STATUTORY INSTRUMENTS

2024 No. 1047

TERMS AND CONDITIONS OF EMPLOYMENT

The Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Office of Communications) Regulations 2024

Made - - - -	*21st October 2024*
Laid before Parliament	*24th October 2024*
Coming into force - -	*21st November 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 38(1) of the Employment Relations Act 1999(**a**).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Transfer of Undertakings (Protection of Employment) (Transfer of Staff to the Office of Communications) Regulations 2024 and come into force on 21st November 2024.

(2) These Regulations extend to England and Wales and Scotland.

(3) In these Regulations—

"OFCOM" means the Office of Communications(**b**);

"premium rate service" has the meaning given in section 120(7) of the Communications Act 2003 (conditions regulating premium rate services)(**c**);

"PSA" means the Phone-paid Services Authority Limited, a company limited by guarantee, registered in England and Wales under company number 2398515(**d**);

"transfer date" means 1st February 2025.

Application of Regulations

2. These Regulations apply to any individual who—

(a) immediately before the transfer date is employed by PSA for the principal purpose of carrying out activities connected to the regulation of premium rate services, and

(b) has, before the transfer date, been notified in writing by PSA that they are to transfer to the employment of OFCOM.

(**a**) 1999 c. 26. Section 38(1) was substituted by S.I. 2019/536.
(**b**) OFCOM is the regulator of communications services in the United Kingdom and is a body corporate created under section 1 of the Office of Communications Act 2002 (c. 11).
(**c**) 2003 c. 21. There are amendments to section 120 not relevant to these Regulations.
(**d**) PSA is a non-departmental public body of the Department for Science, Innovation and Technology.

Transfer of employment

3.—(1) Any individual to whom these Regulations apply is, on the transfer date, transferred to the employment of OFCOM (but see paragraph (6)).

(2) The contract of employment of an individual whose employment has transferred to OFCOM under paragraph (1)—

(a) is not terminated by the transfer, and

(b) has effect from the transfer date as if originally made between that individual and OFCOM.

(3) All the rights, powers, duties and liabilities of PSA under, or in connection with, the contract of employment of any individual whose employment transfers to OFCOM under paragraph (1), are transferred to OFCOM on the transfer date.

(4) Any act or omission before the transfer date of, or in relation to, PSA, in respect of that individual or that individual's contract of employment, is on and after the transfer date deemed to have been an act or omission of, or in relation to, OFCOM.

(5) Paragraphs (3) and (4) do not transfer, or otherwise affect, the liability of any person to be prosecuted for, convicted of or sentenced for any offence.

(6) Paragraph (1) does not operate to transfer the contract of employment of an individual to whom these Regulations apply, or any rights, powers, duties and liabilities under or in connection with that contract, if, before the transfer date, the individual informs PSA that they object to becoming employed by OFCOM.

(7) Where an individual to whom these Regulations apply has objected as described in paragraph (6), that individual's contract of employment with PSA is terminated with effect from the transfer date.

(8) An individual whose contract of employment is terminated in accordance with paragraph (7) is not to be treated, for any purpose, as having been dismissed by PSA (but see paragraph (9)).

(9) Where the transfer involves or would involve a substantial change in working conditions to the material detriment of an individual whose employment is or would have transferred under paragraph (1)—

(a) that individual may treat the contract of employment as having been terminated, and

(b) that individual is to be treated for any purpose as having been dismissed by their employer.

(10) No damages are to be payable by PSA or OFCOM as a result of the dismissal falling within paragraph (9), in respect of any failure by PSA or OFCOM to pay wages to an individual in respect of a notice period which the individual has failed to work.

(11) This regulation does not affect any right of an individual arising apart from this regulation to terminate that individual's contract of employment without notice in acceptance of a repudiatory breach of contract by that individual's employer.

Pensions

4. An individual whose contract of employment is transferred by regulation 3 is to be treated as if regulation 10 of the Transfer of Undertakings (Protection of Employment) Regulations 2006(**a**) ("the TUPE Regulations") (pensions) applied in relation to that transfer, with the modification that—

(**a**) S.I. 2006/246.

(a) for the reference to regulations 4 and 5 in regulation 10(1) of the TUPE Regulations, there were substituted a reference to regulation 3 of these Regulations, and

(b) for the reference to regulation 4(1) in regulation 10(3) of the TUPE Regulations, there were substituted a reference to regulation 3(2) of these Regulations.

Chris Bryant
Minister of State
21st October 2024 Department for Science, Innovation and Technology

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the transfer of the employment contracts of staff from the Phone-paid Services Authority Limited ("PSA") to the Office of Communications ("OFCOM"), on the transfer date. OFCOM is the regulator of communications services in the United Kingdom and is a body corporate created under section 1 of the Office of Communications Act 2002 (c. 11). PSA is a non-departmental public body of the Department for Science, Innovation and Technology.

These Regulations provide for employment protection similar to that provided by certain provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) ("the TUPE Regulations").

Regulation 2 specifies the individuals to whom these Regulations apply.

Regulation 3 provides for the effect of the transfer on the contracts of employment of those to whom the Regulations apply. It makes similar provision to that contained in paragraphs (1), (2), and (6) to (11) of regulation 4 of the TUPE Regulations.

Regulation 4 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 significant impact on the private, voluntary or public sectors is foreseen.

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