



## **TUPE Frequently Asked Questions (FAQ'S)**

These FAQ's have been prepared to respond to general questions concerning TUPE. Employees and/or their representatives should put forward questions in relation to this process at any time during the TUPE consultation process.

### **1. What does TUPE mean?**

TUPE is an abbreviation for the Transfer of Undertakings (Protection of Employment Regulations 2006). It is a law that governs and gives protection to employees when their employer changes following the transfer of an undertaking.

### **2. What protection does TUPE give?**

TUPE preserves the terms and conditions of employees who are transferred to a new employer (this includes contractual terms such as salary, hours of work, leave and sick pay entitlements). TUPE also contains special protections in relation to changing terms and conditions or dismissing employees where the dismissals are connected with the transfer, it also includes obligations on employers to inform and consult with employee representatives about the transfer.

### **3. What does this mean specifically for school employees?**

Conditions of service will remain unchanged for all categories of school staff; teachers in maintained schools are subject to the School Teachers Pay and Conditions Document (STPCD) and the "Burgundy book" which set out the rules for payment of salaries and conditions of service. Support staff are employed under the National Joint Council for Local Government – known as the "Green book". The STPCD, the Burgundy book and the Green book will all continue to apply.

### **4. What is the effect of TUPE on contracts of employment?**

When a school converts to an academy most contracts of employment will transfer to the academy under legislation called the Transfer of Undertakings (protection of employees) Regulations 2006 (TUPE). TUPE is intended to preserve employee's contracts of employment and continuity of service despite the move from one employer (in this case the local authority) to another (the academy).

TUPE will apply so that all those employed immediately prior to the transfer, whether on fixed term or permanent contracts will automatically become employees of the academy.

#### **5. What happens if I object to a transfer?**

Employees have the option of objecting to the transfer of their employment from a local authority to an academy trust under TUPE. The effect of an employee objecting to the transfer would be that their employment would terminate on the transfer date. This would not amount to a dismissal meaning that the employee would not be entitled to a redundancy payment or be able to bring a claim for unfair dismissal.

#### **6. Will my terms and conditions of employment change following the transfer?**

Academies are free to choose their own pay structure and terms and conditions for employees recruited after the transfer has taken place. It is up to the academy whether it wishes to continue to use the national agreements (contained in the Burgundy book and the Green book) or to implement their own terms and conditions.

However TUPE would prevent an academy using the transfer itself as a reason to make changes to terms and conditions for existing employees. They would only be permitted to make changes to existing contracts where they were unrelated to the transfer or where there was an economic or organisational reason for the change.

#### **7. What information and consultation will I receive?**

TUPE obliges employers to provide information about the transfer to employees and where “measures” (i.e. changes made as a result of the transfer), are likely to be taken in relation to employees, employers must consult with employee representatives (i.e. independent trade unions).

TUPE does not specify the time which should be allowed for consultation although consultation has to start long enough before the transfer to allow consultation to be completed.

Opportunities will also be available for staff to have one to one discussions if they wish.

#### **8. How will TUPE affect my pension?**

All staff in maintained schools are entitled to access either the Teachers’ Pension Scheme (TPS) or the Local Government Pension Scheme (LGPS), and this will continue under the Academy federation. The move to Academy status is, however, a change of employer and this has certain implications under the pension scheme rules.

Support Staff – will automatically be brought into the scheme at the point of transfer (even if they are currently opted out of the scheme). Staff may choose to opt out of the scheme, if they so wish.

Teaching Staff - will continue as members of the scheme unless they are currently opted out, in which case the opt-out will continue to be valid under the new employer.

#### **AUTO-ENROLMENT**

Under the government Workplace Pensions – Automatic Enrolment legislation, all eligible jobholders must be placed into an appropriate pension scheme. This legislation is being rolled out based on the size of employer, and at the point the academy comes under the scope of these arrangements all eligible jobholders will be enrolled into the appropriate scheme (TPS or LGPS). Employees will, of course, retain the right to opt out of scheme membership. Under these arrangements, staff electing to opt out will automatically be re-enrolled into the scheme every 3 years.

#### **9. Is continuity of employment maintained if there is a change of employer?**

As you would expect if a member of staff is already employed by a school when that school becomes an academy, then their full length of service for all purposes will be preserved under TUPE.

With regards to continuous service where staff choose to change schools voluntarily, for example by applying for a promotion, please seek further advice from the Head Teacher or the Schools HR Department.

#### **10. Will I be issued with a new contract of employment?**

Not unless you do not have a written contract of employment or your existing contract is out of date.

#### **11. Who will be my employer after the transfer?**

In a single academy model you will be transferred to the new company limited by guarantee or academy trust company that operates for that school only. The school governing body and the Local Authority will be replaced by the board of directors as the responsible body for running that school and no others.

In a multi-academy model there is a more complex governance structure that involves more than one school whilst allowing, initially, a single school to be operated by the academy trust company.

If more schools come under the overall governance of the multi-academy trust company, the model articles of association allow each school to have its own governing body with delegated authority and a level of autonomy in relation to the individual school. Each school would have an element of representation on the main board of directors. The directors have overall responsibility for the financial health and proper running of the company and the schools operate from within that company. In this situation staff are employed by one employer – the multi-academy trust.

**12. Are teachers at an Academy required to hold the same qualifications as those teaching in schools under Local Authority Control?**

Yes. The Academy Trust is committed to delivering the highest standards of education for all students at the Academy which will be subject to the same regime of Ofsted inspection as the Local Authority maintained schools in Stoke on Trent.

**13. What will happen to our existing trade union representation?**

The Academy is committed to working in partnership with its employees. And to this end it is committed to strong working relationships with all trade unions recognised by your current employer. The Academy will need to determine whether they will continue to recognise current Trade Unions and if so for what purposes – a revised recognition and facilities agreement will need to be developed.