

## Local Involvement Networks

### Transfer of Undertakings (TUPE)



#### About this guide

This guide is part of a series aimed at helping make LINKs successful. This guide is designed to help Local Authorities and Host organisations understand issues relating to TUPE regulations and how they might impact on the support arrangements for LINKs.

#### Background

LINKs will be set up in England from April 2008 to give communities a stronger voice in how their health and social care services are delivered. Independent networks of local people and groups, LINKs will find out what people want, investigate issues and use their powers to hold services to account.

#### What is TUPE?

The Transfer of Undertakings (Protection of Employment) Regulations (2006) is the main legislation governing the transfer of an undertaking, or part of one, to another. The Regulations are designed to protect the rights of employees in a transfer situation. Patient Forums will be abolished in March 2008 and LINKs will begin to start their work from 1 April. Forums were supported by Forum Support Organisations and LINKs will be supported by 'Host' organisations. It is possible that staff of former Forum Support Organisations will be employed by LINK Hosts and councils and Hosts need to consider whether the TUPE regulations will apply in their particular case.

#### Key Points

- TUPE is the law governing the transfer of a service undertaking to another.
- Government advice is that it's unlikely that TUPE applies to the transfer of responsibilities from Forum Support Organisations to LINK 'Hosts'.
- The consensus is that each Local Authority should form its own view on TUPE and whether it applies to LINKs.
- Although the weight of evidence suggests that TUPE may not apply, it seems this question is still open to interpretation – TUPE can be a complex and specialist area.

## What is the Department of Health view on this?

The Department of Health (DH) recently took advice about TUPE and its applicability to LINKs. The Departmental view is that it is unlikely that TUPE applies to the transfer of responsibilities from Forum Support Organisations to LINK 'Hosts'. The reason for this is that the abolition of the Commission for Patient and Public Involvement in Health and Patient Forums, and the setting up of LINKs, is unlikely to involve a transfer of an undertaking to which the TUPE regulations could apply. The Department suggests that even if there were such a transfer, it may well be a transfer of functions between public administrative bodies – where TUPE does not apply.

## It's important to get your own advice

Each Local Authority should form its own view about the application of TUPE to the arrangements for LINKs that it is setting up, depending on their own differing and unique situation.

It's also interesting to note that the *Cabinet Office Statement of Practice on Staff Transfers in the Public Sector* concludes that in circumstances where TUPE does not apply in strict legal terms, the principles of TUPE should be followed and the staff involved should be treated no less favourably than had the Regulations applied.

So, although the weight of evidence suggests that TUPE may not apply – it seems that this question is still open to interpretation, depending on the local situation and the funding arrangements.

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[www.nhscentreforinvolvement.nhs.uk](http://www.nhscentreforinvolvement.nhs.uk)

A simple explanation of LINKs  
[www.direct.gov.uk/localinvolvementnetworks](http://www.direct.gov.uk/localinvolvementnetworks)

Lessons from nine 'Early Adopter' projects around England  
<http://www.nhscentreforinvolvement.nhs.uk/docs/EAPS%20final%20report.pdf>

Information about Government policy  
[www.dh.gov.uk/patientandpublicinvolvement](http://www.dh.gov.uk/patientandpublicinvolvement)

## Further information on TUPE

Chartered Institute of Professional Development (CIPD)  
<http://www.cipd.co.uk/subjects/emplaw/tupe/default.htm?lsSrchRes=1>

Statutory Statement: Transfer of Undertakings Regulations, 2006.  
[http://www.opsi.gov.uk/si/si2006/uksi\\_20060246\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20060246_en.pdf)

The Department of Health:

<http://www.dh.gov.uk/en/AdvanceSearchResult/index.htm?searchTerms=TUPE>

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