

Private Equity (Transfer of Undertakings and Protection of Employment) Bill

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Extend the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the acquisition and disposal of substantial shareholdings by private equity companies; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Equity transfers etc.

- (1) For the purposes of this Act, there is an “equity transfer” if an employer is a body corporate and a substantial shareholding in the employer is disposed of, transferred or acquired by a private equity company.
- (2) There is an equity transfer even though the disposal, transfer or acquisition of the interest, or of any part of it, is governed or effected by the law of a country or territory outside Great Britain. 5
- (3) An equity transfer may be effected by a series of two or more transactions.
- (4) In this Act—
 - “2006 Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246); 10
 - “private equity company” has such meaning as may be prescribed by the Secretary of State in regulations made by statutory instrument;
 - “relevant transfer” means a transfer to which the 2006 Regulations apply;
 - “substantial shareholding” means an interest in shares such that an undertaking holding it would, in relation to the employer, be a controlling undertaking within the meaning of regulation 3 of the Transnational Information and Consultation of Employees Regulations 1999 (S.I. 1999/3323); 15
 - “transferee” (except where the reference is to a transferee within the meaning of the 2006 Regulations) means any person, or group of persons acting in concert, who acquire a substantial shareholding in the employer as a result of an equity transfer; and 20

“transferor” (except where the reference is to a transferor within the meaning of the 2006 Regulations) means any person who has, or group of persons who together have, a substantial shareholding in the employer immediately before an equity transfer.

- 2 Individual employment rights where transfer takes place** 5
- (1) Paragraphs (4) and (5) of regulation 4 of the 2006 Regulations (which in the case of a transfer avoid certain purported variations of a contract of employment) apply in relation to an equity transfer (with the references to the transfer of a contract of employment pursuant to paragraph (1) omitted) as they apply in relation to a relevant transfer. 10
- (2) Regulation 7 of the 2006 Regulations (which in the case of a transfer makes certain dismissals of employees automatically unfair) applies in relation to an equity transfer (with references to an employee of the transferee or transferor read as references to an employee of the employer) as it applies in relation to a relevant transfer. 15
- (3) Where an equity transfer takes place, regulation 9 of the 2006 Regulations (which permits certain variations to a contract of employment where there are insolvency proceedings) applies to an employee of an employer subject to relevant insolvency proceedings as it applies, where a relevant transfer takes place, to an employee of a transferor subject to such proceedings. 20
- 3 Effect of transfer on collective employment rights**
- (1) Where an equity transfer takes place, paragraphs (4) and (5) of regulation 4 of the 2006 Regulations apply, with the necessary modifications, to a collective agreement made by or on behalf of the employer with a trade union recognised by the employer as they apply, where a relevant transfer takes place, to a contract of employment. 25
- (2) Where before an equity transfer an independent trade union is recognised to any extent by the employer, those paragraphs apply, with the necessary modifications, to any purported termination or alteration on that recognition (including any purported variation, termination or rescission of any agreement for recognition) as they apply, where a relevant transfer takes place, to a purported variation of a contract of employment. 30
- 4 Information and consultation before transfer**
- (1) Regulation 13 of the 2006 Regulations (which requires certain information and consultation in relation to a transfer) applies to an equity transfer as it applies to a relevant transfer, with the following modifications. 35
- (2) References to employees of the transferor or transferee are to be read as references to employees of the employer.
- (3) In paragraph (2) –
- (a) after “representatives of any affected employees,” insert “and for the steps required by this regulation to be completed before a transferor or transferee decides, or a transferor and transferee agree, that an equity transfer should take place,”; 40
- (b) for “the employer shall inform” substitute “the transferor and transferee shall each secure that the employer informs”; 45

- (c) in sub-paragraph (a), after “transfer is” insert “proposed”;
- (d) for sub-paragraph (c), substitute –
- “(c) the measures which the transferor and transferee each envisages either of them or the employer will, in connection with the transfer, take in relation to any affected employees or, if any of them envisages that no measures will be so taken, that fact;”
- (e) for sub-paragraph (d), substitute –
- “(d) the measures, in connection with the transfer, which the transferor envisages the transferee or employer will take in relation to any affected employees or, if he envisages that no measures will be so taken, that fact; and”;
- (f) after sub-paragraph (d), insert –
- “(e) all relevant facts and matters (actual and anticipated) in relation to the period beginning with the date the information is provided and ending 5 years after the date of the proposed transfer, concerning the structure, economic and financial situation of the transferor, transferee and employer, the probable development of the employer’s business and of production and sales, the situation and probable trend of employment, investments and substantial changes concerning organisation, introduction of new working methods or production processes, transfers of production, mergers, cut-backs or closures of undertakings, establishments or important parts thereof, and collective redundancies.”
- (4) In paragraph (4), after “(2)” omit “(d)”.
- (5) After paragraph (4) insert –
- “(4A) The requirement under paragraph (2) to inform shall be treated as including requirements to –
- (a) give those informed (“the consultees”) such reasonable assistance and training as they may request for the purpose of enabling them to deal with and respond to the information given;
- (b) give the consultees sufficient time, information and facilities to enable them to arrange for an expert study of the implications of the proposal as regards the matters set out in paragraph 2(e);
- (c) give the consultees sufficient time and facilities to prepare, in addition to any other representations they wish to make, a formal opinion on the proposed transfer (which may be accompanied by an expert study as mentioned in paragraph (b));
- (d) where such an opinion is provided, give the consultees a reasoned response to any such opinion and to any expert study accompanying it, and give them a sufficient opportunity for a subsequent exchange of views about the proposed transfer;

- (e) take the steps required by paragraph (2) with due regard for the parties' reciprocal rights and obligations, and with a view to reaching agreement with the consultees as to whether or not the proposed transfer should proceed and if so on what terms."
- (6) In paragraph (6), for "who envisages that he will" substitute ", or a transferee, who envisages that the employer or transferee will". 5
- (7) In paragraph (7), after "employer" insert "or transferee".
- (8) In paragraph (8), for "employer shall" substitute "employer, transferor and transferee shall each".
- (9) In paragraphs (9) to (12) each reference to "employer" is to be read as including the transferor and the transferee. 10
- (10) The requirements of regulation 13 as applied by this section also apply (with the necessary modifications), as they apply to an equity transfer, to any measure which—
- (a) an employer or transferee proposes, following an equity transfer, for a reason connected with the transfer, 15
- (b) concerns any of the matters referred to in regulation 13(2)(e) (as inserted by subsection (3)(f)), and
- (c) may affect employees of the employer.
- (11) Regulation 14 of the 2006 Regulations (election of employee representatives) applies in relation to regulation 13(3) as applied by this section. 20

5 Failure to inform or consult

- (1) Regulations 15 (remedies for failure to comply with a requirement of regulation 13 or 14) and 16 (provision supplemental to regulation 15) apply, with the necessary modifications, to a failure by an employer, transferor or transferee to comply with a requirement of regulation 13 as applied by this Act to an equity transfer, as if the failure were a failure of an employer to comply with a requirement of that regulation. 25
- (2) Where—
- (a) an affected employee, within the meaning of regulation 13 of the 2006 Regulations as applied by this Act, has representatives for the purposes of that regulation as so applied, or is a member of an independent trade union, and 30
- (b) in relation to that employee it appears to any such representative, or to the union, that an employer, transferor or transferee has failed to comply with a requirement of regulation 13 as so applied, or that a transferor or transferee proposes to proceed with an equity transfer before the requirements of that regulation have been complied with, 35
- the representative or union may make an application to the High Court (in Scotland, the Court of Session). 40
- (3) On an application under subsection (2), the court shall make such order, against such of the employer, the transferor or the transferee, as it thinks just and appropriate for the purpose of securing compliance with the requirements of regulation 13 as applied by this Act and for securing that no equity transfer takes place until those requirements have been complied with. 45

6 General

- (1) Regulations 18 and 19 of the 2006 Regulations (restrictions on contracting out, and amendment to the Employment Rights Act 1996 (c. 18)) apply to the provisions of the 2006 Regulations as applied by this Act.
- (2) The Secretary of State may by regulations make such supplemental, consequential, transitional or saving provision as he considers necessary for the purpose of giving effect to this Act, including provision to take account of any amendment, or revocation and re-enactment, of the 2006 Regulations. 5
- (3) Regulations under subsection (2) shall be made by statutory instrument and shall be subject to annulment by resolution of either House of Parliament. 10

7 Short title, commencement and extent

- (1) This Act may be cited as the Private Equity (Transfer of Undertakings and Protection of Employment) Act 2008.
- (2) This Act comes into force at the end of the period of one month beginning with the day on which it is passed. 15
- (3) This Act extends to Northern Ireland to the same extent as the 2006 Regulations.

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To extend the application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the acquisition and disposal of substantial shareholdings by private equity companies; and for connected purposes.

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