

# Client Alert

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## TUPE Amendments 2014

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The Acquired Rights Directive (ARD) applies across the Member States of the European Union and is implemented in the UK by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the “TUPE Regulations”). Under the ARD and the TUPE Regulations, employees automatically transfer on the sale or transfer of a business or undertaking and, under the TUPE Regulations only, on a service provision change as well. Last year, the UK Government consulted on the scope of the TUPE Regulations, primarily concerned that they went further than was required by the ARD. The result was the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (the “TUPE Amendment Regulations”), which take effect on various dates throughout 2014. Although not as far reaching as first envisaged, the new regulations enact a number of important changes of which those involved in the transfer or sale of businesses or in outsourcings of services should be aware. The key amendments are:

1. **Changes to terms and conditions now permitted (in limited circumstances):** Transferees (generally the buyer or new service provider) can now make changes to terms and conditions of employment of transferring employees if the sole or principal reason for the change is an economic, technical or organizational reason entailing a change in the workforce (an “ETO Reason”) and the employee agrees to the change; or the employee’s employment contract allows the change to be made. Although this amendment is helpful and loosens the existing rules, it is unlikely to go far enough to allow a transferee to change terms for the most common reason, harmonization.
2. **Workplace changes are ETO reasons:** A desire to change the work location of the workforce is common in business sales and service provision changes. Helpfully for employers, workplace relocations are now expressly deemed to be an ETO Reason. The effect is that a genuine workplace redundancy is no longer an automatically unfair dismissal; however, employers will still need to follow fair dismissal procedures to avoid claims altogether.
3. **Collective agreements:** Transferees are now also permitted to change terms set out in collective agreements one year after the transfer. However, this is only the case where the overall change is not less favorable to the employee. In addition, a static approach is to be taken to collective agreements as a whole, which means that only those collective terms which are in force at the date of the transfer will be transferred and binding on the transferee.
4. **Collective redundancy consultation can take place pre-transfer:** Where collective redundancies (being 20 or more dismissals) are contemplated by the transferee, the collective redundancy consultation can now begin prior to the transfer, provided the transferor (generally the seller or customer) agrees. Although any dismissals must still take effect post-transfer, this is a welcome change for employers, given the time and cost savings that can be achieved.

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5. **Employee liability information must be provided earlier:** For transfers that occur on or after 1 May 2014, transferors must provide employee liability information at least 28 (rather than 14) days before the transfer takes place.
6. **Informing and consulting for microbusinesses can be direct:** From 31 July 2014, businesses employing 10 or fewer employees (termed “micro-businesses”) are able to inform and consult directly with affected employees if there is no recognized trade union or existing appropriate representatives. This also represents a time-saving change, as scheduling time for employee representative elections is no longer necessary.

In light of these amendments and in a bid to assist employers in complying with their obligations, ACAS (the Advisory, Conciliation and Arbitration Service) has issued this week a new guide for employers on how to handle TUPE transfers. A copy of the guide is available [here](#).

**MoFo will be hosting an EU employment webinar on Wednesday, 18 June 2014, on the Acquired Rights Directive and its implementation in the UK and Germany. For more information and to register for the webinar, please click [here](#).**

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