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STATUTORY INSTRUMENTS

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**2021 No. 1353**

**TERMS AND CONDITIONS OF EMPLOYMENT**

The Transfer of Undertakings (Protection of  
Employment) (Transfer of Staff to the Office  
for Environmental Protection) Regulations 2021

<i>Made</i>	- - - -	<i>1st December 2021</i>
<i>Laid before Parliament</i>		<i>2nd December 2021</i>
<i>Coming into force</i>	- -	<i>24th December 2021</i>

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

**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 for Environmental Protection) Regulations 2021.

(2) These Regulations come into force on 24th December 2021.

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

(4) In these Regulations—

“DEFRA” means the Department for Environment, Food and Rural Affairs;

“the OEP” means the Office for Environmental Protection(2);

“transfer date” means 1st January 2022.

**Application of Regulations**

2. These Regulations apply to any person who—

(a) immediately before the transfer date, is employed by DEFRA for the principal purpose of carrying out activities connected to either or both—

(i) the establishment of the OEP;

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(1) 1999 c. 26. Section 38 was amended by S.I. 2019/536; there is another amending instrument which is not relevant. The terms used in section 38(1) are defined in section 38(2).

(2) The Office for Environmental Protection is a body corporate established under section 22(1) of the Environment Act 2021 (c. 30).

- (ii) the statutory functions of the OEP in the Environment Act 2021<sup>(3)</sup>; and
- (b) before the transfer date, has been notified by DEFRA that they are transferring to the employment of the OEP.

### **Transfer of employment**

3.—(1) Subject to paragraph (6), any person to whom these Regulations apply is on the transfer date transferred to the employment of the OEP.

(2) The contract of employment of a person whose employment has transferred to the OEP under paragraph (1)—

- (a) is not terminated by the transfer; and
- (b) has effect from the transfer date as if originally made between that person and the OEP.

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

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

(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 a person 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 person informs DEFRA that they object to becoming employed by the OEP.

(7) Where a person to whom these Regulations apply has objected as described in paragraph (6), the transfer operates so as to terminate that person's contract of employment with DEFRA.

(8) Subject to paragraph (9), a person whose contract of employment is terminated in accordance with paragraph (7) is not to be treated, for any purpose, as having been dismissed by DEFRA.

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

- (a) that person may treat the contract of employment as having been terminated; and
- (b) that person is to be treated for any purpose as having been dismissed by their employer.

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

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

### **Pensions**

4. A person 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<sup>(4)</sup> (pensions) applied in relation to that transfer, with the modification that for the reference to

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(3) 2021 c. 30.

(4) S.I. 2006/246, to which there are amendments not relevant to these Regulations.

regulations 4 and 5 of those Regulations there were substituted a reference to regulation 3 of these Regulations.

Signed by authority of the Secretary of State for Environment, Food and Rural Affairs

*Rebecca Pow*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

1st December 2021

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations concern the transfer of the employment contracts of certain staff, from the Department for Environment, Food and Rural Affairs to the Office for Environmental Protection, on the transfer date (1st January 2022).

These Regulations provide for employment protection similar to that provided by certain provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“the TUPE Regulations”).

Regulation 2 specifies the persons 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 or voluntary sectors is foreseen. An Explanatory Memorandum has been published alongside these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk).