EXPLANATORY MEMORANDUM TO

THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TRANSFERS OF STAFF TO THE DEPARTMENT FOR WORK AND PENSIONS) REGULATIONS 2014

2014 No. 1139

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of this Instrument

2.1 Currently, the Department for Work and Pensions (DWP) and Local Authorities which administer housing benefit and council tax benefit ("relevant authorities") have powers to investigate and prosecute Social Security Benefits. HM Revenue and Customs (HMRC) has powers to investigate and prosecute tax credit fraud. Since June 2012, DWP investigators may also investigate and prosecute all tax credit fraud.

2.2 The Single Fraud Investigation Service (SFIS) project will introduce under DWP a single service investigating the totality of social security benefits, tax credits and Universal Credit fraud. Part 5 of the Welfare Reform Act 2012 aligns powers so that a DWP investigator can investigate all social security benefits and tax credit offences.

2.3 These Regulations concern the transfer of employees of relevant authorities or employees of their contracted supplier, who are deemed assigned to the work/activities which are transferring to DWP as a result of the SFIS and whose principal purpose is carrying out of activities connected with the detection and investigation of offences relating to housing benefit or council tax benefit. The new service will be created in DWP with individual relevant authorities transferring their housing benefit and council tax benefit investigations work and the employees engaged in that work on a date yet to be fixed falling between the period July 2014 and March 2016.

2.4 Prosecutions arising from these investigations will be conducted by the Crown Prosecution Service in England and Wales and the Procurator Fiscal in Scotland. Employees assigned to this work are not in scope of these regulations.

3. Matters of special interest to the Joint committee on Statutory Instruments

None.

4. Legislative Context

4.1 The transfer of housing benefit and council tax benefit fraud investigations work from relevant authorities to DWP is unlikely to meet the Transfer of Undertakings (Protection of Employment) Regulations 2006, S.I. 2006/246 (TUPE 2006). This is because an administrative reorganisation of public administrative authorities or the

transfer of administrative functions between public administrative authorities is not a relevant transfer for the purpose of those Regulations (TUPE regulation 3(5)). The investigation of housing benefit and council tax benefit fraud is considered to be an administrative function and therefore would fall outside the scope of TUPE.

4.2 In order to maintain an effective system for investigating social security benefit fraud, the transfer of relevant authority employees or employees of the contracted supplier is to 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).

4.3 The transfer of employees under these Regulations will be conducted broadly as if TUPE applied and employees will be identified using TUPE principles. Terms and conditions of employment will also be protected in line with COSoP and employees transferring will not be subject to less favourable terms and conditions following the transfer. With potentially 380 different employers transferring employees to DWP, with varying terms and conditions, there are clear benefits in retaining some flexibility in allowing the potential for changes to terms and conditions on the premise that changes are no less favorable and that any changes are negotiated and agreed in advance. The Regulations therefore will not implement the restriction in TUPE where changes can only be made for "an economic, technical or organisational reasons entailing changes in the workforce".

5. Territorial Extent and Application

5.1 This instrument will apply to Great Britain.

5.2 Reciprocal arrangements are not being made in Northern Ireland.

6. European Convention on Human Rights

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

7. Policy Background

- What is being done and why

7.1 Combined Department for Work and Pensions (DWP) and HM Revenues and Customs (HMRC) fraud and error is estimated to cost £5.6bn per annum. £3.5bn (2.1%) of all DWP benefits were overpaid due to fraud and error in 2011/12. Action 1.6 of the Action Plan within the DWP Business Plan 2012 – 15 states: 'DWP intend to reduce the level of welfare benefit expenditure overpaid from the current 2.1% to a maximum of 1.7% by 2015'. A single fraud service is highlighted as one of the projects that will achieve this.

7.2 The change will allow each individual DWP fraud investigator to conduct investigations covering the totality of social security and tax credit. It brings together social security benefit and tax credit fraud services currently provided by HMRC, local authorities and DWP. It will provide long term sustainability and is a future-proofed, scalable option to deliver a cross-government anti-fraud service.

7.3 The Single Fraud Investigation Service (SFIS) project will deliver cross Government savings whilst enhancing the Government's reputation for tackling welfare benefit fraud. It will deliver a Value for Money (VFM) effective, professional service which optimises resources and is affordable in the long term. It will provide a consistent approach for investigating and prosecuting social security and tax credit fraud by operating a single policy for such investigations and prosecutions.

7.4 The new service carried out by DWP will investigate fraud effectively through better application of the existing professional resources within DWP, HMRC and local authorities. It will enable one DWP investigator to identify the totality of fraud in each investigation. The transfer of local authority staff and their contracted suppliers will ensure the experienced resource is retained and utilised.

- **Consolidation**

7.5 No consolidation is necessary as this Instrument is free standing and does not amend any other instruments.

8. Consultation outcome

Relevant authorities and key stakeholders (including trade unions recognised by Local Authorities) were invited to comment on this proposal for a legislative transfer scheme to facilitate the transfer of employees. A draft copy of the SI was issued for comment. Consultation commenced in March 2014 for a 6 week period. The responses to the consultation have been reviewed. Following the conclusion of the consultation exercise a number of revisions have been incorporated into the final SI. A separate document contains the comments received by stakeholders and DWP's response to these comments. https://www.gov.uk/government/consultations/transfer-of-local-authority-and-contracted-benefit-fraud-investigation-staff-to-dwp

9. Guidance

DWP has produced communications and guidance for employers on the mechanics of the transfer and timescales. DWP will also work with individual employers in the lead up to the transfer period.

10. Impact

10.1 This instrument has no impact on business or civil society organisations.

10.2 An Impact Assessment has not been prepared for this instrument as it has no impact on business or civil society organisations.

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring and review

The transfer of employees will occur during the roll out period of July 2014 to March 2016. Following the initial transfers on 1 July 2014, a break has been built in to allow a review of the process and outcomes before commencing further transfers from October 2014.

13. Contact

Annie Vera at the Department for Work and Pensions Tel: 0114 2934028 or email: sfis.hremployeetransferteam@dwp.gsi.gov.uk can answer any queries regarding the instrument.