EXPLANATORY MEMORANDUM TO

THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TRANSFER OF POLICE STAFF TO THE NATIONAL CRIME AGENCY) REGULATIONS 2019

2019 No. 267

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Under section 82 of the Serious Organised Crime and Police Act 2005, a "protection provider" may make such arrangements as he considers appropriate for the purpose of protecting any person if he reasonably believes that the person's safety is at risk in view of the criminal conduct or possible criminal conduct of another person. A "protection provider" is defined as including a chief officer of a police force in England and Wales and the Director General of the National Crime Agency (the "NCA"). In order to draw together provision in England and Wales of protected person services, these functions will be transferred from the Regional Organised Crime Units in certain police forces in England and Wales to the NCA on 1 April 2019. This instrument provides for certain police staff to be transferred to the employment of the NCA to perform these functions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos.83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

4.2 The territorial application of this instrument is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The transfer of police staff (civilian staff rather than police officers) from police forces to the NCA is unlikely to meet the criteria for being a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006, SI 2006/246 ("TUPE 2006"). This is because, under regulation 3(5) of TUPE 2006, "an administrative reorganisation of public administrative authorities or the transfer of administrative functions between public administrative authorities is not a relevant transfer". In these circumstances, where the activities undertaken are not of an economic nature, TUPE 2006 will not apply.

6.2 Therefore the transfer of staff from the police forces to the NCA will be effected by a legislative transfer scheme under powers contained in Section 38 of the Employment Relations Act 1999 and with regard to the Cabinet Office Statement of Practice on Staff Transfers in the public sector 2000 ("COSoP").

6.3 The transfer of staff will be conducted broadly as if TUPE regulations apply and employees will be identified using TUPE principles. Terms and conditions will also be protected in line with COSoP and employees transferring will not be subject to less favourable terms and conditions following the transfer.

6.4 The transfer of staff will facilitate the establishment of an NCA led "National Protected Persons Service".

7. Policy background

7.1 At present staff employed by police bodies with the principal purpose of carrying out the protected persons service are employed by a large number of separate police forces throughout England and Wales. The new National Protected Persons Service is being established and will be led by the NCA. The new service will deliver protection and care to individuals (protected persons) who are considered by law enforcement agencies to be at risk of serious harm. This includes victims, witnesses and offenders. There is significant operational risk attached to the delivery of this service and it is hoped that the drawing together of staff performing these functions under the employment of the NCA will enable this operational risk to be better managed and the service to be more effectively delivered.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department does not assess that there is any need for consolidation measures.

10. Consultation outcome

10.1 No public consultation was carried out.

11. Guidance

11.1 No guidance is necessary in connection with this instrument.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it relates to the maintenance of existing regulatory standards under the Employment Relations Act 1999.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There is no proposal to monitor or review the effect of this instrument.

15. Contact

15.1 James Athorn at the Home Office, 2 Marsham Street, London SW1P 4DF Telephone: 020 7035 4120 or email: james.athorn@homeoffice.gov.uk; or

Shauna Dimadis at the Home Office, 2 Marsham Street, London SW1P 4DF Telephone 020 7035 3768 or email: shauna.dimadis@homeoffice.gov.uk

can be contacted with any queries regarding the instrument.

15.2 Caroline Mersey, Deputy Director, Serious Organised Crime Group, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Ben Wallace, Minister for Security and Economic Crime, Home Office can confirm that this Explanatory Memorandum meets the required standard.