Transfer of Undertakings (Protection of Employment) Regulations 2006: Consultation on Proposed Changes to the Regulations

UNISON response

April 2014

Introduction

UNISON is the UK's largest public service trade union with 1.3 million members. Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include frontline staff and managers working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector.

UNISON has enormous experience of the Transfer of Undertakings (Protection of Employment) (TUPE) regulations 2006 (and its predecessors) in small and large employers in the public, private and voluntary sectors and have been involved in thousands of staff transfers over the years.

TUPE strengthens the rights of staff involved in transfers, providing them with continuity of employment and the same terms and conditions as they had prior to the transfer. The Regulations also protect the accrued pension rights of transferred staff; protect against unfair dismissal and stipulate that trade union recognition and collective agreements in force at the time of the transfer must be maintained.

We believe the TUPE regulations are essential and that, if anything, need to be strengthened to provide greater certainty for workers and employers in all sectors and a more level playing field for public contracting. The current regulations achieve the stated intention of the EU directive to give workers a valuable degree of certainty and protection at the point of transfer. Before the directive workers often faced immediate pay and conditions cuts on day one of the transfer.

Question 1: Do you agree with the Government's proposal to repeal the 2006 amendments relating to service provision changes?

UNISON does not agree that the Service Provision Changes (SPC) should or needs to be repealed. UNISON believes that removing the SPCs will result in unnecessary costs for organisations in form of increased legal advice and litigation.

a) Please explain your reasons:

Prior to the 2006 TUPE changes, there was uncertainty about whether or not a change of service provision was caught under TUPE. This in turn resulted in claims in the appeal courts and the European Court of Justice (ECJ), over for example whether labour intensive activities transferred, or whether the absence of a transfer of assets precluded a transfer of an undertaking.

Repealing the SPCs will not remove the requirement for the parties to consider whether or not there is a relevant transfer under regulation 3(1) (a) (i.e. is it a "relevant transfer"). Indeed to revert to the pre-2006 position, would be to invite litigation over these matters. This in turn will increase legal uncertainty, increase requests for advice, increase litigation over whether or not there is a relevant transfer, and clog up the tribunal and appeal systems.

A number of the ECJ cases involving the change or contractors and contracting out centred around the application of the multi-factorial test in the *Spijkers v Gebroeders Benedik Abbatoir CV 24/85 [1986] 2 CMLR 296*.

The ECJ case of *Suzen* [1997] is cited as settling the position under the Acquired Rights Directive as to what is a relevant transfer. In this case it was decided that the absence of a transfer of assets to the transferee did not preclude a transfer of an undertaking. However, it also suggested that the determining factor in establishing whether an undertaking had transferred was whether or not a transferee took on employees assigned to the activity. It would follow then that there would be no relevant transfer if a new employer failed to take on employees.

However, domestic case law has clarified that where none of the workforce was taken on, whilst relevant, was not necessarily conclusive of the issue of retention of identity (see *RCO Support Services v UNISON* [2002]). In *RCO Support Services v UNISON* Lord Justice Mummery, addressing the problem posed by *Süzen*, concluded that:

> "...the limits on the application of the Directive set in *Süzen* do not mean that, as a matter of Community law, there can never be a transfer of an undertaking in a contracting-out case if neither assets nor workforce are transferred. *Süzen* does not single out, to the exclusion of all other circumstances, the particular circumstance of none of the workforce being taken on and treat that as determinative of the transfer issue in every case".

Lord Justice Mummery went on to refer to the Court of Appeal decisions of *ECM (Vehicle Delivery) Service v Cox*[1999] IRLR 559 and *ADI (UK) v Willer* [2001] IRLR

542 and said that when deciding if there is a transfer of the undertaking, the *Süzen* decision does not prevent national courts from asking why the employees were not taken on by the new employer; and he concluded that the "fact that none of the workforce is taken on is relevant to, but not necessarily conclusive of, the issue of retention of identity". Mummery LJ said that this "involved an objective consideration and assessment of all the facts, including the circumstances of the decision not to take on the workforce" rather than the subjective motive of the transferee to avoid the EU Acquired Rights Directive (ARD) or TUPE.

In *Balfour Beatty Power Networks Ltd v Wilcox* [2006] EXCA Civ 1240, [2007] IRLR 63, the Court of Appeal has emphasised that the correct approach is the multi-factorial approach.

Following the introduction of the SPCs, it clarified that TUPE applied to outsourcing, a change of contractor or in-sourcing subject always to the conditions in r.3 (3) TUPE applying. The conditions are that there is an organised grouping of employees that continues to carry out the same or similar activities following the transfer. At best, the SPCs bring about a clarification of the law in this area.

In fact, case law since 2006 runs counter to the suggestion that the SPCs are a "gold-plating" of the ARD. There have been a number of EAT decisions which say that there is no SPC, where the activities do not remain the same following the transfer: for example *Metropolitan Resources Ltd v Churchill Dulwich Ltd* [2009] IRLR 190, EAT, *OCS Group UK Ltd v Jones and another* [2009] EAT, *Nottinghamshire Healthcare NHS Trust v Hamshaw and Others* [2011] EAT, *Enterprise Managed Services v Dance* [2011]; *Ward Hadaway v Love* [2009] (on legal services); *Johnson Controls v Campbell* [2012] (centralised taxi booking service). Not only must the activities in question transfer, but there will not be a SPC if there is a fragmentation of service providers.

The purpose of the SPCs is to apply in the narrow circumstances of there being an organised grouping of employees doing the same or similar activities pre and post transfer where there is a change of service provider.

If the SPC provisions are repealed, it will shift the focus back to r.3 (1)(a) TUPE – i.e. whether there has been a transfer of an entity which has retained its identity. This test is fact specific and focuses on what has happened to the relevant assets (including the workforce) of the relevant entity.

In negotiations with employers, UNISON has been informed that by employers that they are not keen on these changes as it will require employers to:

- Seek legal advice in relation to each transfer involving an SPC, at a cost to the transferor and transferee.

- Hire in a competent workforce to carry on the work, at substantial cost to the transferee in respect of hiring new staff (i.e. as staff will not automatically transfer), and also any damage to service provision and reputation in having no staff continuity.

- Burden the transferor with redundancy costs, i.e. if none of the staff are to transfer.

- Create barriers for SMEs as they will not be able to compete with companies who have the funds to recruit new staff or seek legal advice.

- Dissuade smaller employers for bidding for public service contracts, as they carry an increased risk of being liable for substantial redundancy costs at the end of the contract, and litigation costs.

UNISON's view is that the SPC provisions have increased clarity and certainty and reduced litigation; evidenced by the reduction in the number of cases being appealed to the EAT and referred to the CJEU since the introduction of SPC in the 2006 Regulations.

It has also provided employees with job security and protection of their terms and conditions. This in turn has increased certainty at a difficult time when they are to be transferred to a new employer.

If SPCs are removed the concern is that litigation around what is or is not a relevant transfer will increase. We could see legal challenges where transferee employers decline to take on the employees or key assets of the entity. This in turn will clog up the Employment Tribunals (ET) and there will no doubt be a number of appeals to the higher courts or directly to the Court of Justice of European Union (CJEU) to seek clarity.

The removal of the SPCs will also increase the costs to the State, where employees are made redundant and rely on the State for unemployment benefits. There is also bound to be a damaging effect on public services which the state will have to step in to resolve.

b) Are there any aspects of the pre-2006 domestic case law in the context of service provision change cases which might need to be considered with a view to helping to ensure that the test in such situations is aligned with that in the Directive (as interpreted by the Court of Justice of the European Union)?

The Government suggests that *Suzen* correctly interprets the ARD; it follows then that it is Government's intention that there can be no relevant transfer of an undertaking where employees are not taken on by the transferee.

However, the Court of Appeal has stated in the decisions mentioned above at 1a) that when considering if there has been a relevant transfer, a court is not precluded by *Suzen* from considering the motive of the transferor in failing to take on staff following a transfer. The Court of Appeal takes its authority from the *Spijkers* decision which sets out that the test as to whether there is a relevant transfer of an undertaking is based on the multi-factorial test, where none of the individual factors take precedence over the other factors.

UNISON would consider challenging any amended legislation which sought to limit the application of art. 3(1) of the Directive which the ECJ/CJEU has indicated is

mandatory. If there is a relevant transfer (whether or not the SPCs are repealed) each case will have to be determined on its own facts.

Question 2: If the Government repeals the service provision changes, in your opinion, how long a lead in period would be required before any change takes effect? (i) less than one year (ii)1- 2 years (iii) 3-5 years (iv) 5 years or more.

Any repeal should not apply to existing contracts as this will creates uncertainty for staff. Along with the problems set out in 1 above, these changes are likely to increase litigation where transferees opt out of TUPE. There will also be increased costs to incumbent service providers who would need to negotiate revised exit arrangements.

Any end-of-contract risks will also have been priced into contracts. Varying the legal framework mid-contract may trigger an unbudgeted mid-contract increase in cost.

a) **Do you believe that removing the provisions may cause potential problems?**

Yes.

b) If yes, please explain your reasons.

As mentioned in question 1) above, there will still be litigation over whether reg 3(1)(a) TUPE applies and the extent to which employers can organise their businesses to avoid taking on sufficient assets to prevent a transferred entity from retaining its identity; or indeed seeking clarification from the CJEU as to whether the Court of Appeal line of decisions mention above complies with the ARD. UNISON thinks that decisions such as *RCO v UNISON* are ARD compliant, and this will simply result in increased costs to employers who have to defend such litigation. We believe that there will in any event be more litigation of the extent to which an employer can “avoid” the operation of TUPE.

This in turn is likely to see the number of cases to the tribunals increasing. These cases are likely to be stayed whilst test cases are taken to determine if the new provisions are compliant with the Acquired Rights Directive.

From an industrial point of view, the uncertainty to employees as to whether their terms and conditions are likely to remain the same or change will cause industrial tension with current and new employers, if further transfers are envisaged such industrial tensions will no doubt affect service delivery.

In negotiations with employers, UNISON has been informed by employers that they are not keen on these changes as it will require employers to:

- Seek legal advice in relation to each transfer involving an SPC, at a cost to the transferor and transferee.

- Hire in a competent workforce to carry on the work, at substantial cost to the transferee in respect of hiring new staff (i.e. as staff will not automatically transfer), and also any damage to service provision and reputation in having no staff continuity.

- Burden the transferor with redundancy costs, i.e. if none of the staff are to transfer.

- Create barriers for SMEs as they will not be able to compete with companies who have the funds to recruit new staff or seek legal advice.

- Dissuade smaller employers for bidding for public service contracts, as they carry an increased risk of being liable for substantial redundancy costs at the end of the contract, and litigation costs.

In addition public authorities will need to take additional legal advice on TUPE when contracting for services and all parties interested in bidding will need to take legal advice before bidding about whether the SPC apply or not.

Question 3: Do you agree that the employee liability information [ELI] requirements should be repealed?

No.

a) If yes, please explain your reasons

UNISON does not agree that the Employer Liability Information (ELI) provisions should be repealed.

In UNISON's experience, transferor and transferee employers that share ELI with each other, also use their links with trade unions to ensure a smooth transition of services. In particular, information such as which employees are due to transfer is crucial to ensure staff know what is happening, and in order that both employers can be certain that the correct employees are transferring over. For example, without proper ELI, transferees may inherit employees that do not fit into their model of service delivery, and have to be made redundant upon transfer. This will in turn create further costs for transferees.

Without this information, UNISON is aware anecdotally of transferors seeking to transfer employees, whether or not they are assigned to an undertaking in order to "dump" them. Clearer minimum timescales for receiving ELI in advance would ensure transferees were clear on staff pay, pensions, and other associated benefits.

UNISON would also suggest that there is currently insufficient information provided to trade unions and that the ELI should be extended to trade unions. This is in order that the Unions can assist with the process. For example, UNISON has experienced union officials who are able minimise redundancies by seeking to maximise redeployment opportunities for those at risk of redundancy following a transfer.

Usually this means following an agreed policy matching people's skills and ensuring training and support is provided.

b) **Would the answer be different if the service provision changes were not repealed?**

No. Whether or not the SPCs are repealed, the ELI will still be required in respect of relevant transfers under TUPE to ensure the parties communicate with each other, where they would not otherwise be forced to do so. Good employers ensure that this information is shared with trade unions.

c) Do you agree, that there should be an amendment to regulation 13 to make clear that the transferor should disclose information to the transferee where it is necessary for the transferee and transferor to perform their duties under that regulation?

Yes. Regulation 13 should be amended to ensure that broader information is provided to the trade unions; and that the transferor and transferee should be obliged to provide information to each other to comply with the information and consultation process. Any amendment should include the following:

1. Increased transparency over who is assigned to the contract.

2. Employee categories.

3. Fixed penalties where such information is not provided.

Question 4: Do you agree with the Government's proposal to amend the restrictions in regulation 4 on changes to terms and conditions so that the restriction more closely reflects the wording of the Directive (article 4, which is in relation to dismissals) and the CJEU case law on the subject?

No.

a) If you disagree please explain your answer

We do not agree with the proposed amendment wording to regulation 4(4) and 4(5) as this wording does not secure or ensure compliance with the ARD, and instead leaves it up to the courts to interpret these provisions in line with the ARD.

While there is no express provision in the ARD prohibiting changes to terms and conditions, the CJEU has ruled that variations to terms and conditions for the purpose of harmonising terms and conditions would be incompatible with the mandatory requirements under Art 3(1) of ARD (see *Martin v South Bank University* C-4/01[2003] All ER (D) 85 (Nov)).

At an industrial level, this proposed change is likely to create industrial tension and conflict at the beginning of the new contract, where employees will fear post transfer

harmonisation to their terms and conditions. At present there is an assurance that terms and conditions remain post transfer.

Some transferred employees could have protected terms and conditions following equal pay claims. Employers may not harmonise such terms and conditions for fear of finding themselves in breach of compromise agreements, COT3s or equal pay legislation.

Question 5: The Government is considering using article 3.3 of the Acquired Rights Directive to limit the future applicability of terms and conditions derived from collective agreements to one year from the transfer. After that point, variations to those terms and conditions where the reason was the transfer would be possible provided that overall the change was no less favourable to the employee. Is this desirable in your view?

We do not agree with this proposal.

a) Please explain your answer

The role of collective agreements in the UK is different from those in many other EU Member States. This is because, for the most part, the contents of collective agreements are incorporated into individual contracts of employment. Art 3(3) of the ARD is designed for other EU systems where collective agreements are outside a personal contract and have a different status.

The Advocate–General has given his Opinion in the *Parkwood Leisure v Alemo-Herron* case and has made it clear that the "dynamic effect" of collective agreements will continue post transfer. Limiting terms of a contract, which happen to derive from a collective agreement, will run contrary to centuries old common law; to the implied term of trust and confidence; and to Article 11 of the Convention on Human Rights.

Any such restriction will also suggest that collectively agreed terms and conditions somehow obtain an inferior status to other terms and conditions. Contract law does not distinguish contractual terms in this way.

UNISON thinks that this approach is illegal, impractical, and unworkable, and will be seeking to challenge any such change in the courts.

b) Do you agree that there should be a condition that any change after the one year period which is by reason of the transfer, should be no less favourable overall than the terms applicable before the transfer?

If the Government decides to adopt the 1 year rule, then yes this protection should be included.

Whilst we disagree with these changes, we note that this could be an area for litigation as to what is "no less favourable overall".

In addition we foresee practical difficulties in accessing whether those changes which have no financial value are “no less favourable overall”, when weighed in the balance with financial changes.

c) If the outcome of the Parkwood Leisure v Alemo-Herron litigation is that a static approach applies under TUPE, do you think that such an approach would provide useful additional flexibility for changing such terms and conditions?

The Advocate-General’s Opinion is that the “dynamic” approach is permissible.

If the Government amends legislation to say that a static approach applies, it will still not provide flexibility for changing terms and conditions which transfer. This is because variations to terms and conditions for the purpose of harmonising terms and conditions would be incompatible with the mandatory requirements under Art 3(1) of ARD (see *Martin v South Bank University* C-4/01[2003] All ER (D) 85 (Nov)).

d) Do you think there any other changes that should be made regarding the continued applicability of terms and conditions from a collective agreement (bearing in mind the limitations of Article 3(3) of the Directive)?

No. To make further changes would probably be in breach of the ARD.

Question 6: Do you agree with the Government’s proposal to amend the wording of regulation 7(1) and (2) (containing the protection against dismissal because of a transfer) so that it more closely reflects the wording of the Directive (article 4) and the CJEU case law on the subject?

No.

a) If you disagree please explain

Once again this will increase “industrial tension” if staff are put in fear of losing their jobs post transfer.

The CJEU has also referred to the term “connected to” interchangeably with the transfer itself and may not consider that there is such a difference between article 4 of the ARD and r.7 TUPE.

b) **Do you agree that the drafting of the restrictions to terms and conditions in regulation 4 and the drafting of the protection in relation to dismissal (regulation 7) should be aligned?**

No.

Question 7 : Do you agree that TUPE should be amended so that regulations 4(9) and (10) are replaced by a provision which essentially copies out article 4(2) of the Directive?

No..

a) Please explain your reasoning

This is likely to create satellite litigation on whether or not the contract has been terminated and whether or not notice payments are due to be paid. This is likely to increase costs to the employer.

Question 8: Do you agree with the Government's proposal that 'entailing changes in the workforce' should extend to changes in the location of the workforce, so that 'economic, technical or organisational reason entailing changes in the workforce' covers all the different types of redundancies for the purposes of the Employment Rights Act 1996?

No.

a) If you disagree, please explain your reasons

Recent case law has said that relocation is a material change to terms and conditions and can also be a repudiatory breach of contract. In *Tapere v The South London and Maudsley NHS Trust* [2009] IRLR 972, [2009] ICR 1563 the EAT found that the claimant had been constructively dismissed under reg 4 (9) of TUPE, because the change of work location was a substantial change in working conditions to her material detriment. It followed, according to the employment tribunal, that she was entitled to a redundancy payment. The employment tribunal also held that she was automatically unfairly dismissed under reg 7(1) of TUPE in that, whilst there might have been plausible economic technical or organisation reasons for the employers decision, a change in the workplace did not involve a reduction in the workforce or a change in job functions in order to engage reg 7(2) to remove the automatic unfairness.

This interpretation was confirmed by the EAT in *Abellio London Limited v CentreWest London Buses* Ltd UKEAT/0283/11. It was accepted by the parties that this was a service provision change, and therefore a relevant transfer, under reg 3(1)(b) of TUPE. It was held by the employment tribunal that there had been a substantial change to the employees' working conditions to their material detriment under reg 4(9) of TUPE. The move was additionally a repudiatory breach of contract (in that a mobility clause in the employment contract did not extend to the new location). Therefore the employees were also constructively dismissed for the purposes of reg 4(11) of TUPE. It followed that the dismissals were automatically unfair, being by reason of the transfer. The EAT agreed, citing with approval the decision in *Tapere*.

It is UNISON's view that relocations should only be permitted where contractual terms that transfer under TUPE allow for such mobility clauses. A change of location is void for certainty as it is not defined and is too wide. Nor is it appropriate or relevant to have the definition of redundancy under s.139 (a) (ii) ERA 1996 here, as the transferee will not have ceased "to carry on the business in the place where the employee was so employed".

In any event, it is likely that a change of location is likely to be a "substantial change in working conditions to the detriment of the employee" contrary to Article 4(2) of the ARD, and so any change to TUPE to include a change of location is likely to be contrary to the ARD. It is also likely to be a breach of the implied term of mutual trust and confidence.

It is Unison's view that the impact of extending to changes in the location of the workforce have serious equalities implications which have not been examined under the equality impact assessment on page 55. Such a change is very likely to have a disproportionate impact on women, disabled people, people with caring and child care responsibilities(usually women).

Question 9: Do you consider that the transferor should be able to rely upon the transferee's economic, technical or organisational reason entailing changes in the workforce in respect of pre-transfer dismissals of employees?

No.

a) **Please explain your reasons**

It is for the current employer to consult, not the putative employer. This could lead to an abuse of procurement and contracting processes, with transferees in effect agreeing to pay transferors to make redundancies for them. This could possibly then lead to unfair competition for contracts.

Question 10: Should there be an amendment to ensure that any actions of the transferee before the transfer takes place count for the purposes of the requirements to consult on collective redundancies (under the Trade Union and Labour Relations (Consolidation) Act 1992), therefore allowing consultations by the transferee with staff who are due to transfer to count for the purposes of the obligation to consult on collective redundancies?

No

a) if you disagree, please explain your reasons

The requirements under s.188 TULRCA 1992 seek to avoid dismissals and contain separate obligations under separate European Directives.

The information requirements under s.188 TULRCA 1992 are different to those in r.13 TUPE.

Under Regulation 13(1), the employer must inform trade unions in writing of the following matters: The fact that the transfer is to take place; the approximate date of the proposed transfer; the reason for the proposed transfer; the legal, economic and social implications of the transfer for the affected employees; any measure which the old or new employer will take as a result of the transfer, or if no such measures will be taken, this should be stated; the number of agency workers; the parts of employer where agency workers are working; and the type of work agency workers are doing.

On the contrary the information requirements under s.188 TULRCA are for the purposes of the collective redundancy consultation, and it is mandatory for the employer to disclose in writing to the union: the reasons for the proposals; the numbers and descriptions of employees to be dismissed; the total numbers of employees; the method of selection; the method of dismissal; the method of calculating redundancy payments; the number of agency workers; the parts of employer where agency workers are working; and the type of work agency workers are doing.

It is also unworkable, because such consultation must happen with the current employer, and not the proposed employer. Further any relevant Union will not be recognised by the transferee, and therefore, the requirements to consult with the trade union will not be complied with.

Practically, it is unlikely that such consultation can take place in 45 days without causing confusion. Furthermore, on a practical level a consultation on redundancies pre-transfer will be difficult if the changes are brought to remove the requirement for ELI information to be shared.

Question 11: Rather than amending Regulation 13(11) to give clarity on what a 'reasonable time' is for the election of employee representatives do you think our proposal to provide guidance instead would be more useful?

Yes

a) Please explain your reasons

We agree that an amendment to reg 13(11) is not really necessary. Since the timescales of TUPE transfers vary greatly and are case specific, having a fixed timeframe lacks flexibility and, in some case, may not be feasible.

Recognised Trade Unions like UNISON carry out this role for their members in any event. Any guidance should contain strong advice to work with Trade Unions.

If you disagree, what would you propose is a reasonable time period.

Question 12: Do you agree that regulation 13 should be amended so that micro businesses are able to inform and consult with affected employees directly in cases where there is not a recognised independent union, nor appropriate existing employee representatives (under regulation 13(3)(b)(i)), rather than have to invite employees to elect representatives?

No. The Government accepts that where there is a recognised trade union for the affected employees, there should be no ability to cut out the union in the information and consultation process even where there are small numbers of employees affected.

a) If you answer to the above question is yes, would it be reasonable to limit this option so that it were only application to micro businesses (10 employees)

A micro business is not defined and creates a further level of uncertainty. In any event, UNISON is of the view that there should be a level playing field between employers and between employees, and the principle should be equal treatment

Question 13: Do you agree that micro businesses should be included under all the proposed amendments to the TUPE regulations?

Yes.

a) If not, are there particular areas where micro businesses should be expect? Please explain your answer

N/A

b) **Do you think that any of these proposed changes are likely to impose additional costs on micro businesses?**

Yes. Firstly, a company will now have to decide if you are a micro business, then if TUPE applies.

In UNISON's experience, Micro business (e.g. Academy Schools) tend to get swallowed by large chains. The costs of seeking specialist advice will be a huge burden.

It is the Union's view that these changes will dissuade smaller employers for bidding for public service contracts, as they carry an increased risk of being liable for substantial redundancy costs at the end of the contract, and litigation costs.

Question 14: Do you agree that apart from the proposals in relation to service provision changes, there are no other proposals which give rise to the need for a significant lead-in period?

No.

Question 15: Have you any further comments on the issues in this consultation?

We are concerned that the Government has not given sufficient notice to the numbers of respondents who have disagreed with these proposals in the previous call for evidence. UNISON is of the view that these changes are misguided, and will only result in very costly litigation.

Question 16: Do you feel that the Government's proposals will have a positive or negative impact on equality and diversity within the workforce?

It is UNISON's view that the proposals will have a negative impact on equality and diversity within the workforce.

We agree in part with the current equality impact assessment and agree the impact will be as described on page 50 but strongly feel that there is insufficient analysis of data and also an assumption that because there is no conclusive evidence that this means there is no expectation of impact on other protected groups, specifically we disagree there is no expectation of impact on pregnancy and maternity, age and sexual orientation.

Our knowledge and evidence of the impact of privatisation shows that following privatisation there is often 'harmonisation' of terms and conditions post transfer which results in a reduction in pay and conditions. Given the nature of the workforce this is going to impact women, disabled workers and Black workers.

Women make up 65% of the public sector workforce and given the increasing nature of privatisation in the public sector this data must be considered in terms of the equality impact. The TUC analysis in the attached document also highlights the pay differences between private and public sector employers:

http://www.tuc.org.uk/tucfiles/251.pdf

The current Equality Impact Assessment (EIA) does not to have taken account of the transfers data already available from the WERS 2004, however this is significantly

out of date and there has been a significant increase in the level of privatisation since 2004. We note WERS 2011 will be used but it is essential that that data is analysed. Additionally the data needs to be considered at a sectoral level as there are real gaps in juts relying on ONS data.

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