

**EXPLANATORY MEMORANDUM TO
THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)
(AMENDMENT) REGULATIONS 2009**

2009 No. 592

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

This instrument makes consequential amendments to the Transfer of Undertakings (Protection of Employment) Regulations 2006 because of changes made by the Employment Act 2008 to dispute resolution.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None

4. **Legislative Context**

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE Regulations”) implement the Acquired Rights Directive (2001/23/EC) which protects employee rights upon the transfer of an undertaking. The TUPE Regulations require the transferor to supply information about employees including information of any disciplinary procedure taken against, or any grievance procedure taken by, an employee within the preceding two years in circumstances where statutory dispute resolution procedures apply as set out in the Employment Act 2002 (Dispute Resolution) Regulations 2004 (“the Dispute Resolution Regulations”).

The Dispute Resolution Regulations are repealed by the Employment Act 2008. That Act provides instead for formal disciplinary and grievance procedures to be governed under an ACAS Code of practice. Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 contains provision for the issue of such a Code of Practice.

The effect of this instrument is that the TUPE Regulations will require an employer to provide information in circumstances where the Acas Code of Practice rather than the Dispute Resolution Regulations apply.

5. **Territorial Extent and Application**

This instrument applies to the United Kingdom.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

The amendment had to be made as the Dispute Resolution Regulations have been repealed.

8. Consultation outcome

Three quarters of the respondents to the consultation on secondary legislation relating to Dispute Resolution Secondary Legislation agreed that reference to the Dispute Resolution Procedures should be substituted by a reference to the Acas Code in the TUPE regulations

9. Guidance

The Government will review the guidance it provides on this issue in advance of the removal of the reference to the Dispute Resolution Procedures

10. Impact

A regulatory impact assessment has not been prepared for this instrument as it is a technical amendment and will the change should have only marginal, if any, impact on business.

11. Regulating small business

The legislation applies to small business, but the change will not add any burden to small business.

12. Monitoring & review

Not applicable

13. Contact

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