



Institute of Directors

116 Pall Mall

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11/07/2024

Department for Business and Trade  
Old Admiralty Building  
Admiralty Place  
London  
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Dear Secretary of State,

## **IoD response to Consultation on clarifications to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and abolishing the legal framework for European Works Councils**

### **About the IoD**

*The IoD is an independent, non-party political organisation representing approximately 20,000 company directors, senior business leaders, and entrepreneurs. It is the UK's longest-running organisation for professional leaders, having been founded in 1903 and incorporated by Royal Charter in 1906. Its aim is to promote good governance and ensure high levels of skills and integrity among directors of organisations. It campaigns on issues of importance to its members and to the wider business community with the aim of fostering a climate favourable to entrepreneurial activity in the UK.*

The IoD welcomes the opportunity to respond to this Consultation on clarifications to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and the abolition of the legal framework for European Works Councils. The complexity of employment law in Great Britain is a persistent cause of concern for business leaders and we are therefore pleased to present our views.

## Proposal 1

2. Do you agree that the government should amend the definition of 'employee' in the TUPE regulations to confirm the generally accepted principle that the regulations apply to 'employees' but not 'workers'?

Yes. The principle that the increased flexibility that limb (b) workers have in carrying out their work means that they do not access the full range of employment rights is well-entrenched.

"Where employees truly work on a casual basis... it is unreasonable to expect employers to pick up the cost of [full employment rights]." – SME, Professional, scientific and technical activities, Scotland

Furthermore, TUPE regulations are generally considered among employers to be highly complex and difficult to engage with, so any steps to mitigate this complexity would be welcome. The Dewhurst v Revisecatch case introduced an unhelpful element of ambiguity to the issue of whether TUPE regulations apply to workers. As such, clarification from government that TUPE regulations do not apply to workers would be helpful for employers undertaking TUPE transfers where workers are involved.

## Proposal 2

3. Do you agree that the government should legislate to prevent employment contracts being 'split' between multiple transferees during a TUPE transfer, reverting to the generally accepted principle that existed prior to the Govaerts ruling?

Yes. While it may in some cases prove difficult for multiple employers to come to a mutual decision as to which should be responsible for each employee's contract, the practice of splitting contracts risks engendering more considerable difficulties around how to split an employee's contract and how the issue of time and expense for travelling between the employers should be dealt with.

Further clarification regarding how the agreement process would work and what the default position would be in circumstances where no agreement is reached would provide helpful clarity to employers undertaking TUPE transfers.

I hope you have found our comments helpful. If you require further information about our views, please do not hesitate to contact us.

With kind regards,



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