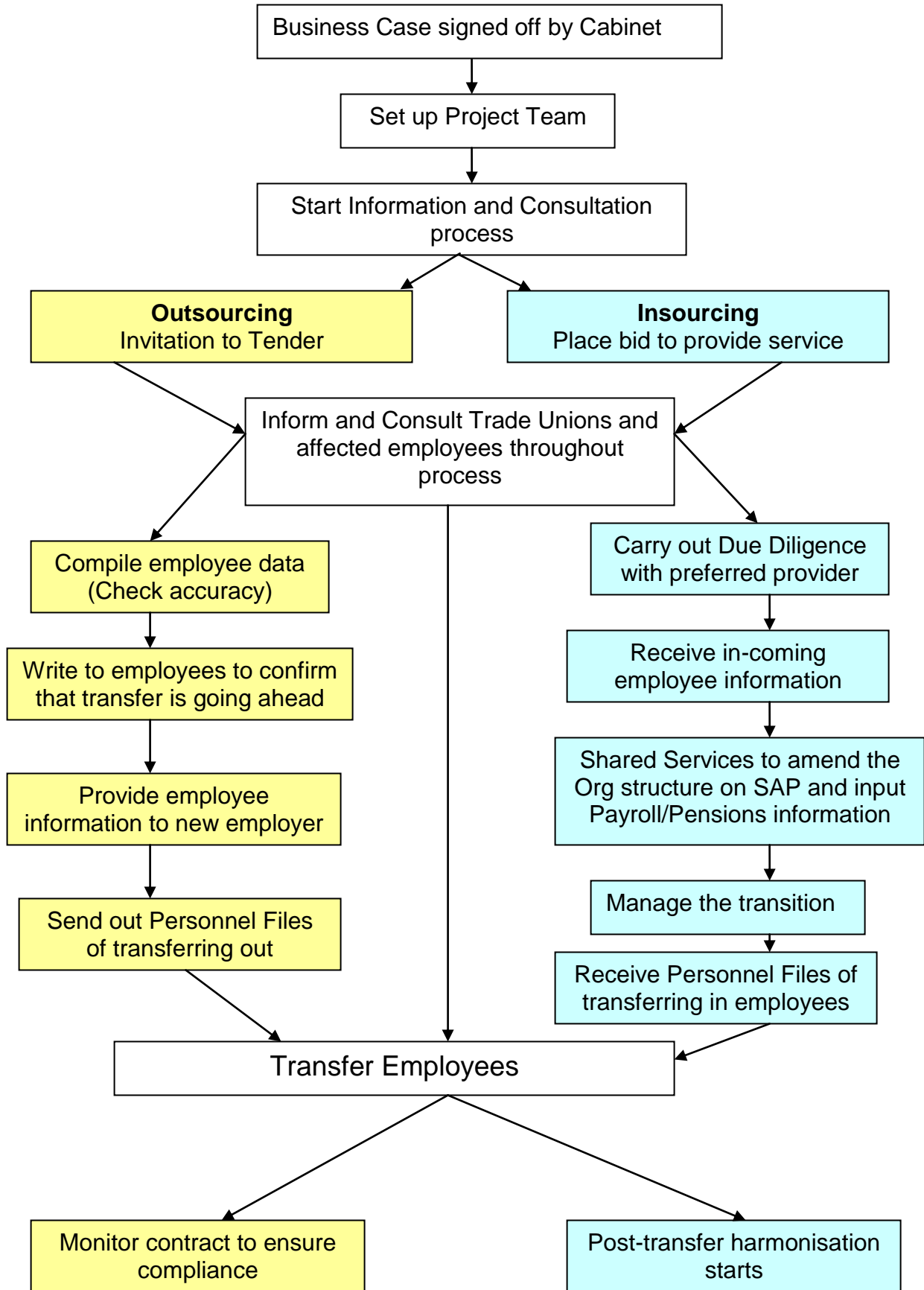


TUPE FLOWCHART



TUPE TOOLKIT

This toolkit is designed to provide guidance in implementing the Transfer of Undertakings (Protection of Employment) Regulations 2006 and the European Community Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC).

The scope of the 2006 Regulations covers Outsourcing, Insourcing or service provision changes, categorised as ‘relevant transfers’ and the effect of the Regulations is to provide employment rights, to preserve the continuity of employment and the terms and conditions of those employees who are transferred to a new employer when a ‘relevant transfer’ takes place.

As TUPE is a very complex process, advice should be sought from an HR Business Partner, where managers have little or no experience in this area.

Glossary of Terms Used	List of Best Practice Note
<p>TUPE – Transfer of Undertakings (Protection of Employment) Regulations 2006</p> <p>OGC – Office of Government and Commerce</p> <p>ETO – An Economic, Technical or Organisational reason entailing changes in the workforce</p> <p>Outsourcing – Where a service is contracted out to an external organisation</p> <p>Insourcing – Where a service is contracted in from an external organisation</p> <p>Relevant transfer – A transfer to which TUPE regulations apply</p>	<p>BPN 1. Information and Consultation</p> <p>BPN 2. Example TUPE FAQs</p> <p>BPN 3. General effects of a TUPE transfer</p> <p>BPN 4. Employee Communication</p> <p>BPN 5. Service User Consultation Requirements</p> <p>BPN 6. Tender and Selection</p> <p>BPN 7. Disclosure of employee information</p> <p>BPN 8. Dismissal, Redundancy and TUPE</p> <p>BPN 9. Other related issues</p>
Model Letters	Forms
<ol style="list-style-type: none"> 1. Trade Union Consultation (Outsourcing) 2. Consultation with Employees (Outsourcing) 3. Confirmation of transfer (Outsourcing) 4. Due Diligence (Insourcing) 5. Measures (Insourcing) 	<p>Form 1 – Staff data request</p>
Further Information	Further Learning
<p>Link to Pensions TUPE Guidance</p>	<p>MDPP – Managing Change</p>

OUTSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
1.0 INITIATING THE PROCESS			
1.1 Business Case	Divisional Director	Proposals to outsource a service provision should be outlined in a Business Case, approved and signed off by Cabinet before implementation starts.	
1.2 Appointments and notifications	Divisional Director	To ensure a smooth transfer process, a senior manager should be appointed as Lead Manager to facilitate implementation, act as a point of contact for queries.	
	Lead Manager	<p>Set up and lead a project team, which could comprise representatives from:</p> <ul style="list-style-type: none"> ▪ Human Resources & Development ▪ Procurement/Contracts ▪ Legal ▪ Finance ▪ Pensions <p>Use the Council's Project Management toolkit to help plan, deliver and manage the project effectively.</p>	<p>Project Management Toolkit</p> <p>BPN 6 – Tender and Selection</p>
	Lead Manager	Notify Trade Unions of service review and potential TUPE consequence.	<p>BPN 1 – Information and Consultation</p> <p>Model Letter 1 – Trade Union Consultation</p>
	Lead Manager	<p>Notify affected employees of the possibility of TUPE applying if a new service provider is appointed.</p> <p>Consider giving a presentation to explain what this means and what employees can expect regarding TUPE</p> <p>Provide Frequently Asked Questions</p>	<p>BPN 2 – Example TUPE Q&A</p> <p>BPN 3 – General effects of TUPE Transfer</p>

OUTSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
2.0 PROCUREMENT			
2.1 Tendering and selecting service	Lead Manager/ Procurement Manager	<p>Jointly draft the service specification of the contract and present to Senior Management Team for approval.</p> <p>Complete tendering process as in Procurement Service guidelines.</p> <p>Organisations that do not satisfy the Council that they will comply with the OGC code of practice will not be selected for the contract.</p>	<p>BPN 6 – Tender and Selection</p> <p>OGC Code of Practice</p>
2.2 Employees' terms and conditions information	Lead Manager/ HR Business Partner	Bidders will legitimately need to have information about employees, their main terms and conditions, collective and local agreements and contact details of Trade Union representatives	
3.0 EMPLOYEES IN SCOPE			
3.1 Identifying affected employees	Lead Manager	<p>It is generally wise to assume that TUPE applies to any transfer or contracting out of services.</p> <p>Employees to whom TUPE applies are those:</p> <ul style="list-style-type: none"> ▪ with a contract of employment; and ▪ mainly assigned (other than on a temporary basis) to the work to be transferred; and ▪ employed at the exact time the transfer takes place <p>This includes those on Maternity Leave, Career Break or Long Term sick leave</p> <p>Colleagues who will not transfer but whose jobs might be affected by the transfer should be included in the consultation process</p>	<p>BPN 3 – General effects of TUPE</p>

OUTSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
3.2 Equalities issues considered	Lead Manager	Undertake an Equalities Impact Assessment (EIA) of the proposal to ascertain the possible effects of the change on employees and ways of mitigating these	Equalities Impact Assessments
4.0 INFORMATION & CONSULTATION			
4.1. Employee/TU consultation	Lead Manager/ HRD Business Partner	<p>Start consultation with employees and their representatives at the earliest opportunity ensuring that there is long enough time for this before the transfer takes place. Don't forget employees on long term absence, maternity leave and career break</p> <p>Follow up verbal communication with a letter where possible. 1:1 meetings with affected employees to allow discussion about their individual circumstances are recommended.</p> <p>If any employees object to the transfer, obtain written confirmation of their objections with confirmation that they do not intend to transfer. Advise them of the consequences under TUPE</p>	BPN 1 – Information and Consultation BPN 4 – Employee Communication BPN 9 – Other Related Issues Model Letter 2 – Employee Consultation
4.2 Service user consultation (if applicable)	Lead Manager	Carry out service-user consultation when considering tendering out services	BPN 5 – Service User Consultation Local Government and Public involvement in Health Act 2007
5.0 EMPLOYEE DATA			
5.1 Provision of data	Lead Manager/HRD Business Partner	<p>Ask transferring employees to confirm accuracy of personal details held on records</p> <p>Ensure employees are aware that anonymised information about those who will (potentially) transfer may be disclosed to 'bidders'.</p>	BPN 7 – Disclosure of Employee Information

OUTSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
5.2 Support for employees	Lead Manager/ HRD Business Partner	Ensure that transferring employees have access to: <ul style="list-style-type: none"> ▪ The Employee Assistance Programme ▪ Time during working hours to meet with Trade Union representative ▪ Time during working hours to meet as a group to provide mutual support, if required ▪ Paid time to attend meetings, if on career break or maternity leave 	
6.0 PENSIONS			
6.1 Pensions Workshops	Lead Manager/HRD Business Partner/ Pensions Manager	Arrange workshops to explain pensions implications of transfer Invite a representative of the preferred bidder's pension team to attend and respond to queries.	Pensions TUPE Guidance
7.0 COMPLETING THE TRANSFER			
7.1 Confirmation of transfer	Lead Manager/HRD Business Partner	Inform affected employees and Trade Unions that the transfer is going ahead and arrangements to implement this	
7.2 Providing information to new employer	Lead Manager/ HRD Business Partner	Information about those employees who will transfer must be provided to the new employer when the transfer has been confirmed:	BPN 7 – Disclosure of employee information
7.3 Notify employees of date of transfer	Lead Manager/HRD Business Partner	When arrangements for the transfer are complete and the transfer date is confirmed inform transferring employees of the date that the transfer will take effect	Model Letter 3 – Confirmation of Transfer
7.4 Facilitating the transfer	Lead Manager	Agree a process with the new employer in order to ensure that a smooth transfer takes place. This could include for e.g. <ul style="list-style-type: none"> ▪ Advance visits to new sites so that transferring 	

OUTSOURCING

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		<p>employees can see their new place of work and meet new colleagues (if this applies)</p> <ul style="list-style-type: none"> ▪ Ensuring that employees know where and to whom to report on the day of transfer ▪ Ensuring that any equipment etc that is to transfer with them is ready and that the transfer happens at the appropriate time ▪ Considering appropriate induction for transferring employees ▪ Considering the impact on the service and ensuring changes are communicated to the appropriate parties. 	
7.5 Termination of contracts	Lead Manager	Seek legal advice if there are any redundancy implications post-transfer	BPN 8 – Dismissals, Redundancy and TUPE
7.6 Personal Files	Lead Manager/HRD Business Partner	Arrange for any Personnel Files for transferring employees to be sent over to the new employer when requested.	
8.0 MONITORING			
8.1 Ensure Service Provider compliance	Director/Head of Service	<p>Throughout the length of the contract, the Council may satisfy itself that the service provider is properly complying with the 2006 OGC Code of Practice.</p> <p>The Council may request information on transferred employees and the terms and conditions of employees employed to work alongside them.</p>	

*****END OF OUTSOURCING TOOLKIT*****

INSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
1.0 INITIATING THE PROCESS			
1.1 Appointments and notifications	Divisional Director	Proposals to in source service provision should be outlined in a Business Case, approved by CSB and signed off by Cabinet before implementation starts	
	Divisional Director	To achieve a smooth transfer process, a senior manager should be appointed to facilitate implementation, act as a point of contact for queries and lead the project team	
	Lead Manager	<p>Set up and lead a project team, which could comprise representatives from:</p> <ul style="list-style-type: none"> ▪ Human Resources & Development ▪ Procurement/Contracts ▪ Legal ▪ Finance ▪ Pensions <p>Use the Council's Project Management toolkit to help plan, deliver and manage the project effectively.</p>	BPN 6 – Tender and Selection Project Management Toolkit
	Lead Manager	Notify Trade Unions of potential Insourcing and TUPE consequence.	BPN 1 – Information and Consultation Model Letter 1 – Trade Union Consultation
	Lead Manager	Notify employees that might be affected by the Insourcing	BPN 2 – Example TUPE FAQs Model Letter 2 –Employee Consultation
2.0 PROCUREMENT			
2.1 Award of Contract	Lead Manager	Following award of contract (and cooling off period) request contact details of external employer's Lead Manager	

INSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
2.1 Due Diligence	Lead Manager/ Procurement Manager	Write to external employer requesting due diligence	Model Letter4 – Employee Information Request Letter
2.1 Receipt of employee information	HR Business Partner	Request anonymised data about transferring employees. Information of any formal objections raised by transferring employees must also be provided, as well as the outcome of these objections	Form 1: Employee Data Request
	HR Business Partner	Request details of the transferring employees terms and conditions of employment	
	Lead Manager	Establish whether there are particular risks and liabilities which will transfer from the external employer to the Council It may be appropriate to seek warranties and indemnities from the external employer	
	Lead Manager	Discuss with Pensions if employees will join the Local Government Pension Scheme so that the cost can be adequately assessed and included	
4.0 INFORMATION AND CONSULTATION			
4.1 Meeting transferring employees	Lead Manager/HR Business Partner	Ask the external employer to be included in any consultation meetings or employee briefings. It may be useful to enquire about the main issues being raised by transferring in employees or obtain a list of questions before the briefing, to allow you to respond quickly.	BPN 1 –Information and Consultation
	Lead Manager/HR Business Partner	While the external employer is responsible for consulting their employees about the transfer, it is best practice to check this as liability could transfer. Inform the external employer of any measures or changes that will be taken, in connection with the transfer, which may affect transferring employees e.g. re-organisation	

INSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
4.3 Consulting affected employees	Lead Manager/Business Partner	Current employees who will be working alongside transferring employees and whose jobs might be affected by the transfer need to be consulted.	BPN 4 – Employee Communication
4.4 Trade Union consultation	Lead Manager/Business Partner	<p>Long before a ‘relevant transfer’ authorised Trade Union officials must be consulted with the view to seeking agreement to the intended measures</p> <p>During these consultations, the Lead Manager must consider and respond to any representations made by the representatives.</p>	
5.0 CONFIRMATION OF INFORMATION			
5.1 Receive information from external employer	Lead Manager/HR Business Partner	<p>The Council will have a duty to take over the contracts of employment of all employees who are transferring; therefore the external employer will have to provide all supporting information (including payroll data) relevant to the transferring employees.</p> <p>This gives the opportunity for checks to be made i.e. right to work, e.g. criminal record checks</p>	BPN 9 – Other Related Issues
5.2 Write ‘Measures’ letter	Lead Manager/HR Business Partner	<p>Confirm details of any changes to structure being made for ETO reasons</p> <p>Where the structure does not have posts for all transferring employees, consider whether this will include redundancies and ensure that the costs are included in the budget</p>	Model Letter 5 – Measures letter
6.0 TRANSFERRING IN			
6.1 Confirming transfer	Lead Manager	The external employer will be responsible for confirming the details of the transfer to the affected employees and their representatives however a letter welcoming transferring employees to the Council should be sent	
6.2 Receipt of personal Files	Lead Manager/HRD Business Partner	Receive personal files of the transferring employees and ensure that any criminal record checks and right to work checks are completed.	
6.3 Paperwork	Lead Manager/HRD Business Partner	Ensure that the necessary paperwork for changes to be made on SAP is completed and sent to Shared Services	Creation of Position Form

INSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
6.4 Induction	Line Manager/HRD Business Partner	Arrange for employees to attend a Council Induction course	
7.0 POST TRANSFER HARMONISATION			
7.1 Varying contracts of employment	Line Manager/HRD Business Partner	To ensure that this is lawful and effective, the sole or principal reason for the variation must not be the transfer itself, or a reason connected with the transfer that is not an ETO	BPN 8 – Dismissals, Redundancy and TUPE
7.2 Dismissal and Redundancy	Line Manager	Ensure that there is an economic, technical or organisational (ETO) reason entailing changes in the workforce	

INSOURCING

Event	Action to be taken by	Action Required	Links to other Documents
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