

2022 No. 1012

TERMS AND CONDITIONS OF EMPLOYMENT

**The Transfer of Undertakings (Protection of Employment)
(Transfer of Staff to the Scottish Courts and Tribunals Service)
Regulations 2022**

<i>Made</i> - - - -	<i>28th September 2022</i>
<i>Laid before Parliament</i>	<i>30th September 2022</i>
<i>Coming into force</i> - -	<i>21st October 2022</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 38 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 Scottish Courts and Tribunals Service) Regulations 2022 and come into force on 21st October 2022.

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

(3) In these Regulations—

“the Transferor” means His Majesty’s Courts and Tribunals Service;

“the Transferee” means the Scottish Courts and Tribunals Service;

“the transfer date” means the date specified in the notice referred to in regulation 2(b) on which the transfer takes place;

“the 1996 Act” means the Employment Rights Act 1996(b);

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(c).

Application of Regulations

2. These Regulations apply to any person who—

- (a) immediately before the transfer date, is employed by the Transferor in relation to Adult Personal Independence Payment and Child Disability Living Allowance appeals in the First-tier (Social Security and Child Support) Tribunal; and
- (b) has been notified in writing by the Transferor that they are to transfer to the employment of the Transferee on the date specified in the notice.

(a) 1999 c. 26. Section 38 was amended by S.I. 2019/536.
(b) 1996 c. 18.
(c) S.I. 2006/246

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 Transferee.

(2) The contract of employment of a person whose employment has transferred to the Transferee 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- (b) has effect from the transfer date as if originally made between that person and the Transferee.

(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 transfers to the Transferee under paragraph (1) are transferred to the Transferee 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 Transferee.

(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 the Transferor that they object to becoming employed by the Transferee.

(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 the Transferor.

(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 the Transferor or Transferee.

(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 their contract of employment as having been terminated, and
- (b) that person is to be treated for all purposes as having been dismissed by the Transferee.

(10) No damages are to be payable by the Transferor or the Transferee as a result of a dismissal falling within paragraph (9), in respect of any failure by the Transferor or the Transferee 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 other than under 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.

Dismissal of employee because of relevant transfer

4.—(1) Subject to the following provisions of this regulation, where, either before or after a relevant transfer, any person employed ("the employee") by the Transferor is dismissed, the employee is to be treated for the purposes of Part 10 of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for the dismissal is the transfer.

(2) This paragraph applies where the sole or principal reason for the dismissal of the employee by the Transferor is an economic, technical or organisational reason entailing changes in the workforce of the Transferor before or after a relevant transfer.

(3) Where paragraph (2) applies—

- (a) paragraph (1) does not apply; and

- (b) without prejudice to the application of section 98(4)(b) of the 1996 Act^(a) (test of fair dismissal), for the purposes of sections 98(1) and 135 of that Act (reason for dismissal), the dismissal is to be regarded as having been—
 - (i) for redundancy where section 98(2)(c) of that Act applies; or
 - (ii) in any other case, for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(4) In paragraph (2), the expression “changes in the workforce” includes a change to the place where employees are employed by the Transferor to carry on the business of the Transferor or to carry out work of a particular kind for the Transferor (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).

(5) The provisions of this regulation apply irrespective of whether the employee is a person to whom these Regulations apply.

(6) Paragraph (1) does not apply in relation to the dismissal of any employee if the application of section 94 of the 1996 Act is excluded by or under any provision of the 1996 Act, the Employment Tribunals Act 1996^(b) or the Trade Union and Labour Relations (Consolidation) Act 1992^(c).

Pensions

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

Information and Consultation

6.—(1) Any transfer effected by regulation 3 is to be treated as a relevant transfer to which regulations 11 to 16 of the TUPE Regulations apply.

(2) Where, before the transfer date, the Transferor has notified the Transferee of employee liability information (within the meaning of the TUPE Regulations) in the form and manner required by regulation 11 of the TUPE Regulations (notification of employee liability information), the Transferor shall be treated as having complied with that regulation.

(3) Information provided or consultation undertaken by the Transferor or Transferee before the transfer date, if provided or carried out in the form or manner required by regulation 13 of the TUPE Regulations (duty to inform or consult representatives), is to be treated as effective for the purpose of that regulation.

28th September 2022

Bellamy
Parliamentary Under Secretary of State
Ministry of Justice

(a) Section 98(4) is amended by S.I. 2011/1069.
(b) 1996 c. 17.
(c) 1992 c. 52.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations concern the transfer of HMCTS administrative staff to the Scottish Courts and Tribunals Service, which is taking place as a result of the introduction of the Scottish Social Security Child and Adult Disability benefits.

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 defines the employees 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, similar to the provisions made by regulation 4 of the TUPE Regulations.

Regulation 4 is equivalent to regulation 7 of the TUPE Regulations and provides that those employees are to be treated for the purposes of Part 10 of the Employment Rights Act 1996 (c.26) (unfair dismissal) as unfairly dismissed if the sole or principal reason for the dismissal is the transfer.

Regulation 5 applies the provisions of regulation 10 of the TUPE Regulations, in relation to pensions to exclude certain rights of and liabilities on occupational pension schemes.

Regulation 6 ensures a transfer is treated as a relevant transfer for the purposes of regulations 11 to 16 of the TUPE Regulations (which make provision about notification of liability information to the transferee and about informing and consulting staff representatives).

A full Impact Assessment has not been produced for this instrument as no impact on the private sector or civil society organisations is foreseen.