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# United Kingdom

## Transfer of Business

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### **Trigger point**

On a Transfer of a Business, the contracts of employment of employees who are assigned to the business or service transferring will be automatically transferred to the Transferee.

### **Obligations**

There is an obligation to inform and, where measures are proposed, consult with appropriate representatives of affected employees on a Transfer of a Business.

### **Timing**

There is no minimum prescribed timeframe for the information and consultation process. The statutory information (as explained below) should be provided to employee representatives in good time before the Transfer of a Business to allow for meaningful consultation to take place. In practice, the statutory information should be provided approximately:

- (i) six to eight weeks before the proposed Transfer of a Business where measures are proposed; and
- (ii) four weeks before the proposed Transfer of a Business where no measures are proposed.

The employee liability information (as explained below) must be provided at least 28 days before the Transfer of a Business.

### **Representatives**

There is an obligation to inform and consult with appropriate representatives of the affected employees.

Where there is an existing Trade Union or other employee representative body, the employees should be asked to confirm that they are happy for these existing representatives to be informed and consulted with for the purposes of this process. Where there is no existing employee representative body, appropriate representatives should be elected.

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## Information/Notification

There are three main information and notification obligations:

- (i) **Statutory information:** The following information must be given to the employee representatives in writing in “good time” before the Transfer of a Business:
  - (a) the fact that the Transfer of a Business is to take place, the date or proposed date when it is to take place and the reasons for it;
  - (b) the legal, economic and social implications of the Transfer of a Business for the affected employees;
  - (c) the measures which the Transferor envisages it will take in connection with the Transfer of a Business in relation to any affected employees or, if no measures are to be taken, that fact; and
  - (d) the measures that the Transferee envisages it will take in connection with the Transfer of a Business in relation to the transferring employees or, if the Transferee envisages taking no measures, that fact.
- (ii) **Measures letter:** The Transferee must provide the Transferor with details of any measures (i.e. any proposals or changes) it envisages taking in respect of the affected employees.
- (iii) **Employee liability information:** The Transferor must provide the Transferee with written information about the transferring employees, including:
  - (a) the identities and ages of the transferring employees;
  - (b) the employees’ statements of terms and conditions of employment which an employer is obliged to give to an employee pursuant to section 1 of the Employment Rights Act 1996;
  - (c) any disciplinary proceedings or grievances issued in the last two years;
  - (d) any court or tribunal cases brought by employees against the Transferor in the last two years, or any court or employment tribunal cases which the Transferor has reasonable grounds to believe that an employee might bring; and
  - (e) any collective agreement which will have effect after the Transfer of a Business.

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**Consultation**

There is an obligation to consult with employee representatives about any measures which are proposed in respect of the transferring employees. Consultation should involve discussing the nature of the envisaged measures and whether they are necessary, and replying to any questions raised by the representatives. The number of consultation meetings will vary, but, in practice, there should be at least three meetings.

The consultation must be meaningful, and conducted with a view to reaching agreement, but there is no requirement to reach agreement with the employee representatives.

**Veto rights**

Neither the employees nor the employee representatives have any veto rights, and neither can prevent a Transfer of a Business from proceeding, although an employee can object to the transfer of their employment.

**Penalties**

Failure to comply with the above process could result in employees (and, in certain circumstances, employee representatives) bringing claims for a failure to inform and consult. If successful, a Tribunal could award compensation of up to 13 weeks' gross pay per affected employee.

Employees may also bring claims for unfair dismissal.

A Tribunal may also order the Transferor to pay £500 per employee to the Transferee for failure to provide employee liability information.

**Other**

The Transferor and/or Transferee must comply with any additional process prescribed in any applicable CBA or information and consultation agreement.

**Impact of Share Sale**

The above requirements do not apply on a Share Sale.

**Intra-Group Transfers**

The same requirements apply in the event of an Intra-Group Transfer.

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# United Kingdom

## Redundancies

### Collective Redundancies

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#### Threshold

The obligations set out below apply where an employer proposes to make 20 or more employees redundant at one establishment over a period of 90 days or less.

#### Obligations

There is an obligation to:

- (i) inform and consult with appropriate representatives of the affected employees; and
- (ii) notify the Department for Business, Energy & Industrial Strategy (“**BEIS**”) of the proposed redundancies.

#### Timing

The employer must begin the consultation process with the employee representatives “in good time” before the redundancies and, in any event:

- (i) where between 20 and 99 redundancies are proposed within a 90-day period, consultation must begin at least 30 days before the first dismissal takes effect; or
- (ii) where 100 or more redundancies are proposed within a 90-day period, consultation must begin at least 45 days before the first dismissal takes effect.

#### Representatives

There is an obligation to inform and consult with appropriate representatives of the affected employees. Where there is an existing recognised Trade Union, the Trade Union must be consulted with. Where there are no existing employee representatives, appropriate representatives should be elected.

#### Information/Notification

There are two main notifications:

- (i) **Information to representatives:** The following information must be provided to the appropriate representatives in writing and the required consultation period does not begin to run until this happens:
  - (a) the reasons for the proposals;
  - (b) the numbers and descriptions of employees who it is proposed will be made redundant;
  - (c) the total number of employees of any such description employed by the employer at the establishment in question;
  - (d) the proposed method of selecting the employees who may be dismissed;

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- (e) the proposed method of carrying out the redundancy program, with due regard to any agreed procedure, including the period over which the dismissals are to take effect;
  - (f) a copy of the HR1 notification to BEIS (as explained below);
  - (g) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by virtue of any enactment) to the employees who may be dismissed; and
  - (h) suitable information about the employer's use of agency workers (including the number of agency workers, the parts of the business in which they work, and the type of work they are carrying out).
- (ii) **Form HR1:** The employer must notify BEIS of certain details of the proposed redundancies on a form HR1. A copy of the form HR1 must also be given to the employee representatives. The timing for the notification is the same as that for the consultation (as explained above).

## **Consultations**

There is an obligation to consult with appropriate representatives about ways of avoiding the dismissals, reducing the number of employees to be dismissed and mitigating the consequences of the dismissals. The consultation must be meaningful, and conducted with a view to reaching agreement, but there is no requirement to reach agreement with the employee representatives.

There must be consultation at both a collective and individual level.

## **Penalties**

Failure to comply with the above process could result in a Tribunal awarding compensation of up to a maximum of 90 days' actual pay for each affected employee (known as a "protective award").

Failure to notify BEIS is a criminal offense, which may result in a fine. Such claims can also result in both corporate liability and personal liability for individual directors.

## **Other**

The employer must comply with any additional process in any applicable CBA or information and consultation agreement.

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## Individual Redundancies

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<b>Threshold</b>	Where the threshold for a collective redundancy is not met.
<b>Obligations</b>	There is no procedure prescribed by statute, but, in practice, there is an obligation to inform and consult with employees individually.
<b>Timing</b>	There is no prescribed timeframe for the process. In practice, the employer should allow sufficient time for meaningful consultation with the employee.
<b>Representatives</b>	There is no requirement for employee representatives to be appointed.
<b>Information/Notification</b>	The employer should have a preliminary discussion with each affected individual to explain that their role may be made redundant. This should involve informing them of the reasons for the proposed redundancies and the process that will follow.
<b>Consultation</b>	<p>The employer should hold meetings to consult individually with the employees. The process should include a discussion as to:</p> <ul style="list-style-type: none"><li>(i) the reasons why the employer is proposing to make a redundancy;</li><li>(ii) why the employee has been selected. This will include discussing the pool and selection criteria used and why he/she scored the lowest;</li><li>(iii) the timing of the proposed redundancy;</li><li>(iv) whether there is any alternative to making him/her redundant. This will include informing the employee of any other vacancies in the employer;</li><li>(v) the redundancy package being offered; and</li><li>(vi) an opportunity for the employee to ask any questions he/she may have.</li></ul> <p>As a matter of best practice, the employer should allow the employee to be accompanied to this meeting by a colleague or Trade Union representative.</p>

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**Penalties**

An employee who has the requisite length of service may have a claim for unfair dismissal if a fair redundancy process is not followed. A Tribunal can award compensation up to the lower of 52 weeks' salary and a statutory cap which is adjusted annually (as of 6 April 2021, the statutory cap was £89,493), plus a basic award calculated based on age and length of service up to a statutory cap (which, as of 6 April 2021, was £16,320).

**Other**

The employer must comply with any additional process in any applicable CBA or information and consultation agreement.

Specific rules may apply to the dismissal of certain categories of employee, depending on which category they belong to.