

Overview

Reorganisation will see one council in charge of each area. This means developing new organisations set up to do things differently and deliver the vision for the new council.

The expectation is that council staff will transfer to a new unitary council. Arrangements must be made ahead of time, before new councils are established, to organise the transfer of council staff from their previous council to a new council. This is done through a process following the requirements of the Transfer of Undertakings (Protection of Employment) Regulations 2006 – known as “TUPE”. TUPE ensures the existing council and incoming new council work together to inform staff about the planned transfer and consult where required, as well as providing staff with certain protections including protecting their existing pay and terms.

The Ministry of Housing, Communities and Local Government has published updated [guidance](#) to signpost the relevant legislation and matters councils will need to consider. This summary is to support discussions with council employees and their relevant representatives about what reorganisation means for them.

Local government reorganisation process

The Government prepares legislation to abolish the existing councils and establish new unitary councils. This legislation, once approved, specifies a date on which these changes will take effect. This is known as the **reorganisation date or vesting day**, which is when the new unitary council comes into existence. It may also be referred to as the **transfer date**, as it is the date council staff who will transfer via **TUPE** move to the new council.

The legislation also sets out how the **transitional period** will be managed in the lead up to new councils “going live”. In this period, existing councils continue to deliver their services as normal, and, at the same time, preparations are underway to set up the new council/s. Time will be provided to prepare for the new council/s and prepare to transfer staff. An **implementation body** is put in place that is responsible for the necessary preparations in the lead up to the reorganisation date. This period will include an election to the new council, so councillors can be elected to represent the new council and drive forward preparations.

Council employees will be kept **informed** throughout the transitional period, with information shared and **consultation** undertaken with appropriate employee representatives, as required, in relation to local government reorganisation and any transfer to a new council.

Legislation

Legislation ensures a smooth transition for staff in existing councils when they transfer to new councils, so that changes happen with minimal disruption to staff delivering services. As employers, councils must follow the relevant legislation.

- **The Local Government (Structural and Boundary Changes) (Staffing) Regulations 2008 (the ‘Staffing Regulations’)** set out:
 - The Transfer of Undertakings (Protection of Employment) Regulations 2006 (the ‘TUPE Regulations’) will apply to all councils going through local government reorganisation, including new councils established as part of this process.
 - The arrangements for appointing the chief executive of the new unitary council, redundancy compensation and early pension eligibility for chief executives.

- If the new council employs staff during the transitional period to undertake certain functions, they are eligible for membership to the Local Government Pension Scheme.
- **The TUPE Regulations 2006** protect employees' existing rights when they transfer to a new employer. This is known as a 'relevant transfer'. This means:
 - Council staff's contracts of employment and existing terms and conditions will transfer over to the new unitary council and staff's continuity of employment is maintained following local government reorganisation.
 - Affected staff must be provided with information about the transfer, and consultation undertaken with employee representatives on matters relating to the transfer.
 - Councils cannot make redundancies before a TUPE transfer, where the reason is the transfer itself. Redundancies can only be made if they are not related to the transfer. After the transfer, employers can only make redundancies related to the transfer if there is both a genuine redundancy situation and an 'economic, technical or organisational' (ETO) reason entailing a change in the workforce, and must follow a fair redundancy process, including holding consultations.
- **The Structural Changes Order** for an area may set out specific requirements regarding staffing, such as prescribing dates by when appointments to certain statutory officer posts in the new council must be made.

What does this mean for council staff?

- Staff employed by an existing council under an existing contract will have their employment transferred to a new unitary council, provided they are employed immediately before the date the existing council is abolished, and their employment is contracted to continue beyond the transfer date. The new unitary council inherits the employment contracts from the previous council, and those contracts are protected under the TUPE Regulations. Council staff remain on the same level of pay and terms and conditions they had at their previous council because their contract is protected.
- When staff transfer from different councils to the new council, there may be differences in pay and terms and conditions between staff. We encourage the new council to work towards addressing this by securing agreement for their new pay policy as soon as possible, subject to the relevant national agreements, consultation requirements and any negotiation processes with recognised trade unions. Transferred staff will assume the terms of this new policy either when they voluntarily elect to do so, or when they apply for an alternative role offered under these terms.
- During the transitional period the incoming new council will undertake workforce and organisational planning. The existing councils and the incoming new council/s will work together to identify transferring roles and the staff who are assigned to those roles, and, where necessary, identify other suitable alternative posts. Council staff must be informed before the transfer happens and, where required, consultation will take place through appropriate employee representatives. Consultation may be required on any measures proposed in connection with the transfer, such as changes to working arrangements, location of work or pay date. Both existing councils and incoming new councils are responsible for providing information and consulting as required with employees on how the changes might affect them.
- To give council staff as much clarity as possible about the transfer, the incoming new council is encouraged to work closely with existing councils early in the transitional period. This will allow sufficient time to explain what the transfer means for staff, outline the new operational structures, and carry out any required consultation.

- As well as keeping all affected employees informed, the existing councils and new council must inform any local recognised trade unions or employee representatives about the transfer and consult with them as required. Councils are strongly encouraged to communicate regularly with their staff and to work closely with trade unions throughout the process.
- Staff cannot be made redundant for reasons relating to the transfer itself (the transfer from the former council to the new council) and these can only be made in certain circumstances when there is a genuine redundancy situation and 'economic, technical or organisational' reason involving a change in the workforce.
- Councils may decide to offer a voluntary exit scheme to employees.

When an existing council is split to create more than one new council for the area

- Existing councils may be split to create more than one new unitary council for the area. This results in services being split and moved into new councils. For example, where an existing county or unitary council is split to create a new unitary council, adult and children's services will need to be split or 'disaggregated'. Districts may also be split.
- When this happens, the relevant existing council/s and new councils will work together as part of the TUPE process to determine which new council individual employees should transfer to, taking into account relevant business need factors and individual circumstances. Staff will be provided with information and consulted as required.

Making appointments to the new council

- While it is expected that council staff will transfer to the new council with their roles, the new council may need to make new appointments to certain posts within its staffing structure. The new council must run an open competition to appoint the new chief executive. This is the only role in the new council with such a requirement. The Structural Changes Order for an area may require certain statutory officer roles to be delegated or appointed before the new council comes into existence.
- The new council may need to make appointments to the new senior leadership team of the new council. Exact arrangements will depend on local circumstances, however councils must consider their obligations under TUPE before undertaking any process for making appointments.
- It is likely there will be several senior leadership post holders performing the same or similar roles across existing councils. However, fewer of these senior leadership posts may remain available within the staffing structure of the new unitary council/s. If any current post holder is not successful in a recruitment exercise for that same post in the new council, new councils are encouraged to explore all available options, such as identifying other suitable posts, keeping in mind the need to retain staff with key skills and knowledge where possible. After the transfer, if there is both a genuine redundancy situation and an economic, technical or organisational reason entailing a change in the workforce, and if there is no suitable alternative post identified, a pragmatic and sensible resolution may be terminating their employment by reason of redundancy.
- Generally, in any planned recruitment, we encourage the new council to ensure staff across all the existing councils have an equal opportunity to be considered or apply to roles in the new council.