EXPLANATORY MEMORANDUM TO

THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) (TRANSFER OF STAFF TO THE OFFICE FOR ENVIRONMENTAL PROTECTION) REGULATIONS 2021

2021 No. 1353

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to transfer the employment contracts of certain staff who are employed by the Department for Environment, Food and Rural Affairs ("DEFRA") to the Office for Environmental Protection ("the OEP") with protection similar to that afforded by the main part of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE Regulations"), including preservation of continuity of service and existing terms and conditions of employment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 22(1) of the Environment Act 2021 ('the Act'), along with The Environment Act 2021 (Commencement No. 1) Regulations 2021 establishes the OEP as a statutory body. That Act confers powers on the OEP to carry out functions related to environmental governance. Some of those functions were initiated in advance on a non-statutory, interim basis and DEFRA have assigned or recruited staff for prospective transfer to the OEP when established. The Act, as commenced, will form the legal basis for carrying out the environmental governance functions defined therein on a statutory basis.

6.2 The Secretary of State has decided that the staff, notified in advance of the transfer and working primarily on the establishment of the OEP and/or the activities that will be carried out by the OEP will transfer to it. The Act does not provide a mechanism to

allow employees carrying out roles related to these functions to transfer to another public body.

6.3 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. Therefore, the TUPE Regulations do not apply in this case.

6.4 This instrument is therefore being made under the powers established in section 38(1) of the Employment Relations Act 1999 to enable the transfer of staff from DEFRA to the OEP, taking account of the requirement in the Cabinet Office Statement of Practice (COSoP) on staff transfers to protect employees' terms and conditions.

6.5 To take account of the requirement in COSoP to provide appropriate pension protection to protect occupational pensions, under the Act, the OEP is to be listed in Schedule 1 of the Superannuation Act 1972, for the purposes of section 1 of that Act. This will enable transferring employees who were eligible to participate in the Civil Service pension arrangements to remain eligible to participate in those arrangements following transfer to the OEP.

6.6 As with a transfer under the TUPE Regulations, this instrument does not transfer contractual occupational pension entitlements relating to benefits for old age, invalidity, or survivors.

7. Policy background

What is being done and why?

7.1 The OEP has a key role in the robust system of environmental governance and will contribute to the long-term goal of environmental improvement under the Environmental Improvement Plans. Some of the functions of the OEP have been initiated on an interim, non-statutory basis until the OEP is legally established. Staff have been assigned or recruited by DEFRA to carry out that work, pending the establishment of the OEP.

7.2 DEFRA have undertaken an exercise to identify the relevant roles to be transferred from DEFRA to the OEP and the individuals in scope have been notified accordingly. DEFRA have shared with the relevant recognised Trade Unions the matters relating to this instrument.

7.3 The staff will transfer on 1st January 2022.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 There is no statutory requirement for consultation on this instrument.

10.2 DEFRA have undertaken a consultation exercise with the individuals in scope and the relevant recognised Trade Unions (Public and Commercial Services Union, Prospect, FDA) on the matters relating to this instrument.

10.3 Trade Unions were engaged on a comparison of terms and conditions between DEFRA and the OEP. Individual staff were engaged through a series of meetings about the scope and effect of this instrument.

10.4 This engagement was ongoing at the time of writing and a summary of responses can be shared on request by the DEFRA contacts below.

11. Guidance

11.1 Guidance is not required.

11.2 Affected staff have been individually notified and engaged through a series of meetings on the scope and effect of this instrument.

12. Impact

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

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

12.3 A full Impact Assessment is not required for this instrument. This instrument relates to a transfer of administrative functions between public administrative authorities to enable the continuation of work already being carried out on an interim basis.

13. Regulating small business

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

14. Monitoring & review

14.1 The effect of this instrument is being monitored through consultation with the affected staff.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Rich Stone at the Department for Environment, Food and Rural Affairs Telephone: 02087201697 or email: Rich.Stone@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Bailey, Deputy Director for Environmental Governance, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rebecca Pow at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.