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STATUTORY INSTRUMENTS

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**2019 No. 267**

**TERMS AND CONDITIONS OF EMPLOYMENT**

The Transfer of Undertakings (Protection of Employment) (Transfer of Police Staff to the National Crime Agency) Regulations 2019

<i>Made</i>	- - - -	<i>14th February 2019</i>
<i>Laid before Parliament</i>		<i>18th February 2019</i>
<i>Coming into force</i>	- -	<i>11th March 2019</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 38(2) of the Employment Relations Act 1999(1).

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Transfer of Undertakings (Protection of Employment) (Transfer of Police Staff to the National Crime Agency) Regulations 2019 and come into force on 11th March 2019.

(2) In these Regulations—

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(2);

“NCA” means the National Crime Agency;

“transfer date” means 1st April 2019;

“transferor” means, in relation to a person to whom these Regulations apply, any police force listed below at (a) – (m) which employs that person immediately before the transfer date—

- (a) West Yorkshire Police,
- (b) Thames Valley Police,
- (c) Avon and Somerset Constabulary,
- (d) West Midlands Police,
- (e) Northumbria Police,
- (f) Lancashire Constabulary,

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(1) 1999 c. 26. Section 38 was amended by S.I. 2011/1043.

(2) S.I. 2006/246; relevant amendments were made by S.I. 2009/592 and 2010/93.

- (g) Merseyside Police,
- (h) Greater Manchester Police,
- (i) Bedfordshire Police,
- (j) Gwent Police,
- (k) Leicestershire Police,
- (l) Nottinghamshire Police,
- (m) Cheshire Constabulary.

### **Application of Regulations**

2.—(1) These Regulations apply to any person who—

- (a) immediately before the transfer date is employed by a transferor for the principal purpose of carrying out activities connected to the performance of functions under section 82 of the Serious Organised Crime and Police Act 2005(3);
- (b) has by midnight on 15th March 2019 notified the NCA that he or she wishes to transfer to the employment of the NCA;
- (c) has not notified the NCA before midnight on 20th March 2019 that he or she no longer wishes to transfer to the employment of the NCA; and
- (d) has by midnight on 27th March 2019 received a written acknowledgement from the NCA of the person's wish to transfer to the employment of the NCA.

(2) A notification for the purposes of paragraph (1)(b) and (c) must be made in the manner prescribed by the NCA.

### **Transfer of employment**

3.—(1) Any person to whom these Regulations apply is on the transfer date transferred to the employment of the NCA.

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

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

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

(4) Any act or omission before the transfer date of, or in relation to, the transferor, 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 NCA.

(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.

### **Pensions**

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

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(3) 2005 c.15; relevant amendments to section 82(1) were made by section 178(2)(b) of the Anti-social Behaviour, Crime and Policing Act 2014 (c. 12). Relevant amendments were made to section 82(5) by paragraph 160 of Schedule 8 to the Crime and Courts Act 2013 (c. 22).

modification that for the reference to regulations 4 and 5 of the TUPE Regulations there were substituted a reference to regulation 3 of these Regulations.

14th February 2019

*Ben Wallace*  
Minister of State  
Home Office

**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 these Regulations)*

These Regulations are made under the power granted to the Secretary of State under section 38(2) of the Employment Relations Act 1999 (c.26).

They concern the treatment of police staff (that is “civilian” staff, rather than police officers) who are employed by regional police forces within the police forces’ Regional Organised Crime Units and who are employed for the principal purpose of carrying out activities connected to the performance of functions under Chapter 4 of the Serious Organised Crime and Police Act 2005 (c.15) (the “2005 Act”).

Chapter 4 of the 2005 Act contains provisions relating to protected person services. Under section 82 a “protection provider” may make such arrangements as he considers appropriate for the purpose of protecting any person if he reasonably believes that the person’s safety is at risk in view of the criminal conduct or possible criminal conduct of another person. A “protection provider” is defined as including a chief officer of a police force in England and Wales and the Director General of the National Crime Agency.

In order to draw together provision in England and Wales of protected persons services, on 1st April 2019 the functions provided by Regional Organised Crime Units relating to protected person services are transferring to the National Crime Agency, and these Regulations provide a mechanism for the transfer of the employment contracts of certain police staff to perform such functions. These Regulations offer employment 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(1), (2) and (6) of the TUPE Regulations and provides for the employees to be transferred to the employment of the NCA. 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.

An Impact Assessment has not been produced for this instrument as no impact is foreseen on the private, voluntary or public sectors.