EXPLANATORY MEMORANDUM TO

THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TRANSFER OF STAFF TO THE CIVIL NUCLEAR POLICE AUTHORITY) REGULATIONS 2025

2025 No. 114

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Michael Shanks, Minister for Energy at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

2.2 Emily Revess, Deputy Director for Energy Resilience, at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Adam Dudzinski-Short at the Department for Energy Security and Net Zero Telephone: 07741701151 or email: dger@energysecurity.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument transfers the employment of certain Ministry of Defence personnel who work for the Ministry of Defence Police (MDP) at or in relation to certain energy sites, to the Civil Nuclear Police Authority, which employs Civil Nuclear Constabulary (CNC) officers and staff. It provides employment protection for the transferring personnel which is similar to that afforded by certain provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the 'TUPE Regulations'), as the TUPE Regulations do not apply in this case.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument is England, Wales, and Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Scotland.

5. Policy Context

What is being done and why?

5.1 The MDP currently provides a policing deployment at certain energy sites in England and Scotland, until 31 March 2025. To maintain the service, the CNC is due to take on the deployment from 1 April 2025.

5.2 The majority of the personnel currently deployed at these energy sites or working in relation to the service will continue to carry out this work and so their employment needs to transfer to the CNPA. The affected personnel are to transfer with their existing continuity of service and terms and conditions of employment preserved. This is in line with government policy that transfers of public sector employees should follow the principles of the TUPE Regulations, with such employees being treated no less favourably than if the TUPE Regulations had applied, under the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSoP).

What was the previous policy, how is this different?

5.3 The policy remains for personnel to be employed by the relevant entity to provide the service. This instrument effects the transfer of affected personnel in a way which preserves their continuity of service and terms of employment; this is also not a change of policy.

6. Legislative and Legal Context

How has the law changed?

6.1 The TUPE Regulations are the usual legal mechanism by which employees' terms and conditions are protected when the business or service in which they work is transferred from one employer to another. However, this is a transfer of administrative functions between public administrative authorities and falls within the exception found in regulation 3(5) of the TUPE Regulations. The TUPE Regulations therefore do not apply in this case.

6.2 These Regulations are therefore being made under the power in section 38(1) of the Employment Relations Act 1999 to effect the transfer of personnel from the Ministry of Defence to the CNPA, taking account of the COSoP which provides that where the TUPE Regulations do not apply to certain types of transfer within the public sector, the principles of the TUPE Regulations should be followed. The effect of these Regulations is that the transfer of personnel will be conducted in the same manner as if certain provisions of the of the TUPE Regulations had applied, and transferring personnel will have their continuity of service preserved and will not be subject to less favourable terms and conditions as a result of the transfer.

6.3 As with a transfer under the TUPE Regulations, these Regulations do not transfer contractual occupational pension entitlements (where those entitlements relate to benefits for old age, invalidity or survivors). The CNPA have ensured that appropriate pension arrangements are available for transferring personnel.

6.4 As with a transfer under the TUPE Regulations, regulation 3(7) which mirrors the provisions of regulation 4(9) of the TUPE Regulations, enables personnel in scope of the instrument to treat their employment contract as having been terminated by reason of dismissal by their employer, if the transfer does or would involve a substantial change in working conditions to their material detriment. This does not entitle personnel to claim unfair dismissal under s94 Employment Rights Act 1996 (the "1996 Act") if the application of that provision is excluded by another provision of that or another Act. Pursuant to s200 of the 1996 Act, the right to claim unfair dismissal under s94 of that Act does not apply to employment under a contract of employment in police service or to persons engaged in such employment. For these purposes, police service includes service as a member of a constabulary maintained by virtue of an enactment. There are some exceptions to this exclusion, in relation to

dismissals for certain cases related to health and safety purposes and for making a protected disclosure.

6.5 Some of the transferring personnel are police officers who hold office as members of the MDP, in accordance with the Ministry of Defence Police Act 1987. The Regulations provide for these personnel to hold office as members of the CNC, in accordance with the Energy Act 2004, from the transfer date.

Why was this approach taken to change the law?

6.6 This is the only possible approach to make the necessary changes, because the TUPE Regulations do not apply in this case. The general intent is for personnel who have been working on the existing policing service to continue to do so by becoming employed by the incoming service provider; and to preserve the continuity of employment and terms and conditions of employment of these personnel. This respects the principles set out in COSoP. The instrument is required in order to transfer employment and preserve continuity of service and employment terms and conditions.

7. Consultation

Summary of consultation outcome and methodology

7.1 There has not been a published or public consultation in relation to the instrument because this was not considered appropriate or necessary for the subject matter.

7.2 MDP has been consulting on the transfer with the Defence Police Federation (DPF) and staff associations (SAs) who are responsible for consulting with their members. This consultation has been carried out jointly by MDP, DPF, and SAs via written communication as well as dial-in meetings and focus groups, with positive feedback. This instrument was also shared in draft with the DPF.

7.3 The Scottish Government were informed of DESNZ's intention to lay the instrument given that it affects policing operations in England and Scotland, noting that the instrument relates to reserved matters.

8. Applicable Guidance

8.1 Guidance is not required.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because its effect is to transfer the employment of certain personnel on their existing terms between public authorities. This is for an established service, and it is not expected to have a significant impact.

9.2 This instrument is not in scope of the Government's Better Regulation Framework.

Impact on businesses, charities and voluntary bodies

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

9.4 The legislation does not impact small or micro businesses.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 There are no plans to monitor or review the effect of this instrument.

10.2 The statutory duty under the Small Business, Enterprise and Employment Act 2015 to include a review provision does not apply as the instrument relates to public authorities. Inclusion of a review provision has nonetheless been considered. A review provision would not be appropriate, given that the instrument effects the transfer of employment.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).