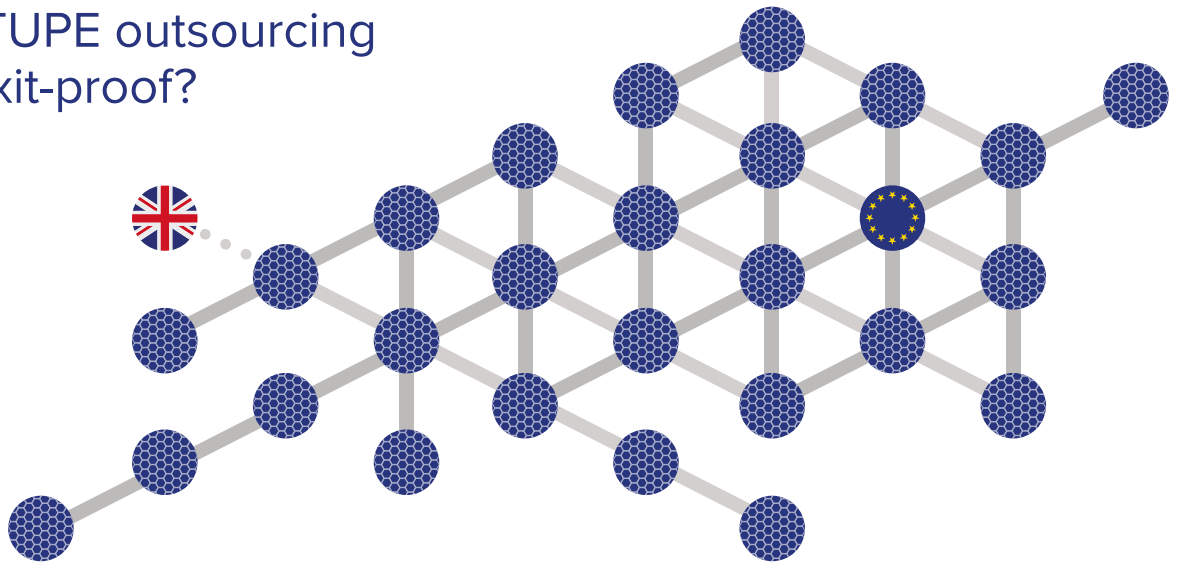


Are your TUPE outsourcing terms Brexit-proof?



Outsourcing agreements often include TUPE provisions designed to apply when the contract terminates, which could be years, or even decades down the line. This briefing considers how to future-proof your outsourcing contracts so that they can withstand the possibility of TUPE being significantly amended or repealed entirely after Brexit.

After Brexit, it is possible that the UK Government will amend or repeal TUPE. It is too early to know whether that is likely to happen (and the current Government has said nothing will change for the time being), but if it does, it could have a significant impact on employment costs in outsourcing contracts.

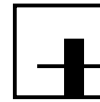
Without TUPE, the default position at the end of a service contract would be for staff to remain with the outgoing provider, likely creating a redundancy situation, potentially at significant cost to the outgoing provider. Current outsourcing agreements will have been drafted on the assumption that TUPE will apply in the future, and so employees would transfer to an incoming provider, or the client itself on an insourcing. If TUPE is repealed, there may be the unintended consequence that employee liabilities remain with the outgoing provider instead.

Existing contracts should be reviewed to assess whether there is a risk of previously unforeseen employment costs on termination. When drafting new outsourcing

agreements, particularly those which apply to long term projects and which involve significant staff numbers, consideration should be given to the possibility that TUPE will not exist, at least not in its current format, on termination. Agreement should be reached on what will happen to staff in those circumstances. There are three main possible approaches:

1. Will the outgoing provider assume the risk of the law being changed and being left with a redundancy liability?
2. Will a commercial agreement be reached to share the financial and practical risk?
3. Will the parties agree to proceed as if TUPE applies, even if the law has changed during the term of the contract?

If you have any questions about outsourcing wording, or would like assistance with reviewing existing contracts, please get in touch with your usual Shepherd and Wedderburn contact.



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JOINING THE DOTS OF THE EU REFERENDUM

What next?

Shepherd and Wedderburn has been for many years offering balanced and impartial advice on how the different scenarios might play out in the event of constitutional change.

Now that the vote has been cast to leave the EU, members of our dedicated Brexit group continue to interrogate the regulatory and commercial issues and to advise clients on next steps and outcomes.

For further information in the first instance, please contact:



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