

**EXPLANATORY MEMORANDUM TO THE
TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT)
(CONSEQUENTIAL AMENDMENTS) REGULATIONS 2006**

2006 No. 2405

1. This explanatory memorandum has been prepared by The Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

The Regulations, which come into force on 1 October 2006, amend the Information and Consultation of Employees Regulations 2004, the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004 and the ACAS Arbitration Scheme (Great Britain) Order 2004. In each case the Regulations replace references to the now revoked Transfer of Undertakings (Protection of Employment) Regulations 1981 with appropriate references to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

The Regulations are being made pursuant to powers in section 2(2) of the European Communities Act 1972 and section 38 of the Employment Relations Act 1999.

5. Extent

This instrument applies to Great Britain.

6. European Convention on Human Rights

Margaret Hodge MP has made the following statement regarding Human Rights:

In my view the provisions of the Transfer of Undertakings (Protection of Employment)(Consequential Amendments) Regulations 2006 are compatible with the Convention rights.

7. Policy background

The Transfer of Undertakings (Protection of Employment) Regulations 2006 came into force on 6 April 2006 and replaced the Transfer of Undertakings (Protection of Employment) Regulations 1981. These Regulations ensure that the three Regulations described at paragraph 2 above make appropriate reference to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

8. Impact

These Regulations ensure that the policy intent of the three Regulations described at paragraph 2 above is maintained. A copy of the Regulatory Impact Assessment is available at www.dti.gov.uk/employment.

9. Contact

David Dugmore at the Department of Trade and Industry, Tel 0121 698 4048 or email David.Dugmore@dti.gsi.gov.uk regarding any queries on this instrument.



Regulatory Impact Assessment

Employment Relations Directorate

The Transfer of Undertakings (Protection of Employment) (Consequential Amendments) Regulations

September 2006

<http://www.dti.gov.uk/employment>

Purpose and intended effect

The Transfer of Undertakings (Protection of Employment) Regulations 1981 were revoked and replaced by the Transfer of Undertakings (Protection of Employment) Regulations 2006 on 6 April 2006. The Transfer of Undertakings (Protection of Employment) (Consequential Amendments) Regulations 2006 replace references to the 1981 TUPE Regulations with references to the 2006 TUPE Regulations in the following instruments:-

- the Information and Consultation of Employees Regulations 2004
- the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004; and
- the ACAS Arbitration Scheme (Great Britain) Order 2004.

This Regulatory Impact Assessment (RIA) should be read in conjunction with the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the RIA that accompanied those Regulations.

Options/Costs and benefits

a. **Do nothing** This would create uncertainty for employers, employees and Employment Tribunals, because it would leave references to the 1981 Regulations, which have been revoked, in the instruments listed at paragraph 2 above. It is possible that Tribunal Chairs might be prepared to use their judgment to imply references to the 2006 Regulations in any event. However it is possible that they may, in the absence of any amendment, continue to apply the reference to the 1981 Regulations, or determine that the references to the 1981 Regulations are of no legal effect and cannot be applied.

b. **Make amendments** Updating the references to the TUPE Regulations would ensure that the policy intent of the three instruments described at paragraph 2 is maintained. There would be no additional costs to employers.

Summary and recommendation

We recommend making the consequential amendments as proposed.

Declaration

‘I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.’

Signed by Margaret Hodge, Minister of State for Industry and the Regions

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Date

6th September 2006

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Contact details Any queries should be directed to David Dugmore, DTI at David.Dugmore@dti.gsi.gov.uk or 0121 698 4048.