TUPE under review: what employers need to know about the Government’s Call for Evidence

The Department for Business and Trade has launched a wide-ranging review of the TUPE regulations. Employers have until 1 July 2026 to make their voices heard.

What is the background?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 – known as TUPE – sit at the heart of almost every business sale, merger, outsourcing arrangement and service provision change. They are also, in the experience of most HR professionals and in-house teams, among the most complex and demanding pieces of employment legislation to navigate in practice.

On 8 April 2026, the Department for Business and Trade (**DBT**) published a Call for Evidence on TUPE as part of the Government’s broader “Plan to Make Work Pay” programme. The review follows hot on the heels of the Employment Rights Act 2025 and signals that further legislative change is on the agenda.

The Call for Evidence is explicitly framed around two, sometimes competing, objectives: making TUPE easier for businesses to operate, while simultaneously strengthening

protections for employees who are subject to a transfer. Ministers have been candid that they want both outcomes and are seeking evidence to understand whether the current regulations deliver either goal satisfactorily.

At this stage, however, the Government is gathering information and experience from employers, employees, trade unions, legal practitioners and business representative bodies. Depending on the results, it may go on to develop policy proposals and consult on those.

The six areas under scrutiny

The Call for Evidence covers six broad areas:

The current framework

The Government asks whether the existing framework strikes the right balance between employer flexibility and employee protection, covering terms and conditions, consultation rights, collective agreements and pensions. Notably, occupational pension benefits tied to old age, invalidity or survivors remain exempt from automatic transfer under TUPE. The review invites views on whether that exemption remains appropriate, signalling potential change in this area.

Identifying a "relevant transfer"

One of the most persistent practical difficulties with TUPE is the threshold question: does it apply at all? The definition

of a “relevant transfer” (i.e. an economic entity retaining its identity, or when a service transfers to a new provider) has generated extensive case law and significant uncertainty, particularly in complex outsourcing arrangements. The Government asks how clear the current test is in practice and whether it needs to be reformed.

Process and practicalities

The Call for Evidence asks about the areas where employers experience difficulty in the TUPE process: planning, employee liability information, consultation, terms and conditions post-transfer, and/or situations involving insolvency. These are the friction points where legal disputes commonly arise, and where clearer rules could benefit business.

Variation of terms and conditions

Under the current rules, employers cannot vary terms and conditions where the reason for doing so is the transfer itself. Variations are only permissible for economic, technical or organisational (**ETO**) reasons entailing changes in the workforce and the employee agrees to the change, or in certain other limited circumstances.

In practice, the bar on harmonisation is one of the most commercially significant features of TUPE. Acquiring businesses frequently find themselves managing workforces on incompatible terms for years after a transfer, creating both operational complexity and employee relations difficulties. The Government is asking whether this framework is clear, fair and proportionate.

Guidance and support

The review asks how useful the existing Government and Acas guidance is in practice. This reflects a longstanding criticism from employers and practitioners that the guidance does not give businesses the practical direction they need when navigating novel or complex transfers.

Cost and impact

The Government is seeking quantitative evidence on the cost burden of TUPE compliance, both direct costs such as legal advice, HR resource and restructuring costs, and indirect ones including delay to transactions and difficulty in workforce planning.

What does this mean for employers?

It would be premature to predict specific reforms at this stage. What is clear is that the Government is open to relaxing some aspects to facilitate smoother transactions, while tightening others to strengthen employee protections.

Employers should be particularly alert to the possibility of changes to the ETO framework, which currently provides the main route for post-transfer harmonisation of terms. Reform to the service provision change rules is also plausible. Any tightening of the information and consultation obligations, or of the protective award exposure for non-compliance, would have immediate and significant financial consequences for employers involved in transfers.

It is also worth setting this review in its broader legislative context. The Employment Rights Act 2025 has strengthened employee rights across multiple areas. Any TUPE reform is likely to be developed in that spirit.

Responses may be submitted online, by email to tupepolicy@businessandtrade.gov.uk, or in writing to the TUPE Policy Team at the Department for Business and Trade, Old Admiralty Building, London SW1A 2DY. The response deadline is 11.59pm on 1 July 2026.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Amanda Steadman (AmandaSteadman@bdbf.co.uk), Rose Lim (RoseLim@bdbf.co.uk) or your usual BDBF contact.