

**Department for Business and Trade:
Make Work Pay: Call for evidence on Transfer
of Undertakings (Protection of Employment)
Regulations**

GENERAL COMMENTS

1. NASUWT welcomes the opportunity to respond to the Department for Business and Trade (DBT) Call for Evidence on the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).
2. NASUWT – The Teachers’ Union – represents teachers and headteachers across the United Kingdom.
3. NASUWT recognises the need for good jobs and a stronger economy that delivers for working people. It is therefore welcome that the Government should look at the role played by TUPE and how it provides vital protections for employees when they are moved between employers as part of its *Make Work Pay* plan.¹
4. The Union is supportive of any measures that help employees undergoing TUPE, including providing them with a ‘real say’ throughout the process and stronger protections in regards to their rights and entitlements around their terms and conditions of employment.²

¹ <https://www.gov.uk/government/collections/make-work-pay>

² [Call for Evidence on Transfer of Undertakings \(Protection of Employment\) Regulations](#)

5. Originating from the European Union (EU) directive – specifically the Acquired Rights Directive (ARD)³ – TUPE seeks to protect the terms and conditions of employees when their contract of employment is transferred to a new employer.
6. TUPE regulates what happens when a relevant transfer takes place, including the rights that employees have in continued employment, the terms and conditions on which they transfer to the new employer and the rights of the affected employees to be informed and consulted on the transfer of any related changes.⁴
7. In regards to schools and teachers, the basic position is that where a school changes employer, such as when a local authority school converts to academy status or joins a multi-academy trust (MAT), TUPE operates to ensure the staff working in the school, who have a contract of employment or a similar working relationship with the employer, automatically transfer.
8. As such, they will remain on their existing terms and conditions as set out in their contracts of employment before the transfer and may include the School Teachers' Pay and Conditions Document (STPCD)⁵ and the Conditions of Service for School Teachers in England and Wales (the 'Burgundy Book')⁶ if these terms applied before the transfer.
9. Importantly, TUPE establishes statutory rights to information, while collective consultation (Regulations 13⁷ and 14⁸) ensures that, where there is a recognised trade union, consultation must be with representatives of that union, or, if there is no union, with either representatives appointed or elected generally for consultation and information purposes, or representatives elected specifically for the purposes of the transfer.

³ [Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses](#)

⁴ [Call for Evidence on Transfer of Undertakings \(Protection of Employment\) Regulations](#)

⁵ [School teachers' pay and conditions - GOV.UK](#)

⁶ [Conditions of Service for School Teachers in England and Wales \(Burgundy Book\)](#)

⁷ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#)

⁸ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#)

10. In doing so, trade unions are informed about the potential implications of a proposed transfer and any envisaged measures relating from the transfer. Consultation must be meaningful, so employers must engage in TUPE consultation as early as practically possible, including if there are any economic, technical or organisational (ETO) reasons associated with the transfer that permits an employer to vary the terms and conditions of employment contracts.
11. However, over recent years, changes in the UK labour market have had a significant impact upon pay, job security and conditions of employment, resulting in an increased disparity in the balance of power between employers and employees.
12. As such, the current TUPE regulations could be seen to be failing many employees as they do not effectively protect key terms and conditions during a transfer, give too much scope to employers to vary terms and conditions or even dismiss employees post transfer, and often do not provide enough time for trade unions to scrutinise transfers effectively.
13. Given the growing complexity of taxation and employment and equality law, coupled with the significant changes in the UK labour market over recent years which have impacted upon pay, job security and conditions of employment, it is essential that there is a strong TUPE regulatory framework.
14. It is therefore right that the Government seeks to ensure that employment rights are fit for a modern economy, empower working people, and support economic growth,⁹ by reviewing the current TUPE framework to better protect employees.
15. The plan to Make Work Pay represents a once-in-a-generation opportunity to strengthen the working conditions for employees who, over previous decades, have seen their wages decline, terms and conditions erode, and contracts become ever less secure.

⁹ [Call for Evidence on Transfer of Undertakings \(Protection of Employment\) Regulations](#)

SPECIFIC COMMENTS

Indicate whether you are responding as:

- An academic
- An employer
- An employee, worker or individual
- An employer – other
- A legal representative
- A business representative organisation or trade body
- A trade union or staff association – The National Association of Schoolmasters Union of Women Teachers (NASUWT – The Teachers' Union)
- A voluntary sector organisation
- Other (please specify)
- Do not know

What sector or industry do you operate in?

- Manufacturing
- Construction
- Wholesale and retail trade; repair of motor vehicles and motorcycles
- Transport and storage
- Accommodation and food services
- Information and communication
- Financial, insurance and real estate activities
- Professional, scientific and technical activities
- Administrative and support services
- Public admin and defence; social security
- Education
- Human health and social work activities
- Other services (please specify)
- Do not know

Q1. To what extent do you agree or disagree that the current TUPE regulations strike the right balance between supporting employer needs and protecting employees' employment rights?

Please explain your answer.

- strongly agree

- agree
- neutral
- disagree
- strongly disagree
- other

16. NASUWT maintains that the framing of the question regarding the need to 'strike the right balance' is unhelpful and distracts from the fundamental principle behind TUPE – namely to provide adequate protection for employees' terms and conditions when a transfer takes place.

17. This is not helped when the consultation makes references to '*strike the right balance*'¹⁰ and ensuring that '*TUPE is as efficient as it can be*',¹¹ as this gives the impression that TUPE is onerous and bureaucratic and acting as a barrier to economic growth, which NASUWT would dispute.

18. NASUWT would therefore argue that this should not be the basis by which the effectiveness of the TUPE regulations are reviewed, as no evidence has been provided to entertain any suggestion that the regulations act as a barrier for employers.

19. Indeed, the Union would argue that the current provisions do not go far enough to protect the terms and conditions of employees when a transfer of employment takes place.

Q2. To what extent do you agree or disagree that the current TUPE regulations sufficiently protect employees' employment rights when a transfer takes place? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- strongly disagree
- other

¹⁰ Ibid.

¹¹ Ibid.

20. NASUWT strongly disagrees that the current TUPE regulations provide sufficient levels of protection for employees' employment rights for a number of reasons, including those outlined and detailed below:

- the need for greater protection for the terms and conditions from collective agreements post-transfer (i.e. 'dynamic' vs 'static' alignment);
- the transfer of trade union recognition and associated bargaining machinery;
- the fact that wider employment policies and procedures should also transfer;
- the obligation to consult with trade unions needs to be strengthened;
- the need for greater protection regarding ETO variations;
- occupational pensions should also transfer;
- the regulations should be extended to cover all employees;
- the need for better statutory advice and guidance to provide clarity and consistency when a transfer takes place, with an emphasis on early engagement with trade unions;
- TUPE should be amended so that an employee who treats their employment as terminated by reason of a substantial change in their working conditions to their material detriment is able to claim for wrongful dismissal;
- the right to object should be strengthened;
- variations which are favourable to the employee; and
- anti-avoidance measures.

The need for greater protection for the terms and conditions from collective agreements

21. Following a TUPE transfer, NASUWT believes that its members should benefit from 'dynamic alignment' with any collective agreements. Members who transfer to a new employer would continue to benefit from any enhancements to collective agreements negotiated by NASUWT post-transfer, thereby reversing the 'static' position on the incorporation of collective agreements from Alemo-Herron.¹²

22. As a consequence, the Union believes that Regulation 4 (5B) of TUPE,¹³ which permits an employer to make variations to terms and conditions derived from collective agreements after one year, should be removed.

¹² [Microsoft Word - Parkwood Leisure Press SummaryFINAL.doc](#)

¹³ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#)

This would include reference to the fact that the rights and obligations in the employee's contract, when considered together, '*are no less favourable*',¹⁴ as this suggests that the terms and conditions of employees somehow 'averages out', based on an assessment of the overall contract.

Transfer of trade union recognition and associated bargaining machinery

23. Whilst NASUWT recognises that trade union recognition automatically transfers, it should be noted that this is only if those who are transferred retain a separate identity within the new employer's organisation. This weakens the collective voice of employees at a time when they are likely to feel particularly anxious and vulnerable.

24. The Union maintains that TUPE should provide additional protection for recognition applications at the time of the transfer. Indeed, it is understood that when the TUPE regulations were brought in, further regulations were to be introduced to ensure that declarations of the Central Arbitration Committee (CAC) and outstanding applications were preserved so as to apply against the transferee. However, those regulations were not introduced.

25. In addition, NASUWT is concerned that the collective bargaining machinery that underpins and details engagement between employers and recognised trade unions does not transfer across.

26. Trade union recognition agreements (TURAs) that codify how negotiation and consultation should take place, as well as detail how disputes are to be resolved, can be disregarded – leaving trade unions to effectively start from the beginning.

27. This is a common occurrence within education, with more and more schools transferring from local authority control to an academy trust, or transferring between different academy trusts.

¹⁴ Ibid.

28. Indeed, NASUWT has experience of trying to negotiate TURAs with some more unscrupulous employers for a number of years. When recognition agreements are discussed, it is often the case that the TURA does not conform to all the key aspects of the TUC Model Agreement for Academies,¹⁵ with many employers refusing to entertain words involving 'negotiation' in a TURA.

29. Of even greater concern is the fact that arrangements to pay into and provide facility time release for trade union representatives do not transfer, which can significantly impact on the time available to them to effectively represent NASUWT members as and when required.

30. Given this, the Union maintains that the TUPE regulations should be amended or statutory guidance issued by the Government that makes clear that if facility time has been provided via de-delegation from the schools budget, then this should be provided post-transfer by paying into the relevant local authority trade union facility time pot.

The fact that wider employment policies and procedures should also transfer

31. NASUWT is concerned by the fact that the TUPE regulations do not cover wider employment policies and procedures that are either not part of an employee's contractual terms and conditions or have not been incorporated into a collective agreement.

32. Consequently, many wider policies and procedures that can be beneficial to members do not transfer and, as such, members may suffer a detriment at the point of transfer with employers seeking to 'harmonise terms and conditions' as part of the TUPE process, citing that many policies are 'non-contractual'.

¹⁵ [TUC Model Agreement for Academies July 2015.pdf](#)

33. For example, the Union is often informed of the following in TUPE letters when there is a transfer between academy trusts or from a local authority maintained school to an academy trust:

Policies and Procedures

'As a measure following transfer, all non-contractual policies and procedures currently in operation at the school will be replaced by the Trust's policies and procedures with effect from the transfer date.'

'The Trust believes that the implementation of a common suite of policies across all schools within the Trust provides consistency, clarity and fairness for all employees.'

'The replacement of existing non-contractual policies with the Trust's policies constitutes a measure for the purposes of TUPE.'

'Employees and their representatives will be informed of the principal differences between the current policies and the Trust's policies as part of the information and consultation process.'

'The adoption of the Trust's policies will not alter employees' contractual terms and conditions of employment.'

34. A good example of this is where a pay policy for teachers with one employer has provisions for automatic pay progression, yet the employer they transfer into has a link between pay and performance.
35. Whilst there is an expectation that this forms part of the TUPE process, NASUWT is aware that the reality often involves a transferee not gathering all the relevant policies from the transferor in enough time for meaningful consultation, resulting in members being left with no choice but to accept working on the new policies from day one with their new employer.

36. Given this, the Union contends that the TUPE regulations should be amended to include the fact that all policies transfer, irrespective of whether or not they are 'contractual' or 'non-contractual', and that they can only be varied post-transfer following negotiation with relevant trade unions on the premise of no detriment.

Consultation obligations with unions needs to be strengthened

37. As stated above, despite the requirement for any TUPE consultation to be meaningful and take place as early as practicable possible, NASUWT maintains that many employers do not carry out their duties properly and with due diligence.

38. As such, trade unions are often left in a position where they are unable to scrutinise the TUPE process and any associated measures forensically, which can significantly impact on the ability to protect the terms and conditions of members.

39. This is because there is no specific timescale set out in the TUPE regulations, meaning that information is often provided only shortly before the transfer. This is in contrast to the position regarding collective redundancies where the law does set out specific minimum periods. Given that a TUPE transfer can have a significant impact on employees, NASUWT maintains that Regulation 13 (2) should be amended to specify minimum timescales.

40. In addition, the Union contends that the 'special circumstances' consultation exemption¹⁶ should be open to greater examination and scrutiny by trade unions and should exclude circumstances dictated by transactional timetables, thereby overturning the decision in UNISON vs Somerset County Court,¹⁷ where the Council avoided its obligation to consult because of the urgent nature of negotiations between the transferor and transferee.

¹⁶ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#)

¹⁷ [Unison v Somerset County Court & Ors | United Kingdom Employment Appeal Tribunal | Judgment | Law | CaseMine](#)

41. Furthermore, NASUWT believes that it would be reasonable for the TUPE regulations to provide for meaningful consultation to be an ongoing process that continues post-transfer. This would reverse the decision in *Amicus vs City Building Glasgow LLP*,¹⁸ where it was held that a transferee's information and consultation obligations under TUPE cease at the date of transfer.
42. The Union also maintains that the TUPE regulations need to be changed to place an expectation on employers to consult and engage with trade unions meaningfully.
43. Currently, the duty to consult with trade unions only arises in circumstances when '*an employer of an affected employee [...] envisages that he will take measures in relation to an affected employee*',¹⁹ meaning that in a situation where an employer transfers all of its employees to another employer but takes no measures, it does not have to consult.
44. This is compounded by the fact that the employer to which the employees are being transferred into does not have to consult unless it is taking measures in regards to its own staff because they are not an employer of the affected employee and, as per the ruling in *Amicus vs City Building Glasgow*, there is no requirement to consult post-transfer.
45. In addition, the TUPE regulations should confirm that information about 'measures' includes information about pensions (see below).

The need for greater protection regarding ETO variations

46. NASUWT contends that the ability of an employer to vary the terms and conditions of employees, or dismiss an employee for economic, technical or organisational reasons, provides a significant loophole for employers that allows them to 'game the system' and avoid the TUPE regulations.

¹⁸ [EATS.0007_080007_08UCATTvGlasgow...formatted.doc](#)

¹⁹ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#)

Given this, it should not be possible to vary terms or make dismissals related to a TUPE transfer.

Occupational pension provision should also transfer

47. Whilst appreciating that teachers in pensionable employment will automatically remain in the Teachers' Pension Scheme (TPS) upon transfer, it is recognised that occupational pension entitlements do not transfer under the TUPE regulations.

48. As such, the Union maintains that the TUPE regulations should be amended to ensure that occupational pension provision transfers for all, and that employees are not prevented from deriving the benefits associated with occupational pension schemes post-transfer through no fault of their own.

49. This is particularly prescient when considering the situation for supply teachers as agency workers, who may find that the work has been outsourced from a local authority pooled supply arrangement to an employment agency and they have lost the opportunity to access the TPS as a consequence.

The regulations should be extended to cover all employees

50. NASUWT contends the TUPE regulations should apply to all employees in order to avoid a situation as detailed above in regards to the outsourcing of workers, such as supply teachers, to employment agencies.

51. Whilst the 2019 employment tribunal judgement in Dewhurst vs Revisecatch Ltd t/a Ecourier²⁰ concluded that TUPE applies to limb (b) employees as well as employees, it is not binding and has therefore created some uncertainty.

²⁰ [Consultation on clarifications to the Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(TUPE\) and abolishing the legal framework for European Works Councils - GOV.UK](#)

52. NASUWT contends that the law should be clarified and extended so that all employees can benefit from protection of their key terms and conditions when their employment transfers, including those who find themselves outsourced through no fault of their own, including to employment agencies.
53. Figures published by the Trades Union Congress (TUC) show that 4.1 million people in the UK were employed in low-paid and insecure work in 2024. This included around one million workers on zero-hours contracts,²¹ which, it is estimated, accounts for 3% of all employees,²² whereas further analysis has put the number of temporary workers at 1.6 million, making up 5.5% of total employment.²³
54. Data from the Labour Force Survey (LFS) (March 2025) suggests there are approximately 900,000 individuals involved in agency work in the UK,²⁴ with roughly 140,000 stating that they were on a zero-hours contract.²⁵
55. Furthermore, figures suggest that there were approximately 40,000 agencies operating across different sectors of the labour market in the UK in 2018,²⁶ with a 200% increase reported in 2019.²⁷
56. It cannot go unnoticed that there are important equalities considerations to take into account given that those from Black and minority ethnic groups, as well as those who are disabled, are disproportionately represented in low-paid and insecure work.
57. NASUWT believes that the applicability of TUPE to all sections of the workforce should be given serious consideration, including as part of the manifesto commitment to move towards a single status of worker.²⁸

²¹ [Over 8 in 10 zero-hours contract workers want regular hours – TUC poll reveals | TUC](#)

²² [Consultation on the application of zero hours contracts measures to agency workers](#)

²³ [EMP01 SA: Full-time, part-time and temporary workers \(seasonally adjusted\) - Office for National Statistics](#)

²⁴ [Make Work Pay: Modernising the Agency Work Regulatory Framework](#)

²⁵ [Consultation on the application of zero hours contracts measures to agency workers](#)

²⁶ [Recruitment industry edges closer to 40,000-agency mark - TALiNT Partners Insights](#)

²⁷ [200%+ increase in new recruitment agencies in 2019 | Recruiter](#)

²⁸ [LABOUR'S PLAN TO MAKE WORK PAY](#)

Better statutory advice and guidance to provide clarity and consistency when a transfer takes place, with an emphasis on early engagement with trade unions

58. NASUWT believes that to improve clarity, consistency and accountability the Government should introduce comprehensive statutory advice and guidance, akin to a statutory Code of Practice, such as that which already exists for the Equality Act 2010.²⁹

59. Any such guidance should be developed with recognised trade unions and include sector-specific examples.

60. Furthermore, the Government should amend the TUPE regulations so that employers have to set out and evidence any reasoning regarding the applicability of TUPE in relevant circumstances, as well as engaging with trade unions where applicability is in doubt.

The TUPE regulations should be amended to provide that an employee who treats their employment as terminated by reason of a substantial change in their working conditions to their material detriment is able to claim for wrongful dismissal

61. NASUWT believes that it is unacceptable that an employee who claims to have been dismissed in circumstances where there has been, or will be, a substantial detrimental change in their working conditions is not able to pursue a claim for wrongful dismissal, particularly when they have been dismissed without the requisite period of notice.

62. The Union therefore contends that the right to object should be strengthened and that an employee should be able to pursue a claim for any detriment suffered in such circumstances.

²⁹ [employercode.pdf](#)

Variations that are favourable to the employee

63. NASUWT maintains that it is fundamental that employees are able to benefit from improved terms and conditions and upwards harmonisation after they have transferred to a new employer.

64. Indeed, *Regent Security Services Ltd vs Power*³⁰ concluded that contractual variations which are beneficial to employees are not void under Regulation 4 (4) of TUPE.³¹ However, this has been thrown into doubt by *Ferguson vs Astrea Asset Management Ltd*,³² which argued that the words '*any purported variation*' in Regulation 4 (4) should be interpreted to cover all types of variation and not just those which are adverse to the employee, a decision that was followed by the Employment Appeal Tribunal (EAT) in *Anne vs Great Ormond Street Hospital*.³³

65. Given this, the Union contends that the TUPE regulations should be amended to permit changes that are beneficial to the employee to stand.

Anti-avoidance measures

66. NASUWT believes that the TUPE regulations should be amended to close any potential loophole in regards to the definition of a 'relevant transfer' that enables nefarious employers to game the system.

67. For example, recent casework with a school has shown that it is possible for an employer to transfer employees into a shell company, but not transfer any of the tangible assets. An independent school, for instance, is '*an organised grouping of wage-earners who are specifically and permanently assigned to a common task*',³⁴ and so the employees can potentially transfer without any of the other components that make the

³⁰ [Regent Security Services Ltd v Power | England and Wales Court of Appeal \(Civil Division\) | Judgment | Law | CaseMine](#)

³¹ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#)

³² [Microsoft Word - 19_0139 fh u RB JOJ.docx](#)

³³ [Failing to harmonise terms following a TUPE transfer | Weightmans](#)

³⁴ [Daniel Barnett's Employment Law Archive: Important TUPE case - Cheesman v Brewer Contracts](#)

school function (e.g. buildings, name, equipment etc.) (see Cheesman vs Brewer Contracts).³⁵

68. The transferee shell company can then go into liquidation, and since that shell company has no assets, the cost of the redundancy, notice pay and any unpaid wages then fall on the relevant government fund. This allows the transferor, who still owns all the tangible and non-tangible assets, to reopen the school without the encumbrance of any of the employees and recruit a new workforce on whatever terms they wish.

69. The Union would therefore want to see the definition of a 'relevant transfer' preclude transferring staff but no assets, or to maintain liability on the transferor, or the directors of the transferee/transferor in certain defined circumstances.

Q3. To what extent do you agree or disagree that the current TUPE consultation requirements are sufficient to ensure employees are informed and consulted with when a transfer takes place? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- **strongly disagree**
- other

70. The evidence presented in this consultation demonstrates that many employers are often unwilling to enter into effective and meaningful consultation with trade unions. Where it does occur, it is often as an afterthought and not undertaken in good faith.

71. As such, NASUWT believes that serious consideration must be given to strengthening and robustly enforcing the obligations on employers to consult with trade unions meaningfully, including providing all relevant information, as early as practicably possible.

³⁵ Ibid.

72. It cannot go unnoticed that an employer has a formal obligation to consider any representations made and reply, with reason for objection, where appropriate (Regulation 13 (6)).³⁶

73. In addition to the relevant points raised above in response to question two, NASUWT would want to see an alignment with the maximum protective award for non-compliance with collective redundancies (180 days' pay per affected employee) where an employer had failed to engage in meaningful consultation during a TUPE process.

74. Furthermore, there should be a requirement placed on a transferee to consult with appropriate trade union representatives on the measures it envisages it will take regarding the transferring of employees in connection to the transfer, rather than the current position where the transferee only has to consult with the trade union representatives of their own workforce.

75. Regulation 13 should therefore be amended to reflect this, as well as ensuring there is always a duty to consult about measures on both transferor and transferee, before and after the transfer.

Q4. To what extent do you agree or disagree that collective agreements are sufficiently protected under a TUPE transfer? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- **strongly disagree**
- other

76. In addition to the relevant points raised above in response to question two, NASUWT would want to see the TUPE regulations amended to remove the ability of the employer to make variations to any terms and conditions derived from collective agreements after one year (Regulation 4 (5B)).³⁷

³⁶ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#)

³⁷ [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#)

Q5. To what extent do you agree or disagree that employee pension rights are sufficiently protected under a TUPE transfer? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- **strongly disagree**
- other

77. In addition to the relevant points raised above in response to question two, NASUWT would want to see a requirement for meaningful consultation to take place with workers regarding what pension provision the new employer is intending to put in place.

78. Going further, the Union would want to see supply teachers, as agency workers, captured by *The Cabinet Office Guidance on Staff Transfers in the Public Sector*, which stipulates that when public sector workers are contracted out, there should be appropriate arrangements put in place to protect their pensions, including the requirement that transferees secure access to relevant public sector pension schemes so that employees can retain membership of them.³⁸

79. It cannot go unnoticed that the exclusion of pensions from TUPE provisions incentivises egregious employers to seek to take advantage of this loophole by offering vastly inferior pension provision that employees have no choice but to accept in order to avoid being seen to have voluntarily resigned.

Q6. To what extent do you believe that it is clear when a 'relevant transfer' has taken place and TUPE regulations apply? Please explain your answer.

- completely clear: no improvement required
- mostly clear: it could be improved
- neutral

³⁸ [COSOP-revised-Dec-13.doc](#)

- **mostly unclear: it should be improved**
- **completely unclear: it must be improved**
- **other**

80. In addition to the relevant points made above in response to question two, NASUWT would want to see the definition of a 'relevant transfer' reconsidered so that activities should not have to be 'fundamentally the same' after the transfer: a diminution in the level of service provided should not matter; the client may not need to be the same; and it should not matter whether the 'organised grouping of employees' is deliberately organised to carry out the activities.

Q7. If you have previously been involved in a TUPE process, in your view, what aspects of the process worked well? Please explain your answer.

N/A

Q8. If you have previously been involved in a TUPE process, did you encounter any issues with the process?

- **yes**
- **no**
- **other (please specify)**

81. In addition to the points made earlier in response to question two, NASUWT is aware that employers often fail to provide copies of policies and procedures, especially non-contractual policies and procedures, when these are identified as a measure when the new employer seeks to 'harmonise policies and procedures' for those employees subject to transfer.

82. Furthermore, the Union believes that this could be remedied if measures were taken to improve the TUPE process, including introducing a requirement to consult with recognised trade unions at the earliest stage possible, particularly if there are questions about the applicability of TUPE.

83. Coupled with this should be mechanisms to resolve disputes before transfer, such as Acas-led discussions and/or expedited tribunal determination on the applicability of TUPE.

84. This could be complemented by updated advice and guidance that provides detail regarding how TUPE interacts with redundancy and the new provisions relating to fire and rehire.

Q9. At which stage of the transfer process did you encounter these issues? Please select all that apply.

- after the transfer was complete
- dealing with complications resulting from employees disagreeing with the transfer or raising a disagreement with your employer about the transfer
- employee liability information
- employees' redundancies
- employees' terms and conditions after the transfer
- employer insolvency
- informing and consulting the employees or being informed and consulted regarding the transfer
- planning the transfer
- **throughout the process**
- transferring the employees to a new business or being transferred to a new business
- other (please specify)

Q10. Which, if any, of these issues did you face during a TUPE process?

Please select all that apply. Please explain your answer.

- insufficient guidance or clarity on the process
- **issues with trade union recognition and collective agreements**
- **lack of clarity about employees' employment rights in continued employment**
- **lack of clarity on identifying a 'relevant transfer'**
- **lack of clarity on transferring employees' terms and conditions**
- **lack of consultation for employees and their representatives**
- **lack of enforcement regulation if the process is not followed**
- loopholes in the existing process
- practicalities are too complicated

- **rules not followed or discrepancies in following rules**

- the cost to businesses is too high
- other

85. The evidence provided throughout this call for evidence documents the issues and concerns that NASUWT has in regards to the TUPE process.

Q11. To what extent do you agree or disagree that the TUPE process can be challenging for employers to navigate? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- strongly disagree
- other

N/A

Q12. In your view, how do you think the TUPE process could be made more efficient for employers?

86. As stated at the beginning of this call for evidence, NASUWT would countenance against any suggestion that the TUPE process could be made more efficient for employers, especially given the importance TUPE has on employment terms and conditions.

Q13. In your view, how do you think the TUPE process could be strengthened to provide greater protections for employees' employment rights?

87. The evidence provided throughout this call for evidence documents the recommendations that could be implemented to strengthen the TUPE process.

Q14. In the process of undergoing TUPE, what support, if any, did you use?

- employment organisation
- employee representatives
- legal representatives
- trade union
- government
- other – please specify

N/A

Q15. How helpful do you believe the guidance (GOV.UK and Acas) currently available on TUPE is? Please explain your answer.

- very helpful: no improvement required
- somehow helpful: it could be improved
- neutral
- somehow unhelpful: it should be improved
- **very unhelpful: it must be improved**
- other

88. The evidence provided throughout this call for evidence documents the recommendations that could be implemented to strengthen the TUPE process, including in regards to statutory advice and guidance that would act as a Code of Practice.

Q16. To what extent do you agree or disagree that the current circumstances that an employer can change the contractual terms and conditions of an employee (e.g. ETO reasons), strikes the right balance between supporting employer needs and protecting employees' employment rights? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- **strongly disagree**
- other

Q17. In your view, to what extent do you agree or disagree with the reasons, as outlined above, for being able to vary employment contracts (ETOs)? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- **strongly disagree**
- other

89. NASUWT has serious reservations about the ability of employers to ETO variations as a means to undermine the TUPE regulations by watering down key terms and conditions of employment, following transfer to a new employer.

90. As such, the Union maintains that the ability to make variations based on ETO reasons should be removed, including in situations where the sole or principal reason for a dismissal is an ETO reason entailing changes in the workforce.

Q18. To what extent do you agree or disagree that the circumstances where employers can change the contract terms and conditions of an employee (for example using ETO exemptions), following a transfer, are sufficiently clear and specific? Please explain your answer.

- strongly agree
- agree
- neutral
- disagree
- **strongly disagree**
- other

Q19. If answered strongly disagree, disagree, or other to question 18, what further guidance/clarifications do you think will be most beneficial and why? Please explain your answer.

91.If the recommendations in response to questions 16 and 17 are not enacted, then NASUWT maintains that serious consideration should be given to the introduction of a statutory definition on an ETO variation following engagement with recognised trade unions and other stakeholders.

Q20. To what extent do you agree or disagree that the overall cost of TUPE-protected transfers is too high for businesses? Please explain your answer.

- **strongly agree**
- **agree**
- **neutral**
- **disagree**
- **strongly disagree**
- **other**

92.NASUWT would countenance against any suggestion that the overall cost of TUPE-protected transfers is too high for businesses, given the fact that workers bear significant costs in relation to outsourcing, such as job losses and a serious deterioration in pay and conditions of employment, something that is felt by women and Black and minority ethnic groups who are disproportionately represented in outsourced work.

Q21. Please provide information on the types of costs that businesses need to consider during a TUPE-protected transfer and where in the process these costs occur.

N/A

Q22. If you have been through a transfer process, please provide an estimate of the total cost of the transfer for your business.

N/A

Q23. In your view, have the TUPE regulations resulted in any unintended consequences for individuals with a protected characteristic under the

Equality Act 2010 or different socioeconomic background? Please explain your answer. Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.

- **yes**
- **no**
- **do not know**
- **other**

93.As stated previously, it cannot go unnoticed that there are important equalities considerations to take into account, given that those from Black and minority ethnic groups, as well as those who are disabled, are disproportionately represented in low-paid and insecure work.

94.Indeed, the equalities impact assessment referenced in the 2024 consultation paper concludes that excluding workers from the scope of the TUPE regulations could have a disproportionate impact on older, Black and minority ethnic and disabled workers.³⁹

95.The Union maintains that the impact on those with protected characteristics can be felt long after a transfer has taken place. For example, when more experienced teachers transfer from one school to another, this can impact detrimentally if the pay policy (non-contractual) of the new employer is linked to performance management, whereas the old employer adopted automatic pay progression, particularly when there is an expectation that more experienced and older teachers are expected to have more demanding performance management objectives to make pay progression.

Q24. Is there anything else you would like to share your reflections on, that was not covered by the previous questions?

³⁹ [Consultation on clarifications to the Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(TUPE\) and abolishing the legal framework for European Works Councils - GOV.UK](#)

96. NASUWT contends that the TUPE regulations should apply to all relevant transfers, irrespective of the size of the business. As such, the small business exemption for information and consultation should be removed (Regulation 13A).

97. In addition, there needs to be greater clarity over which workers transfer and benefit from continuity of employment in order to avoid situations where employers fail to assign certain workers to the 'organised grouping'.

98. Finally, it is vital that the two-tier code is reinstated in order to prevent a situation where those workers who have been subject to a TUPE transfer benefit from enhanced terms and conditions in comparison to others, including in situations when insourcing occurs.

ADDITIONAL COMMENTS

Effective enforcement

99. Any changes made as a result of this call for evidence must be supported with an effective and fit-for-purpose enforcement mechanism that acts as a deterrent for unscrupulous employers.

100. We are clear that enforcement penalties must ensure that there is a level playing field, and that employers who break the law can expect significant repercussions for their actions, whilst providing employees, workers and the wider public with confidence in the system.

Single employment status of 'worker'

101. The establishment of the employment status of an individual is fundamental to determining their eligibility for certain statutory rights, including in relation to TUPE.

102. The Union is concerned that the current system is therefore too open to manipulation by unscrupulous employers, specifically in regards to the use

of agency workers and zero-hours contracts, when it would be more appropriate to appoint permanent staff.

103. In such situations, there is a concern that individuals are unsure of their employment rights and lack the confidence to assert them, especially where the balance of power is slanted in favour of the employer.

104. The Union is clear that all those employed, irrespective of their employment status, should be able to access the same basic rights, entitlements and protections as those currently accessed by employees.

105. There should therefore be a single 'worker' status to determine access to all statutory employment rights.

106. A single coherent definition of 'worker', which is understood by both worker and employer, will overcome the confusing, and often conflicting, definitions which have created inconsistencies and uncertainties.

107. It is therefore disappointing that the Government's plan to consolidate various employment contracts into a 'single status' has been delayed, as it remains a key pillar of its plans to Make Work Pay.

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