC and all its subsidiary companies. This policy does not include any potential employees that join the business as a consequence of a transfer under TUPE.

3. CONTEXT

This policy works in conjunction with a number of other policies, procedures and working practices. Some of which are detailed below:-

- Collective Consultation Policy
- Redundancy Policy
- Fairness & Inclusion Policy

4. DEFINITIONS

Line Manager - refers to the direct Line Manager on Workday for the employee, or alternatively if they are not available, then the manager’s manager.

HR – primarily refers to the HR Business Partner team who will be responsible for providing advice and guidance to managers on policy and process.

Employee – is an individual who is directly employed by Mears Group and or any of its subsidiaries. It does not include self-employed, agency or contractors for the Group.

5. RESPONSIBILITIES

Line Managers are responsible for ensuring they:

- Read and understand the contents of the policy and procedure.
- Participate in the provision of required information and consultation in line with policy.
- Treat any all information and consultation confidentially and sensitively.
- Maintain regular contact with relevant parties in line with policy.

Employees are responsible for:

- Cooperating fully with the process avoiding unnecessary delays.

- Maintain confidentiality throughout the process regarding fellow employees who are under consultation.

HR are responsible for:

- Providing advice and guidance on the application of the policy and related policies, to employees and managers.
- Ensuring Workday records are accurately processed and maintained

6. LEGISLATION AND GUIDANCE

This policy was developed with reference to the following statutory provisions or guidance:-

- Transfer of Undertakings (Protection of Employment) Employment) regulations 2006” as amended by the “Collective redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) regulations 2014
- The General Data Protection Regulation 2016
- Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023

7. WHAT IS TUPE?

TUPE refers to the “Transfer of Undertakings (Protection of Employment) Employment) Regulations 2006” as amended by the “Collective redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014”. The Regulations apply to organisations of all sizes and protect employees’ rights when the organisation or service they work for transfers to a new employer, or a different Company within a Group of Companies.

The TUPE regulations can apply when a company is sold, activities are outsourced, brought in-house, transferred or a contract for services is moved from one provider to another.

Employees from the newly acquired business, service or contract will transfer automatically to the incoming employer, unless they object. Their contractual terms and conditions of employment (apart from occupational pensions) and continuity of service transfer with them and they also receive certain protections around dismissal and redundancy.

8. WHEN DOES TUPE APPLY?

There are two situations when the regulations may apply;

- a. business transfers
- b. service provision changes.

Collectively these are called “relevant transfers”. In some situations, a service provision change can also qualify as a business transfer.

BUSINESS TRANSFER

A business transfer under TUPE occurs when an economic entity, which retains its identity, is transferred from one employer to another. This includes situations where the entire business or a distinct part of it, such as a specific department or division, is sold or transferred to a new owner. The key aspect of a business transfer is that the entity being transferred must remain identifiable after the transfer, meaning that its activities continue in a similar form under the new ownership.

SERVICE PROVISION CHANGE

The TUPE Regulations apply in the following situations:

- a. a company takes over activities from a client (known as outsourcing)
- b. a new company takes over activities from another company (known as re-tendering)
- c. a client takes over activities from a company (known as in-sourcing).

In both cases there must be an organised grouping of employees who are wholly or mainly assigned to the principal purpose of carrying out the activities concerned on behalf of their employer or a particular client.

9. WHAT AND WHO TRANSFERS?

The TUPE Regulations provide that upon a relevant transfer the following legal consequences apply:-

- a. Employees who are wholly or mainly assigned to carry out work on the transferring services, will automatically transfer from the old employer to the new employer.
- b. Any collective agreements made with the recognised trade unions prior to transfer continue to apply to the relevant employees. This is only applicable at the point of transfer and is often referred to as a static transfer. What this means is any future collective agreements/pay awards made by the previous employer would not apply to the employees that have transferred out.
- c. The new employer takes over all rights, obligations and liabilities arising from those contracts of employment, except criminal liabilities.

10. PLANNING FOR A TUPE TRANSFER

Both the existing and new employers must plan carefully for a TUPE transfer to ensure a smooth transition and any disruption to both employees and service is minimised. Much of this will

involve operational considerations such as the working arrangements for the new contract but it is also critical that the new employer carries out a full due diligence exercise. They will require extensive employment information and an understanding of all and any legacy terms and conditions of employment in order to determine what employment obligations are liable to transfer to them under TUPE.

Sufficient time and resources should be allowed to ensure that this information is collated and reviewed so that any queries and challenges to the information can be addressed, prior to the transfer date. This will also enable the new employer to check their understanding, set up payroll and ascertain what if any measures/changes need to be made to affect the transfer. NB a “measure” is a change to an employment arrangement that is in place, and typically will include, changes in pay date; holiday years etc, it may also include changes to the size and composition of the workforce.

11. EMPLOYEE LIABILITY INFORMATION (A Limited form of Due Diligence)

The existing employer must provide the new employer with a specific set of information which will assist with understanding the rights, duties, obligations and employment contracts in relation to those employees who will be transferred.

This information must be provided at least 28 days prior to the transfer date and must include the following:-

- the identities of the transferring employees and their ages
- all the information contained in the transferring employees’ written contracts of employment (also known as statements of particulars)
- information about any collective agreements (if any)
- details of any formal disciplinary action taken against any transferring employees in the previous two years
- details of any formal grievances raised by any of the transferring employees in the previous two years
- details of any legal action brought against the old employer by any of the transferring employees during the last two years
- details of any potential legal action that the old employer reasonably believes may be brought.

However, outline and anonymised information may be provided as part of a tender process, but this does not cover the requirements of the regulations. Whilst there is no statutory right to receive this information, it is sometimes imbedded in commercial agreements. If not, the employee information should be sought as soon as possible. NB: some commercial agreements will enhance the provisions of TUPE to be applied.

information below provides an overview of the key steps to follow when planning for an inward or outward transfer, and template documents.

12. INFORM AND CONSULT

The Regulations place a legal duty on both the existing employer and the new employer, to inform and consult with the 'affected' employees and their representatives (trade unions or elected employee representatives).

In both scenarios, direct consultation applies where there are no existing employee representatives in place. Mears Group PLC also have the discretion to continue to consult with an employee representative if this is the preferred method.

Note – affected employees are the employees who are due to transfer, and may also include other employees at both organisations who are not transferring but who may be affected by changes in work etc.

There is no legal timescale for how long the consultation should last but it must be long enough before the transfer date to allow meaningful consultation with employees and their representatives of the following;

- that the transfer is going to take place, approximately when, and why;
- solving any problems/finding solutions together;
- an opportunity for employees to influence decisions/how things are implemented;
- the legal, economic, social and other implications of the transfer for the affected employees;
- whether the new employer intends taking any action (*re-organisation for example*) in connection with the transfer which will affect the employees;
- any measures/changes to terms and conditions of employment (*this usually includes pay date changes, and changes to the new employers policies/procedures etc.*).
- any proposed redundancies post-transfer.

If the affected employees do not have trade union representatives, they must be given the opportunity to elect an employee representative(s). Please refer to the Collective Consultation Policy.

There are some exemptions to the duty to consult with employee representatives, under the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023 (SI

2023/1426)'s amendment to the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 with transfers that take place on or after 1 July 2024.

The changes mean employers will be able to consult directly with employees, rather than through representatives, if:

- the organisation employs fewer than 50 employees, or
- the transfer take place on or after 1 July 2024 and involves fewer than 10 employees (regardless of the size of the organisation).

13. SELECTION OF EMPLOYEE REPRESENTATIVES

Where an appropriate representative needs to be appointed the law sets out a clear a process of selecting employee representatives from the group of affected employees. Mears Group will endeavour to ensure that the election process is fair.

Mears Group will typically ask for the affected employees to nominate one of their colleagues, from the same affected group, to act as employee representative for the duration of the consultation process only. There may need to be more than one representative depending on the categories of employees affected by the consultation; Mears Group will determine how many are needed together with the appropriate work streams representatives need to be aligned to.

This nomination process will take place during or shortly after the group consultation meeting takes place. All nominations must be proposed by a nominee and thereafter seconded. In the event that more nominations are received than the required number of representatives identified, the Company will call a ballot to elect representatives. In which case the following principles should be considered:

- The number of representatives should be proportionate to the number of affected employees;
- The category of representative should reflect the make-up of the workforce with at least one representative from each of the employee category e.g. office employees and mobile workers;
- The candidates for election as employee representatives should be a member of the group of affected employees on the date of the election;
- Any specific requirements for election e.g. experience should be clearly communicated;
- No affected employee should be unreasonably excluded from standing for election;
- All affected employees on the date of the election should be entitled to vote;
- The employees entitled to vote should be able to vote for as many candidates as there are representatives to be elected to represent their particular group of employees; and
- Where an employee representative ceases to act and as a result some employees have no representation, another election should be held.

It is possible to elect employee representatives for the dual purpose of collective consultation in respect of redundancy and TUPE. Whatever the purpose, this must be clear to all parties at the time, as too the duration for which it is intended for the employee representative to serve, and for the specific purpose

If the employer has issued an invitation, in good time, asking affected employees to elect representatives and an appropriate representative is not elected Mears Group still has a duty to provide necessary information to each and every affected employee.

14. THE ROLE OF EMPLOYEE REPRESENTATIVES

The role of employee representatives during a collective consultation process is to represent the views and opinions of the affected employees which they represent. They should provide the group with the necessary information throughout the process and act as an intermediary between Mears Group and all of the affected employees.

They are required to represent the interests of all the affected employees, not just their own interests, and should take reasonable steps to ensure that the views of all of the affected employees are taken into account as part of the consultation process.

The employee representatives must be given direct access to the affected employees (by way of email, telephone, face-to-face meetings, or otherwise) and afforded such facilities as may be appropriate for that purpose such as meeting rooms. The employee representative will also be paid to have reasonable time off to perform their duties in the capacity as an employee representative.

15. ACCESS AND FACILITIES FOR REPRESENTATIVES

Under TUPE regulation 13.8 'the employer shall allow the appropriate representative's access to any affected employees and shall afford those representatives such accommodation and facilities as may be appropriate'. In practice the existing employer should ensure that any representatives are made aware of the group of employees affected, and if needed – to provide access to a private meeting room for their use, computer, email, access to a noticeboard etc.

16. FAILURE TO CONSULT

If either/both the old employer and the new employer fail to consult with the affected employees, they are both liable, and should a claim go forward to an Employment Tribunal may be liable for 13 weeks' pay/award to every employee affected and not consulted with.

17. TUPE IN

Transferring employees into the Group can be complicated and time consuming, depending on the type of service/numbers of employees that are affected and the extent to which changes to the service are envisaged.

old employer will provide a list of employees who they propose should transfer. It is important to check that the employees are correctly assigned to the service, are in an organised grouping, and the list is correct and up to date.

It is likely the employees transferring in will be on different terms, conditions, policies and pay. It is important to fully understand the employment details and request the employees employment information as soon as possible through a due diligence process. The old employer legally must provide this at least 28 days prior to the transfer.

There is a legal obligation on both the transferor and transferee to consult and inform the affected employees and their representatives/trade unions prior to the transfer, on the reasons of the transfer, the proposed dates, and any changes/measures that will be made post transfer.

If any posts are proposed to be redundant post-transfer, it is also important to make this clear as part of the measures notification, and to ensure adequate redundancy consultation time is given.

There are no legal timescales to the length of time transfer consultation takes place prior to a transfer, but it must be meaningful.

It is considered good practice to arrange at least one joint consultation meeting with the affected employees, their representatives and both old and new employers. The affected employees then have a chance to meet and ask any relevant questions.

Whilst pension provisions do not transfer under TUPE legislation, it is the new employer's responsibility to check what pension provision has been written into any new contract for services, and that it offers a broadly comparable pension scheme, subject to statutory limitations.

The main legally permissible route to implement changes to transferred employees' contracts is to show an ETO reason. ETO stands for economic, technical and organisational and refers to grounds that mean that the service cannot be delivered in the same way.

Whilst future Pension provision by the new employer is not strictly covered under the law, commercially it is typically a contractual requirement for enhanced statutory arrangements to be put into place.

18. TUPE OUT

important to clearly define which employees are affected and are in scope to transfer out. This includes employees who are wholly or mainly assigned to the particular service/contract for the majority of their time as at the date of transfer.

There is a legal obligation on both the old employer and new employer to consult and inform the affected employees and their representatives/trade unions prior to the transfer, on the reasons of the transfer, the proposed dates, and any changes/measures the new contractor will be making post transfer.

There are no legal timescales to the length of time transfer consultation takes place prior to a transfer, but it must be meaningful.

The number of group consultation meetings will be dependant on the implications of the transfer, but as a minimum at least one joint consultation meeting with the affected employees, and both old and new employer prior to transfer. The affected employees then have a chance to meet their new employer and ask any relevant questions.

There is a legal obligation on the current employer to provide employee liability and employment data, 28 days prior to the transfer to the new employer/contractor.

Whilst pension provisions do not transfer under TUPE legislation, it is the new employer's responsibility to check what pension provision has been written into any new contract for services, and that it offers a broadly comparable pension scheme, subject to the statutory limitations.

The new employer is not legally obliged to allow the continuation of the current pension provision. It is the Group's responsibility to ensure through the new contract for services, that the employer is offering a broadly comparable pension scheme, subject to the statutory limitations. Where appropriate, the new employer should ensure that they have achieved admitted body status for the LGPS or other public sector schemes.

If the new employer wishes to consult with employees regarding any potential changes ie redundancy, written permission must be sought before any consultation commences.

19. INTRAGROUP TRANSFER

Where the employee is transferring to a different employing entity within the Mears Group PLC this too may trigger a TUPE situation. If this is the case, the requirements of the transferor and transferee remain the same.

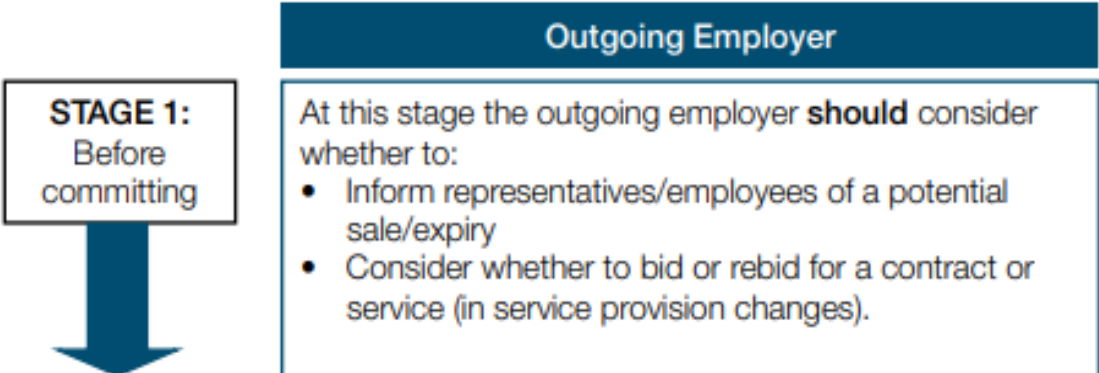
20. EMPLOYEES WHO CHOOSE NOT TO TRANSFER

employees have the right to object to a transfer and not to transfer to the new employer. However, in doing so their employment comes to an end with the existing employer by reason of resignation.

21. FURTHER INFORMATION

For further information, guidance and support on the implementation of this policy please speak to your line manager, HR Business Partner or HR Advisor Team.

Appendix 1 – Process Flow: Outgoing TUPE



Appendix 2 – Process Flow: Incoming TUPE

