STATUTORY INSTRUMENTS

2014 No. 1139

TERMS AND CONDITIONS OF EMPLOYMENT

The Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Department for Work and Pensions) Regulations 2014

Made - - - -	*1st May 2014*
Laid before Parliament	*6th May 2014*
Coming into force - -	*27th June 2014*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 38 of the Employment Relations Act 1999(**a**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Department for Work and Pensions) Regulations 2014 and come into force on 27th June 2014.

(2) In these Regulations—

"the 1996 Act" means the Employment Rights Act 1996(**b**);

"the TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006(**c**).

"council tax benefit" means council tax benefit under section 131 of the Social Security Contributions and Benefits Act 1992(**d**);

"housing benefit" means housing benefit under section 130 of that Act(**e**);

"the Secretary of State" means the Secretary of State for Work and Pensions;

"transferor" means—

(a) an authority administering housing benefit or council tax benefit, or

(b) a person providing services to, or authorised to exercise any function of, an authority referred to in paragraph (a) in relation to the activities mentioned in regulation 2(a),

from whom the function of carrying out such activities is or is to be transferred to the Secretary of State ("a relevant transfer"), and "relevant transferor", in relation to any person to

(**a**) 1999 c.26.
(**b**) 1996 c.18.
(**c**) S.I. 2006/246; relevant amendments are made by S.I. 2009/592 and 2010/93.
(**d**) 1992 c.4. Section 131 is repealed by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 (c.5) subject to savings and transitional provisions specified in S.I.2013/358.
(**e**) Section 130 is repealed by section 147 of, and Part 1 of Schedule 14 to, the Welfare Reform Act 2012 but this repeal is not yet in force.

whom these Regulations apply, means the transferor which employs that person immediately before the transfer date;

"the transfer date", in relation to any person to whom these Regulations apply, means the date on which the relevant transfer takes place;

Application of Regulations

2. These Regulations apply in the event of a relevant transfer to any person who—

(a) immediately before the transfer date is employed by a transferor for the principal purpose of carrying out activities connected with the detection and investigation of offences relating to housing benefit or council tax benefit; and

(b) has, with the written agreement of the Secretary of State, been notified in advance in writing by that transferor that—

(i) the function of carrying out those activities is to be transferred to the Secretary of State on a date specified in the notice; and

(ii) that accordingly they are to transfer to the employment of the Secretary of State on that date.

Transfer of employment

3.—(1) Subject to the following provisions of this regulation—

(a) any person to whom these Regulations apply ("P") is on the transfer date transferred to the employment of the Secretary of State;

(b) P's contract of employment is not terminated by that transfer but has effect from the transfer date as if originally made between P and the Secretary of State; and

(c) without prejudice to sub-paragraph (b)—

(i) all the rights, powers, duties and liabilities of the relevant transferor under, or in connection with, P's contract of employment are transferred to the Secretary of State on the transfer date; and

(ii) any act or omission before the transfer date of, or in relation to, the relevant transferor, in respect of P or P's contract of employment, is from that date deemed to have been an act or omission of, or in relation to, the Secretary of State.

(2) Paragraph (1) does not operate to transfer P's contract of employment, or any rights, powers, duties and liabilities under or in connection with that contract, if, before the transfer date, P informs the relevant transferor or the Secretary of State that they object to becoming employed by the Secretary of State.

(3) Where P has objected as described in paragraph (2), P's contract of employment with the relevant transferor is terminated with effect from the transfer date.

(4) Subject to paragraphs (5) and (6), where P's contract of employment is terminated in accordance with paragraph (3), P is not to be treated, for any purpose, as having been dismissed by the relevant transferor.

(5) Where the transfer involves or would involve, a substantial change in working conditions to the material detriment of P, P may treat the contract of employment as having been terminated.

(6) Where P treats the contract of employment as having been terminated as set out in paragraph (5), P is to be treated for all purposes as having been dismissed by the relevant transferor.

(7) No damages are to be payable by the relevant transferor or the Secretary of State as a result of a dismissal falling within paragraph (6) in respect of any failure by the relevant transferor or the Secretary of State to pay wages to P in respect of a notice period which P has failed to work.

(8) Paragraphs (1) to (6) are without prejudice to any right of P arising apart from this regulation to terminate their contract of employment without notice in acceptance of a repudiatory breach of contract by the relevant transferor.

(9) Paragraph (1) does not transfer, or otherwise affect, the liability of any person to be prosecuted for, convicted of or sentenced for any offence.

Dismissal of employee because of relevant transfer

4.—(1) Subject to the following provisions of this regulation, where, either before or after a relevant transfer, any person ("the employee") employed by the transferor or the Secretary of State ("the employer") is dismissed, the employee is to be treated for the purposes of Part 10 of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for the dismissal is the transfer.

(2) This paragraph applies where the sole or principal reason for the dismissal of the employee by the employer is an economic, technical or organisational reason entailing changes in the workforce of the employer before or after a relevant transfer.

(3) Where paragraph (2) applies—

(a) paragraph (1) does not apply;

(b) without prejudice to the application of section 98(4)(b) of the 1996 Act(**a**) (test of fair dismissal), for the purposes of sections 98(1) and 135 of that Act (reason for dismissal), the dismissal is to be regarded as having been—

(i) for redundancy where section 98(2)(c) of that Act applies; or

(ii) in any other case, for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(4) In paragraph (2), the expression "changes in the workforce" includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).

(5) The provisions of this regulation apply irrespective of whether the employee is a person to whom these Regulations apply.

(6) Paragraph (1) does not apply in relation to the dismissal of any employee if the application of section 94 of the 1996 Act is excluded by or under any provision of the 1996 Act, the Employment Tribunals Act 1996(**b**) or the Trade Union and Labour Relations (Consolidation) Act 1992(**c**).

Pensions

5. A person whose contract of employment is transferred to the Secretary of State by regulation 3 is to be treated as if regulation 10 of the TUPE Regulations (pensions) applied in relation to that transfer, with the following modifications—

(a) for the reference to regulations 4 and 5 of the TUPE Regulations substitute a reference to regulation 3 of these Regulations; and

(b) for the reference to the circumstances described in regulation 4(1) of the TUPE Regulations, substitute a reference to the circumstances where regulation 3(1) of these Regulations applies.

Signed by the authority of the Secretary of State for Work and Pensions

Freud
Parliamentary Under Secretary of State
Department for Work and Pensions

1st May 2014

(**a**) Section 98(4) is amended by S.I.2011/1069.
(**b**) 1996 c.17.
(**c**) 1992 c.52.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the treatment of persons employed by authorities administering housing benefit or council tax benefit (or employed by persons providing services to, or authorised to exercise functions of, such authorities). The Regulations apply to employees who are employed for the principal purpose of carrying out activities connected with the detection and investigation of offences relating to those benefits. They ensure that, if the function of carrying out those activities by a particular authority or service provider is transferred to the Secretary of State, those employees will have protection similar to that provided by certain provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations").

Regulation 2 defines the employees to whom these Regulations apply. Regulation 3 is equivalent to regulation 4 of the TUPE Regulations and provides for the employees to be transferred to the employment of the Secretary of State. Regulation 4 is equivalent to regulation 7 of the TUPE Regulations and provides that those employees are to be treated for the purposes of Part 10 of the Employment Rights Act 1996 (c.26) (unfair dismissal) as unfairly dismissed if the sole or principal reason for the dismissal is the transfer. Regulation 5 applies the provisions of regulation 10 of the TUPE Regulations in relation to pensions so as to exclude certain rights and liabilities in relation to occupational pension schemes.

A full Impact Assessment has not been produced for this instrument as no impact on the private sector or civil society organisations is foreseen.

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